

AGENDA
DAYTON PLANNING COMMISSION &
HISTORIC PRESERVATION COMMITTEE
SPECIAL JOINT MEETING

Date: Thursday, October 17, 2019
Place: City Hall Annex, 408 Ferry Street, Dayton Oregon
Time: 6:30 pm

| Item | Description | Page # |
|------|--|--------|
| A. | CALL TO ORDER | |
| B. | APPROVAL OF ORDER OF AGENDA | |
| C. | APPEARANCE OF INTERESTED CITIZENS | |

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| This time is reserved for questions or comments from persons in the audience on any |
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D. PUBLIC HEARING

The Planning Commission, in consultation with the Historic Preservation Committee, will hold a public hearing to consider proposed legislative amendments to the Dayton Land Use and Development Code (LUDC).

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| Staff Report | 2 |
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E. ADJOURNMENT

Posted: October 7, 2019
By: Cyndi Park, Planning Coordinator

Persons with hearing, visual or manual impairments who wish to participate in the meeting should contact the City of Dayton at least 32 working hours (4 days) prior to the meeting date in order that appropriate communication assistance can be arranged. The Dayton City Hall Annex is accessible to the disabled. Please let us know if you need any special accommodations to attend this meeting.

Next Scheduled Meeting on this Topic:
Dayton City Council
Monday, November 4, 2019 6:30 p.m.
City of Dayton, PO Box 339, 416 Ferry St, Dayton Oregon 97114
Phone: (503) 864-2221 www.ci.dayton.or.us

CITY OF DAYTON

416 Ferry Street – P. O. Box 339
Dayton, OR 97114-0039
503-864-2221 fax 503-864-2956

STAFF REPORT

PLANNING COMMISSION – OCTOBER 17, 2019

REPORT DATE: October 4, 2019

FILE NUMBER: LA 2019-01 (Legislative Amendment)

APPLICANT: City of Dayton

REQUEST: Amend the Dayton Development Code regarding Historic Resources.

PROPERTY:

| <u>Tax Lot</u> | <u>Size</u> | <u>Zoning</u> |
|----------------|-------------|--------------------------------------|
| Citywide | NA | Historical Property Overlay District |

ZONING: Historical Property Overlay District

SURROUNDING ZONING: North: NA
South: NA
East: NA
West: NA

CURRENT USE: NA

CRITERIA: **Dayton Land Use and Development Code (LUDC)**
Section 7.3.112.03: Criteria to Amend Development Code Text

I. PURPOSE

The purpose of this staff report is to provide the Planning Commission with information regarding the proposed legislative amendments to the Dayton Land Use and Development Code (LUDC). The amendments are intended to accomplish the following.

1. Update the Historical Property Overlay Zone (HPO), Section 7.2.112, to reflect that the City's historic resources program does not include an Historic District encompassing several whole blocks with historic and non-historic resources within a boundary line. Instead the program designates individual properties at various locations throughout the city as historic and each property is covered by the HPO.
2. Amend Section 7.2.404, Manufactured Homes on Individual Lots, to change the current language which allows a manufactured home (MH) on a lot in a residential zone abutting a historic property, to

not allow a MH on a lot in a residential zone abutting a historic property. The current language allows a MH through the Conditional Use Permit (CUP) process. Oregon Revised Statute 197.314(3) allows City development regulations to prohibit a MH on a lot in a residential zone abutting a historic property. The amendment clarifies that existing MH's on a lot in a residential zone abutting a historic property can remain and they can be replaced in the future.

3. Additional issue not included: In the past there was concern about a sign related to a new commercial development in the Commercial Zone (C) near a property with an historic resource, i.e., the sign was thought to be too large. The sign issue is not addressed here because the City's sign regulations apply only to the Central Business Overlay District (CBO) and the CBO covers only the Commercial (C) and Commercial – Residential (CR) zoned properties in the area south of Church, east of 5th, north of Alder and west of 2nd. The new commercial development was several hundred feet west of the CBO and no sign regulations applied to the development.

Adding sign regulations in the Historic Property Overlay District (HPO), Section 7.2.112, is inappropriate because the HPO regulations apply only to properties in the HPO and not to properties outside the HPO. The commercial development at issue is not in the HPO.

Where the City desires to regulate the signage for properties outside the CBO, the City could amend the LUDC to (1) enlarge the CBO wherein the sign regulations in the CBO would apply, or (2) don't enlarge the CBO and instead adopt sign regulations which would apply to properties zoned Commercial (C) outside the CBO.

II. PROCESS

The proposed amendments constitute a legislative change to the LUDC and are processed as a legislative Type IV land use action. The highly prescriptive requirements of a quasi-judicial process do not apply to the legislative process, e.g., ex-parte contact is allowed.

A notice of the Planning Commission and City Council public hearings was mailed to the owners of Designated Landmark properties to ensure they are aware of the proposed amendments and the notice was also mailed to the owners of properties that abut the Designated Landmark properties because the owners of abutting properties in a residential zone are proposed to not be allowed to place a manufactured home on the residentially zoned abutting properties in the future.

The LUDC Type IV process set forth in Section 7.3.203.01, Type IV Initiation, requires a Type IV process to be initiated by a majority of the City Council, a majority of the Planning Commission or by a recommendation by the City Manager subject to majority approval by Planning Commission or the City Council. The Staff Recommendation in Section VI on page 34 includes two motions; a first motion confirming the City Manager's initiation of the amendment process and a second motion stating the recommendation of the Planning Commission regarding the amendments.

III. BACKGROUND

At the time the HPO was written it appears there wasn't a clear understanding of the difference between a regulatory system based on an Historic District versus a system that is not based on an

Historic District. A Historic District system would include a map with a boundary around a multi-block area which would include historic sites and non-historic sites. The non-Historic District system would designate many individual sites as historic and apply an Overlay Zone to each individual historic property.

The Dayton historic resources program designates individual properties at various locations throughout the city as historic and each property is regulated by the HPO standards. There is no multi-block Historic District and thus, there is no map showing a boundary line around a multi-block Historic District.

The LUDC, however, uses the term “historic district” and “district” numerous times which can lead the reader to erroneously believe there is an Historic District encompassing multiple blocks within a boundary which includes historic sites and non-historic sites.

Another possible explanation of why the current language refers numerous times to “historic district” is, a model historic resources chapter from another city or from an historic resource organization may have been used which included an Historic District.

Attached is a map from the 1993 "Advisory Design Guidelines" showing the various "Contributing and Non-Contributing Properties" in black and the "Primary and Secondary Contributing Properties" in shading. The sites are from Water Street on the east to Village Place on the west and from Hwy 18 on the north to Mill Street on the south. The map does not contain a "boundary line" around the Water Street / Village Place / Hwy 18 / Mill Street area, thus there is no Historic District. Instead, the HPO regulates each individual historic site.

The 49-page 1993 Guidelines are not mandatory. It isn't clear at this time if the Guidelines were adopted by the City Council by oral motion, resolution or Ordinance, or if the document was simply produced with the intention of not adopting it, and instead, providing it to developers and property owners who were considering remodeling their historic structures.

The HPO, Section 7.2.112, includes the standards for the individually designated sites. The language in 7.2.112 includes the word "district" several times.

The LUDC, Section 7.2.112.03, Definitions, defines the term "Historic District" and says in part, "...the boundaries of which have been adopted by the Council under Section 7.2.112.05." It appears the term “Historic District” is defined in the event the City were to adopt an historic district in the future. The City's historic resources program does not include an Historic District and instead, as discussed above, the program has designated individual sites which are regulated by the HPO Zone.

The Dayton Comprehensive Plan has been reviewed and it does not mention a historic district nor does it include a map of a historic district. On the other hand it lists 47 historic sites throughout the City that are on the Oregon State Historic Preservation Office's statewide inventory.

Similarly, the Dayton Planning Atlas which provides background information for the Comprehensive Plan does not mention an historic district nor does it include a map of an historic district. As above, the Planning Atlas lists 47 historic sites throughout the City that are listed on the Oregon State Historic Preservation Office's statewide inventory.

The State Historic Preservation Office (SHPO) has been contacted and their list of jurisdictions with Historic Districts does not include Dayton.

Based on the above, despite the LUDC using the term "historic district," there is no historic district, and instead, there are several dozen individually designated historic resource sites that are regulated by the HPO Zone.

IV. PROPOSED AMENDMENTS – MARK-UP VERSION

The majority of the proposed amendments are “housekeeping” and procedural. A notable substantive amendment is on p. 5 (at the top) in Section 7.2.112.01, Purpose, where a new “E” is proposed to clarify there is no historic district.

BEGINNING OF PROPOSED AMENDMENTS TO 7.2.112, HISTORICAL PROPERTY OVERLAY ZONE.

The following shows the current language in Section 7.2.112, Historical Property Overlay Zone (HPO) in Times New Roman font. The proposed amendments are shown in ~~strikeout~~ for language proposed to be deleted and in **bold italics** for language proposed to be added.

