

## Chapter 30 LANDMARK PRESERVATION<sup>1</sup>

### ARTICLE I. IN GENERAL

#### Sec. 30-1. Purpose and declaration of policy.

- (1) It is hereby declared as a matter of public policy that the protection, enhancement, perpetuation and use of structures and districts of historical, architectural, geographic, or cultural significance, located within the city or its mountain parks, is a public necessity, and is required in the interest of the prosperity, civic pride and general welfare of the people.
- (2) The purpose of this chapter is to:
  - (a) Designate, preserve, protect, enhance and perpetuate those structures and districts which reflect outstanding elements of the city's cultural, artistic, social, economic, political, architectural, historic or other heritage;
  - (b) Foster civic pride in the beauty and accomplishments of the past;
  - (c) Stabilize or improve the aesthetic and economic vitality and values of such structures and districts;
  - (d) Protect and enhance the city's attraction to tourists and visitors;
  - (e) Promote the use of outstanding historical or architectural structures or districts for the education, stimulation and welfare of the people of the city;
  - (f) Promote good urban design including the perpetuation of related private open spaces; and
  - (g) Promote and encourage continued private ownership and utilization of such buildings and other structures now so owned and used, to the extent that the objectives listed above can be attained under such a policy.
- (3) It is the sense of the council that the economic, cultural and aesthetic standing of this city cannot be maintained or enhanced by disregarding the historical, architectural and geographic heritage of the city and by ignoring the destruction or defacement of such cultural assets.
- (4) This chapter is enacted in accordance with the city council's general police power found in Charter section 3.2.3, and not the zoning power of city council.

(Code 1950, § 131.12(2); Ord. No. 934-94, § 1(a), 11-14-94; Ord. No. 914-19, § 1, 9-30-19)

#### Sec. 30-2. Definitions.

The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them:

- (1) *Accessory structure* shall have the same meaning as the term is defined in article XIII of the Denver Zoning Code.

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<sup>1</sup>Cross reference(s)—Buildings and building regulations, Ch. 10; community development and assistance, Ch. 12.

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- (2) *Alteration* shall mean any act or process which changes one (1) or more of the features of a designated structure for preservation or district for preservation.
  - (3) *Contributing* shall mean a structure or feature that adds to the historic, architectural, geographic, or cultural significance of a structure for preservation or a structure in a district for preservation.
  - (4) *Culture* shall mean the traditions, beliefs, customs, and practices of a particular community. Culture can encompass structures, businesses, institutions, organizations, events, arts, and crafts.
  - (5) *Demolition* shall mean the removal of forty (40) percent or more of the exterior walls, forty (40) percent or more of the roof, or forty (40) percent or more of the combined total exterior walls and roof of a structure for preservation or a structure in a district for preservation.
  - (6) *District* shall mean a group of structures or improvements or both, and their surrounding environs that have been designated for preservation.
  - (7) *Executive director* shall mean the executive director of the City and County of Denver's Department of Community Planning and Development, or the executive director's designee.
  - (8) *Feature* shall mean the architectural style, design, general arrangement and components of the exterior surfaces of a structure or improvement, including but not limited to the color, texture, materials, type and style of all windows, doors, lights, signs and other fixtures appurtenant to the structure or improvement.
  - (9) *Historic context* shall mean those patterns, themes, or trends in history by which a specific structure or district is understood. It refers to the cultural, social, religious, economic, and/or political conditions that existed during a certain time and at a place and provides the background necessary to understand how and why a structure or district may have historic, architectural, geographic, or cultural significance.
  - (10) *Improvement* shall mean any feature, building, structure, place, work of art or other object constituting a physical betterment of real property or any part of such betterment.
  - (11) *Integrity* shall mean the ability of a structure or district to convey its historic, geographic, architectural, or cultural significance. To have integrity means that a structure or district can be recognized as belonging to its particular time and place in Denver's history. The seven (7) qualities that, in various combinations, define integrity are:
    - a. *Location*: The place where the historic structure was constructed or the place where the historic event occurred.
    - b. *Setting*: The physical environment of a historic structure.
    - c. *Design*: The combination of elements that create the form, plan, space, structure, and style of a structure.
    - d. *Materials*: The physical elements that were combined or deposited during a particular period of time in a particular pattern or configuration to form a historic structure.
    - e. *Workmanship*: The physical evidence of a particular culture or people's craft during any given period in history.
    - f. *Feeling*: A structure's expression of the aesthetic or historic sense of a particular period or time.
    - g. *Association*: The direct link between an important historic event or person and a historic structure.

Determining which of these seven (7) qualities are most important to a particular property requires knowing why, where, and when the property is significant.

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- (12) *Noncontributing* shall mean a structure or feature that does not add to the historic, architectural, geographic, or cultural significance of a structure for preservation or a district for preservation.
  - (13) *Period of significance* shall mean the time period during which a structure for preservation or a district for preservation gained its historic, architectural, geographic, or cultural importance. A district's period of significance may cover a longer period of time than a structure's, in order to encompass the period during which the district developed.
  - (14) *Primary structure* shall have the same meaning as the term is defined in article XIII of the Denver Zoning Code.
  - (15) *Replacement structure* shall mean a structure for a permitted use, except surface parking and storage, that takes the place of a structure for preservation or a structure in a district for preservation.
  - (16) *Residential use* shall mean any building or part of a building in which a person or group of persons are provided with sleeping accommodations.
  - (17) *Significance* shall mean that a structure for preservation or a district for preservation is important to the history, architecture, geography, or culture of the city.
  - (18) *Structure* shall mean anything which is constructed or erected and the use of which requires more or less permanent location on the ground or attachment to something having permanent location on the ground, not, however, including wheels; any physical feature of the site; any improvement on the site; an edifice or building of any kind.
  - (19) *Temporary sign* shall have the same meaning as the term is defined in article XIII of the Denver Zoning Code.
  - (20) *Temporary structure* shall have the same meaning as the term is defined in article XIII of the Denver Zoning Code, or any structure required to have a permit under Denver Building Code Section 134.

(Code 1950, § 131.12(11); Ord. No. 934-94, § 1(a), 11-14-94; Ord. No. 419-01, § 1, 5-21-01; Ord. No. 496-12, § 1, 10-1-12; Ord. No. 616-12, §§ 1, 2, 12-3-12; Ord. No. 914-19, § 2, 9-30-19)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

### **Sec. 30-3. Criteria for designation of structures and districts for preservation.**

A structure or district may be designated for preservation if, due to its significance, it meets the criteria listed in subsections (1), (2) and (3) below:

- (1) The structure or district maintains its integrity;
- (2) The structure or district is more than thirty (30) years old, or is of exceptional importance; and
- (3) The structure or district meets at least three (3) of the following ten (10) criteria:
  - a. It has a direct association with a significant historic event or with the historical development of the city, state, or nation;
  - b. It has direct and substantial association with a recognized person or group of persons who had influence on society;
  - c. It embodies the distinctive visible characteristics of an architectural style or type;
  - d. It is a significant example of the work of a recognized architect or master builder;

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- e. It contains elements of design, engineering, materials, craftsmanship, or artistic merit which represent a significant innovation or technical achievement;
  - f. It represents an established and familiar feature of the neighborhood, community, or contemporary city, due to its prominent location or physical characteristics;
  - g. It promotes understanding and appreciation of the urban environment by means of distinctive physical characteristics or rarity;
  - h. It represents an era of culture or heritage that allows an understanding of how the site was used by past generations;
  - i. It is a physical attribute of a neighborhood, community, or the city that is a source of pride or cultural understanding; or
  - j. It is associated with social movements, institutions, or patterns of growth or change that contributed significantly to the culture of the neighborhood, community, city, state, or nation.

In evaluating the structure's or district's eligibility for designation, the landmark preservation commission ("commission") shall consider the structure's or district's historic context.

(Code 1950, § 131.12(5); Ord. No. 333-82, § 1, 6-21-82; Ord. No. 934-94, § 1(a), 11-14-94; Ord. No. 419-01, § 2, 5-21-01; Ord. No. 616-12, § 3, 12-3-12; Ord. No. 914-19, § 3, 9-30-19)

#### **Sec. 30-4. Procedure for designating structures and districts for preservation.**

- (1) *Initiation of procedure.* An application for designation shall be submitted to the commission for due consideration through the process described herein. An application for designation may be submitted:
  - (a) By the owner or owners of the property or properties to be designated;
  - (b) By the executive director;
  - (c) By a member or members of city council;
  - (d) By non-owners of the property or properties to be designated, in which case the application must be submitted by three (3) persons who are residents of the City and County of Denver.

Such an application for designation shall describe the appearance of the structure or district and shall demonstrate how the structure or district meets the criteria for designation set forth herein. The commission shall provide an application form and instructions that set out the required information for designation applications.

