

to issue a stop work order on all construction or development related to the permitted operation. Permittee shall then be required to obtain City approval of a revised blasting plan. Work shall not be allowed to continue until the revised blasting plan is approved.

(Ord. No. 177-02/03, 3-17-03)

- Sec. 14-592. Reserved.**
- Sec. 14-593. Reserved.**
- Sec. 14-594. Reserved.**
- Sec. 14-595. Reserved.**
- Sec. 14-596. Reserved.**
- Sec. 14-597. Reserved.**
- Sec. 14-598. Reserved.**
- Sec. 14-599. Reserved.**
- Sec. 14-600. Reserved.**

## **ARTICLE IX. HISTORIC PRESERVATION**

### **DIVISION 1. GENERALLY**

#### **Sec. 14-601. Purpose.**

The purpose of this article is to promote the educational, cultural, economic and general welfare of the City of Portland by:

- (a) Creating a mechanism to identify, preserve and enhance distinctive areas, sites, structures and objects that have historic, cultural, architectural and archeological significance;
- (b) Providing a resource of information and expertise to help those interested in rehabilitation or construction in a district or restoring a landmark;
- (c) Applying design standards in a reasonable and flexible manner to prevent the unnecessary loss of the community's historical features and to ensure compatible construction and rehabilitation in historic districts while not stifling change and development or forcing modern recreations of historic styles;
- (d) Fostering civic pride in the city's history and development patterns as represented in such distinctive

areas, sites, structures and objects;

- (e) Protecting and enhancing neighborhood character;
- (f) Stabilizing and improving the values of designated properties and areas;
- (g) Protecting and enhancing the attractiveness of the city to its home buyers, home owners, residents, tourists, visitors, businesses and shoppers;
- (h) Fostering and encouraging preservation, restoration and rehabilitation that respects the historic, cultural, architectural and archeological significance of distinctive areas, sites, structures and objects.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-602. Definitions.**

*Alteration:* Any act or process requiring a building permit and any other act or process not requiring a building permit but specifically listed in this article as a reviewable action, including without limitation the repair, reconstruction, demolition or relocation of any structure or object, or any part of a structure or object.

*Applicant:* A person who submits an application for issuance of a certificate of appropriateness.

*Application:* A form submitted for approval of alteration, construction, demolition or removal that requires issuance of a certificate of appropriateness.

*Business day:* A day on which the department is open for business.

*Certificate of appropriateness:* A certificate issued by the department evidencing approval of specific plans for alteration of a structure or construction on a site in accordance with this article.

*Certificate of economic hardship:* A certificate issued by the department evidencing a hardship variance approved by the board of appeals in accordance with division 8 of this article.

*Certificate of nonapplicability:* A certificate issued by the department evidencing a determination that specific plans for alteration of a structure or construction on a site do not require approval under this article.

*Committee:* The historic preservation committee.

*Construction:* The adding to a structure by an addition, or the erection or placement of any new structure on a lot or property.

*Contributing:* A classification applied to a site, structure or object within a historic district signifying that it contributes generally to the qualities that give the historic district cultural, historic, architectural or archeological significance as embodied in the criteria for designating an historic district, but without being itself a landmark.

*Council:* The city council.

*Demolition:* Any act or process that partially or totally destroys a structure or object.

*Department:* The department of planning and urban development.

*Design guideline:* Any design standard specified for alteration or construction which is unique to a particular landmark, historic district or historic landscape district.

*Design manual:* The historic resources design manual described in section 14-675.

*District:* An historic district or historic landscape district.

*Historic district:* An area designated as an "historic district" by the council.

*Historic landscape district:* An area designated as an "historic landscape district" by the council.

*Landmark:* A property, site, structure or object designated as a "landmark" by the council.

*Major development:* As defined in article V of this chapter.

*Minor development:* As defined in article V of this chapter.

*Noncontributing structure:* Any structure which is neither a contributing structure within a district nor a landmark.

*Object:* Anything constructed, fabricated or created, the use of which does not require permanent or semipermanent location on or in the ground.

*Open space:* Any park and any other area outside of a building open to the public.

*Ordinary maintenance:* Acts of maintenance or repair which do not include a change in the design, material or outer appearance of a structure, including without limitation repainting, replacement of materials or windows of the same scale, texture and color, and landscaping other than within an historic landscape district.

*Owner:* The person or persons holding record title to the building, site or property; provided, however, the last previous tax roll in the records of the city assessor's office may be relied upon as showing record ownership in the absence of substantial evidence to the contrary.

*Property:* Land and improvements identified as a separate lot for purposes of subdivision, site plan, or zoning regulation.

*Relocation:* Any removal or relocation of a structure on its site or to another site.

*Restoration:* Any act which returns a structure or a feature of a structure to a prior state of historic significance.

*Sign:* As defined in section 14-47.

*Site:* The location of an event, activity, structure or object.

*Street:* The entire width between boundary lines of every way publicly owned and maintained or which way is open to the use of the public for purposes of vehicular or pedestrian traffic.

*Structure:* Anything constructed or erected, having a permanent or semipermanent location on another structure or in the ground, including without limitation buildings, garages, fences, gazebos, advertising signs, billboards, antennas, satellite sending or receiving dishes, and swimming pools.

DIVISION 2. HISTORIC PRESERVATION BOARD

**Sec. 14-603. Composition.**

The historic preservation board shall consist of seven (7) voting members who shall serve without compensation. Members shall have demonstrated interest, knowledge, ability, experience or expertise in restoration, rehabilitation, or neighborhood conservation or revitalization and shall be residents of the city.  
(Ord. No. 235-90, 2-26-90)

**Sec. 14-604. Appointment and terms.**

(a) Members shall be appointed by the council for terms of three (3) years. Appointments shall be staggered so that the terms of not more than three (3) members expire in any calendar year.

(b) Vacancies on the historic preservation board shall be filled within sixty(60) days. However, every member shall continue in office after expiration of the term until a successor has been appointed. Vacancies on the historic preservation board shall be filled for the unexpired term of the former member.  
(Ord. No. 235-90, 2-26-90; Ord. No. 197-03/04, 9-8-04)

**Sec. 14-605. Removal of historic preservation board member.**

Members may be removed for cause by the council. Cause shall include, but is not limited to, the failure to attend meetings without good cause. Any member proposed to be removed shall be given written notice and an opportunity to be heard prior to final action.  
(Ord. No. 235-90, 2-26-90)

**Sec. 14-606. Officers.**

(a) Officers of the historic preservation board shall consist of a chair and vice-chair.

(b) Officers shall be elected by the historic preservation board and shall serve a term of one (1) year and shall be eligible for re-election. No person shall serve as chair for more than two (2) consecutive years.

(c) The chair shall preside at all meetings and hearings and fulfill the customary functions of that office.

(d) In the absence of the chair, the vice-chair shall act as chair and shall have all the powers of the chair. The vice-chair shall have such other powers and duties as may from time to time be provided by the rules of the historic preservation board.

(e) The director of the department or his or her designated representative shall serve as staff secretary to the historic preservation board and shall attend all its meetings. The secretary shall provide for the keeping of tape recordings or minutes of the proceedings of the historic preservation board, showing the vote of each member on every question or his or her absence or failure to vote, and shall maintain the records and decisions of all meetings, hearings and proceedings and all correspondence of the historic preservation board. Copies of permanent records shall be filed with the city clerk. The secretary shall publish and distribute copies of the minutes, reports and decisions of the historic preservation board to historic preservation board members and to others upon approval of the historic preservation board. The department shall assign necessary staff to assist the historic preservation board and the planning board in carrying out their responsibilities under this article.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-607. Meetings, hearing, procedures and decisions.**

(a) Regular meetings of the historic preservation board shall be held no less frequently than monthly. Special meetings may be called by the chair or any four (4) members or at the request of the chair of the planning board.

(b) The historic preservation board may adopt procedural rules for the conduct of its business not inconsistent with this article, including the creation of a subcommittee structure to enhance efficiency in consideration of historic preservation board business. Such rules shall be filed with the secretary and with the city clerk. All such rules shall be subject to veto, in whole or in part, by the council within forty-five (45) days of such filing. The initial rules shall take effect when filed, subject to veto as provided above. Amendments to the rules shall take effect upon expiration of said veto period. Any rule may be waived by the chair upon good cause being shown.

(c) No final action shall be taken by the historic preservation board which could in any manner deprive or restrict the owner of a property in its use, alteration, maintenance, disposition or demolition, until such owner either has knowledge of the proceeding or is sent notice offering opportunity to be heard. This paragraph shall not affect the interim protection provisions of division 5.

(d) Every recommendation or recommended decision shall include written findings of fact and shall specify the reason or reasons for such action.