Imbedded within the HPO language are [comments in brackets in Calibri font] stating the reason for the proposed amendments. The [comments in brackets] precede each proposed amendment.

7.2.112 HISTORICAL PROPERTY OVERLAY ZONE (HPO)

7.2.112.01 Purpose

The purpose of this Overlay Zone is to:

- A. Promote the historic, educational, architectural, cultural, economic, and general welfare of the public through the preservation, restoration and protection of those buildings, structures, sites, districts, and objects of historic interest within the city;

[Propose deleting an unnecessary word.]

- B. Foster civic pride in the accomplishments of the past; ~~and~~

[A standard reason for regulations in a Development Code is to carry out the provisions of the local Comprehensive Plan because the Comprehensive Plan sets the policy direction and the Development Code implements the Plan’s policy direction. Propose adding a new “C” and renumbering the rest.]

- C. ***Carry out the provisions of the Dayton Comprehensive Plan; and***

- D. Carry out the provisions of the Land Conservation and Development Commission, Statewide Planning Goal 5.

[Propose a new “E” to clarify the HPO is an overlay zone that applies individually to each designated landmark and the HPO is not an historic district.]

E. Provide an Historical Property Overlay Zone that applies to each Designated Landmark site individually.

7.2.112.02 Conformance Required

No land shall be used, and no building, site, object, district, or structure of significance, or part thereof, shall be demolished, moved, or altered, nor shall any new construction take place within a district or on a landmark site except in conformity with this Code.

7.2.112.03 Definitions

[Propose deleting an unnecessary word.]

The following definitions shall apply to this Section: ~~otherwise:~~

Affirmative Maintenance: Maintaining a building in such a manner as to not create deterioration of the structure and/or dwelling unit. See Deterioration, Prohibited.

[Propose correcting a typo.]

Alteration: An addition, removal, or reconfiguration which significantly changes the exterior character (including windows and doors) of *an* historic resource.

Archaeological Artifact: An item being at least 75 years old and is the physical record of an indigenous or other cultures or the material remains of past human life or activity.

Archaeological Site: A site with 10 or more artifacts or a feature likely to have been generated by patterned cultural activity.

Archaeological Site of Significance: An archaeological site that is currently, or potentially eligible to be included on the National Register of Historic Places, or any archaeological site that has been on the National Register of Historic Places, or any archaeological site that has been determined significant by any of Oregon’s nine federally designated Native American Tribes.

Cultural Resource Survey and Inventory: The record of information about resources evaluated for listing in the Designated Landmarks Register or National Register of Historic Places within the City of Dayton.

Demolition: The razing, destruction, or dismantling of a resource to the degree that its historic character is substantially obliterated.

[Propose clarifying the term that will be used consistently throughout Section 7.2.112. Propose using “Designated Landmark,” not “Landmark Designated.” The term “Designated Landmark” is placed here in its alphabetical order. Below, note that “Landmark Designated” is proposed to be deleted and replaced by “Designated Landmark” and placed here in its alphabetical order. No change to the definition.]

~~Landmark~~ Designated **Landmark**: Any site, object, buildings, or structure officially recognized and designated by the City Council under Section 7.2.112.05.

Designated Landmarks Register: The list of historic building or sites and archeological resources identified as “significant” and the record of information about properties officially recognized by the City of Dayton as important in its prehistory and history.

Deterioration, Prohibited: Prohibited conditions of deterioration include, but are not limited to moisture infiltration through the exterior roof, walls, openings and foundations; unchecked damage by animals or vandalism, un-maintained or unsafe mechanical, electrical, or plumbing systems, and any conditions on the property that endangers the resource. See Affirmative Maintenance.

[Propose retaining the term Historic District in the event the City were to adopt a historic district in the future.]

Historic District: A geographically defined area possessing a significant concentration of buildings, objects, and/or sites which are unified historically by plan or physical development, the boundaries of which have been adopted by the Council under Section 7.2.112.05.

[Propose deleting an unnecessary word.]

Historic Preservation Committee (HPC): A committee established by the City Council under Ordinance No. 592 (October 2009) to work with the Planning Commission and City Council to make recommendations that will ensure ~~that~~ the City continues to preserve, protect, and identify properties with historic value.

Historic Resource: A building, structure, object, site, or district which meets the significance and integrity criteria for designation as a landmark. Resource types are further described as:

Building: A construction made for purposes of shelter or habitation, e.g. house, barn, store, theater, garage, school, and etc.

Structure: A construction made for functions other than shelter or habitation, e.g. bridge, dam, highway, boat, and etc.

Object: A construction which is primarily artistic or commemorative in nature and not normally movable or part of a building or structure, e.g. statue, fountain, milepost, monument, sign, and etc.

Site: The location of a significant event, use, or occupation which may include associated standing, ruined, or underground features, e. g. battlefield, shipwreck, campsite, cemetery, natural feature, garden, food-gathering area, and etc.

District: See Historic District above.

[Consistent with the above, propose deleting “Landmark Designated” and replacing it with “Designated Landmark” and placing it above in its alphabetical order.]

~~Landmark Designated: Any site, object, buildings, or structure officially recognized and designated by the City Council under Section 7.2.112.05.~~

[Propose clarifying there is an Historical Property Overlay Zone which is applied to each individual Designated Landmark. The reference to “historic district” is retained in the event the City were to adopt a historic district consistent with Federal Historic District provisions in the future.]

Major Public Improvement: The expenditure of public funds or the grant of permission by a public body to undertake change in the physical character of ***a Designated Landmark on property within the Historical Property Overlay Zone, or on property within an historic district or on a landmark site***, except for the repair or maintenance of existing public improvements.

7.2.112.04 Cultural Resource Survey and Inventory

- A. The Planning Commission and/or Historic Preservation Committee shall periodically survey and inventory resources potentially eligible for listing in the Designated Landmarks Register and/or National Register of Historic Places with the City of Dayton.
1. Survey and inventory documents shall be maintained, periodically updated, and open to the public.
 2. Survey and inventory documents and processes shall be compatible with the practices of the Oregon State Historic Preservation Office for maintaining the Oregon Inventory of Historic Sites.
 3. Records concerning archeological sites shall NOT be made available to the public.
 4. Properties included in the Cultural Resource Inventory are not subject to the provisions of 7.2.112.02 (Conformance Required), 7.2.112.06 (Demolition and Moving), 7.2.112.07 (Exterior Alteration and New Construction), or 7.2.112.08 (Notice of Public Hearing) of this Land Use and Development Code unless they are already listed on the National Register.

7.2.112.05 Landmark and District Designation

[Even though one of the purposes of these amendments is to clarify the City has no historic district, the terms “historic district” and “district” are retained here because Section A addresses how the City would designate a historic district in the future if the City wanted to adopt a historic district.]

[Propose using the full names of the City Council, Planning Commission and Historic Preservation Committee to ensure the reader does not become confused by the shortened terms of Council, Commission and Committee.]

A. Process. The process for designating a landmark or historic district may be initiated by the *City* Council, the *Planning* Commission, or by any interested person who submits an application for designation to the City Manager. At the time of application the City Manager shall provide the property owner and applicant with information regarding the benefits and restriction s of designation.

B. Information. The following information shall be required in an application:

[Many years ago an Oregon Land Use Board of Appeals decision, or possibly it was an Oregon Court of Appeals decision, said a City cannot require items be submitted as part of the application form that are not required by the Development Code. Where the City wants the applicant to sign the application form, the Development Code must require the signature.]

1. The applicant's name and address *and the applicant's signature*;

[Section 7.2.112.06, F, below, regarding the moving and demolishing a Designated Landmark, requires "...the applicant provides evidence of legal and recorded ownership of the subject property." Presumably, the City wants to require such evidence be submitted for an application to designate a landmark or establish a historic district, therefore, the following proposes requiring such. Where the City wants the owner to sign the application form, the Development Code must require the signature.]

2. The owner's name and address, ~~if different from the applicant~~ *and evidence of legal and recorded ownership of the subject property and the owner's signature*;

3. A written description of the boundaries of the proposed district or the location of the proposed landmark;

[Propose requiring the map of the proposed historic district be to scale. Propose requiring the site plan be to scale and adding some basic information about the size of the structures and the existing setbacks.]

4. A map, *drawn to scale*, illustrating the boundaries of the proposed district, or *a site plan, drawn to scale, indicating* the location of *structures on the subject property including* the proposed landmark, *and the dimensions of the structures and distances from the structures to the property lines*;

5. A statement explaining the following:

[Propose deleting, and adding, capitalization where it is inappropriate. Proposed including the full Subsection number to ensure there is no misunderstanding as to which subsection.]

a. The reason(s) why the proposed district or landmark should be designated under the ~~D~~ *decision* ~~E~~ *criteria* specified in ~~s~~ *Sub-section 7.2.112.05*, E.