- (2) *Withdrawing of applications.* An applicant may withdraw its application at any time before a bill for an ordinance to designate a structure or district is filed with city council. An application filed by three (3) persons as allowed in section 30-4(1)(d) above, must be withdrawn by all three (3) persons who filed the application.
- (3) *Preliminary review.* The commission staff shall conduct a preliminary review to determine whether the application is complete, and whether the structure or district is eligible for designation. If the applicant is not the owner of the property, the owner shall be notified at every stage of the designation proceedings. If preliminary review determines the application to be complete and the structure or district to be eligible for designation, the commission staff shall set the time, date and place for the public hearing before the commission (hereinafter called a "designation hearing") and the review shall proceed as described. If not, the applicant shall be advised of the reasons the application is incomplete or the structure or district does not meet the criteria for designation. However, the applicant may require that the application be forwarded to the commission, which shall then decide whether to send it to a public hearing.

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- (4) *Scheduling of designation hearing by the commission.* If an application has been forwarded to the commission in spite of staffs findings that it was not complete or did not meet the criteria for designation, the commission shall review the application and staff's recommendation to determine if the application is complete and demonstrates that the structure or district is potentially eligible for designation. If the commission finds the application complete and the property potentially eligible for designation it shall schedule a public hearing on the question of designation at a specified time, date and place.
- (5) *Notice of hearing.* Notice of the designation hearing shall be given as follows:
- (a) Written notice of the time, date, place and subject of the hearing shall be sent no fewer than twenty-five (25) days and no more than forty (40) days prior to the hearing to all owners of record as determined from records in the assessor's office who own property containing a structure being proposed for designation for preservation or within a proposed district for preservation. The written notice to owners of property containing a structure being proposed for designation for preservation shall be by first class and certified mail. The written notice to owners of property within a proposed district shall be by first class mail.
  - (b) Signs indicating the proposed action and the time, date and place of the hearing shall be posted by the commission on all property proposed for designation as a structure for preservation and on the boundaries of all areas proposed for designation as a district for preservation, no fewer than fifteen (15) days prior to the hearing. These signs shall be prominently displayed and easily readable from abutting public ways.
  - (c) Written notice of the proposed designation, including the identification of the property, the basis for commencing the designation procedure, and the time, date and place of the hearing shall be given to the executive director no fewer than twenty-five (25) days prior to the hearing.
- (6) *Review by planning board.* The planning board may review a proposed designation for a district for preservation with respect to:
- (a) Its relationship to the comprehensive plan;
  - (b) The effect of the designation upon the surrounding neighborhood; and
  - (c) Such other planning considerations as may be relevant to the proposed designation.

The board may recommend approval or denial of the proposed designation and if a recommendation is made it shall contain a statement of the basis therefor. If a recommendation is made by the board, said recommendation shall be delivered to the city council for council's consideration.

- (7) *Hearing:*
- (a) A quorum of the commission shall conduct the hearing. A hearing may be continued. If the hearing is continued, the time, date and place of the continuation shall be established and announced to those present when the current session is to be adjourned.
  - (b) Reasonable opportunity shall be provided for all interested parties to express their opinions regarding the proposed designation or designations. However, nothing contained herein shall be construed to prevent the commission from establishing reasonable rules to govern the proceedings of the hearings, or from establishing reasonable limits on the length of individual presentations.
  - (c) Transcripts of the hearings are not required; however, the commission's records shall include the name and address of each speaker; the organization or person the speaker represents, if any; whether or not the speaker is an owner or holder of some interest in an affected property, or represents such owner or holder; and each speaker's position on the designation. Written presentations, including the report of the board, shall be incorporated into the record of the hearing. All recordings, documents, and physical evidence considered shall be retained for sixty (60) days after designation.

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- (8) *Findings and recommendations of the commission.* The commission shall consider the designation criteria in section 30-3 in making its determination. The commission shall act officially on each proposed designation within forty-five (45) days after the hearing thereon. The commission may recommend to approve or recommend to modify any proposal, but no proposal may be extended beyond the boundaries of the land described in the final application for designation unless the initiation and hearing procedure is repeated for the enlarged boundaries. The commission may also deny the application, which shall terminate the designation procedure. The commission shall set forth in its recommendation the findings of fact which constitute the basis for its decision. If the commission fails to act within the forty-five-day period, the designation shall be deemed to have been denied, and the designation procedure terminated. If more than one (1) property is involved in the designation procedure, the commission may approve in part and deny in part. Each part shall then be treated as a separate action. In no event may any property be added to the area described in the final application for designation without instituting a new designation procedure.
  - (9) *Transmittal to city council.* Within thirty (30) days after reaching a decision to recommend approval or recommend to modify a designation application, the commission shall forward to city council the commission's recommendation on the designation of a structure or district for preservation, including the description of the property involved, and the findings upon which the recommendation was based.
  - (10) *Action by city council.* City council shall hold a public hearing if the commission recommends approval or modification to designate property as a structure for preservation or a district for preservation. Prior to general comment at a public hearing, owners and applicants of a structure for designation and owners or residents of structures in a district for designation shall have a reasonable opportunity to present their case regarding the proposed designation or designations at the public hearing, pursuant to the council's rules of procedure. City council may approve the designation of property as a structure for preservation or a district for preservation after considering the recommendations of the commission, the written views of owners of affected property, and any other comments received at the public hearing; and city council may deny the designation based on any of the considerations above. However, if no bill for an ordinance to designate a structure or district is filed within ninety (90) days after transmittal of the recommendation, the designation procedure is terminated.
  - (11) *Recording of designation.* Within fifteen (15) days of the effective date (date of final publication) of an ordinance designating property as a structure for preservation or a district for preservation, the commission shall notify the executive director of the official designation and shall record among the real property records of the clerk and recorder a notice stating that specified property has been designated as a structure for preservation or a district for preservation, and citing the ordinance and the effective date thereof which made the designation effective. Failure to record such notice within the required time shall suspend the effective date of the designation until the recording has been made.
  - (12) *Notification.* Within twenty (20) days after the recording of the notice of designation, the staff of the commission shall send to the owner of each property affected by the designation a letter outlining the reasons for such designation and the obligations and restrictions created by such designation.

(Code 1950, § 131.12(6); Ord. No. 174-82, 4-12-82; Ord. No. 277-82, § 1, 5-24-82; Ord. No. 426-87, §§ 1—3, 8-4-87; Ord. No. 934-94, § 1(a), 11-14-94; Ord. No. 594-97, § 1, 9-2-97; Ord. No. 419-01, § 3, 5-21-01; Ord. No. 159-03, §§ 1, 2, 3-3-03; Ord. No. 69-10, §§ 1—4, 2-1-10; Ord. No. 616-12, § 4, 12-3-12; Ord. No. 914-19, § 4, 9-30-19; Ord. No. 841-22, § 1, 8-22-22)

### **Sec. 30-5. Procedure to amend or rescind designation of structures and districts for preservation.**

The designation of a structure or district for preservation may be amended or rescinded in the same manner as the original designation was made under the provisions of section 30-4 of this chapter; provided however, in the

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event a structure for preservation has been demolished or moved from the designated site, then the rescission of designation may be made by ordinance without following the procedures set forth in said section 30-4; provided further that an amendment to a designating ordinance shall not require a city council public hearing if said amendment does not change the area encompassed by the district or structure for preservation. Any application to amend the area of a district or structure for preservation or to rescind a designation shall be forwarded to city council with the commission's recommendation.

(Code 1950, § 131.12(7); Ord. No. 934-94, § 1(a), 11-14-94; Ord. No. 419-01, § 4, 5-21-01; Ord. No. 159-03, § 3, 3-3-03; Ord. No. 69-10, § 5, 2-1-10; Ord. No. 914-19, § 5, 9-30-19)

### **Sec. 30-6. Procedure to authorize erection, construction, reconstruction, alterations to, or demolition of structures.**

- (1) *Protection from demolition during designation proceedings and review of properties prior to demolition.*
  - (a) Upon or after receipt by community planning and development ("CPD") of an application for designation of a structure or a district for preservation, no demolition permit applied for after the designation application is submitted shall be issued for said structure or any structure in said district until the commission denies the application for designation, city council fails to designate the structure or district, or the designation application is withdrawn. Any demolition permit must comply with all Denver Building and Fire Code requirements. If the structure is designated, the provisions of section 30-6(6) shall apply.
  - (b) For a structure that is not pending designation as a structure for preservation or as part of a district for preservation at the time an application for demolition is received by CPD, the executive director shall review the demolition application within ten (10) working days to determine whether the structure has potential for designation. The date of receipt of the application shall not be counted in the ten (10) working day period. For the purposes of this section 30-6(1)(b) only, "demolition" shall be as defined in the Denver Zoning Code, and "structure" shall mean a primary structure or an accessory structure which is one and a half (1½) stories or more in height, only, as "primary structure," "accessory structure" and "half story" are defined in the Denver Zoning Code.
    - i. During the ten (10) working day review period no demolition permit shall be issued unless the structure is determined not to have potential for designation by the executive director. Any time after the executive director makes a determination that the structure does not have potential for designation or if the ten (10) working day period has elapsed without such a determination, and provided no application for designation has been received by CPD, the demolition approval shall be issued upon compliance with all Denver Building and Fire Code requirements. The demolition approval under this section will be valid for three (3) years from the date of issuance.
    - ii. If the executive director determines that the structure may have potential for designation, the executive director shall notify the person who applied for demolition, the property owner, the city council person in whose district the structure lies, the at-large councilpersons, the registered neighborhood organizations the boundaries of which encompass or are within two hundred (200) feet of the structure and appropriate historic preservation entities that the structure has been deemed to have potential for designation and there is a request for demolition pending. The property shall be posted for twenty-one (21) calendar days for notification about the potential for demolition of the property. The initial day of posting shall not be counted in the twenty-one (21) day period. No demolition permit shall be issued for a period of twenty-one (21) calendar days from the date of the above notifications and posting. The notification and posting requirements above must be completed within three (3) business days of the executive director's decision that the structure may have potential for designation.