(e) The secretary shall mail notice of any final action of the historic preservation board to the applicant and any designated interested parties and send a copy thereof to the planning board within five (5) business days following such action.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-608. Conflicts of interest.**

No member of the historic preservation board shall participate in the hearing or disposition of any matter in which he or she has a pecuniary interest.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-609. Responsibilities.**

The historic preservation board shall have the following responsibilities:

- (a) To conduct or administer an ongoing survey to identify historically, culturally, architecturally and archaeologically significant areas, sites, structures and objects.
- (b) To review all areas, sites, structures and objects listed in the National Register of Historic Places, including the boundaries of areas so listed, and make recommendations to the planning board and council for the adoption of ordinances designating those areas, sites, structures and objects as landmarks or districts.
- (c) To investigate and recommend to the planning board the adoption of ordinances designating areas, sites,

structures and objects not listed in the National Register of Historic Places as landmarks and districts and to make recommendations to the planning board concerning sites, structures and objects that have contributing significance or are intrusions within nominated or designated districts.

- (d) To keep a register of all areas, sites, structures and objects that have been designated as landmarks or districts, including all information required as part of each designation.
- (e) To create an appropriate system of plaques for identification of individual landmarks and make recommendations for the design and implementation of specific marking of streets and routes leading from one (1) landmark or district to another.
- (f) Upon request, to advise and assist owners of landmarks and property, sites, structures or objects within districts on physical and financial aspects of preservation, renovation, rehabilitation and reuse and for procedures for inclusion on other registers of significant areas, sites, structures and objects, including the National Register of Historic Places.
- (g) To recommend to the planning board the nomination of areas, sites, structures and objects to the National Register of Historic Places or to any State of Maine Register of Historic Places that may be established.
- (h) At the direction of the council, to prepare application for, and participate in, the "certified local government" program of the National Historic Preservation Act Amendments of 1980 and the Main Historic Preservation Commission; and carry out any responsibilities delegated to it under that program, including review and comment on any National Register nominations submitted to the historic preservation board; upon request of the council, participate in any review of federal actions or undertakings pursuant to Section 106 of the National Historic Preservation Act; attend informational and educational programs sponsored by the Maine Historic Preservation Commission; and prepare an annual report of the activities of the historic preservation board.

- (i) To inform and educate the citizens of Portland concerning the cultural, historic, architectural and archeological heritage of the city by publishing appropriate maps, newsletters, brochures and pamphlets and by sponsoring programs and seminars.
- (j) To hold meetings and public hearings to review applications for certificates of appropriateness affecting proposed or designated landmarks and districts; to recommend approval or disapproval of certificates of appropriateness.
- (k) To provide testimony to the board of appeals in connection with any application for a certificate of economic hardship.
- (l) To develop design guidelines affecting landmarks or districts for review and approval by the planning board.
- (m) To advise the planning board as to recommendations on any preservation or conservation easements that the City of Portland may have or be offered as a gift or otherwise.
- (n) To advise the planning board as to the administration of such gifts, grants and money as may be appropriated for the purposes of this article upon authorization and approval by the council.
- (o) To confer recognition upon the owners of landmarks or properties, sites, structures or objects within districts by means of certificates, plaques or markers.
- (p) To assist the planning board in the development of a preservation component in the comprehensive plan of the City of Portland.
- (q) To periodically review this Code and to make recommendations to the planning board concerning any amendments appropriate for the protection and continued use of landmarks or properties, sites, structures or objects within districts.
- (r) To annually report to the council with respect to the following matters:

1. Survey work in progress or completed;
  2. The number of projects reviewed (by type);
  3. How many certificates of each type were issued.
- (Ord. No. 235-90, 2-26-90)

### DIVISION 3. CATEGORIES AND CRITERIA FOR DESIGNATION

#### **Sec. 14-610. Minimum criteria for designation.**

(a) The historic preservation board shall limit its consideration to the following criteria in making a determination on a proposed nomination of an area, site, structure or object for designation by ordinance as a landmark or district:

- (1) Its value as a significant example of the cultural, historic, architectural, archeological or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States;
- (2) Its location as a site of a significant historic or prehistoric event or activity which may have taken place within or which involved the use of any existing structure on the property;
- (3) Its identification with a person or persons who significantly contributed to the cultural, historic, architectural, archeological or related aspect of the development of the City of Portland, State of Maine, New England region, or the United States;
- (4) Its exemplification of a significant architectural type, style or design distinguished by innovation, rarity, uniqueness or overall quality of design, detail, materials or craftsmanship;
- (5) Its identification as the work of an architect, designer, engineer or builder whose individual work is significant in the history or development of the City of Portland, the State of Maine, the New England region, or the United States; or

- (6) Its representation of a significant cultural, historic, architectural, archeological or related theme expressed through distinctive areas, sites, structures or objects that may or may not be contiguous.

(b) In the case of a nominated historic district, the historic preservation board shall also determine whether a substantial number of the properties, sites, structures or objects have a high degree of cultural, historic, architectural or archeological significance and integrity, many of which may qualify as landmarks, and which may also have within its boundaries other properties, sites, structures or objects which, while not of such cultural, historic, architectural or archeological significance to qualify as landmarks, nevertheless contribute to the overall visual characteristics of the significant properties, sites, structures or objects located within it.

(c) In the case of a nominated historic landscape district, the historic preservation board shall also consider its significance as a geologic, natural or man-made landscape feature associated with the development, heritage or culture of the City of Portland, State of Maine, New England region, or the United States.

(d) The planning board and council shall apply the criteria of subsections (a), (b) and (c) but shall also consider the effect of such designation on other aspects of the comprehensive plan of the city.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-611. Integrity of landmarks and historic districts.**

Any area, structure or object that meets the criteria in section 14-610 must also have sufficient integrity of location, design, condition, materials and workmanship to make it worthy of preservation or restoration.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-612. Designation of historic landscape districts.**

An historic landscape district may be nominated and considered for designation only if the entire area of the district is owned by a unit of federal, state or local government, or any combination of such ownership.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 2, 5-17-93)

**Sec. 14-613. Reserved.**

DIVISION 4. NOMINATION, CONSIDERATION AND DESIGNATION

**Sec. 14-614. Procedure.**

The provisions of this division shall govern the nomination, consideration and designation of landmarks and districts.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-615. Initiation of nomination.**

(a) Nomination of an area, site, structure or object for consideration of designation as a landmark, historic district or historic landscape district shall be submitted to the department, on a form provided by the department, by the following:

- (1) Any two (2) members of the historic preservation board on their own initiative, by written notice to the department; or
- (2) By written petition of any owner, in the case of a landmark; or
- (3) By written petition of one (1) or more owners of affected property in the case of a district; provided two (2) members of the historic preservation board must sponsor the petition.

(b) A nomination shall be completed and filed with the department with all required signatures and any fees specified therefor for the nomination to be pending.

(c) Upon nomination, the department shall notify the owner or owners of the nomination and shall transmit the nomination to the historic preservation board for its consideration at its next scheduled meeting, which in no event shall be held later than thirty (30) days following nomination.

(d) At any time after a complete nomination is filed for an historic district, the owner of a structure who seeks a permit for demolition may apply to the historic preservation board for a determination that the structure to be demolished is noncontributing and eligible for a demolition permit. The

determination of the historic preservation board that the structure is noncontributing shall be conclusive.  
(Ord. No. 235-90, 2-26-90)

**Sec. 14-616. Notification of nomination and public hearing.**

(a) A public hearing on the nomination shall be held by the historic preservation board within thirty (30) days following the first scheduled meeting referred to in section 14-615(c), but in no event later than sixty (60) days following receipt of the completed nomination form by the department. Notice of the nomination and of the public hearing shall be in accordance with the procedures for public hearings before the planning board for site plan approval.

(b) The hearing shall be conducted in accordance with procedures adopted by the historic preservation board. The historic preservation board shall consider all testimony or evidence relating to the designation criteria in division 3 from any person who makes written submissions or appears at the public hearing. Historic preservation board members may also present testimony or make submissions. The owner of a nominated landmark or of property within a nominated district shall be allowed reasonable opportunity to present testimony or evidence concerning the applicability of the designation criteria in division 3.  
(Ord. No. 235-90, 2-26-90)

**Sec. 14-617. Recommendation by historic preservation board.**

Within thirty (30) days following the close of the public hearing, the historic preservation board shall make recommendation to the council in the case of a landmark, or to the planning board in the case of a district, upon the evidence as to whether the nominated landmark or district meets the criteria for designation in division 3. Such recommendation shall be approved by at least four (4) members of the historic preservation board and shall be accompanied by a report to the council or planning board containing the following information:

- (a) Explanation of the significance or lack of significance of the nominated landmark or district as it relates to the criteria for designation.
- (b) Explanation of the integrity or lack of integrity of a nominated landmark or historic district.