[Propose adding “historic” to ensure the term “historic district” is used consistently throughout the HPO.]

- b. The reason(s) why the boundaries of the proposed *historic* district are appropriate for designation;

[Propose rewording to be less wordy. Propose adding “historic” to ensure the term “historic district” is used consistently throughout the HPO.]

- c. The potential impact, if any, ~~which designation~~ of the proposed *historic* district or landmark ~~would have~~ on the residents or other property owners in the area.

[Propose deleting redundant language and adding “the.”]

- 6. Any other information deemed necessary by the City Manager ~~necessary~~ to address *the* approval criteria.

[Propose deleting unnecessary language. Propose using the full name of the Council, Commission and Committee. Propose clarifying if the HPC chooses to provide a written recommendation to the PC (the current language says HPC “shall” review and “may” provide) and CC, it is based on the approval criteria. Propose deleting the language indicating the approval criteria are guidelines when they are actually approval criteria that must be addressed.]

- C. Historic Preservation Committee (HPC) Review: After the application is deemed complete, the Historic Preservation Committee shall review the application at ~~either one of their~~ a regularly scheduled meeting s or by ~~arranging at~~ a special meeting. The ~~HPC~~ *Historic Preservation Committee* may provide to the *Planning Commission and the City Council* a written ~~response in regards to their review of the application using~~ *recommendation based on* the approval criteria *in Section 7.2.112.05, E* as a guideline ~~for their recommendation(s)~~. The Committee serves in an advisory capacity.

[Propose deleting the word “available” which may lead a reader to erroneously think it must be at the next Council meeting. It need not be at the next Council meeting and it cannot be at the next Council meeting because a notice of the City addressing an amendment to the Development Code must be provided to the Department of Land Conservation and Development at least 35-days prior to the first hearing (the Planning Commission hearing).

Propose replacing the reference to a Type III action with a reference to a Type IV action. Section 7.3.101 (Application Requirements and Review Procedures) lists which land use actions are Type I, Type II, Type III and Type IV. Section 7.3.101 is inconsistent where it lists “Historic Landmark and District Designation” as a Type III action (7.3.101.03, D) and lists “Text Amendment to the Comprehensive Plan and Development Code” as a Type IV process (7.3.101.04, A). The Type IV process is correct – the explanation follows.

An amendment to the Development Code text is a Type IV process because the Type IV process addresses actions where a new City law is being created or changed (a “legislative” process), whereas

the Type III process addresses actions where an existing City law is being implemented (a “quasi-judicial” process). For example (using a non-historic example), if the City initiates a Zone Code Text Amendment application to change the minimum lot size for a lot in the R-1 Zone, such a change to the subdivision regulations would be a legislative process because the City’s laws would be changed. On the other hand, if a Subdivision Application is submitted, such an application would be a quasi-judicial process because existing City laws would be applied to the proposed subdivision to determine if the subdivision complied with the laws.

An action to establish a new Designated Landmark (a new law) must be done in accordance with the Type IV process and in accordance with Statewide Planning Goal 5 which covers historic resources.

Section 7.3.101.03 (Type III Actions) clearly says, “A Type III action is a quasi-judicial process....” Thus, adding a Designated Landmark or establishing a historic district could not be processed through the Type III process.

Section 7.3.101.04 (Type IV Actions) clearly says, “A Type IV action is a legislative review....” Thus, adding a Designated Landmark or establishing a historic district would be processed through the Type IV process.

Propose amending D to address the Planning Commission’s role in the process and move the City Council’s role to E and renumber the following sections.]

D. *Planning Commission Action. After the application is deemed complete, the City Manager shall schedule the application to be considered at a Planning Commission meeting. The application shall be processed in accordance with the Type IV process pursuant to Section 7.3.2 (Administrative Procedures). The City Manager shall forward the application and any comments from the Historic Preservation Committee to the Planning Commission. The Planning Commission, after notice and public hearing held in accordance with provisions in Section 7.3.2 (Administrative Procedures), shall pass an oral motion recommending the City Council approve or disapprove the application. Where the Historic Preservation Committee provides a recommendation to the Planning Commission, the Planning Commission shall consider the recommendation. The Commission serves in an advisory capacity.*

[Propose D be renumbered to E and amended to reflect the Type IV process. Add “Administrative” to the name of Section 7.3.2 because the name is Administrative Procedures. Propose deleting the language about a written record because State Statute requires minutes be taken of City Council meetings.]

~~D~~E. *City Council Action. After the application is deemed complete, the City Manager shall schedule the request application to be considered at the next available a City Council meeting. The Council shall conduct a public hearing (Type III) application shall be processed in accordance with the Type IV process pursuant to Section 7.3.2 (Administrative Procedures) of this Code. The City Manager shall forward the application, any comments from the Historic Preservation Committee and the Planning Commission’s recommendation to the City Council. The City Council, after notice and public hearing held in accordance with provisions in Section 7.3.2 (Administrative*

Procedures), shall approve or disapprove the application. Where the Historic Preservation Committee provides a recommendation to the City Council, the City Council shall consider the recommendation. ~~The Council shall make a written record approving, approving with conditions, disapproving, or postponing final action on the request.~~

[Propose deleting unnecessary language. The proposed language is consistent with language at 7.2.112.06, E, and 7.2.112.07, F, below.]

~~EF.~~ Decision Criteria. ~~The~~ *To approve the application the City* Council shall consider the following criteria to determine if the ~~potential landmark or district is significant enough to grant the designation~~ *the proposed Designated Landmark or historic district should be approved* :

1. The property is associated with events that have made a significant contribution to the broad patterns of local, state, or national history;
2. The property is associated with the lives, persons, or groups of people, significant in local, state, or national history;

[Propose deleting unnecessary language thereby making the sentence structure of 3 similar to the structure of 1 and 2, above.]

3. The property is ~~significant because it~~ embodies the distinctive characteristics of an architectural type, style, period, or method of construction, or that represents the work of a master, or that possesses high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction;

[Propose deleting unnecessary language thereby making the sentence structure of 4 similar to the structure of 1, 2 and 3. Propose replacing “important” with “significant” to reduce confusion wherein Criteria 1, 2 and 3 call for significance, but 4 calls for only importance. Either “significant” or “important” should be selected and used consistently throughout.]

4. The property is ~~significant because it~~ yielded or is likely to yield information which is ~~important~~ *significant* to local, state, or national history;

[Propose deleting unnecessary language thereby making the sentence structure of 5 similar to the structure of 1, 2, 3 and 4.]

5. The property is ~~of significance~~ as a *significant* visual landmark;

[Propose deleting unnecessary language thereby making the sentence structure of 6 similar to the structure of 1, 2, 3, 4 and 5.]

6. The property is ~~of significance because the resource~~ contributes *significantly* to the continuity or historic character of the street, neighborhood, and/or community;

7. The resource is listed on the National Register of Historic Places ÷ .

[Propose deleting 8 because it isn't a criterion (it's a process step), therefore, it should not be in the list of criteria. The requirement for the Planning Commission and City Council to consider the Historic Preservation Committee's recommendation is proposed to be added as shown in D and E, above.]

~~8. If testimony or comments are provided, the Council considers the recommendation from the Historic Preservation Committee (HPC).~~

[Propose minor changes to improve clarity and specify which section in the Code contains the procedures.]

~~FG.~~ Removal of Designation. The process for removing a landmark *designation* or historic district designation may be initiated by the *City* Council, the *Planning* Commission, or by any interested person who submits to the City Manager an application for removal of the designation. The *City* Council may amend or rescind ~~its~~ *an existing* designation by following ~~the~~ procedures ~~required by this Code~~ *set forth in Section 7.2.112.05* for designating a landmark *or historic district*, including the adoption of ~~appropriate~~ findings.

[Propose a minor change to show the actual name.]

~~GH.~~ If the property is listed on the National Registry of Historic Place *s* , the removal shall be completed in cooperation with the State Historic Preservation Office (SHPO) and according to federal statute under CFR Part 60.15.

7.2.112.06 Demolition and Moving

[Propose replacing "City Manager" with "Planning Commission" because the Planning Commission is the decision authority for demolishing or moving a designated landmarks per Section 7.3.101.02, E (Type II Actions). Propose clarifying it is a "designated" landmark, not a "significant resource." Add "Historical Property Overlay Zone" so it is clear the designated landmarks are in the HPO. Propose deleting reference to the City Manager issuing a permit because the Planning Commission must first approve the land use application to allow the demolition or moving, and then, through the building permit process a Demolition Permit would be approved by the Building Official, not the City Manager, or another appropriate permit would be approved by the Building Official, not the City Manager, to move the structure to another site. Propose deleting the statement about a form provided by the City because it duplicates language in the next section, "Application Process," Subsection B, which says, "...shall be filed on a form provided by the City."]