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- iii. Notwithstanding subsection ii. above, if a notice of intent to file an application for designation ("notice of intent") is filed by any of the parties allowed to submit an application for designation in section 30-4(1)(b)-(d), and is received by the twenty-first (21<sup>st</sup>) calendar day after the posting of the property, the posting period shall be extended to sixty (60) days from the initial posting, and no demolition permit shall be issued during that period. Only one (1) notice of intent shall be accepted by CPD per posting.
    - 1. No later than forty (40) days following the initial posting, at least one (1) of the parties who filed the notice of intent shall meet with the owner of the property or the owner's representative. CPD shall notify a facilitator that a notice of intent has been submitted. The facilitator shall coordinate the meeting, and shall determine other attendees of the meeting, but in all cases a member of the commission staff shall attend. The facilitator should strive to limit the attendees of the meeting to no more than fifteen (15) people. The facilitator shall produce a written summary of the meeting to CPD, and this summary will be incorporated into the record of any commission and city council public hearing. No application for designation may be submitted to CPD prior to this meeting.
    - 2. After the meeting required in subsection 1. above has concluded, a designation application may be filed with CPD.
    - 3. If the party who filed the notice of intent fails to appear at the meeting required above, then the demolition approval shall be issued to the applicant for the permit. If the owner or owner's representative fails to appear at the meeting required above, then the demolition approval shall be denied. The applicant for a demolition permit may apply for another demolition permit, subject to the procedures of section 30-6(1).
  - iv. If a complete application for designation, along with the applicable fee, is received before the applicable posting period has elapsed, the provisions of sections 30-6(1) shall apply.
  - v. If the structure is not designated within ninety (90) days after the receipt by CPD of a complete application for designation, along with the applicable fee, the designation proceedings shall be terminated.
  - vi. If the applicable posting period has elapsed and no complete application for designation has been received by CPD, if the commission denies the application for designation, city council fails to designate the structure or district, or the designation application is withdrawn, then the demolition approval shall be issued upon compliance with all Denver Building and Fire Code requirements.
- (c) In order to provide certainty in the demolition process, an owner of a structure that is not pending designation and is neither designated as a structure for preservation nor in a district for preservation may apply to CPD to have the structure reviewed for eligibility of demolition and have a certificate to that effect (the "certificate"). Said certificate shall prevent an application for designation from going forward without the owner's consent for a period of five (5) years from the date of issuance, and for said five-year period will allow an application for demolition to be processed without further review as to the structure's potential for designation. Notwithstanding the previous sentence, if the structure is part of a General Development Plan (GDP) under the Denver Zoning Code the certificate shall be valid for the period during which the GDP is vested or five (5) years from the date of issuance, whichever is longer, up to a maximum of ten (10) years.
- i. Upon receipt of a complete application for a certificate including any required fee, the executive director shall review the application for a certificate within ten (10) working days to determine if the structure has potential for designation. The date of receipt of the application shall not be counted in the ten (10) working day period. Any time after the executive director makes a determination that the property does not have potential for designation or if the ten (10)

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working day period has elapsed without such a determination, the executive director shall issue a certificate.

- ii. If the executive director determines before ten (10) working days have elapsed since the application that the structure may have potential for designation the executive director shall notify the person who applied for the certificate, the property owner, the city council person in whose district the structure lies, the at-large council persons, the registered neighborhood organizations the boundaries of which encompass or are within two hundred (200) feet of the structure and appropriate historic preservation entities that the structure has been deemed to have potential for designation and there is a request for a certificate pending. The property shall be posted for twenty-one (21) calendar days for notification about the potential for receipt of a certificate for the property. The initial day of posting shall not be counted in the twenty-one (21) day period. The notification and posting requirements above must be completed within three (3) business days of the executive director's decision that the structure may have potential for designation.
  - iii. Notwithstanding subsection (c) above, if a notice of intent is filed by any of the parties allowed to submit an application for designation in section 30-4(1)(b)-(d), and is received by the twenty-first (21<sup>st</sup>) calendar day after the posting of the property, the posting period shall be extended to sixty (60) days from the initial posting, and no certificate shall be issued during that period. Only one notice of intent shall be accepted by CPD per posting.
    - 1. No later than forty (40) days following the initial posting, at least one of the parties who filed the notice of intent shall meet with the owner of the property or the owner's representative. CPD shall notify a facilitator that a notice of intent has been submitted. The facilitator shall coordinate the meeting, and shall determine other attendees of the meeting, but in all cases a member of the commission staff shall attend. The facilitator should strive to limit the attendees of the meeting to no more than fifteen (15) people. The facilitator shall produce a written summary of the meeting to CPD, and this summary will be incorporated into the record of any commission and city council public hearing. No application for designation may be submitted to CPD prior to this meeting.
    - 2. After the meeting required in subsection 1. above has concluded, a designation application may be filed with CPD.
    - 3. If the party who filed the notice of intent fails to appear at the meeting required above, then the certificate shall be issued to the applicant for the certificate. If the owner or owner's representative fails to appear at the meeting required above, then the certificate shall be denied. The applicant for a certificate may apply for another certificate, subject to the procedures of section 30-6(1).
  - iv. If a complete application for designation along with the applicable fee, is received before the applicable posting period has elapsed, the provisions of sections 30-6(1) shall apply.
  - v. If the structure is not designated within ninety (90) days after the receipt by CPD of a complete application for designation, along with the applicable fee, the designation proceedings shall be terminated.
  - vi. If the applicable posting period has elapsed and no complete application for designation has been received by CPD, if the commission denies the application for designation, city council fails to designate the structure or district, or the designation application is withdrawn, then the certificate shall be issued.
- (d) In this section 30-6(1) "potential for designation" shall mean a structure which after initial review appears to meet the designation criteria.

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- (2) *Design review standards, policies and guidelines.*
- (a) The commission shall adopt the secretary of the interior's treatment of historic properties and design review policies and guidelines (in such form as it deems appropriate) to aid in its review of design review and permit applications.
  - (b) For the purposes of this section "permit" includes building permit, curb cut permit, demolition permit, encroachment permit, zoning construction permit and request for zoning lot amendment, unless one or more type of permit is specified or excluded. The commission shall not review permits for temporary structures or temporary signs.
- (3) *Review of permit.* The commission shall review any application for a permit for any of the following acts:
- (a) Alteration of, reconstruction of, or addition to the exterior of any structure which constitutes all or part of a designated structure for preservation or all or part of a structure located in a designated district for preservation or the modification of a zone lot in a designated district for preservation or all or part the zone lot of a designated structure for preservation;
  - (b) Demolition of any structure which constitutes all or part of a designated structure for preservation or all or part of a structure located in a designated district for preservation;
  - (c) Construction of, erection of, or any addition to any structure upon any land in a designated district for preservation or on any land included in the area designated as a structure for preservation;
  - (d) Application for a zone lot amendment in a designated district for preservation or for any land included in the area designated as a structure for preservation.
- (4) *Approval of permit.* The permit shall not be issued without written approval of the commission or its designated representative, except as provided in subsection 30-6(7).
- (5) *Action on proposed alterations, reconstruction, or additions.* (See section 30-6(6) for action on proposed demolitions.) The commission shall base reviews of applications on adopted standards, policies, guidelines, and information found in the designation application. The commission may request additional information as necessary to undertake its review. When dealing with a proposed alteration of, reconstruction of, or addition to the exterior of a contributing structure in a district for preservation or of a structure for preservation, the commission shall place the emphasis on applying the appropriate design guidelines to said structure with a view to preserving the historic significance of the basic structure. When dealing with a proposed alteration of, reconstruction of, or addition to the exterior of a noncontributing structure in a district for preservation or a noncontributing structure within the designated land area of a structure for preservation, the commission shall place the emphasis on preserving the historic character of the district or structure for preservation rather than preserving the character of the structure to be altered, reconstructed or added. The commission staff may administratively approve applications which clearly meet the guidelines, unless the commission has determined that certain types or applications or projects must be brought before the commission. All other applications shall be sent to the commission which shall approve, approve with conditions, or deny said applications.
- (a) Upon the request of any affected property owner or receipt of an application for a permit, other than a curb cut, demolition or encroachment permit, the commission shall review any proposal for altering, constructing, erecting, or adding to any structure covered by subsections 30-6(3)(a) or (3)(c). If the commission finds that the proposed work is of a nature which will not destroy or adversely affect any architectural feature of the structure and is appropriate or consistent with the spirit and purposes of this chapter, it shall so indicate in writing. No substantial change shall be made to the work as presented in an application approved by the commission without resubmittal to the commission and approval of such changes in the same manner as the original application.