- (c) Proposed design guidelines for review of alteration or construction. The specific design guidelines may provide explanation by text and/or schematic examples of visual compatibility for purposes of division 7.
- (d) Relationship of the nominated landmark or district to the ongoing effort by the committee to identify and nominate all potential areas, sites, structures and objects that meet the criteria for designation.
- (e) A map showing the location of the nominated landmark and the boundaries of the nominated district.
- (f) A list, including the address, of every site, structure and object in each nominated historic district indicating their degree of cultural, historic, architectural or archeological significance by classification as of a landmark or contributing significance.

Where a motion either in favor of a recommendation or in opposition to a recommendation results in a vote of fewer than four (4) members, the item shall automatically be tabled to the next regularly scheduled meeting.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 3, 5-17-93)

**Sec. 14-618. Reserved.**

**Sec. 14-619. Notification of historic preservation board recommendation.**

(a) The recommendation of the historic preservation board, including a copy of the report, shall be transmitted to the city council in the case of a landmark and to the planning board in the case of a district. Notice of the recommendation shall be sent by mail to the owner of a nominated landmark and to all owners within a nominated district within ten (10) business days following adoption of the recommendation and report.

(b) If the recommendation of the historic preservation board is that the property or district not be designated, the nomination process shall terminate and no new nomination shall be submitted for the identical property or area for a period of one (1) year from the date of termination, except upon a showing of substantial and material newly discovered information.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-620. Determination by planning board.**

(a) The planning board, upon receipt of a recommendation and a report from the historic preservation board concerning nomination of a district, may hold a workshop meeting pursuant to the provisions of section 14-26. After review of the historic preservation board recommendation and report, the planning board shall hold a public hearing.

(b) All meetings, hearings and deliberations of the planning board to consider the recommendation and report of the historic preservation board shall be held in conformity with sections 14-24 through 14-28.

(c) The planning board may request the chair of the historic preservation board, or a member designated by the chair, to appear at any meeting, hearing or deliberation to explain any recommendation or report.

(d) The planning board shall make its final determination including written findings as to whether the nominated district meets the criteria for designation in division 3 within forty-five (45) days following receipt of the recommendation and report from the historic preservation board. A copy of the determination of the planning board shall be sent by regular mail to all owners within a nominated district within ten (10) business days following the determination.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-621. Planning board recommendation to city council.**

The recommendation of the planning board regarding a nominated district shall be filed with the city clerk within ten (10) business days. It shall be accompanied by a copy of the report and recommendation of the historic preservation board and, in the case of a recommendation that the council designate, a draft of a proposed designation ordinance, including any proposed design guidelines for review of alteration, construction, removal or demolition. The recommendation of the planning board may include proposed changes in other city ordinances, policies, infrastructure, or recommendations with respect to the comprehensive plan of the city relating to the proposed designation.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-622. Action by city council.**

(a) Within sixty (60) days after the filing of a recommendation on the nomination with the city clerk pursuant to section 14-620, the council shall designate the landmark or district or reject designation. Any designation ordinance may include design guidelines for the designated landmark or district.

(b) Designation of a district shall be accompanied by a list, including the address, of every site, structure and object in the district which is determined to be a landmark or considered to be contributing, indicating their degree of cultural, historic, architectural or archeological significance. All sites, structures and objects not specifically classified shall be considered to be noncontributing. This list may be amended thereafter by the council upon recommendation from the planning board under the same procedures as set forth above. Where there are no express findings by the council in the designation ordinance, there shall be a presumption that the council found that all requirements of sections 14-610 and 14-611 were met.

(c) Notice of the proposed action of the council shall be provided by mail to the nominator and the owner of the nominated landmark and/or of all properties adjacent thereto prior to council action. The notice shall include a copy of the resolution or designation ordinance and design guidelines.

(d) Notice of council action to the same persons shall be sent within ten business days following the council action. A copy of each designation ordinance and design guidelines shall be sent to the planning board, the historic preservation board and the department. A complete schedule of all landmarks and districts, including design guidelines and a listing of landmark and contributing structures, shall be maintained by the department as part of the design manual and shall be available for public inspection and copying during ordinary business hours.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-623. Amendment and rescission of designation.**

Amendment and rescission of any designation shall be upon the request of a person or persons authorized to nominate the property or properties affected, or upon request of the council, and shall follow the procedure set forth in division 4 for designation. The

council may rescind or amend a designation only after all of these procedures have been followed. The standards for rescission or amendment applied by the committee, planning board and council shall be limited to those provided in section 14-610(a) and section 14-611. Amendments may include refinement or correction of design guidelines, maps, and other parts of any designation ordinance.  
(Ord. No. 235-90, 2-26-90)

**Sec. 14-624. Reserved.**

**Sec. 14-625. Reserved.**

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**\*Editor's note** - Order No. 197-03/04 adopted 9/8/04, repealed §14-625 Projects of Special Merit in its entirety.  
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**Sec. 14-626. Reserved.**

**Sec. 14-627. Reserved.**

**Sec. 14-628. Time limits.**

(a) Any time limit specified for any step in the process for nomination or designation of a landmark may be extended with the consent of the property owner.

(b) Any time limit specified for any step in the process for nomination or designation of a district may be extended where at least ten (10) percent of the owners of property within the boundaries of the proposed district have given written consent to the extension.

(c) Failure to comply with any time limit in the nomination and designation process as provided in divisions 3 or 4 shall not affect the validity of any designation nor the interim protection provided by division 5.  
(Ord. No. 235-90, 2-26-90)

**Sec. 14-629. Reserved.**

#### DIVISION 5. INTERIM PROTECTION FOR NOMINATIONS

**Sec. 14-630. Nominated landmarks and districts.**

(a) From the time of nomination until the historic preservation board acts upon such nomination, a site, structure, object or area nominated but not yet designated as a landmark or district shall be subject to all of the provisions of divisions 8 and 10 governing demolition and minimum maintenance, to the same extent as if designated. Upon final action of the historic preservation board recommending designation, the site, structure, object or area nominated shall be subject to all of the protection of this article until a final decision on designation by the council becomes effective. If the council rejects designation or fails to designate a property, that property shall no longer be subject to the provisions of divisions 8 and 10 of this article.

(b) Alteration or construction commenced pursuant to a building permit issued prior to nomination shall not require a certificate of appropriateness, unless such permit has expired, been canceled or revoked. No project for which any application is pending, and which has received substantive review by the planning board prior to nomination, shall be affected by nomination. Substantive review, as used in this paragraph, shall include workshop review of any completed application under articles IV or V of this chapter.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 4, 5-17-93)

**Sec. 14-631. National Register of Historic Places.**

(a) Every property, landmark or district listed in the National Register of Historic Places prior to adoption of this article, as shown in the design manual, is hereby designated as a landmark or district and shall be subject to all of the protection of this article, until such time as such designation is amended or rescinded as provided by section 14-623. Listed properties which would qualify for designation as historic landscape districts shall be subject to the applicable provisions of this article. If there is any inconsistency between the boundaries of any landmark or district as shown in the designation ordinance, if any, the design manual and/or the National Register, such inconsistency shall be resolved in favor of such ordinance and the design manual in that order. A certificate of appropriateness shall be obtained for every alteration or construction affecting said listed properties and districts.

(b) Upon notice to the city that a property or area has been listed in the National Register after the adoption of this article, a nomination shall be deemed submitted to the historic preservation

board for designation of such property or area as a landmark, historic district or historic landscape district under this article, and the procedures of this division shall be applicable thereto.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-632. Properties eligible for listing on National Register or for local designation.**

A certificate of economic hardship shall be obtained prior to demolition of any structure which has not been designated in accordance with this article but which is eligible for listing on the National Register of Historic Places under the criteria established by 16 U.S.C. Section 470(a) or its successor statute and/or regulations made thereunder or which is eligible for local listing under the criteria for designation of this article. The determination of eligibility for listing shall be made by the department, which may refer such a determination to the historic preservation board, and by the board of appeals if an appeal is taken. Upon determination of eligibility, the structure so determined shall also be subject to the provisions of division 10 until a final decision by the council on designation becomes effective. If the council rejects designation or fails to designate a structure which has been determined to be eligible under the terms of this section, that structure shall no longer be subject to the provisions of divisions 8 and 10 of this article.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 5, 5-17-93)

**Sec. 14-633. Reserved.**

DIVISION 6. CERTIFICATES OF APPROPRIATENESS AND NONAPPLICABILITY

**Sec. 14-634. Certificate of appropriateness required.**

(a) Except as provided in sections 14-635 and 14-636, a certificate of appropriateness shall be required before the following actions affecting any landmark or structures, objects, sites or property in a district may be undertaken and shall be a condition precedent to the issuance of any permit authorizing such work:

- (1) Any exterior alteration or construction requiring a building permit from the City of Portland, including, but not limited to the following:

- a. Removal and replacement of architectural detailing including, but not limited to, porch spindles and columns, railings, window moldings and cornices;
  - b. Moving of structures or objects on the same site or to another site;
  - c. Construction of rooftop additions or decks;
  - d. Alteration of accessory structures such as garages;
  - e. Porch replacement or new construction of porches;
  - f. Installation of exterior access stairs;
  - g. Window or door replacement requiring enlargement of openings;
  - h. Installation of antennas and satellite receiving dishes;
  - i. Installation of solar collectors.
- (2) Any exterior alteration that does not require a building permit but which involves any one (1) of the following activities:
- a. Installation or replacement of either roofing or gutters where the roofing or gutters are a significant and integral feature of the structure including, but not limited to, mansard roofs, cupola roofs, ornamental slate roof features, and built-in gutter systems and the installation or replacement of siding;
  - b. Window and door replacement whether or not it requires enlargement of openings;
  - c. Masonry work including, without limitation, tuckpointing, sandblasting, chemical cleaning;
  - d. Site features other than vegetation including, without limitation, fencing, walls, paving and grading. However, required review for alterations

to cemeteries designated under this article shall not include review of alterations to headstones made for the purpose of recognition of additional decedents or installation of grave markers and/or tombs;

- e. Landscaping within an historic landscape district;
- f. Exterior lighting where proposed in conjunction with commercial and institutional signage or awnings, where placed on street-fronting facades of designated structures;
- g. Exterior utilities including mechanical, plumbing and electrical, where placed on street-fronting facades.