A. ~~City Manager~~ *Planning Commission* Approval. No person shall move ~~;~~ *or* demolish, or cause to be *moved or* demolished , a *Designated* † Landmark ~~or a significant resource~~ in *the Historical Property Overlay Zone or in* an historic district, unless ~~a permit to do so has first been obtained from the City Manager~~ *approved by the Planning Commission. A separate permit must be obtained from the Building Official to demolish or move the structure..* ~~Application for a permit shall be on a form provided by the City.~~

[Propose deleting “alteration” and “new construction” because this section, 7.2.112.06, is about demolishing or moving a designated resource – Section 7.2.112.07 covers exterior alterations and new construction. Add “Historical Property Overlay Zone” so it is clear the designated landmarks are in the HPO.]

B. Application Process. ~~An application for alteration of~~ ***moving or demolishing a Designated Landmark or new construction in the Historical Property Overlay Zone or in an historic district or on a landmark site shall be filed on a form provided by the City. The following information shall be required in an application:***

[Many years ago an Oregon Land Use Board of Appeals decision, or possibly it was an Oregon Court of Appeals decision, said a City cannot require items be submitted as part of the application form that are not required by the Development Code. Where the City wants the applicant to sign the application form, the Development Code must require the signature.]

1. The applicant's name and address ***and the applicant’s signature;***

[Subsection F, below, says, “A permit shall not be issued unless the applicant provides evidence of legal and recorded ownership of the subject property.” Presumably, such evidence would be submitted with the application materials, therefore, such evidence should be included in 7.2.112.06, B, which lists the items to be submitted with the application. Where the City wants the applicant to sign the application form, the Development Code must require the signature.]

2. The owner's name and address, ~~if different from the applicant~~ ***and evidence of legal and recorded ownership of the subject property and the owner’s signature;***

[Propose changing to clarify that #3 requires a written description and an explanation of how the approval criteria are met. To ensure consistent language throughout, replace “relocation” with “moving.”]

3. A written description ~~—explanation~~ of the proposed ~~relocation~~ ***moving or demolition and an explanation of how the moving or demolition meets the approval criteria set forth in Section 7.2.112.06, E;***

[Propose requiring the site plan be to scale and adding some basic information about the size of the structures and the existing setbacks.]

4. A site plan, ***drawn to scale***, indicating the location of structures on the subject property, ***the dimensions of the structures and the distances from the structures to the property lines;***

5. Statements indicating the intended re-use of the subject property;

[Propose deleting redundant language and adding “the.”]

6. Any other information deemed necessary by the City Manager ~~necessary~~ to address ***the*** approval criteria.

[Propose deleting unnecessary language. Propose using the full name of the Council, Commission and Committee. Propose replacing “may” with “shall” to be consistent with 7.2.112.05, C, above, which requires the HPC to review applications for Landmark and District Designations. Where the HPC chooses to provide a written recommendation to the PC (the current language says HPC “may” provide a recommendation to the PC), the recommendation must be based on the approval criteria. Propose deleting the language indicating the approval criteria are guidelines when they are actually approval criteria that must be addressed.]

- C. Historic Preservation Committee (HPC): After the application is deemed complete, the Historic Preservation Committee ~~may~~ **shall** review the application at ~~either one of their a~~ regularly scheduled meetings ~~or by arranging~~ **at** a special meeting. The **Historic Preservation Committee** may provide to the **City Planning Commission** a written response in regards to their review of the application using **recommendation based on** the approval criteria ~~as a guideline for their recommendation(s)~~. The **Historic Preservation** Committee serves in an advisory capacity.

[Propose deleting unnecessary language and adding language similar to the above where the City Manager schedules an application for Planning Commission consideration. Reword to clarify there may, or may not, be a recommendation from the HPC.]

- D. Review Process. Upon receipt of a completed application, the City Manager shall ~~include the demolition request on the agenda for consideration~~ **schedule the application to be considered** at the next available **a Planning** Commission meeting. The **Planning** Commission shall hold a Type II public hearing pursuant to Section 7.3.2 (**Administrative Procedures**) of this Code. **Where the Historic Preservation Committee provides a recommendation to the Planning Commission, the Planning Commission** shall consider, if available, comments from the City's Historic Preservation Committee **the recommendation**.

[Propose deleting unnecessary language. The proposed language is consistent with language at 7.2.112.05, E, above, and 7.2.112.07, F, below.]

- E. Decision Criteria. ~~In order to~~ **To approve an the application for the relocation to move or demolition of demolish** a Designated Landmark, the **Planning** Commission must find ~~that~~ **the following criteria are met** :

[To be consistent with other sections, replace the comma with semi-colon.]

1. No prudent and feasible alternative exists ~~,~~ ; or

[To be consistent with other sections, replace the comma with a semi-colon.]

2. The designated property is deteriorated beyond repair, ~~,~~ ; or

[Propose adding “historical or architectural” to clarify which value is meant.]

3. The value to the community of the proposed use of the property outweighs the *historical or architectural* value of retaining the Designated Landmark .

[Propose deleting unnecessary language. The proposed language is consistent with language at 7.2.112.05, E, above, to designate a Landmark and 7.2.112.07, F, below, for an exterior alteration or to allow new construction on a Designated Landmark site. Propose adding language referring to the criteria. Propose deleting the language about evidence of legal ownership because it was added, above, in the requirements for the application form.]

- F. Planning Commission Approval. The *Planning* Commission may approve , *or approve with conditions*, the ~~demolition or moving request after considering the criteria in this section~~ *application where the application materials show at least one approval criterion is met*. If no appeal is filed, the *decision is effective on the day following the last day of the appeal period* ~~City Manager shall issue the permit in compliance with all other codes and ordinances of the City . A permit shall not be issued unless the applicant provides evidence of legal and recorded ownership of the subject property~~

[Propose deleting unnecessary language. Propose adding language referring to the criteria.]

- G. Planning Commission Denial. The *Planning* Commission may ~~disapprove~~ *deny* the ~~demolition or removal request~~ *application where the application materials do not show at least one approval criterion is met* if ~~after considering the criteria in this section and based upon not satisfying the criteria, it determines that, in the interest of preserving historical or architectural values, the resource should not be demolished or moved.~~ *If no appeal is filed, the decision is effective on the day following the last day of the appeal period.*

[Propose deleting unnecessary language. Propose adding language referring to the additional requirements during the continuance.]

- H. Planning Commission Continuance. The *Planning* Commission may continue the final action ~~on a request for issuance of a demolition or moving permit based on compliance in accordance with Subsection 7.2.112.06, K, below, and consistent~~ with the State of Oregon 120-day rule for making a final decision on an application.

[Propose adding clarifying language and deleting unnecessary language. Propose adding language referring to the additional requirements during the continuance.]

- I. Appeals. A decision by the *Planning* Commission to approve, *approve with conditions or deny* ~~disapprove an the~~ application to ~~relocate or demolish an historic resource~~ may be appealed to the *City* Council by an ~~aggrieved party~~ aggrieved party who appeared orally or in writing, in person or through an attorney at the *Planning* Commission hearing and presented or submitted testimony related to the ~~request~~ *application* under consideration. The appeal shall comply with the requirements in Section 7.3.2. (*Administrative* Procedures).

[Propose adding City to clarify it is the City Manager.]

J. Alternative Actions. At the time a demolition or moving application is filed the *City* Manager shall review alternatives to demolition or moving with the owner of the resource, including local, state and federal preservation programs.

[Propose adding the full name of the Commission.]

K. Additional Requirements. During a period of continuance, the *Planning* Commission may require the property owner to:

1. List the resource for sale with a real estate agent for a period of time to allow for final decision within 120-days. The real estate agent shall advertise the resource in local and state newspapers of general circulation in the area for a minimum of 10 days and over a period of time that allows for a final decision within 120 days.

[Propose clarifying who posts the sign provided by the City. Propose rewording the reference to Subsection K, 1.]

2. Give public notice by posting the hearing notice on-site in addition to a "For Sale" sign which shall read: HISTORIC BUILDING TO BE MOVED OR DEMOLISHED - FOR SALE. Lettering on the sign shall be at least one foot in height. The sign shall be provided by the City and be posted *by the applicant* in a prominent and conspicuous place within ten feet of a public street abutting the premises on which the resource is located. The applicant is responsible for ~~assuring that~~ *ensuring* the sign is posted continuously within the time frame specified in ~~Number~~ *Subsection 7.2.112.06, K, 1*, above.
3. Prepare and make available any information related to the history and sale of the property to all individuals, organizations, and agencies who inquire.

[Propose replacing an inappropriate word.]

4. ~~Assure that~~ *Ensure* the owner has not rejected the highest bona fide offer for sale and removal of the resource.

[Propose replacing "removal" with "moving" to be consistent.]

L. Press Notification. Prior to issuance of a demolition permit, the City Manager shall issue a press release to local or state newspapers of general circulation in the county. The press release shall include, but *is* not limited to, a description of the significance of the resource, the reasons for the proposed *moving or* demolition ~~or removal~~, and possible options for preserving the resource.