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- (b) If upon review of the proposed work, the commission finds portions thereof to be unacceptable, the application may be approved with conditions which shall be adhered to.
  - (c) If upon review of the proposed work, the commission finds said work to be unacceptable, the application shall be denied. The commission shall state the reasons for the denial, citing adopted standards, policies, and guidelines.
  - (d) Upon approval of a permit, a certificate of appropriateness ("COA") shall be issued which shall state the approved work and any conditions to said approval. A copy of the COA shall be displayed along with and in the same manner as any building permits issued for the same work. The COA shall be valid for three (3) years from the original date of issuance. If construction has not started within said three-year period, or if an active building or zoning permit has not been issued by CPD, the applicant must submit a new application. If the COA has expired and if no substantial changes have been made to the project, and applicable design guidelines have not changed since issuance of the COA, the COA will be reissued one (1) time.
- (5.5) *Action on a proposed zone lot amendment.* The commission shall base reviews of applications on adopted standards, policies and guidelines. The commission may request additional information as necessary to undertake its review. When dealing with a zone lot amendment in a district for preservation, the commission shall determine whether the amendment adversely affects character or integrity of the district or any contributing structure in the district. When dealing with a zone lot amendment encompassing all or part of the land area of a structure for preservation, the commission shall determine whether the amendment adversely affects the character or integrity of the structure for preservation. In reviewing a zone lot amendment, the commission shall make a recommendation to the zoning administrator for approval, denial, or approval with conditions.
- (6) *Action on proposed demolition of a structure for preservation or structure in a district for preservation.* Application for a proposed demolition covered by subsection 30-6(3)(b) (Hereinafter in this section (6) called an "application for demolition") must be made in writing to the commission. An application for a demolition permit or a letter of intent fulfills this requirement. In no event (except in the case of (b)iv. below) shall a demolition permit be issued for a primary structure that is a structure for preservation or contributing to a district for preservation until the commission has approved a replacement structure. In no event (except in the case of (b)iv. below) shall a demolition permit be issued for a noncontributing primary structure or an accessory structure until the commission has approved a replacement structure or site plan.
- (a) If the structure proposed for demolition is a noncontributing accessory structure or outbuilding, the commission staff may approve the application for demolition or forward the application for demolition to the commission with a recommendation for approval or disapproval.
  - (b) The commission may approve or disapprove without a public hearing an application for demolition if the structure to be demolished is:
    - i. A noncontributing structure in a district;
    - ii. A noncontributing addition to a structure or site;
    - iii. An accessory structure or outbuilding of a contributing structure or site; or
    - iv. Determined, in accordance with section 30-6(7), to be imminently dangerous to life, health or property and its demolition remedies said dangerous condition.

The commission shall take action on such an application at the regularly scheduled meeting at which it receives the application or at one (1) of the two (2) regularly scheduled meetings next following said receipt of the application.

- (c) Upon receipt of an application for demolition of a contributing accessory structure or outbuilding, the commission may require a public hearing if it finds that the accessory structure or outbuilding has

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historic, architectural, geographic, or cultural significance of its own, and its removal would affect the integrity of the site.

- (d) The commission shall hold a public hearing on all applications for demolition, except as provided in sections 30-6(6)(a), (b) and (c) above. Public hearings of the commission shall be conducted at a regularly scheduled meeting of the commission. The commission may adopt such rules or limits as may be necessary to govern the hearing within the proper spirit and purposes of this chapter. Staff shall notify the commission at the commission's next regularly scheduled meeting of receipt of an application for demolition. After the commission has been so notified, the commission shall set a public hearing to be held at the second regularly scheduled public meeting after the meeting at which the commission is notified of the application for demolition, unless the applicant agrees to a later hearing.

Written notice of the public hearing shall be sent to the owner of the property and to the building permit applicant (if different from the owner), giving the time, date, place and subject of the public hearing, no fewer than thirteen (13) days prior to the hearing. Signs indicating the proposed action and the time, date and place of the hearing shall be posted by the commission on the property being considered no fewer than thirteen (13) days prior to the hearing. Such signs shall be prominently displayed and easily readable from abutting public ways.

- (e) Determination. Either at the final meeting during which the public hearing is held, or at the next regularly scheduled meeting after the public hearing is closed, the commission shall make a determination to approve or deny the application for demolition. The findings of the commission shall be based on consideration of specified design standards, presented plans, public testimony and related findings of fact. Notification of the commission's determination shall be made to the applicant. Notification shall also be sent to the building inspection division within five (5) days after the determination. If the application for demolition is approved, the commission shall require a replacement structure or site plan as a condition of the demolition approval. The demolition approval under this section will be valid for three (3) years from the date of issuance.
- (f) If the application for demolition is denied, the applicant may seek relief through the economic hardship process, defined in section 30-6(8).

- (6.5) *Action on requests for curb cut and encroachment permits.* Upon receipt of an application for a curb cut permit or an encroachment permit, the manager of transportation and infrastructure shall determine if the work to be done will be located in a district for preservation or adjacent to a structure for preservation. If the work is so located, the manager shall forward said application to the commission for review. The commission shall determine if the work would negatively affect the district for preservation or structure for preservation and make its recommendation, in writing, to the manager of transportation and infrastructure. The commission shall base its review on adopted standards, policies and guidelines. If recommending that the work not be done or that the work be modified, the commission shall state which standards, policies and guidelines formed the basis for its recommendation. The manager shall consider the commission's recommendations in determining whether to approve the application, but may overrule the commission if the manager finds there are valid public safety or other concerns that override the historic preservation considerations.

- (7) *Remedying of dangerous conditions.* In any case where the building inspection division of CPD, the department of public health and environment or the fire department or any other duly authorized officer or agency of the city orders or directs the construction, reconstruction, alteration, repair or demolition of any improvement to a structure for preservation or structure in a district for preservation, for the purpose of remedying conditions determined by that department, agency or officer to be imminently dangerous to life, health or property, said work may proceed without further delay imposed by reason of this chapter, provided any such department, agency or officer shall give the commission notice prior to issuance of any such order or directive. Nothing contained herein shall be construed as making it a violation of this chapter for any person to comply with such order or directive without receipt of a statement from the commission.

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- (8) *Procedure to demonstrate economic hardship.*
- (a) Economic hardship is proven when the denial of the application for demolition of a structure for preservation or a contributing structure in a district for preservation would prevent the owner's reasonable beneficial use of the structure. Consideration of a request for a determination of economic hardship may not include any of the following:
    - i. The review of proposed elective alterations to a structure;
    - ii. The review of the financial ability of the owner to rehabilitate a property;
    - iii. The review of self-imposed hardships, such as demolition by neglect or intentional destabilization of a structure; or
    - iv. The lack of due diligence by the owner, or an inopportune economic climate.
  - (b) Application to demonstrate economic hardship shall be made on a form prepared by the commission. The application may include, but is not limited to, the valuation of the property, estimates of the costs for rehabilitation of the building, estimates of the costs for new construction on the site, and reports as to the condition of the building prepared by professionals with experience in preservation and rehabilitation. The commission shall establish the submittal requirements for an application by rules and regulations under the provisions of article VI, chapter 2 of the Denver Revised Municipal Code. The notice of intent to initiate the procedure shall be given to the commission within thirty (30) days of the denial of the application to demolish. The commission shall schedule a public hearing concerning the application and any person, including the applicant, may testify. The public hearing shall be conducted as in section 30-6(6) above.
  - (c) The commission shall consider the following factors in making a determination of economic hardship on a request for a demolition permit of a structure for preservation or a contributing structure in a district for preservation:
    - i. Whether significant economic hardship to the property is demonstrated based on the structural condition of the building and/or the condition of its materials, and the cost of rehabilitation;
    - ii. Whether significant harm to the public interest based on the following preservation factors:
      - 1. The age of the building.
      - 2. The significance of the building as related to the historic and architectural heritage of the city taking into consideration whether it is a structure for preservation or a contributing structure to a district for preservation.
      - 3. The extent to which the structure maintains the continuity, scale and massing of adjacent contributing structures, and the prominence of the structure within the block.
      - 4. The extent to which the rehabilitation or reuse implements the goals of the comprehensive plan, or any adopted neighborhood plans.
  - (d) Burden of proof and appeal.
    - i. The burden of proof as to whether the structure should be demolished is on the applicant.
    - ii. The applicant may appeal the decision under the provisions of section 30-9(4), below.
- (9) This section 30-6 shall apply to all districts for preservation and structures for preservation except for all structures in the Lower Downtown Historic District (LDHD) including any structures for preservation located therein. Erection, construction, reconstruction, or alterations to structures in the LDHD shall be governed by article III (Lower Downtown Historic District) of this chapter 30.