(3) Installation or alteration of any exterior sign.

(4) Any demolition or relocation of a landmark or contributing structure within a district.

(b) There shall be a rebuttable presumption that any structure within a district is contributing unless the design manual expressly identifies it as not being contributing. Where the department or the owner believes that the identification is erroneous, the historic preservation board shall determine whether the structure is contributing.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 6, 5-17-93; Ord. No. 62-93, 8-2-93)

**Sec. 14-635. Exceptions to requirement of certificate of appropriateness.**

A certificate of appropriateness is not required:

- (a) Where a certificate of nonapplicability has been issued within the previous twelve (12) months;
- (b) Where the work consists solely of ordinary maintenance and/or restoration, provided that there is no substitution of materials or alteration of architectural details;
- (c) Where the work consists solely of emergency repair of a temporary nature;

- (d) Where a certificate of economic hardship has been issued and remains valid;
- (e) In the case of either alteration of a structure (other than a landmark) or of construction within a district, a certificate of appropriateness shall not be required where the department determines that the proposed exterior changes to a structure are not readily visible at pedestrian heights, when viewed at any height between four (4) and six (6) feet from any open space or street. Where a certificate of appropriateness is required for such changes, it shall be limited to those portions of the structure or structures so visible.

(Ord. No. 235-90, 2-26-90; Ord. No. 197-03/04, 9-8-04)

**Sec. 14-636. Exterior work within historic landscape districts.**

A certificate of appropriateness shall be obtained before any alteration or construction within an historic landscape district may be undertaken, except where a certificate of nonapplicability has been issued or where construction or alteration is pursuant to a master plan approved by a prior certificate of appropriateness within five (5) years of commencement.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-637. Applications for certificate of appropriateness.**

(a) Application for a certificate of appropriateness shall be made on a form prepared by the city and shall be submitted to the department along with the applicable fee. Upon receipt of a complete application, the item shall be scheduled for the next available historic preservation board meeting, provided that the notice requirements of this article can be met prior to that meeting. The department shall transmit a copy of the complete application to the Planning Board and the historic preservation board, as applicable, at least four (4) days prior to their next scheduled meeting. The department shall not issue or act upon the application until the historic preservation board and the planning board, as applicable, have completed their review and approval process.

(b) An application for a certificate of appropriateness shall be treated as an application for a certificate of economic hardship under division 8, whenever the historic preservation board or the

Planning Board, as applicable, determines that the proposed alteration includes any demolition which would:

- (1) Have the effect of causing the structure to no longer meet the criteria for designation of division 3; or
- (2) Materially impair the significance and integrity of the structure.

(c) Where a determination under paragraph (b) is made by the historic preservation board, the planning board shall review that decision as a preliminary matter, whether the historic preservation board has taken final action with respect to the application or not. Upon any final determination that an application for a certificate of appropriateness is required to be treated as an application for a certificate of economic hardship, no further action shall be taken with respect to the application until that certificate is applied for and is granted.

(d) Where the applicant has done work or caused work to be done on a structure or a property for which a certificate of appropriateness is sought and such work is either not done in compliance with an approval received under this article or was performed without the approvals required under this article, no application for such structure or property shall be considered by the department or by the historic preservation board until such work is brought into compliance with the requirements of this article. The historic preservation board may waive this requirement if the historic preservation board determines that the work does not alter the essential character of the structure or district and one (1) or more of the following standards are also met:

- (1) The work was needed to bring a building into conformance with any building or safety code;
- (2) The applicant can demonstrate a good faith belief that necessary approvals had been received for the work at issue prior to the commencement of the work; or
- (3) The applicant can demonstrate a good faith belief that the work done was not subject to review under this article.

Review of any application by the department or by the historic preservation board shall not constitute waiver of any future claims

by the city concerning violations and shall not stop the city from prosecuting any violation.

(e) Once a completed application has been submitted, it shall be diligently pursued. Failure of an applicant to attend two (2) or more historic preservation board meetings at which an application is scheduled for review shall cause the application to expire and to be deemed null and void, unless the department determines that good cause is shown for the failure to attend. Where good cause is shown for a failure to attend, the historic preservation board shall table an application to a date mutually agreed upon in writing.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 7, 5-17-93)

**Sec. 14-638. Review process for certificate of appropriateness, except as provided elsewhere in this division.**

(a) The process for review of an application for a certificate of appropriateness shall be as follows, except to the extent specifically provided elsewhere in this division:

- (1) The department shall review the application and make a recommendation to the historic preservation board based upon the standards in division 7, except as provided in subsection (b) for historic plaques or markers. The recommendation of the department shall be made within (30) days of receipt of a complete application.
- (2) Whenever the recommendation of the department is that the application shall be approved, the application shall be placed upon the next consent agenda of the historic preservation board, except as provided in subsection (b). Any member of the historic preservation board may remove an application from the consent agenda for the purpose of giving it a public hearing.
- (3) Whenever the recommendation of the department is that the application not be approved or there is no timely recommendation, the application shall be scheduled for a public hearing at the next meeting of the historic preservation board which allows for adequate notice.
- (4) The historic preservation board shall either conduct a public hearing or make a decision on the application within thirty (30) days following receipt of the

application from the department. The historic preservation board shall review the application and any negative recommendation of the department. If an item is scheduled for historic preservation board review, the historic preservation board shall cause notice of the application to be given to all property owners within one hundred (100) feet of the property at least seven (7) days prior to the date of the hearing.

- (5) The historic preservation board shall enter findings of fact concerning the relationship between the application and the applicable standards of division 7 immediately following a denial or conditional approval of any certificate of appropriateness.
- (6) Written notice of the determination of the historic preservation board on the application, including a copy of the findings of fact, shall be sent by regular mail to the applicant and to the planning board within ten (10) business days following its determination.
- (7) The applicant and any owner of abutting property or of property located within the same district aggrieved by the decision may object to the proposed decision by filing a notice of objection with the department within thirty (30) days following the mailing of the notice of determination of the historic preservation board; provided, however, only the applicant may object where no building permit or site plan review is required for the work which requires the issuance of the certificate of appropriateness, and a proposed decision approving any such application shall be deemed final upon being reduced to writing and provided to the applicant. In the absence of filing of such objection, upon expiration of said thirty (30) days the proposed decision shall become final. If a timely objection is received, the application shall be placed on the planning board agenda and shall be disposed of in accordance with section 14-639. The planning board shall deny the appeal unless it finds that the action of the historic preservation board was arbitrary or capricious or was not based on substantial evidence. Review by the planning board under this section is intended to be appellate in nature. Except where the planning board determines that injustice would result, the planning board shall determine the appeal without

considering any facts or arguments which were not presented to the historic preservation board. Where the planning board finds it necessary to consider such new evidence in order to do substantial justice, it shall remand the matter to the historic preservation board for further consideration, unless it determines that the resulting delay is likely to result in undue hardship to the applicant.

(Ord. No. 235-90, 2-26-90; Ord. No. 371-91, § 2, 6-5-91; Ord. No. 220-93, § 8, 5-17-93; Ord. No. 197-03/04, 9-8-04)

**Sec. 14-639. Review process involving major development.**

The process for review of an application for alteration or construction that is also major development shall be as follows:

- (a) The planning board shall initiate its review upon receipt of an application for a certificate of appropriateness from the department. Site plan review by the planning board and historic preservation review by the historic preservation board shall, to the extent feasible, proceed concurrently. During its review, the historic preservation board shall take into consideration the relevant site plan standards that will apply to the application.
- (b) Upon receipt of the application for a certificate of appropriateness, the department shall review the application and schedule a workshop for preliminary review by the historic preservation board. The historic preservation board shall conduct a workshop on the application within thirty (30) days following receipt of the application from the department. The department shall prepare an analysis of the application based upon the standards in division 7 for consideration at the workshop. The historic preservation board shall cause notice of the workshop to be given to all property owners within five hundred (500) feet of the property at least seven (7) days prior to the date of the meeting.