[Propose a minor change.]

M. Permit Conditions. As a condition for approval of a demolition permit, the *Planning* Commission may:

[Propose a minor change.]

1. Require photographic documentation, preparation of architectural drawings, and other graphic data or history as it deems necessary to preserve an accurate record of the resource. The historical documentation materials shall be the property of the ~~county~~ **City** or other party determined appropriate by the **Planning Commission**.

[Propose clarifying the owner can donate or sell the artifacts, minerals, etc.]

2. Require that specific artifacts, materials, or equipment be protected and saved. The owner may keep all such materials **or donate or sell them to the City or other party determined appropriate by the Planning Commission**. The applicant shall be provided with a list of persons capable of salvaging the resource.

[Propose clarifying it is Section 7.2.112, the HPO.]

- N. Dangerous Building. ~~This Code~~ **Section 7.2.112** shall not be construed to make it unlawful for any person, without prior approval of the **Planning Commission**, to comply with an order by the City Council to remove or demolish ~~any~~ **Designated † Landmark** determined by the **City Council** to be dangerous to life, health, or property.

7.2.112.07 Exterior Alteration and New Construction

[The word "Scope" is proposed to be deleted because it is not needed. Section 7.2.112.07, A, is the only place where the word "Scope" is used in 7.2.112, therefore, it is proposed to be deleted. Re-word to be consistent with the format in 7.2.112.06 regarding the moving or demolishing of a resource. Reword to be consistent with Subsection D, below, which says the City Manager determines if the proposed exterior alteration or new construction on a site with a Designated Landmark is "minor," and where it is determined to be "minor," the City Manager is the decision authority (Section 7.3.101.01, D, says a "minor" exterior alteration or "minor" new construction is a Type I Action which is a City Manager decision). Also, reword to be consistent with E, below, which says where the City Manager determines the exterior alteration or new construction is not "minor," the Planning Commission is the decision authority (Section 7.3.101.02, F, says an exterior alteration or new construction referred to the Planning Commission is a Type II Action which is a Planning Commission decision). Propose clarifying it is a "Designated Landmark," not a "significant resource." Add "Historical Property Overlay Zone" so it is clear the Designated Landmarks are in the HPO. Propose adding a reminder that a separate Building Permit may be needed for the alteration or new construction.]

- A. ~~Scope.~~ **City Manager or Planning Commission Approval.** No person shall alter **the exterior of a Designated † Landmark in the Historical Property Overlay Zone** or ~~any significant resource~~ in an historic district nor shall any new building or structure be constructed **on a Designated Landmark site in the Historical Property Overlay Zone** or in an historic district ~~or on a landmark site~~ **where the City Manager determines it is minor** unless approval is first obtained under this section **approved by the City Manager**. No person shall alter **the exterior of a Designated Landmark in the Historical Property**

Overlay Zone or in an historic district nor shall any new building or structure be constructed **on a Designated Landmark site in the Historical Property Overlay Zone or** in an historic district **where the City Manager refers the application to the Planning Commission unless approved by the Planning Commission. A Building Permit may be required for certain exterior alterations and new construction.** In addition, no major public improvements shall be made on a **Designated** † Landmark site or in an historic district unless approved by the Planning Commission.

[Propose adding “exterior” to consistently use the phrase “exterior alteration.” Add “Designated” to consistently use the phrase “Designated Landmark.” Re-word to include the HPO to clarify that the Designated Landmark is in the HPO and that the City does not have a historic district.]

B. Application Process. **An application for the exterior alteration of a Designated † Landmark or new construction is in the Historical Property Overlay Zone or in** an historic district ~~or on a landmark site~~ shall be filed on a form provided by the City. The following information shall be required in an application:

[Many years ago an Oregon Land Use Board of Appeals decision, or possibly it was an Oregon Court of Appeals decision, said a City cannot require items be submitted as part of the application form that are not required by the Development Code. Where the City wants the applicant to sign the application form, the Development Code must require the signature.]

1. The applicant's name and address , **and the applicant’s signature;**

[Section 7.2.112.06, F, for moving and demolishing a Designated Landmark, requires “...the applicant provides evidence of legal and recorded ownership of the subject property.” Presumably, the City wants to require such evidence be submitted for an application for an exterior alteration or new construction, therefore, the following proposes such. Where the City wants the owner(s) to sign the application form, the Development Code must require the signature.]

2. The owner's name and address, ~~if different from the applicant~~ **and evidence of legal and recorded ownership of the subject property and the owner’s signature;**

[Propose a minor change to delete the parentheses.]

3. Name of the person(s), title, or relationship to the project who will verify that the **exterior** alteration or new construction ~~(~~ , if approved ~~)~~ , has been completed according to the City’s requirements;

[Propose a minor change to replace the forward-slash with “and.”]

4. A written description ~~/~~ **and** explanation of the proposed exterior alteration or new construction;

[Propose requiring the site plan be to scale and adding some basic information about the size of the structures and the existing setbacks.]

5. A site plan , *drawn to scale*, indicating the location or proposed location of structures on the subject property , *the dimensions of the structures and the distances from the structures to the property lines* ;

[Propose minor changes to delete the forward-slashes and parentheses. Propose replacing “new or remodeled structure” with the specific terms used consistently throughout Section 7.2.112.07, i.e., “exterior alterations or new construction.”]

6. Photographs, other pictorial / *and* schematics *information*, sample materials / *and* colors ← , if available → , to represent the proposed ~~changes or additions for a new or to a remodeled structure~~ *exterior alterations or new construction*;

[Propose minor changes to replace “intended” with “proposed” because “proposed” refers to the actual changes shown in the application. Propose adding “exterior” to use the same term throughout 7.2.112.07, i.e., “exterior alteration or new construction.” Propose adding instructions to assist an applicant in finding the cited electronic address on the U.S. Secretary of Interior’s website.]

7. Written explanation of the ~~intended~~ *proposed exterior alteration or new construction* in comparison with the City’s 1993 Advisory Guidelines and the US Secretary of Interior Guidelines. (An on-line copy of the latter document is available for review at the following site: (www.nps.gov/history/hps/tps/standguide/index.htm.) *At the site, click on the tab “Education and Training,” then click on “Online Training,” then click on “Illustrated Rehabilitation Guidelines.”*

[Propose a minor change to add “the.”]

8. Any other information deemed necessary by the City Manager to address *the* approval criteria .

[Propose deleting unnecessary language. Propose using the full name of the Council, Commission and Committee. Propose replacing “may” with “shall” to be consistent with 7.2.112.05, C, above, which requires the HPC to review applications for Landmark and District Designations, and to be consistent with 7.2.112.06, C, above which requires the HPC to review applications for moving and demolishing a Designated Landmark. Where the HPC chooses to provide a written recommendation to the PC (the current language says HPC “may” provide a recommendation to the PC), the recommendation must be based on the approval criteria. Propose deleting the language indicating the approval criteria are guidelines when they are actually approval criteria that must be addressed.]

- C. Historic Preservation Committee (HPC): After the application is deemed complete, the ~~City Manager requests a review by the~~ Historic Preservation Committee *shall review the application at a regularly scheduled meeting or at a special meeting*. ~~The review is conducted at their regularly scheduled meetings or by arranging a special meeting.~~ The *Historic Preservation Committee* may provide to the City a written response in regards to their review of the application using *recommendation based on* the approval criteria as a guideline for their recommendation(s) *to the City Manager and the Planning Commission*. The *Historic Preservation* Committee serves in an advisory capacity.

[Propose rewording to clarify the City Manager’s decision may be to approve, approve with conditions or to deny the application. Propose adding “exterior” and “new construction” to use the same term throughout 7.2.112.07.]

D. ~~Approval Requirements~~ **City Manager Decision.** ~~The~~ **Where the City Manager determines the application meets at least one of the following criteria 1, 2 or 3, for a minor exterior alteration or new construction, the City Manager may approve, approve with conditions, or deny the alteration request application if determined a minor alteration based upon:** **Where the Historic Preservation Committee provides a recommendation to the City Manager, the City Manager shall consider the recommendation.**

[Propose adding “exterior” to use the same term throughout 7.2.112.07. Propose replacing “resource” with “Designated Landmark” to clarify it is a Designated Landmark. Propose replacing “includes” with “the proposed work is.”]

1. No change in the **exterior** appearance or material of the ~~resource~~ **Designated Landmark** as it exists ~~and/or~~ **the proposed work is** ~~includes~~ building maintenance; or

[Propose adding “exterior” to use the same term throughout 7.2.112.07, i.e., “exterior alteration or new construction.” Proposed deleting the reference to the City Manager sending the application to the Planning Commission because it is redundant of the first sentence in E, below.]