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(Code 1950, § 131.12(8); Ord. No. 426-87, § 4, 8-4-87; Ord. No. 430-90, § 1(a), 7-30-90; Ord. No. 934-94, § 1(a), 11-14-94; Ord. No. 1110-96, § 1, 12-16-96; Ord. No. 419-01, § 5, 5-21-01; Ord. No. 872-01, § 1(a)—(e), 10-15-01; Ord. No. 159-03, §§ 4—7, 3-3-03; Ord. No. 94-05, §§ 1—4, 2-14-05; Ord. No. 785-06, §§ 1, 2, 11-27-06; Ord. No. 786-06, §§ 1, 2, 11-27-06; Ord. No. 69-10, §§ 6—9, 2-1-10; Ord. No. 616-12, §§ 5—8, 12-3-12; Ord. No. 427-18, § 17, 6-11-18; Ord. No. 914-19, § 6, 9-30-19; Ord. No. 39-20, § 62, 2-3-20; Ord. No. 486-20, §§ 1—3, 6-15-20)

Editor's note(s)—That the notification and posting requirements of D.R.M.C. Sections 30-6(1)(b)(ii) and (c)(ii) are postponed, but only for the period of June 19 through August 2, 2020, for any property containing a structure the executive director of Community Planning and Development determines to have potential for designation. On August 3, 2020, the executive director of Community Planning and Development will post any property that received a postponement under Section 1 of Ord. No. 486-20, and notify all required entities. The procedures of D.R.M.C. Sections 30-6(1)(b)(iii)-(vi) and (c)(iii)-(vi) will also begin on August 3, 2020.

Editor's note(s)—That the processes of D.R.M.C. Sections 30-6(1)(b)(iii) and (c)(iii) are tolled, but only for the period of June 19 through August 2, 2020, for any property that prior to June 19, 2020, has been posted for notification about the potential for demolition or receipt of a certificate of eligibility of demolition of the property as required by D.R.M.C. Sections 30-6(1)(b)(ii) and (c)(ii). On August 3, 2020, the processes of D.R.M.C. Sections 30-6(1)(b)(iii) and (c)(iii), including all time limits within these sections that were tolled, will continue.

Editor's note(s)—That the 90-day deadlines of D.R.M.C. Sections 30-6(1)(b)(v) and (c)(v) are tolled, but only for the period of June 19 through August 2, 2020, for any property in which an application for historic designation has been submitted after a meeting has been held under D.R.M.C. Sections 30-6(1)(b)(iii) and (c)(iii), and prior to June 19, 2020. On August 3, 2020, any 90-day deadlines that were tolled, will continue.

### **Sec. 30-7. Extension of time limits.**

Any time limits set forth in this chapter may be extended by mutual consent of the commission, the owner, and the applicant.

(Code 1950, § 131.12(10); Ord. No. 934-94, § 1(a), 11-14-94; Ord. No. 914-19, § 7, 9-30-19)

### **Sec. 30-8. Minimum maintenance of designated structures for preservation and structures in districts for preservation.**

Structures designated for preservation or structures in districts designated for preservation shall be preserved against decay and deterioration and kept free from structural defects by the owner thereof or such other person or persons who may have legal custody and control.

(Ord. No. 934-94, § 1(a), 11-14-94)

### **Sec. 30-9. Enforcement.**

- (1) It shall be unlawful to violate any provision of this chapter, or to disobey or fail to follow any order, decision or ruling of the commission or the Lower Downtown Design Review Commission ("LDDRC"). Any person violating any provision of this chapter shall be subject to the penalties provided by this Code.
- (2) In case any building or structure is erected, constructed, externally reconstructed, externally altered, added to or demolished in violation of this chapter, the commission, or if the building or structure is in the LDHD, the LDDRC, may order any such building or structure to be returned to its condition prior to such unlawful

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erection, construction, reconstruction, exterior alteration, addition or demolition. This may specifically include ordering the reconstruction of a structure that was demolished to replicate as closely as possible the original structure. Furthermore, the city or any proper person may institute an appropriate action or proceedings to prevent such an unlawful erection, construction, reconstruction, exterior alteration, addition or demolition.

- (3) The imposition of any penalty hereunder, or pursuant to chapter 2, article XII, Administrative Citations, shall not preclude the city or any proper person from instituting any proper action or proceeding to require compliance with the provisions of this chapter and with administrative orders and determinations made hereunder.
- (4) A final decision or action of the commission may be appealed to Denver District Court in accordance with the Colorado Rules of Civil Procedure Rule.

(Code 1950, § 131.12(9); Ord. No. 934-94, § 1(a), 11-14-94; Ord. No. 94-05, § 5, 2-14-05; Ord. No. 69-10, §§ 10, 11, 2-1-10; Ord. No. 585-15, § 1, 9-14-15; Ord. No. 914-19, § 8, 9-30-19)

### **Sec. 30-10. Reviewing entity for historic rehabilitation tax credit projects.**

- (1) The commission shall act as a reviewing entity for Colorado historic rehabilitation tax credits, as set forth in C.R.S. §§ 39-22-514, and 39-22-514.5.
- (2) The amount of the fee required to be paid by the taxpayer for such review shall be as set forth in C.R.S. § 39-22-514, or as set forth in section 30-13 of this chapter, as applicable.
- (3) Any appeal of the commission's review of Colorado historic rehabilitation tax credits shall be in accordance with C.R.S. §§ 39-22-514, and 39-22-514.5, and any adopted rules and regulations implementing such sections.

(Ord. No. 797-90, § 1, 12-17-90; Ord. No. 1013-91, § 1, 12-30-91; Ord. No. 908-92, § 1, 11-30-92; Ord. No. 978-93, § 1, 11-29-93; Ord. No. 934-94, § 1(a), 11-14-94; Ord. No. 585-15, § 2, 9-14-15; Ord. No. 914-19, § 9, 9-30-19)

### **Sec. 30-11. Landmark preservation commission designation of contributing or noncontributing properties.**

- (1) In determining whether a structure or feature is contributing or noncontributing to the structure or district for preservation, the commission shall determine whether the structure or feature retains integrity and evaluate the following criteria:
  - a. Whether the structure or feature is listed as contributing or noncontributing in the designation ordinance or in the designation application;
  - b. Whether the structure or feature was constructed within the period of significance for the structure or district for preservation; or
  - c. Whether the structure or feature contributes to the significance for which the structure or district for preservation were designated.
- (2) The commission may approve a change in the contributing or noncontributing status of a property if listed in the designation ordinance in the following circumstances:
  - a. The structure or feature has been rehabilitated or restored so as to meet the criteria for contributing structures or features; or

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- b. The structure or feature has lost its integrity and no longer contributes to the significance for which the structure or district for preservation was designated.
- (3) The commission may only consider a change in status from noncontributing to contributing at the owner's request.
- (Ord. No. 419-01, § 6, 5-21-01; Ord. No. 914-19, § 10, 9-30-19)

**Sec. 30-12. Landmark preservation commission review of neglected and derelict buildings listed in the National Register of Historic Places.**

Whenever, pursuant to the provisions of article IX (Neglected and Derelict Buildings), of chapter 10 (Buildings and Building Regulations) of this Code, the landmark preservation commission is authorized to review administrative actions for enforcement and abatement of neglected and derelict buildings it shall review said actions using the standards and procedures set forth in section 30-6, above. If the building being reviewed is neither in a designated district for preservation, nor is a designated structure for preservation, but is a property listed in the National Register of Historic Places pursuant to Section 101(a)(1)(A), National Historic Preservation Act of 1966, as amended, the commission shall utilize the standards and procedures set forth in section 30-6 for a designated structure for preservation in conducting its review.

(Ord. No. 872, § 2, 10-15-01)

**Sec 30-13. Fees to accompany applications and reviews under this chapter.**

The executive director may set fees for all applications and reviews under this chapter 30. Such fees shall cover costs of designation and review including signs for posting, reproduction and postage for notification and production of standard plaques and district signs, certificates of appropriateness and recording fees. Fees shall be paid prior to the public hearing for designation or review by staff, the commission or the LDDRC. All applications or requests for reviews initiated by the city, including city council members, shall be exempt from such fees.

(Ord. No. 69-10, § 12, 2-1-10; Ord. No. 616-12, § 9, 12-3-12; Ord. No. 914-19, § 11, 9-30-19)

**Secs. 30-14—30-20. Reserved.**

***ARTICLE II. PRESERVATION COMMISSION<sup>2</sup>***

**Sec. 30-21. Created.**

There shall be and hereby is created a preservation commission.