Additional workshops may be scheduled by the historic preservation board with the consent of the applicant.

- (c) Following preliminary workshop(s) and upon determination by the historic preservation board that the application

is complete, the historic preservation board shall conduct a public hearing and make a final decision on the application. The historic preservation board shall cause notice of the public hearing to be given consistent with the procedures outlined in (b) above.

- (d) If the historic preservation board finds that the application meets the applicable standards of division 7, it shall issue a certificate of appropriateness, with or without conditions. If the action by the historic preservation board is a denial or conditional approval, the historic preservation board shall make findings of fact concerning the relationship between the application and the applicable standards of division 7.
- (e) Written notice of the determination of the historic preservation board on the application, including a copy of the findings of fact, if any, shall be sent by regular mail to the applicant within ten (10) business days following its determination.
- (f) The applicant and any owner of abutting property or of property located within the same district aggrieved by the decision may object to the proposed decision as provided in Section 14-638(7).

(Ord. No. 235-90, 2-26-90; Ord. No. 63-97, 8-18-97; Ord. No. 197-03/04, 9-8-04)

**Sec. 14-640. Review process involving installation or alteration of any exterior sign; minor alterations; and temporary alterations, construction or improvements.**

(a) An application for a certificate of appropriateness for installation or alteration of any exterior sign; minor alterations; and temporary alterations, construction or improvements shall be reviewed by the department for compliance with the standards of division 7 and the design manual. Where the department determines that such an application meets these requirements, the certificate of appropriateness shall be issued by the department without presentation to the historic preservation board for approval. The department shall provide the historic preservation board with written notice of such action at the next historic preservation board meeting.

(b) If the department approves an application with conditions, the applicant may request review by the historic

preservation board. The application shall then be subject to review by the historic preservation board pursuant to section 14-638.

(c) If the department determines that the application does not meet the requirements of division 7 and the design manual, the application shall be scheduled for review by the historic preservation board pursuant to section 14-638, unless the applicant withdraws the application.

(d) For purposes of this section only, temporary is defined as either a one-time occurrence that does not exceed fourteen (14) days or as an annual occurrence that does not exceed one (1) fourteen-day period each year. Minor alterations are defined as incidental changes or additions to a building, site features or exterior utilities which require building permits but will neither result in substantial changes to any significant historic features nor obscure such features. In no event shall any change be deemed minor when, in the opinion of the department, such change shall alter the historic character of the building or site.

(Ord. No. 220-93, § 9, 5-17-93)

**Sec. 14-641. Action by planning board.**

Upon any appeal from the historic preservation board determination pursuant to section 14-638, the planning board shall review the appeal and the decision of the historic preservation board and shall take final action appeal within sixty (60) days following receipt of appeal; provided, however, whenever the planning board also is considering a site plan for development of the site, it shall proceed in accordance with the time frames applicable to site plan review. The planning board shall notify the applicant by regular mail within ten (10) business days following its decision on appeal.

(Ord. No. 235-90, 2-26-90; Ord. No. 197-03/04, 9-8-04)

**Sec. 14-642. Issuance of certificate of appropriateness.**

(a) The department shall issue the certificate of appropriateness within ten (10) business days following a proposed affirmative decision by the historic preservation board becoming final.

(b) Unless work authorized by a certificate of appropriateness shall be commenced within six (6) months of the date of issuance of the certificate of appropriateness, the

certificate of appropriateness shall expire and shall become null and void. The department may approve additional extensions of this six-month period, not to exceed a total of two (2) years, provided that a written request for extension is received prior to the expiration date of the certificate of appropriateness. In the event of litigation arising out of the granting of a certificate of appropriateness, the certificate shall remain valid until one (1) year after the entry of final judgment in the litigation or until the end of the two-year period, whichever is later.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 10, 5-17-93; Ord. No. 197-03/04, 9-8-04)

**Sec. 14-643. Certificate of nonapplicability.**

(a) The department shall issue a certificate of nonapplicability as to property subject to this article when requested to do so when:

- (1) The department determines that none of the proposed work requires a certificate of appropriateness;
- (2) The department determines that all of the proposed work is ordinary maintenance, restoration, or a combination thereof;
- (3) In the case of the alteration of a structure other than a landmark or of construction within a district, where the department determines that the proposed exterior changes to a structure are not readily visible at pedestrian heights from any open space or street when viewed from any height between four (4) and six (6) feet above such space or street. Where a certificate of appropriateness is required for such changes, a certificate of nonapplicability shall be issued upon request for those portions of the structure or structures not visible at such heights; provided, however, this paragraph shall not apply to alteration of a landmark or to any demolition; or
- (4) After any appeal where the historic preservation board, planning board or any court determines that paragraphs (1), (2) or (3) of this subsection are applicable.

(b) The department shall act upon any application for a certificate of nonapplicability within five (5) business days of

receiving a complete written description of all work to be undertaken.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-644. Amendments to approved certificates of appropriateness.**

If at any time before or during work approved under the procedures set forth in this division the applicant requests minor amendments to approved work, the department may approve such minor amendments under the procedures set forth in section 14-638(b), provided that such amendments will not result in a waiver or substantial alteration of the approval or any condition attached to the approval. The applicant shall supply a written statement of the proposed amendment and amended plans or drawings to the department. The decision of the department as to whether an amendment may be reviewed under this section shall be final.

(Ord. No. 220-93, § 11, 5-17-93)

**Sec. 14-645. Reserved.**

**Sec. 14-646. Reserved.**

**Sec. 14-647. Reserved.**

**Sec. 14-648. Reserved.**

**Sec. 14-649. Reserved.**

DIVISION 7. STANDARDS FOR REVIEW OF APPLICATION FOR CERTIFICATE OF APPROPRIATENESS

**Sec. 14-650. Standards for review of alteration.**

In considering an application for a certificate of appropriateness involving alteration, the historic preservation board and the Planning Board shall apply the following general standards, as further described in the design manual and any design guidelines in the ordinance designating the landmark or district:

- (a) Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration to the character-defining features of the structure, object or site and its environment or to use a property for its originally intended purpose.
- (b) The distinguishing original qualities or character of a structure, object or site and its environment shall not

be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

- (c) All sites, structures and objects shall be recognized as products of their own time, place and use. Alterations that have no historical basis or create a false sense of historical development, such as adding conjectural features or elements from other properties, shall be discouraged.
- (d) Changes which may have taken place in the course of time are evidence of the history and development of a structure, object or site and its environment. Changes that have acquired significance in their own right shall not be destroyed.
- (e) Distinctive features, finishes and construction techniques or examples of skilled craftsmanship which characterize a structure, object or site shall be treated with sensitivity.
- (f) Deteriorated historic features shall be repaired rather than replaced wherever feasible. Where the severity of deterioration requires replacement of a distinctive feature, the new feature should match the feature being replaced in composition, design, texture and other visual qualities and, where possible, materials. Repair or replacement of missing historic features should be based on accurate duplications of features, substantiated by documentary, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other structures or objects.
- (g) The surface cleaning of structures and objects, if appropriate, shall be undertaken with the gentlest means possible. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be undertaken.
- (h) Every reasonable effort shall be made to protect and preserve significant archeological resources affected by or adjacent to any project. If resources must be disturbed, mitigation measures shall be undertaken.

- (i) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural or archeological materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the size, scale, color, material and character of the property, neighborhood or environment.
  
- (j) Wherever possible, new additions or alterations to structures and objects shall be undertaken in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the historic property would be unimpaired.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 12, 5-17-93)

**Sec. 14-651. Standards for review of construction.**

In considering an application for a certificate of appropriateness involving construction, the historic preservation board and the planning board shall apply the following general standards, as further described in the design manual and any design guidelines in the ordinance designating the landmark or district:

(a) *Scale and form:*

1. *Height.* In addition to the applicable requirements of articles III, IV and V of this chapter, the proposed height shall be visibly compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.
  
2. *Width.* The width of a building shall be visually compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.
  
3. *Proportion of principal facades.* The relationship of the width to the height of the principal elevations shall be visually compatible with structures, public ways and open spaces to which it is visually related.
  
4. *Roof shapes.* The roof shape of a structure shall be

visually compatible with the structures to which it is visually related.

5. *Scale of a structure.* The size and mass of structures in relation to open spaces, windows, door openings, porches and balconies shall be visually compatible with the structures, public ways and places to which they are visually related.