2. The proposed **exterior alteration or new construction** duplicates or restores the affected exterior features and materials as determined from historic photographs, original building plans, or other evidence of original features or materials ~~with the provision that the City Manager may refer the interpretation to the Planning Commission;~~ or

[Propose adding “exterior” to use the same term throughout 7.2.112.07. Propose adding “rear elevation” to clarify that a rear elevation is included. Proposed replacing “building” with “Designated Landmark” to clarify #3 applies to a Designated Landmark.]

3. The **exterior** alteration ~~work~~ is on a side ~~or sides~~ **or rear elevation** of a ~~building~~ **Designated Landmark or is not visible from public rights-of-way, or the new construction is** not visible from public rights-of-way.

[Propose adding “exterior” to use the same term throughout 7.2.112.07. Propose rewording to clarify the City Manager makes the determination and that only one criterion must be met. Propose adding “approve with conditions” to the list of possible Planning Commission actions to replace the last sentence.]

E. **Planning Commission Action.** ~~If a request for~~ **Where the City Manager determines the application does not meet the provisions of subsection (D) of this section is not a minor exterior alteration or is not minor new construction,** the City Manager shall forward the

application and ~~the~~ *any* comments from the Historic Preservation Committee to the Planning Commission. *Where the Historic Preservation Committee provides a recommendation to the Planning Commission, the Planning Commission shall consider the recommendation.* The *Planning* Commission, after notice and public hearing held in accordance with provisions in Section 7.3.2 (*Administrative* Procedures) of this Code, shall approve, *approve with conditions* or disapprove issuance of the requested permit *the application*. ~~The Commission may attach conditions to the approval which must be adhered to for the approval to remain valid.~~

[Propose deleting unnecessary language. The proposed language is consistent with language at 7.2.112.05, E, above, and 7.2.112.06, E, above.]

- F. Decision Criteria. ~~The~~ *To approve the application for exterior alteration of a Designated Landmark or for new construction on the site of a Designated Landmark the Planning* Commission shall consider the following standards, comments, and criteria in determining whether to approve an alteration request.

[Propose rewording to clarify there are two elements to this criterion, i.e., the proposed new use is similar to the historical use of the property, or a proposed new use requires minimal changes.]

1. ~~Use of the property is historically similar~~ *The proposed new use is similar to the historical use of the property* or *the proposed* new use requires minimal change to ~~it's the~~ *Designated Landmark's or property's* distinctive materials, features, spaces, and spatial relationships.

[Propose minor changes.]

2. Historic character of a *the* property is retained and preserved. The relocation of distinctive materials or alterations of *exterior* features, spaces, and spatial relationships that characterize a *the* property shall be avoided.

[Propose minor changes.]

3. Use of *the* property recognizes *the* physical record of its time, place, and use. Changes that create a false sense of historic development, such as adding conjectural features or elements from other historic properties, shall not be undertaken.
4. Changes acquiring historic significance in their own right are retained and preserved.
5. Alterations preserve distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the property.
6. Historic features are repaired versus replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old

in design, color, texture, and, where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence.

7. Use of chemical and physical treatments, if appropriate, are undertaken by the gentlest means possible. Treatments that cause damage to historic materials shall not be used.
8. Alteration, including new additions, exterior alterations, or related new construction, do not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historic materials, features, size, scale, and proportions, and massing to protect the integrity of the property and environment

[Propose minor changes.]

9. New additions and adjacent or related new construction *on the subject property* **are** undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment are unimpaired.

[Propose a minor changes.]

10. ~~The Planning Commission~~ Consider s design guidelines recommended by the ~~Planning Commission or Historic Preservation Committee~~, such as applicable sections of the City's 1993 Advisory Guidelines or the U.S. Secretary of Interior's Standards; (www.nps.gov/history/hps/tps/standguide/index.htm).

[Propose deleting 11 because it isn't a criterion, therefore, it should not be in the list of criteria. The requirement for the Planning Commission to consider the Historic Preservation Committee's recommendation is proposed to be added as shown in D and E, above.]

- ~~11. The Planning Commission considers comments submitted by the Historic Preservation Committee.~~

[Propose minor changes to clarify the portion of the "Code" referred to is Section 7.2.112 and replace "such" with "including, but not limited to an."]

- G. Repair and Maintenance Provisions. No provision of ~~this Code~~ **Section 7.2.112** shall be construed to prevent the ordinary maintenance or repair of a Designated Landmark ~~such as any~~ **including, but not limited to an** exterior architectural feature which does not involve a change in design, material or appearance of such feature. The City Manager **shall** determine s if the proposed activity is required for the public safety due to an unsafe or dangerous condition.

[Propose minor changes. Propose deleting reference to Section 3403.5 of the Uniform Building Code because that section no longer exists, or has been moved, in the Uniform Building Code (UBC) and "UBC" is no longer the title of the State's building regulations. Propose retaining the "Oregon Structural Specialty Code" because it is still a document and add "Oregon Residential Specialty Code" because it

regulates the construction of single family dwellings. Propose replacing “variances” with “leniency” to be consistent with the first sentence which uses “leniency.”]

[Note: Subsection H allows an owner to request leniency from the Building Official (BO), but it also says the City Manager has the final authority to grant leniency. It is not clear at this time if only the BO has authority to grant such leniency because of technical expertise.]

H. Building Code Leniency. Property owners may request ~~that~~ the City Building Official or ~~his/her~~ designee grant leniency for non-conforming *exterior* alterations, repairs, additions, and changes of occupancy for existing ~~and~~ *Designated Landmark* structures in accordance with ~~Section 3403.5 (or its most current replacement/update)~~ of the *current Uniform Building Code/Oregon Structural Specialty Code, or Oregon Residential Specialty Code*. The City Manager ~~and/or his/her~~ designee shall have the final authority to grant such ~~variances~~ *leniency*. In accordance with the statute, the Building Official or ~~his/her~~ designee may seek guidance from the Oregon State Historic Preservation Office in the application of this provision.

7.2.112.08 Notice and Public Hearing

[Propose clarifying a minor exterior alteration or minor new construction is through the Type I process where the City Manager is the decision authority, and a major exterior alteration or major new construction is through the Type II process where the Planning Commission is the decision authority.]

A. Application Process. ~~The hearing shall be conducted by the Planning Commission as a Type II hearing and subject to the notice, procedural and appeal provisions in Section 7.3.2 (Procedures).~~ *In accordance with Section 7.3.101.01, D, an application for a minor exterior alteration or minor new construction on the site of a Designated Landmark in the Historical Property Overlay Zone or in an historic district, is a Type I process. In accordance with Section 7.3.101.02, F, an application for a major exterior alteration or major new construction on the site of a Designated Landmark in the Historical Property Overlay Zone or in an historic district, is a Type II process.*

7.2.112.09 Affirmative Maintenance.

[Propose using the term “Designated Landmarks.” Propose including the name of Section 7.1.102,06 in the LUDC, and Section 4.5 in the Municipal Code, to allow the reader to know what those sections address.]

~~Structures and sites designated by the City to be of historic significance~~ *Designated Landmarks and their sites* shall be maintained. See 7.2.112.03, Definitions—Affirmative Maintenance and Deterioration, Prohibited.

Properties *with Designated Landmarks* deemed deficient in maintenance are subject to the violation provisions and other applicable ordinances of the City. (See the Land Use and

Development Code, Section 7.1.102.06 , *Violations*, of the Development Regulations and the Municipal Code, Section 4.5 , *Dangerous Buildings*.)

7.2.112.10 Enforcement of State Preservation Laws

[Propose using the full names of the City Council, Planning Commission and Historic Preservation Committee to ensure the reader does not become confused by the shortened terms of Council, Commission and Committee. Include the HPC as one of the groups that must support the City’s historic preservation program. Propose replacing “for” with “as” because the ORS language uses “as.”]

The City of Dayton City Council , ~~and~~ Planning Commission *and Historic Preservation Committee* shall support the enforcement of all State laws relating to historic preservation. These include but are not limited to ORS 197.772 (Consent for designation ~~for~~ *as* historic property), ORS 358.653 (Conservation Programs, Leases), and ORS 358.475 through 358.541 (Special Assessment).

END OF PROPOSED AMENDMENTS TO 7.2.112, HISTORICAL PROPERTY OVERLAY ZONE.

BEGINNING OF PROPOSED AMENDMENTS TO 7.2.404, MANUFACTURED HOMES ON INDIVIDUAL LOTS.

There are no proposed amendments to 7.2.404, A – I. The proposed amendment to 7.2.404, J, is substantive. Currently, a manufactured home (MH) can be placed on a residentially zoned property immediately adjacent to a property with a Designated Landmark through the Conditional Use Permit process (a Type II action – Planning Commission hearing and decision). The amendment would not allow a MH on a residentially zoned property immediately adjacent to a property with a Designated Landmark.