(Code 1950, § 131.12(3)(a); Ord. No. 934-94, § 1(b), 11-14-94)

**Sec. 30-22. Composition.**

The preservation commission shall consist of nine (9) members who shall be residents of the city. Appointments shall be for a three-year term. Each member shall continue to serve in such capacity until the

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<sup>2</sup>Cross reference(s)—Administration, Ch. 2; boards, commissions and committees generally, § 2-126 et seq.

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member's successor has been duly appointed and is acting, provided, however, that period shall not exceed ninety (90) days past the expiration of the member's term. The nine (9) members of the commission serving on the effective date of the ordinance from which this section was derived shall serve the balance of the term to which the member was appointed.

(Code 1950, § 131.12(3)(b); Ord. No. 934-94, § 1(b), 11-14-94; Ord. No. 159-03, § 8, 3-3-03)

### **Sec. 30-23. Appointments.**

- (1) *Appointments by mayor.* All appointments to the preservation commission shall be made by the mayor as follows:
  - (a) Two (2) members shall be appointed from nominees submitted by the president of the Denver Chapter of the American Institute of Architects;
  - (b) Two (2) members shall be appointed from nominees submitted by the president of the state historical society;
  - (c) Two (2) members shall be appointed from nominees submitted by the chairperson of the planning board;
  - (d) Two (2) members shall be appointed directly by the mayor; and
  - (e) One (1) member shall be appointed from nominees submitted by the Colorado Chapter of the American Society of Landscape Architects.
- (2) *Qualifications of candidates.* In making appointments to the preservation commission, the mayor shall give due consideration to maintaining a balance of interests and skills in the composition of the commission, and to the individual qualifications of the candidates, including their training, experience, knowledge or interest in any one (1) or more of the following fields: architecture; landscape architecture; history of the community; real estate; law; city planning; fine arts; general contracting; education; commerce and industry.
- (3) *New appointments.* At any time that the term of office of a member of the preservation commission shall expire or a member resigns, the mayor shall request not less than two (2) nominees for each such opening from the appropriate entity under (1) above. The mayor shall make his appointments from the appropriate list of nominations.
- (4) *Appointments without nominations.* In the event that the nominations required to make appointments or to fill vacancies have not been received by the mayor within thirty (30) days after a written request for the required list has been sent to the nominator, the mayor is authorized to appoint members of the commission without nominations. However, the mayor shall give consideration to the qualifications of the appointee as if such appointee were nominated by the designated group.

(Code 1950, § 131.12(3)(c); Ord. No. 426-87, § 5, 8-4-87; Ord. No. 907-92, § 1, 11-30-92; Ord. No. 934-94, § 1(b), 11-14-94)

### **Sec. 30-24. Compensation.**

Members of the preservation commission shall serve without compensation. To the extent authorized by council, such members may be reimbursed for expenses necessarily incurred incidental to their duties for the commission.

(Code 1950, § 131.12(3)(g); Ord. No. 934-94, § 1(b), 11-14-94)

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### **Sec. 30-25. Officers and bylaws.**

The preservation commission shall elect a chairperson and such officers other than a secretary as it may require. The commission shall make and adopt bylaws for governing its work, and it shall conduct its business in accordance with Roberts' Rules of Order.

(Code 1950, § 131.12(3)(d); Ord. No. 934-94, § 1(b), 11-14-94)

### **Sec. 30-26. Staff.**

The staff of the commission shall be the custodians of the records of the commission, shall conduct official correspondence, and shall generally supervise the clerical and technical work of the commission.

(Code 1950, § 131.12(4); Ord. No. 934-94, § 1(b), 11-14-94; Ord. No. 914-19, § 12, 9-30-19)

### **Sec. 30-27. Committees and subcommittees.**

The commission may appoint committees and subcommittees as necessary to carry out the work of the commission.

(Ord. No. 934-94, § 1(b), 11-14-94; Ord. No. 914-19, § 13, 9-30-19)

### **Sec. 30-28. Meetings.**

The preservation commission shall act only at regularly scheduled meetings, which shall be held the first and third Tuesday of each month at 1:00 p.m., or at meetings of which not less than five (5) days' notice has been given; provided, however, that if the chairperson declares an emergency to exist, the commission may meet upon two (2) days' written notice. Absent the objection of any member the chairperson may cancel or postpone a regularly scheduled meeting of the commission.

(Code 1950, § 131.12(3)(e); Ord. No. 934-94, § 1(b), 11-14-94; Ord. No. 159-03, § 9, 3-3-03)

### **Sec. 30-29. Quorum; action.**

No official business of the preservation commission shall be conducted unless a quorum of not less than five (5) members is present. The concurring vote of at least five (5) members of the commission is necessary to constitute an act the official act of the commission.

(Code 1950, § 131.12(3)(f); Ord. No. 934-94, § 1(b), 11-14-94)

### **Sec. 30-30. Rules and regulations.**

The preservation commission may adopt rules and regulations for the administration and enforcement of this chapter and not inconsistent herewith.

(Code 1950, § 131.12(3)(h); Ord. No. 934-94, § 1(b), 11-14-94)

Cross reference(s)—Rules and regulations generally, § 2-91.

### **Secs. 30-31—30-44. Reserved.**

### ***ARTICLE III. LOWER DOWNTOWN HISTORIC DISTRICT***

#### **Sec. 30-45. Designation and legal description.**

The Lower Downtown Historic District, as originally designated a district for preservation by Ordinance 109, series of 1988, is hereby continued as a district for preservation and shall include all of the property described as follows:

All of Blocks A and B, all of Blocks 12, 13 and 15 through 23, all of Blocks 38 through 44; Lots 1 through 16 of Blocks 45 through 50, East Denver; All of Blocks 240, 241 and 242, West Denver; and all subdivisions and resubdivisions thereof; and all vacated streets and alleys within or adjacent to the afore described areas; and including all dedicated streets and alleys within or adjacent to the afore described areas.

(Ord. No. 94-05, § 7, 2-14-05)

#### **Sec. 30-46. Lower Downtown Design Review Commission.**

- (a) There shall be and is hereby created a Lower Downtown Design Review Commission ("LDDRC") which shall consist of nine (9) members. The nine (9) members shall be appointed by the mayor from nominations from the following persons and organizations or their successors:
- (1) The city council representative, or representatives, of the Lower Downtown Historic District for preservation ("district");
  - (2) The Denver chapter of the American Institute of Architects;
  - (3) Historic Denver, Inc.;
  - (4) History Colorado;
  - (5) The National Trust for Historic Preservation;
  - (6) Registered neighborhood organizations which represent all of the district.
- (b) The nine (9) members of the LDDRC shall represent the following groups, interests or professions:
- (1) A real estate developer. Nominees shall have experience in the rehabilitation or construction of commercial or residential projects similar in scale to the buildings in lower downtown.
  - (2) An architect.
  - (3) A historic preservationist.
  - (4) A preservation architect.
  - (5) A resident of the district.
  - (6) A property owner in the district.
  - (7) An owner or operator of a business in the district.
  - (8) Two at-large members.
- (c) Appointments shall be made by the mayor.

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- (d) No member of the LDDRC shall be a member of the LPC.
  - (e) Each member of the LDDRC shall serve a term of three years. Members may be removed by the mayor only for cause upon written charges. The mayor shall appoint two (2) new at-large members, one (1) who shall sit for a term of two (2) years, and one (1) who shall sit for a term of three (3) years. As the LDDRC members' terms expire, their replacements shall be then appointed by the mayor for a term of three (3) years so as to attain and then maintain the representation set forth in (b) above. Members may be reappointed to succeed themselves. After following the nomination and selection procedures set forth above in this section, vacancies shall be filled by the mayor for the unexpired term of any member whose term becomes vacant.
  - (f) A quorum shall be five (5) members. A concurring vote of a majority of the members present shall be required to pass general business matters of the LDDRC. To approve any design review or demolition application, other than for any project in a special review district, the concurrence of a majority of the LDDRC (five (5) members) shall be necessary. Six (6) of the nine (9) members must concur in order to approve a project in a special review district.
  - (g) The staff of the LDDRC shall be the custodians of the records of the LDDRC, shall conduct official correspondence and generally supervise the clerical and technical work of the LDDRC.
- (Ord. No. 94-05, § 7, 2-14-05; Ord. No. 914-19, § 14, 9-30-19)

### **Sec. 30-47. Design guidelines.**

The board shall adopt design guidelines in accordance with the Lower Downtown Neighborhood plan and the design guidelines for landmarks structures and districts. Such guidelines shall be adopted by the LDDRB as rules and regulations under the provisions of article VI, chapter 2 of the Denver Revised Municipal Code.