(b) *Composition of principal facades:*

1. *Proportion of openings.* The relationship of the width to height of windows and doors shall be visually compatible with structures, public ways and places to which the building is visually related.
2. *Rhythm of solids to voids in facades.* The relationship of solids to voids in the facade of a structure shall be visually compatible with structures, public ways and places to which it is visually related.
3. *Rhythm of entrance porch and other projections.* The relationship of entrances and other projections to sidewalks shall be visually compatible with the structures, public ways and places to which they are visually related.
4. *Relationship of materials.* The relationship of the color and texture of materials (other than paint color) of the facade shall be visually compatible with the predominant materials used in the structures to which they are visually related.
5. *Signs.* Any new sign, and any change in the appearance of an existing sign located on a landmark within an historic district or within an historic landscape district, which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the design manual.

(c) *Relationship to street:*

1. *Walls of continuity.* Facades and site structures, such as masonry walls, fences and landscape masses, shall, when it is a characteristic of the area, form cohesive walls of enclosure along a street to ensure visual compatibility with the structures, public ways and places to which such elements are visually related.
2. *Rhythm of spacing and structures on streets.* The relationship of a structure or object to the open space between it and adjoining structures or objects shall be visually compatible with the structures, objects, public ways and places to which it is visually related.
3. *Directional expression of principal elevation.* A structure shall be visually compatible with the structures, public ways and places to which it is visually related in its directional character, whether this be vertical character, horizontal character or nondirectional character.
4. *Streetscape, pedestrian improvements.* Streetscape and pedestrian improvements and any change in the appearance thereof located adjacent to, or on a landmark, within an historic district or within an historic landscape district which is readily visible from any street or open space shall not be incongruous to the historic character of the landmark or district and shall comply with the criteria and guidelines specified in the design manual.

(d) *Other standards:*

1. *Compatible uses.* Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration to the character-defining features of the structure, object or site and its environment or to use a property for its originally intended purpose.
2. *Distinguishing original character.* The

distinguishing original qualities or character of a structure, object or site and its environment shall not be destroyed. The alteration of any historic material or distinctive architectural features should be avoided when possible.

3. *Archeological resources.* Every reasonable effort shall be made to protect and preserve significant archeological resources affected by or adjacent to any project. If resources must be disturbed, mitigation measures shall be undertaken.
4. *Contemporary design.* Contemporary design for additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural or archeological materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the size, scale, material and character of the property, neighborhood and environment.
5. *Additions.* Wherever possible, new additions to structures and objects shall be undertaken in such a manner that, if such additions were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 13, 5-17-93)

**Sec. 14-652. Standards for review of relocation.**

In acting upon an application for a certificate of appropriateness involving relocation, the historic preservation board and the planning board shall apply the following general standards and any design guidelines in the ordinance designating the landmark or district:

- (a) Whether the historic or urban design character and aesthetic interest of the structure or object contribute to its present setting.
- (b) If located within a district, whether there are definite plans for the area to be vacated and what the effect of those plans is on the character of the surrounding area. In such cases, consideration of additional design

guidelines for construction to be imposed as a condition of approval is appropriate.

(c) Whether the relocation of the structure or object can be accomplished without significant damage to its physical integrity.

(d) Whether the proposed relocation area is compatible with the cultural, historical or architectural character of the structure or object.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-653. Qualification of applicant.**

Prior to issuance of any certificate of appropriateness, any applicant shall demonstrate sufficient right, title or interest in the property, technical capacity and financial capacity to complete any change proposed to be undertaken under the certificate of appropriateness, upon reasonable request of the department. If the department determines that the applicant has failed or refused to demonstrate an ability to complete the proposed activity, it shall refer the issuance to the Planning Board, which shall make a final determination as to whether the applicant has demonstrated a sufficient capability to complete the proposed activity. Notwithstanding any other provision of this article, the historic preservation board or Planning Board may include reasonable conditions, including the provision of adequate financial security, to ensure that actions taken under a certificate of appropriateness will be successfully prosecuted to completion, as approved, in a timely and workmanlike manner.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-654. Reserved.**

**Sec. 14-655. Reserved.**

**Sec. 14-656. Reserved.**

**Sec. 14-657. Reserved.**

**Sec. 14-658. Reserved.**

**Sec. 14-659. Reserved.**

DIVISION 8. CERTIFICATE OF ECONOMIC HARDSHIP

**Sec. 14-660. Applicability.**

(a) Any applicant denied a certificate of appropriateness by the planning board within thirty (30) days thereafter and any applicant seeking demolition of a landmark or a contributing structure within a district may make application for a certificate of economic hardship from the board of appeals. The application shall be submitted to the department, together with the applicable fee.

(b) The department shall transmit a copy of the application to the board of appeals, with copies to the Planning Board and the historic preservation board, within ten (10) business days following receipt of a properly completed application.  
(Ord. No. 235-90, 2-26-90)

**Sec. 14-661. Standard to be applied.**

(a) The board of appeals shall approve an application for a certificate of economic hardship only upon a determination that the denial of approval of the proposed activity or of the proposed demolition will result in the loss of all reasonable use of the structure as required by sections 14-664 and 14-666.

(b) In applying this standard, the board of appeals shall consider among other things any evidence presented concerning the following:

- (1) Any opinions from a licensed engineer or architect with experience in renovation, restoration or rehabilitation as to the structural soundness of the structure and its suitability for continued use, renovation, restoration or rehabilitation.
- (2) Any estimates of the cost of the proposed alteration, construction, demolition or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the planning board for changes necessary for it to be approved.
- (3) Any estimates of the market value of the property in its current condition; after completion of the proposed alteration, construction, demolition or removal; after any expenditures necessary to comply with the recommendations of the planning board for changes

necessary for it to approve a certificate of appropriateness; and in the case of a proposed demolition, after renovation of the existing structure for continued use.

- (4) In the case of a proposed demolition, any estimates from architects, developers, real estate consultants, appraisers or other real estate professionals experienced in rehabilitation as to the economic feasibility of restoration, renovation or rehabilitation of any existing structures or objects.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-662. Information to be supplied by applicant.**

(a) The applicant shall submit by affidavit the following information for an application to be considered to be complete:

- (1) The assessed value of the property and/or the structure in the case of a demolition for the two (2) most recent assessments.
- (2) Real property taxes paid for the previous two (2) years.
- (3) The amount paid for the property by the owner, the date of purchase and the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased.
- (4) The current balance of any mortgages or any other financing secured by the property and the annual debt service, if any, for the previous two (2) years.
- (5) All appraisals obtained within the previous two (2) years by the owner or applicant in connection with purchase, offerings for sale, financing or ownership of the property, or state that none were obtained.
- (6) All listings of the property for sale or rent, price asked and offers received, if any, within the previous four (4) years, or state that none were obtained.
- (7) All studies commissioned by the owner as to profitable renovation, rehabilitation or utilization of any

structures or objects on the property for alternative use, or a statement that none were obtained.

- (8) For income-producing property, itemized income and expense statements from the property for the previous two (2) years.
- (9) Estimate of the cost of the proposed alteration, construction, demolition or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the planning board for changes necessary for it to approve a certificate of appropriateness.
- (10) Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture or other.

(b) In the event that the information required to be submitted by the applicant is not reasonably available, the applicant shall file with the affidavit a statement of the information that cannot be obtained and shall describe the reasons why such information is unavailable.

(c) Notwithstanding the submission of the above information, the board of appeals may require additional evidence as provided in section 14-680.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-663. Public hearing.**

(a) The board of appeals shall hold a public hearing on the application within thirty (30) days following receipt of the completed application form. Where the application requests the demolition of a landmark or a contributing structure within a district, the public hearing shall not be held less than ninety (90) days following receipt of the completed application, unless the applicant makes a clear showing that the delay will result in undue hardship of a unique or exceptional character which could not reasonably be or have been avoided. Upon such a showing, the department may waive all or any part of the ninety-day period and schedule the hearing before the board. Undue hardship shall not include mere inconvenience or incidental financial loss. No such waiver shall be granted without the department giving best practical notice to all persons entitled to notice of the hearing.

(b) Notice of the application and of the public hearing, and conduct of the hearing, shall be in accordance with the provisions of section 14-550. Where the application requests the demolition of a landmark or a contributing structure within a district, the department shall promptly notify any persons interested in historic preservation, who have registered in writing with him or her, give notice by mail to all owners of property within five hundred (500) feet of the structure, and shall require that the applicant immediately place a notice, to be supplied by the building official, in a prominent place on the structure and to maintain it there at all times during the pendency of the demolition application. The notice shall be substantially in the following form:

"This structure has been proposed to be demolished by its owner. For further information, contact Inspection Services of the City of Portland. 874-8300"

(c) The failure to give any notice required hereunder shall not affect the validity of any action taken by the department or the board of appeals.

(d) The Planning Board may provide a report or any other information, documentation or evidence or request the historic preservation board to assist the board of appeals in considering the extent of variance necessary, an appropriate incentive plan, or reasonable condition to be imposed.