The following is the current language in Section 7.2.404, Manufactured Homes on Individual Lots. The proposed amendments are to 7.2.404, J, 1 – 4, and are shown in ~~strikeout~~ for language proposed to be deleted and in ***bold italics*** for language proposed to be added.

7.2.404 MANUFACTURED HOMES ON INDIVIDUAL LOTS

Where permitted as a special use, manufactured homes located on individual lots outside of a mobile home park shall meet the following requirements:

- A. Construction Date. The manufactured home shall have been manufactured after June 15, 1976, and exhibit the Oregon Department of Commerce "Insignia of Compliance" that indicates conformance with Housing and Urban Development (HUD) standards.
- B. Minimum Area. The manufactured home shall be multi-sectional with a minimum area of 1,000 square feet.
- C. Foundation. The manufactured home shall be placed on an excavated and back-filled foundation, enclosed at the perimeter with either concrete, concrete block, brick, stone,

pressure treated wood, or combination thereof. No more than 24 inches of the enclosing material may be exposed above grade. Where the building site has a sloped grade, no more than 24 inches of the enclosing material shall be exposed on the uphill side of the home. If the manufactured home is placed on a basement, or within an identified flood hazard zone, the 24-inch limitation shall not apply.

- D. Roof. The manufactured home roof shall have a nominal pitch of 3 feet for each 12 feet in width.
- E. Exterior Material. The manufactured home shall have an exterior that is residential in appearance.
- F. Garage. The manufactured home shall have a garage with exterior material that is residential in appearance, or, a carport with a concrete parking surface. The garage or carport shall be placed on the property prior to occupancy of the manufactured home.
- G. Energy Efficiency. The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting the performance standards which reduce heat loss to levels equivalent to the performance standards required of single-family dwellings constructed under the state building code.
- H. Lot Development Standards. The manufactured home shall meet all applicable development standards, such as setbacks and height limitations, in the Development Code.
- I. Transportation Equipment. The tongue, axles, wheels and traveling lights shall be removed from the manufactured home.

[Propose amending J to not allow a manufactured home to be installed on a residentially zoned property immediately adjacent to a property with a Designated Landmark in the Historical Property Overlay Zone or immediately adjacent to a residentially zoned property in an historic district. ORS 197.314(3) allows a city to prohibit a manufactured home from being installed on a property “immediately adjacent” to a residentially zoned property with a Designated Landmark in the Historical Property Overlay Zone or “immediately adjacent” to a residentially zoned property in an historic district. The Dayton Development Code does not define “adjacent” or “immediately adjacent” in the definition section (7.1.200.03), and a definition is not proposed here. Instead the proposed amendments to J, below, explain what constitutes “immediately adjacent.”

ORS 197.314 follows:

197.314 Required siting of manufactured homes; minimum lot size; approval standards.

(1) Notwithstanding ORS 197.296, 197.298, 197.299, 197.301, 197.302, 197.303, 197.307, 197.312 and 197.313, within urban growth boundaries each city and county shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses to allow for siting of manufactured homes as defined in ORS 446.003. A local government may

only subject the siting of a manufactured home allowed under this section to regulation as set forth in ORS 197.307 (8).

(2) Cities and counties shall adopt and amend comprehensive plans and land use regulations under subsection (1) of this section according to the provisions of ORS 197.610 to 197.651.

(3) Subsection (1) of this section does not apply to any area designated in an acknowledged comprehensive plan or land use regulation as a historic district or residential land immediately adjacent to a historic landmark. (emphasis added)

End of the 197.314 quote.

The proposed amendments clarify that existing MH's on a lot in a residential zone immediately adjacent to a historic property can remain and can be replaced in the future for any reason – the replacement would not be subject to the nonconforming regulations in 7.2.204.04. It should be noted the non-conforming regulations, Section 7.2.204.05, Exemptions, allows a non-conforming single family dwelling to be replaced “without the need to comply with the requirements and procedures...” of 7.2.204. Typically, a non-conforming use would be a house in a commercial zone or an industrial zone where the expectation is that, eventually, the house would be replaced by a commercial or industrial use. But the historic resources amendments address a situation where an existing manufactured home is in a residential zone and there is no expectation that, eventually, it will be replaced by a different use. Additionally, the exemption in the non-conforming section, 7.2.204.05, retains a 1-year time limit and the dwelling must have been destroyed by “fire, other casualty or natural disaster,” not by demolition or removing a manufactured home to allow replacement by a new manufactured home. Given the unique situation the existing manufactured homes are in, the proposed amendments grant them relief to replace an aging manufactured home without restriction by the non-conforming use regulations.]

J. ~~A Conditional Use permit shall be required to place a manufactured home on an individual lot or parcel adjacent to a significant historical resource as identified in the Dayton Comprehensive Plan. The application shall be subject to the decision criteria contained in Section 7.3.107 as well as the following factors: (Revised ORD 510—Effective 12/07/98)~~ ***Manufactured Homes. A manufactured home shall not be placed on a property in the R-1, R-2, R-3 or RC Zones where the property is immediately adjacent to a Designated Landmark in the Historical Property Overlay Zone, or of a property in an historic district. A manufactured home existing prior to the effective date of this 2019 amendment to Subsection J on a property in the R-1, R-2, R-3 or RC Zones can remain and can be replaced in the future for any reason.***

[Propose amending J, 1 – 4, to delete language related to the CUP process and adding language explaining what “immediately adjacent” means. It is not uncommon for parties to a land use hearing, when it supports their position, to cast doubt on the definition of “abutting,” “adjacent,” “contiguous” and other similar terms. The following clarifications intend to recognize the many shapes and locations of lots, i.e., that lots across a public right-of-way are not immediately adjacent, and that a lot whose frontage is on a different street is not immediately adjacent, and that a lot whose property corner, and only the corner, touches the corner, and only the corner, of a Designated Landmark property is not immediately adjacent, and that a lot whose frontage is on the same street as the Designated Landmark property and whose side or rear property lines only partially touch the Designated Landmark property,

but is separated from a Designated Landmark property by another property, is not immediately adjacent.]

1. ~~Location—The dwelling shall be situated to maintain the greatest possible distance from the adjacent historical site or structure while maintaining compliance with the setback requirements.~~ ***Immediately adjacent does not include a property separated from the Designated Landmark property by a public right-of-way, including but not limited to an alley or a street.***
2. ~~Orientation—If the primary entrance of the adjacent historical building faces a public street, the primary entrance to the manufactured home shall also face the same public street. This provision does not apply if either lot or parcel is a “corner lot” as defined by this Code. Dayton Land Use and Development Code—Revised 06/06/16 7.2.4.4~~ ***Immediately adjacent does not include a property whose only immediate adjacency is a property corner touching a property corner of the Designated Landmark property.***
3. ~~Screening—Screening and buffering shall be required. Screening may include fencing, berms, vegetation or any combination thereof. The screening shall be designed to maintain the visual integrity of the adjacent historic site or building. For example, a wooden fence may be required instead of a chain-link fence.~~ ***Immediately adjacent does not include a property whose side or rear property line, or a portion thereof, touches a Designated Landmark property, but whose frontage is on a different street from the Designated Landmark property.***
4. ~~Intent—It is not the intent of this section to grant a conditional use permit in all circumstances, even if factors 1 to 3 above are successfully met. The Conditional Use shall be granted only under those circumstances which are unique to the subject property and will not impair or adversely impact the integrity of the adjacent historical site. The burden of proof shall be placed by the applicant to ensure these concerns are adequately addressed.~~ ***Immediately adjacent does not include a property whose frontage is on the same street as a Designated Landmark property and whose side or rear property line, or a portion thereof, touches a Designated Landmark property, but is separated from the Designated Landmark property by another property.***

END OF PROPOSED AMENDMENTS TO 7.2.404, MANUFACTURED HOMES ON INDIVIDUAL LOTS.

BEGINNING OF PROPOSED AMENDMENTS TO 7.3.101, SUMMARY OF APPLICATION TYPES.

The following is the current language in Section 7.3.101, Summary of Application Types and Review Procedures. The proposed amendments are shown in ~~strikeout~~ for language proposed to be deleted and in ***bold italics*** for language proposed to be added.

[Propose deleting 7.3.101.03, D, because the process to establish a Designated Landmark in the Historical Property Overlay Zone or designating an historic district is a Type IV process.]

[As stated above, Section 7.3.101 (Application Requirements and Review Procedures), lists the Type I, Type II, Type III and Type IV land use actions. Section 7.3.101 is inconsistent where it lists “Historic Landmark and District Designation” as a Type III action (7.3.101.03, D) and lists “Text Amendment to the Comprehensive Plan and Development Code” as a Type IV process (7.3.101.04, A). The Type IV process is correct – the explanation follows.]

[An amendment to the Development Code text is a Type IV process because the Type IV process addresses actions where an existing City law is being amended or deleted, or a new City law is being created (a “legislative” process), whereas the Type III process addresses actions where an existing City law is being implemented (a “quasi-judicial” process).]