(Ord. No. 94-05, § 7, 2-14-05; Ord. No. 496-12, § 2, 10-1-12)

### **Sec. 30-48. Design and demolition review.**

- (a) The design review process for all structures within the Lower Downtown Historic District shall be as follows:
  - (1) Design review shall be required and shall commence upon a written request by the applicant or upon a request by the applicant for a zoning permit or a building permit.
  - (2) Applications for design review which clearly meet the design guidelines may be administratively approved by the staff of the LDDRC. Staff may request additional information if the application is incomplete.
  - (3) The applicant may request a decision on an entire project at a single meeting, or may ask for a two- or three-step review except for an application for infill construction, which must be a two- or three-step review. The first step is to review the request for demolition a structure, if any. The second step is review of the building envelope (the building's height, mass, form, setbacks, site plan, and contextual fit), and the concept of the basic exterior facade appearances. The third step is review of the remainder of the project. Approval or denial of each step shall be considered a final decision and separately appealable in accordance with section 30-48(a)(9).

At each step of the review process, at least five (5) days before the LDDRC conducts its review, notification shall be sent to all registered neighborhood organizations within which the property being reviewed is located or whose boundaries are within two hundred (200) feet of the property being reviewed.

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- (4) The LDDRC may approve, approve with conditions or deny the application or any step in the application.
  - (5) Upon approval of a complete project, a certificate of appropriateness shall be issued which shall state the approved work and any conditions to said approval. A copy of the certificate shall be displayed along with and in the same manner as any building permits issued for the same work. The certificate of appropriateness shall be valid for three (3) years from the original date of issuance. If construction has not started within said three-year period or if active building or zoning permits have not been issued for the project the applicant must submit a new application. If the COA has expired and if no substantial changes have been made to the project, and applicable design guidelines have not changed since issuance of the COA, the COA will be reissued one (1) time.
  - (6) A final decision or action of the LDDRC may be appealed to Denver District Court in accordance with the Colorado Rules of Civil Procedure.
- (b) The criteria for the design review process shall be as follows:
- (1) The purpose of the review process is to protect, enhance, and perpetuate buildings, sites, and areas of the historic district reminiscent of past eras, events, and persons important in local, state, or national history; to encourage rehabilitation of contributing buildings and ensure new construction is compatible with contributing buildings; to provide significant examples of architectural styles of the past and to develop and maintain appropriate settings and environments for such buildings, sites, and areas to enhance property values, stabilize neighborhoods, promote economic development, job creation, tourist trade, and foster knowledge of the city's living heritage;
  - (2) The design review process is intended to draw a reasonable balance between private property rights and the public interest in preserving the cultural, historic, and architectural and geographic heritage of the historic district by providing property owners the opportunity to retain the benefits of property ownership through rehabilitation or alteration of existing buildings or the construction of new buildings which are architecturally compatible with the heritage of the district, ensuring that renovation, rehabilitation, or alteration of buildings and structures contributing to that heritage will be carefully weighted with other alternatives and the economic feasibility of renovation and re-use, and that alterations to such buildings and structures and new construction will respect the character of the district, not by imitating surrounding structures, but by being compatible with them.
  - (3) The LDDRC will review the application for design review in accordance with the secretary of the interior's treatments for historic properties, the design guidelines for Denver landmark structures and districts, the Lower Downtown design guidelines, the design review process, and the following requirements:
    - a. If the proposed work is related to renovation or rehabilitation of a contributing building, the proposed work preserves, enhances or restores and does not damage, destroy or obscure the architectural features of the building;
    - b. The proposed work does not adversely affect the special character or special historical or architectural features of the property, and/or the district;
    - c. The architectural style, massing, texture, scale, color, arrangement of color, and materials used on existing and proposed structures are compatible with the character of the district;
    - d. Height:
      1. Fifty-five (55) feet, excluding cornices, heating, ventilating and air conditioning equipment, stair enclosures and elevator overruns, shall be considered the height by right in the district.

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2. Buildings between fifty-five (55) and eighty-five (85) feet in height (excluding cornices, heating, ventilating and air conditioning equipment, stair enclosures and elevator overruns) may be allowed by the LDDRC if they are in context with any contributing buildings within three hundred (300) feet of any point on the property line of the proposed building, and if the structure includes residential uses anywhere in the building in a minimum amount equal to the floor area above the 55-foot limit. All residential use portions of the building shall be constructed first, or at the very least, at the same time as the remainder of the building.
  3. Buildings between eighty-five (85) and one hundred (100) feet in height may be allowed, but only: if they are in context with any contributing building within three hundred (300) feet of any point on the property line of the proposed building; if the structure includes residential uses anywhere in the building in a minimum amount equal to the floor area above the 55-foot limit; and if the additional fifteen (15) feet above the 85-foot limit of 2. above, is a residential penthouse. Notwithstanding the previous sentence, for contributing structures which have no residential uses, the penthouse need not be a residential penthouse, however, all other provisions of this section 30-48 shall apply to such nonresidential penthouse. Cornices, heating, ventilating and air conditioning equipment, stair enclosures and elevator overruns must be included in the total height of one hundred (100) feet. The residential penthouse shall be used exclusively for residential or residential support purposes and shall not cover in excess of one-third ( $\frac{1}{3}$ ) of the roof area at that level. All aspects of the penthouse shall comply with the design guidelines. All residential use portions of the building shall be constructed first, or at the very least, at the same time as the remainder of the building.
  4. Buildings between one hundred (100) and one hundred thirty (130) feet in height, excluding stair enclosures and elevator overruns not in excess of fifteen (15) feet tall, may be allowed by the LDDRC if they are in special review district 1, 2 or 3, provided the structure includes residential uses anywhere in the building in a minimum amount equal to the floor area above fifty-five (55) feet. All residential use portions of the building shall be constructed first, or at the very least, at the same time as the remainder of the building. The following three (3) areas are defined for purposes of this section 30-48(a)(3)d.4. as special review districts:
    - i. District 1 shall include:

Lots 1 to 16 inclusive, Block 49, East Denver; and Lots 17 to 32 inclusive, Block 39, East Denver.
    - ii. District 2 shall include:

Lots 12 to 16 inclusive, Block 47, East Denver; Lots 11 to 22, inclusive, including vacated alley between said lots, Block 41, East Denver; Lots 1 to 6 inclusive, Block 46, East Denver; Lots 1 to 6 inclusive, and lots 27 to 32 inclusive, including vacated alley between said lots, Block 42, East Denver; and Lots 27 to 32 inclusive, Block 19, East Denver.
    - iii. District 3 shall include:

Lots 1 to 15 and Lots 22 to 30, all in Block 12, East Denver, and Lots "A" to "G", Howard Resubdivision (being a resubdivision of part of block 12 East Denver, and parts of Cherry Creek as shown by Boyds Map of the City of Denver).

Together with a parcel of land designated in the Cherry Creek Commissioners report as "Tract No. 52" being more particularly described as follows:

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Commencing at a point where the East line of Cherry Creek as shown by Boyds Map of the City of Denver intersects the produced Northwest line of the alley in Block 12, East Denver; thence Southwest along said produced Northwest alley line to an intersection with Northeast line of the Channel of Cherry Creek as defined and described in Ordinance No. 86 Series of 1903; thence Northwest along said line as so defined to the produced Southeast line of Wewatta Street; thence Northeast along said produced line of Wewatta Street to the East line of Cherry Creek as shown on said Boyds map; thence Southerly along said East line of the Channel of Cherry Creek to the point of beginning, and

Together with the vacated alley extending Northeasterly and Southwesterly through Block 12, East Denver and with a parcel of land designated in the Cherry Creek Commissioners report as "Tract No. 51", all being more particularly described as follows:

Commencing at the point where the East line of Cherry Creek as shown by Boyds Map of the City of Denver intersects the produced Northwest line of the alley in Block 12, East Denver; thence Southwest, along said produced Northwest alley line to an intersection with the Northeast line of the Channel of Cherry Creek as defined and described in Ordinance No. 86 Series of 1903; thence Southeast, along said line as so defined to the produced Southeast line of the alley in Block 12, East Denver; thence Northeast, along said produced Southeast Alley line and along said Southeast alley line to the Southwest line of 15th Street; thence Northwest, along said Southwest line of 15th Street to the Northwest line of the alley in Block 12, East Denver; thence Southwest, along said Northwest alley line and along said northwest alley line produced, to the point of beginning.