(e) The board of appeals may continue a proceeding for such additional time as it reasonably takes an applicant, any other interested person, the historic preservation board or the planning board to comply with a request for additional information or evidence. The applicant shall be afforded the right to present rebuttal evidence.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-664. Determination by the board of appeals.**

(a) The determination by the board of appeals shall be made within forty-five (45) days following close of the public hearing and submission of all information, documentation or evidence requested by the board. The determination shall be accompanied by findings of fact.

(b) The board of appeals shall not grant approval of an application involving demolition, unless the board determines, upon clear and convincing evidence, that one (1) or more of the following circumstances apply:

- (1) The structure is not subject to this article; or
- (2) Denial of a demolition permit would result in a hardship to the property owner so great that it would effectively deprive the owner of all reasonable use of the structure. The extent of any demolition permitted shall be limited to the amount necessary to allow reasonable use of the structure. Where the condition of the structure is claimed to prevent any reasonable use, the applicant shall establish that such condition is not the result of the acts or neglect of the owner or his predecessors in title occurring in whole or in part after August 1, 1988.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-665. Disapproval by board of appeals.**

If the determination of the board of appeals is to disapprove the application for a certificate of economic hardship, the applicant shall be notified within five (5) business days. The notice shall include a copy of the findings of fact and report.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-666. Determination of no reasonable use.**

(a) If the determination of the board of appeals is that the denial of the certificate of appropriateness has resulted in the denial of all reasonable use of the structure, or the entire property in the case of construction, then the certificate of economic hardship shall be issued by the department ninety (90) days following the determination unless during that time the council approves an incentive plan pursuant to section 14-667.

(b) A copy of the determination of the board of appeals, together with the findings of fact, shall be mailed to the applicant and filed with the city clerk, the planning board and the historic preservation board within five (5) business days following the determination of economic hardship.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-667. Incentive plan.**

The purpose of an incentive plan is to provide a mechanism to allow a reasonable use without the demolition of the complete structure or important architectural elements. The Planning Board, in cooperation with the historic preservation board and the owner, may prepare a report and recommend to the board of appeals an incentive plan to assure reasonable use of the structure. This incentive plan may include, but is not limited to, loans or grants from the City of Portland or other public or private sources, acquisition by purchase or eminent domain, building and safety code modifications to reduce cost of maintenance, restoration, rehabilitation or renovation, changes in applicable zoning regulations, including a transfer of development rights, or relaxation of the provisions of this article sufficient to allow reasonable use of the structure.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-668. City council consideration of incentive plan.**

(a) Upon receipt of a report from the board of appeals recommending an incentive plan to assure reasonable use of the property, the council shall give prompt consideration to the determination of economic hardship and the report of the board, including the recommended incentive plan. The council shall approve or disapprove the incentive plan determined by the board of appeals to allow reasonable use of the structure within ninety (90) days following the determination by the board of appeals.

(b) A copy of the ordinance enacted by the council, together with the incentive plan, if any, shall be mailed to the applicant and transmitted to the board of appeals, the planning board and the historic preservation board within five (5) business days following the enactment of the ordinance.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-669. Issuance of certificate of economic hardship.**

(a) Upon receipt by the board of appeals of a copy of council action disapproving an incentive plan, or upon failure of the council to act to either approve or disapprove an incentive plan within the time specified, the board of appeals shall approve a certificate of economic hardship to the applicant within thirty (30) days. The certificate may be subject to conditions including design guidelines for subsequent construction not inconsistent with the standards set forth in this article and the design manual. The

certificate of economic hardship shall be valid for a period of one hundred twenty (120) days from approval by the board of appeals, except as provided in section 14-666 where an incentive plan has been proposed. Certificates of economic hardship shall not be transferable from the applicant to another subsequent owner of the same property.

(b) Upon presentation by the applicant of a valid certificate of economic hardship to the department, the certificate of appropriateness shall be issued to the applicant within five (5) business days.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-670. Reserved.**  
**Sec. 14-671. Reserved.**  
**Sec. 14-672. Reserved.**  
**Sec. 14-673. Reserved.**  
**Sec. 14-674. Reserved.**

#### DIVISION 9. ADMINISTRATION

#### **Sec. 14-675. Historic resources design manual.**

(a) On recommendation of the historic preservation board, the Planning Board may provide further guidance on how to meet the standards of this article in the historic resources design manual, which shall supplement this article, which may include but need not be limited to maps and descriptions of landmarks and districts, a listing of properties which have been determined to be eligible for listing on the National Register or for local designation, a glossary of terms and architectural styles, descriptions, and illustrations of how the standards of this article will be interpreted, and all designation ordinances, reports and design guidelines. All provisions of the design manual shall be consistent with the standards of this article and any designation ordinance adopted hereunder.

(b) Amendments to the design manual shall be effective forty-five (45) days after being filed with the city clerk. Amendments shall be subject to veto, in whole or in part, by the council within said forty-five-day period.

(c) The design manual shall be maintained by the department and available for inspection and copying during regular business

hours.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 14, 5-17-93)

**Sec. 14-676. Reserved.**

**Sec. 14-677. Costs.**

Any project may be subject to one or more of the following fees:

(a) Review.

(1) Certificate of Appropriateness, \$50.00.

(2) Historic Preservation Historic preservation board Review:  
\$100.00

(3) New Construction, Comprehensive Rehabilitation, Major Additions: \$500.00

(4) After-the-fact review \$750.00

(5) Historic preservation and special exception sign review  
\$35.00

For purposes of this section, the following definitions shall apply:

New construction - any new construction (including building additions) whose building footprint exceed 200 square feet. This shall not include replacement or reconstruction of existing or documented historical features.

Comprehensive rehabilitation - any exterior alterations affecting more than one architectural feature and exceeding an overall project cost of \$15,000.

(b) Advertising expenses.

Every applicant shall bear the entire expense of giving notice by mail and publication in accordance with this article.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 15, 5-17-93; Ord. No. 119-01/02, §

**Sec. 14-678. Notices and public comment.**

(a) Except as provided in sections 14-638 and 14-639, notice of proceedings upon any application for a certificate of appropriateness shall be given only when the proposed activity otherwise constitutes major development or the planning authority has referred a minor development to the planning board under article V. Notice of such proceedings also shall be furnished to any persons interested in historic preservation who have registered with the department, and to the historic preservation board and/or the planning board when the proceeding is pending before a different body. The failure to give any notice required by this article shall not affect the validity of any action taken.

(b) The historic preservation board, the planning board, the board of appeals and the council shall each invite public comment at a public meeting in accordance with their respective rules, prior to any final action being taken under this article.

(c) The department shall advise the historic preservation board and the planning board of any demolition permit application received by the department as to structures or objects that are noncontributing within nominated or designated districts, but there shall be no historic preservation board review of such permit applications.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-679. Expiration of approval.**

An approval shall expire and become null and void upon the expiration of the authorization for the work, or for the development, under the applicable provisions of chapter 6 or of articles IV or V of this chapter.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-680. Applicant to supply necessary evidence.**

In determining the existence of the circumstances specified in this article, the historic preservation board, planning board or board of appeals may require such additional documentation or evidence as they may respectively determine to be necessary, including plans, drawings and elevations, and notwithstanding any time limit for action or decision specified in this article, it may

continue a proceeding for such additional time as it reasonably takes an applicant or any other party to comply with the request for additional relevant documentation or evidence and may draw a negative inference with regard to the content of any material evidence not produced upon reasonable request.

(Ord. No. 235-90, 2-26-90)

**Sec. 14-681. Appeals.**

(a) The applicant, or any person who has participated in opposition to the application and demonstrates a particularized harm caused by the approval of the application, may appeal to superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure from:

- (1) Any final action of the planning board, provided, however, only the applicant may appeal where no building permit or site plan review is required for the work which requires the issuance of the certificate of appropriateness; or
- (2) Any final decision of the board of appeals. If the decision of the board of appeals is subject to an incentive plan, the decision shall not be considered final until final action on the incentive plan by the council becomes final.