5. Special review district 4, which shall also be known as the Historic Urban Edge District (HUED), is hereby created. Its boundaries shall be that portion of the Lower Downtown Historic District lying southwest of 14th Street and a line extending 14th Street northwest to Wewatta Street as defined by the southwest edge of the B-7 zone district. There shall be seven (7) sub-areas within the HUED with heights limited as follows:
  - i. Sub-area 1 shall consist of that portion of the HUED bounded by: the south ROW line of Walnut St. (North Boundary); the east ROW line of N. Speer Blvd (West Boundary); the north ROW line of Larimer St. (South Boundary); and the northwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (East Boundary). Building height shall be limited to three hundred seventy-five (375) feet, plus up to twenty-five (25) feet for screened mechanical equipment, stair and elevator overruns and an exceptional architectural feature, such as a spire, provided however that if any portion of the building shall have a height in excess of eighty-five (85) feet, excluding up to fifteen (15) feet for screened mechanical equipment, stair and elevator overruns, the floorplate of said building shall not exceed seven thousand five hundred (7,500) square feet excluding balconies and terraces. If no portion of the building exceeds eighty-five (85) feet, excluding up to fifteen (15) feet for screened mechanical equipment, stair and elevator overruns, the floorplate limitation shall not apply.
  - ii. Sub-area 2 shall consist of that portion of the HUED bounded by: the south ROW line of Walnut St. (North Boundary); the northwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (West

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Boundary); the north ROW line of Larimer St. (South Boundary); and the west ROW line of 14th St. (East Boundary). Building height shall be fifty-five (55) feet plus up to fifteen (15) feet for screened mechanical equipment, stair and elevator overruns.

- iii. Sub-area 3 shall consist of that portion of the HUED bounded by: the south ROW line of Blake St. (North Boundary); the east ROW line of N. Speer Blvd. (West Boundary); the north ROW line of Walnut St. (South Boundary); and the northwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (East Boundary). Between a line thirty (30) feet to the Walnut St. side of a line formed by extending the center line of Blake St. as it is in the non-HUED portion of the Historic District through the HUED (Blake St. extended) and Walnut street, building height shall be limited to eighty-five (85) feet, plus up to fifteen (15) feet for screened mechanical equipment, stair and elevator overruns. Between a line thirty (30) feet to the Blake St. side of Blake St. extended and Blake St., building height shall be limited to sixty-four (64) feet, plus up to fifteen (15) feet for screened mechanical equipment, stair and elevator overruns. Any structure must have residential uses anywhere in the building in a minimum amount equal to the floor area above fifty-five (55) feet. For a distance of thirty (30) feet on either side of the line of Blake St. extended there shall be no habitable structures.
- iv. Sub-area 4 shall consist of that portion of the HUED bounded by: a line parallel to and 44.72 northwesterly of the southeasterly line of Lot 8 Block 240, West Denver Subdivision, said parallel line being extended southwesterly to the northeasterly ROW line of Speer Boulevard and extended northwesterly from the southwesterly line of said Lot 8, north 59° 36' 28" East a distance of 85.48 feet, thence South 45° 26' 13" East a distance of 46.31 feet to a point on the northwesterly line of Lot 9, said Block 240 extended northeasterly, thence continuing along the northeasterly extension of the northwesterly line of said Lot 9 to the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (northwesterly boundary); the northeasterly ROW line of Speer Boulevard (southwesterly boundary); the southeasterly line of the Official Channel of Cherry Creek (northeasterly boundary); and the northwesterly line of Wazee Street (southeasterly boundary). The building height provisions generally applicable to contributing structures in the Lower Downtown Historic District shall apply.
- v. Sub-area 5 shall consist of that portion of the HUED bounded by the northwesterly line of lot 7, Block 240, West Denver, lying southwesterly of the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 and extended southwesterly to the northeasterly ROW line of Speer Boulevard (northwesterly boundary); the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (northeasterly boundary); the northeasterly ROW line of Speer Boulevard (southwesterly boundary); and a line lying 44.72' northwesterly of and parallel to the southeasterly line of Lot 8, Said Block 240, said line extended southeasterly to the northeasterly ROW line of Speer Boulevard and also extended to the northeast North 59° 36' 22" East from the southwesterly line of said Lot 8, a distance of 85.48 feet, thence South 45° 26' 13" East to a point on the northwesterly line of Lot 9, said Block 240, thence along said northwesterly line of Lot 9 extended North 59° 36' 22" East to the southwesterly line of the

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Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (southeasterly boundary). Building height shall be limited to eighty-six (86) feet plus up to fifteen (15) feet for screened mechanical equipment, stair and elevator overruns. Any structure must have residential uses anywhere in the building in a minimum amount equal to the floor area above fifty-five (55) feet.

- vi. Sub-area 6 shall consist of that portion of the HUED bounded by: the northwesterly line of Lot 7, Block 240, West Denver, and said northwesterly line lying southwest of the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 and extended to the northeasterly ROW of Speer Boulevard (southeasterly boundary); the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (northeasterly boundary); the northeasterly ROW line of Speer Boulevard (southwesterly boundary); and a line parallel with and sixty-five (65) feet southeasterly of the southeasterly ROW line of Wewatta St. as established by the northwesterly line of Block 12, East Denver, extended southwesterly (northwesterly boundary). The building height provisions generally applicable in the Lower Downtown Historic District shall apply.
  - vii. Sub-area 7 shall consist of all portions of the HUED not included in any other sub-area. The building height provisions generally applicable in the Lower Downtown Historic District shall apply.
6. Buildings over one hundred thirty (130) feet in height, excluding cornices, heating, ventilating and air conditioning equipment, stair enclosures and elevator overruns, shall not be allowed in the district, except in sub-area 1 of the HUED.
- e. For buildings greater than eighty-five (85) feet in height, that portion of the building over 85 feet must be set back at least twenty-five (25) feet along the front zone lot line which is part of the longer dimension of any block; and
  - f. Contemporary design for additions, alterations, and new construction is not discouraged, and is recognized as an important element in the evolution of individual buildings as well as the district as a whole.
  - g. The above building heights are maximums and the LDDRC may reduce the height of any proposed structure to comport with the design guidelines.
  - h. Notwithstanding the height requirements above, a nonconforming structure may be reconstructed in accordance with the requirements and limitations of the Denver Zoning Code for nonconforming structures.
- (c) The LDDRC shall follow the process of section 30-6(6) in making a determination on a request for a demolition permit of a structure, including the economic hardship process in section 30-6(8).
- (Ord. No. 94-05, § 7, 2-14-05; Ord. No. 78-07, § 1, 2-20-07; Ord. No. 65-08, § 1, 2-11-08; Ord. No. 69-10, §§ 13, 14, 2-1-10; Ord. No. 496-12, §§ 3—9, 10-1-12; Ord. No. 914-19, § 15, 9-30-19)

### **Sec. 30-49. Contributing buildings.**

- (a) Contributing buildings are hereby established as indicated on the map titled "Contributing Building Survey" ("survey") as filed with the office of the Denver City Clerk and Recorder on March 20th, 2002, in Filing Number 02-242. Contributing buildings are those buildings shaded on the map. This map also reflects the

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boundaries of the district as originally designated in section 1 of Ordinance 109, series of 1988; which boundaries are still in effect.

- (b) The owner of a property may petition the LDDRC to include said property on the survey as a contributing building. If the LDDRC determines that the property is a proper candidate for inclusion as a contributing building, the LDDRC shall forward its recommendation to the city council, which may then by ordinance include said property as a contributing building in the district.
  - (c) A building cannot be deleted from the survey, unless it is approved for demolition according to the terms of this article, destroyed by fire, flood, or act of God, or major accidental damage not the fault of the owner.
- (Ord. No. 94-05, § 7, 2-14-05; Ord. No. 496-12, § 10, 10-1-12; Ord. No. 914-19, § 16, 9-30-19)

### **~~Sec. 30-50. Parking.~~**

- ~~(a) In the event an applicant for a project proposes to include parking in an amount greater than the minimum parking plus the additional parking allowed by section 59-239 of the former chapter 59 for a project zoned under former chapter 59 or by section 8.4.1.4 for a project zoned under the Denver Zoning Code, the applicant shall specifically request permission from the LDDRC to include said excess parking.~~
- ~~(b) Said excess parking shall be considered as part of the design review process, however, any meeting at which excess parking is to be considered shall only be held after appropriate notice, as described in section 30-48(a)(5) above.~~
- ~~(c) The LDDRC may approve, approve with conditions, or deny the application.~~
- ~~(d) The decision of the LDDRC is a final decision and may be appealed as provided in section 30-48(a)(6) above.~~
- ~~(e) The siting of excess parking within the district shall be carefully considered using the following criteria:~~
  - ~~(1) Excess parking may be appropriate if there is minimal impact on the context and social fabric of the neighborhood.~~
  - ~~(2) Excess parking may be appropriate in those areas that demonstrate a high parking demand combined with a scarce or fully utilized current parking inventory.~~
  - ~~(3) Excess parking should be encouraged in special review districts.~~
  - ~~(4) Excess parking should not disrupt street liveliness.~~
  - ~~(5) Excess parking should not disrupt established traffic patterns.~~
  - ~~(6) Excess parking should not create congestion.~~
  - ~~(7) Excess parking should not create unacceptable levels of noise, air or light pollution.~~
  - ~~(8) Excess parking should be related to the parking needs of Lower Downtown as discussed in the neighborhood plan.~~

(Ord. No. 94-05, § 7, 2-14-05; Ord. No. 496-12, § 11, 10-1-12; Ord. No. 914-19, § 17, 9-30-19)