(Ord. No. 235-90, 2-26-90; Ord. No. 197-03/04, 9-8-04)

- Sec. 14-682. Reserved.**
- Sec. 14-683. Reserved.**
- Sec. 14-684. Reserved.**
- Sec. 14-685. Reserved.**
- Sec. 14-686. Reserved.**
- Sec. 14-687. Reserved.**
- Sec. 14-688. Reserved.**
- Sec. 14-689. Reserved.**

DIVISION 10. MAINTENANCE

**Sec. 14-690. Preservation of protected structures.**

(a) Minimum maintenance requirement. All landmarks, and all contributing structures located in an historic district, shall be

preserved against decay and deterioration by being kept free from the following structural defects by the owner and any other person or persons who may have legal custody and control thereof:

- (1) Deteriorated or inadequate foundation which jeopardizes its structural integrity;
- (2) Defective or deteriorated floor supports or any structural members of insufficient size to carry imposed loads with safety which jeopardize its structural integrity;
- (3) Members of walls, partitions or other vertical supports that split, lean, list or buckle due to defective material or deterioration which jeopardize its structural integrity;
- (4) Structural members of ceilings and roofs, or other horizontal structural members, which sag, split or buckle due to defective materials or deterioration or are of insufficient size to carry imposed loads with safety which jeopardize its structural integrity;
- (5) Fireplaces or chimneys which list, bulge or settle due to defective material or deterioration or are of insufficient size or strength to carry imposed loads with safety which jeopardize its structural integrity;
- (6) Lack of weather protection which jeopardizes the structural integrity of the walls, roofs or foundation.

(b) The owner or such other person shall repair such building, object or structure within a specified period of receipt of a written order to correct defects or repairs to any structure as provided by subsection (a) above, so that such structure shall be preserved and protected in accordance with the purposes of this article.

(c) Any such order shall be in writing, shall state the actions to be taken with reasonable particularity and shall specify dates for compliance, which may be extended by the department for reasonable periods to allow the owner to secure financing, labor or materials. Any such order may be appealed to the board of appeals within thirty (30) days. The board shall reverse such an order only if it finds that the department had no substantial justification

for requiring action to be taken, that the measures required or time periods specified were not reasonable under all of the circumstances. The taking of an appeal to the board or to court shall not operate to stay any order requiring structures to be secured or requiring temporary support, unless the board or court expressly stays such order. The court of competent jurisdiction to enforce any order.

(Ord. No. 235-90, 2-26-90)

- Sec. 14-691. Reserved.**
- Sec. 14-692. Reserved.**
- Sec. 14-693. Reserved.**
- Sec. 14-694. Reserved.**

#### DIVISION 11. PENALTIES, ETC.

##### **Sec. 14-695. Fines for violation.**

Failure to perform any act required by this article or performance of any act prohibited by this article or of any conditions or any certificate issued hereunder shall constitute a violation and be subject to a fine as provided in 30-A M.R.S.A. Section 4452. Each day on which there is failure to perform a required act or on which a violation exists shall constitute a separate violation for purposes of this section.

(Ord. No. 235-90, 2-26-90)

##### **Sec. 14-696. Additional penalties for willful violation or gross negligence.**

(a) In addition to the penalties authorized by section 14-695, a violation which is intentional, or occurs through gross negligence, shall be subject to the following provisions:

- (1) No permit shall be issued under chapter 6 of this Code for any alteration or construction affecting such property for a period of five (5) years following the last date of the violation, other than permits necessary to correct the violation. However, upon presentation of evidence satisfactory to the planning board that the

violation has been corrected, any remaining portion of the five-year prohibition on issuance of a permit may be waived.

- (2) For a period of twenty-five (25) years, any alteration or construction on the property shall be subject to this article, whether or not any remaining structure or object on the property continues to have the cultural, historical, architectural or archeological character and integrity that caused it to be nominated or designated as a landmark or part of a district.
- (3) As a condition for any new land use approval, the owner may be required to rebuild, reconstruct, restore or replicate the structure or object on the property.

(b) Paragraphs (1) and (2) of subsection (a) shall not apply to violations which are limited to noncontributing structures.  
(Ord. No. 235-90, 2-26-90)

**Sec. 14-697. Other remedies.**

Notwithstanding the provisions of sections 14-695 and 14-696, the city may institute appropriate proceedings in law and equity to prevent or remedy any violation of this article.  
(Ord. No. 235-90, 2-26-90)

**Sec. 14-698. Liberal construction of article.**

This article shall be liberally applied and construed to effectuate the purpose of preservation set forth in section 14-601.  
(Ord. No. 235-90, 2-26-90)

**Sec. 14-699. Exception for dangerous buildings.**

This article shall not apply to any structure which has been ordered demolished by the municipal officers or a court, in accordance with 17 M.R.S.A. Section 2851 et seq., its equivalent, as it may be amended from time to time, or to any structure which has been partially destroyed and is determined by the department to represent an immediate hazard to the public health or safety, which hazard cannot be abated by reasonable measures specified by the department, including without limitation securing apertures and/or erecting fencing.  
(Ord. No. 235-90, 2-26-90)

**Sec. 14-700. Severability; effective date.**

The provisions of section 1-14 shall apply to this chapter.

The provisions of this article shall be effective August 1, 1990.  
(Ord. No. 235-90, 2-26-90)

DIVISION 12. LANDMARKS

**Sec. 14-701. Structures designated as landmarks.**

In addition to those structures designated as landmarks pursuant to section 14-631, the following structures are designated as landmark buildings under the terms of this article:

The Tracy Causer Building, 507 Fore Street.  
(Ord. No. 42-91, 9-4-91)

**Sec. 14-702. Historic landscape districts.**

In addition to those areas designated as historic landscape districts pursuant to section 14-631, the following areas are designated as historic landscape districts under the terms of this article:

Evergreen Cemetery, Stevens Avenue, as more particularly delineated on the attached map, which shall become a part of the City of Portland Historic Districts Map, a copy of which is on file in the department.  
(Ord. No. 61-93, 8-2-93)

**Sec. 14-703. Historic districts.**

In addition to those areas designated as historic districts pursuant to section 14-631, the following areas are designated as historic districts under the terms of this article:

Hamblen Development Historic District, as more particularly delineated on the attached map, which shall become a part of the City of Portland Historic Districts Map, a copy of which is on file in the department.  
(Ord. No. 59-93, 8-2-93)

**Sec. 14-704. Historic landmark sites.**

In addition to those areas designated as historic landmark sites pursuant to section 14-631, the following areas are designated as historic landmark sites under the terms of this article:

Henry Wadsworth Longfellow Monument and site of the monument,  
as more particularly delineated on the attached map.  
(Ord. No. 60-93, 8-2-93)

- Sec. 14-705. Reserved.
- Sec. 14-706. Reserved.
- Sec. 14-707. Reserved.
- Sec. 14-708. Reserved.
- Sec. 14-709. Reserved.
- Sec. 14-710. Reserved.
- Sec. 14-711. Reserved.
- Sec. 14-712. Reserved.
- Sec. 14-713. Reserved.
- Sec. 14-714. Reserved.
- Sec. 14-715. Reserved.
- Sec. 14-716. Reserved.
- Sec. 14-717. Reserved.
- Sec. 14-718. Reserved.
- Sec. 14-719. Reserved.
- Sec. 14-720. Reserved.
- Sec. 14-721. Reserved.
- Sec. 14-722. Reserved.
- Sec. 14-723. Reserved.
- Sec. 14-724. Reserved.
- Sec. 14-725. Reserved.
- Sec. 14-726. Reserved.
- Sec. 14-727. Reserved.
- Sec. 14-728. Reserved.
- Sec. 14-729. Reserved.
- Sec. 14-730. Reserved.
- Sec. 14-731. Reserved.
- Sec. 14-732. Reserved.
- Sec. 14-733. Reserved.
- Sec. 14-734. Reserved.
- Sec. 14-735. Reserved.
- Sec. 14-736. Reserved.
- Sec. 14-737. Reserved.
- Sec. 14-738. Reserved.

- Sec. 14-739. Reserved.
- Sec. 14-740. Reserved.
- Sec. 14-741. Reserved.
- Sec. 14-742. Reserved.
- Sec. 14-743. Reserved.
- Sec. 14-744. Reserved.
- Sec. 14-745. Reserved.
- Sec. 14-746. Reserved.
- Sec. 14-747. Reserved.
- Sec. 14-748. Reserved.
- Sec. 14-749. Reserved.
- Sec. 14-750. Reserved.

#### ARTICLE X. RESERVED

- Sec. 14-751. Reserved.
- Sec. 14-752. Reserved.
- Sec. 14-753. Reserved.
- Sec. 14-754. Reserved.
- Sec. 14-755. Reserved.
- Sec. 14-756. Reserved.
- Sec. 14-757. Reserved.
- Sec. 14-758. Reserved.
- Sec. 14-759. Reserved.
- Sec. 14-760. Reserved.
- Sec. 14-761. Reserved.
- Sec. 14-762. Reserved.
- Sec. 14-763. Reserved.
- Sec. 14-764. Reserved.
- Sec. 14-765. Reserved.
- Sec. 14-766. Reserved.
- Sec. 14-767. Reserved.
- Sec. 14-768. Reserved.
- Sec. 14-769. Reserved.
- Sec. 14-770. Reserved.
- Sec. 14-771. Reserved.
- Sec. 14-772. Reserved.
- Sec. 14-773. Reserved.
- Sec. 14-774. Reserved.
- Sec. 14-775. Reserved.
- Sec. 14-776. Reserved.
- Sec. 14-777. Reserved.