[Section 7.3.101.03 (Type III Actions) says, “A Type III action is a quasi-judicial process....” Thus, a legislative process such as amending or deleting an existing City law, or adding a new City law, cannot be processed through the Type III process.]

[Section 7.3.101.04 (Type IV Actions) says, “A Type IV action is a legislative review....” Thus, a legislative process such as amending or deleting an existing City law, or adding a new City law, must be processed through the Type IV process.]

7.3.101 SUMMARY OF APPLICATION TYPES AND REVIEW PROCEDURES

7.3.101.03 Type III Actions

A Type III action is a quasi-judicial process in which the City Council applies a mix of objective and subjective standards. Staff and the Planning Commission have advisory roles. Public notice is provided and public hearings are held before the Commission and City Council. Section 3.202 lists the notice requirements. Appeal of the decision is to the Land Use Board of Appeals (LUBA). The following actions are processed under a Type III procedure:

- A. Comprehensive Plan Map Amendments (involving 5 or fewer adjacent land ownerships or less than 10 acres)
- B. Zone Changes (involving 5 or fewer adjacent land ownerships or less than 10 acres)
- C. Annexation
- ~~D. Historic Landmark and District Designation~~

NOTE: No change to the list of actions in 7.3.101.04, Type IV Actions, is needed because it currently says text amendments to the Development Code are Type IV actions.

END OF PROPOSED AMENDMENTS TO 7.3.101, SUMMARY OF APPLICATION TYPES.

BEGINNING OF PROPOSED AMENDMENTS TO 7.3.203, TYPE IV ACTIONS.

The following is the current language in Section 7.3.203, Type IV Actions. The proposed amendments are in 7.3.203.02, Procedure For Type IV Action. The proposed amendments are shown in ~~strikeout~~ for language proposed to be deleted and in ***bold italics*** for language proposed to be added.

7.3.203 TYPE IV ACTIONS

7.3.203.01 Initiation Type IV may be initiated by:

- A. Majority vote of the City Council.
- B. Majority vote of the Planning Commission.
- C. Recommendation by the City Manager subject to majority approval by the City Council or Planning Commission.

7.3.203.02 Procedure for Type IV Actions

A. Public Hearings by Planning Commission:

[Propose amending 7.3.203.02, A, 1, to require the Planning Commission to consider a recommendation by the Historic Preservation Committee, if a recommendation is provided, for Type IV amendments to Section 7.2.112, Historical Property Overlay Zone.]

1. A public hearing shall first be held by the Planning Commission on all Type IV requests. ***Where a recommendation is provided by the Historic Preservation Committee regarding amendments to Section 7.2.112, Historical Property Overlay Zone, the Planning Commission shall consider the recommendation.***
2. The Planning Commission may continue any hearing in order to make a reasonable decision. Amendments to the original request may be considered and acted upon by the Planning Commission.
3. A Type IV Planning Commission action shall be in the form of a recommendation to the City Council.

B. Public Hearing by City Council:

[Propose amending 7.3.203.02, B, 1, to require the City Council to consider a recommendation by the Historic Preservation Committee, if a recommendation is provided, for Type IV amendments to Section 7.2.112, Historical Property Overlay Zone.]

1. Following the Planning Commission action, the City Council shall hold a public hearing to consider the Planning Commission's recommendation , ***and where a recommendation is***

provided by the Historic Preservation Committee regarding amendments to Section 7.2.112, Historic Property Overlay Zone, the City Council shall consider the recommendation.

[Propose deleting unnecessary language.]

2. The City Council may continue any hearing ~~in order~~ to make a reasonable decision. Amendments to the original request or the Planning Commission's recommendation , *or the Historic Preservation Committee's recommendation regarding amendments to Section 7.2.112, Historic Property Overlay Zone,* may be considered and acted upon by the City Council.

[Propose a minor change. The City Council passes ordinances, not codes.]

3. An approved Type IV City Council action shall be in the form of an ~~Code~~ *ordinance*.

END OF PROPOSED AMENDMENTS TO 7.3.203.02, PROCEDURE FOR TYPE IV ACTIONS.

V. APPLICABLE APPROVAL CRITERIA

Dayton Land Use and Development Code, Section 7.3.112.03, Criteria For Approval of Development Code text amendments.

7.3.112.03 CRITERIA FOR APPROVAL, DEVELOPMENT CODE TEXT AMENDMENTS

7.3.112.03, A:

A. *Impact of the proposed amendment on land use and development patterns within the city, as measured by:*

1. *Traffic generation and circulation patterns;*

FINDINGS: Not applicable because the proposed amendments do not affect traffic generation or circulation patterns.

2. *Demand for public facilities and services;*

FINDINGS: Not applicable because the proposed amendments do not affect public facilities and services.

3. *Level of park and recreation facilities;*

FINDINGS: Not applicable because the proposed amendments do not affect park and recreation facilities.

4. *Economic activities;*

FINDINGS: Not applicable because the proposed amendments do not affect economic activities.

5. Protection and use of natural resources;

FINDINGS: Not applicable because the proposed amendments do not affect natural resources.

6. Compliance of the proposal with existing adopted special purpose plans or programs, such as public facilities improvements.

FINDINGS: Not applicable because the proposed amendments do not affect adopted special purpose plans or programs such as public facilities improvements.

B. A demonstrated need exists for the product of the proposed amendment.

FINDINGS: The product of the proposed amendments is needed to ensure the Dayton Land Use and Development Code is clear and complete regarding historic resources. The proposed amendments provide needed clarity and completeness regarding historic resources.

C. The proposed amendment complies with all applicable Statewide Planning Goals and administrative rule requirements.

FINDINGS: The Statewide Planning Goals follow.

Goal 1, Citizen Involvement: The Planning Commission is scheduled to hold a duly noticed public hearing on October 17, 2019 and the City Council on November 4, 2019 to receive comments from the public. The hearings are consistent with the Development Code's procedures for legislative amendments to the Development Code. Goal 1 is met.

Goal 2, Land Use Planning: Goal 2 supports clear and thorough local procedures. The proposal does not involve exceptions to the Statewide Goals. Adoption actions are consistent with the acknowledged Development Code for processing legislative amendments to the Development Code. The proposed amendments are discussed in the staff report and are set forth showing language to be added and deleted. Goal 2 is met.

Goal 3, Agricultural Lands and Goal 4, Forest lands: Goals 3 and 4 are not applicable. The proposal does not involve or affect farm or forest lands.

Goal 5, Open Spaces, Scenic and Historic Areas, and Natural Resources. Goal 5 is not applicable. The proposal amends the City's historic resources regulations in accordance with Goal 5 requirements.

Goal 6, Air, Water and Land Resource Quality: Goal 6 is not applicable. The proposal does not address Goal 6 resources.

Goal 7, Natural Hazards: Goal 7 is not applicable. The proposal does not address Goal 7 resources.

Goal 8, Recreation: Goal 8 is not applicable. The proposal does not address recreational needs.

Goal 9, Economic Development: Goal 9 is not applicable. The proposal does not address Goal 9 issues.

Goal 10, Housing: Goal 10 is applicable because a proposed amendments would not allow manufactured houses (MH) on residentially zoned properties immediately adjacent to properties with a designated landmark. The prohibition is consistent with ORS 197.314(3).

ORS 197.314 follows:

197.314 Required siting of manufactured homes; minimum lot size; approval standards.

(1) Notwithstanding ORS 197.296, 197.298, 197.299, 197.301, 197.302, 197.303, 197.307, 197.312 and 197.313, within urban growth boundaries each city and county shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses to allow for siting of manufactured homes as defined in ORS 446.003. A local government may only subject the siting of a manufactured home allowed under this section to regulation as set forth in ORS 197.307 (8).

(2) Cities and counties shall adopt and amend comprehensive plans and land use regulations under subsection (1) of this section according to the provisions of ORS 197.610 to 197.651.

(3) Subsection (1) of this section does not apply to any area designated in an acknowledged comprehensive plan or land use regulation as a historic district or residential land immediately adjacent to a historic landmark. (emphasis added)

End of the 197.314 quote.

The proposed amendments clarify that existing MH's on a lot in a residential zone immediately adjacent to a historic property can remain and can be replaced in the future for any reason – the replacement manufactured home would not be subject to the nonconforming regulations in 7.2.204.04. It should be noted 7.2.204.05, Exemptions, allows a non-conforming single family dwelling to be replaced “without the need to comply with the requirements and procedures...” of 7.2.204. Typically, a non-conforming use would be a house in a commercial zone or an industrial zone where the expectation is that, eventually, they will be replaced by a commercial or industrial use. But the historic resources amendments address a situation where the existing manufactured homes are in residential zones and there is no expectation that, eventually, they will be replaced by a commercial or industrial use. Additionally, the exemption in the non-conforming section retains a 1-year time limit and the dwelling must have been destroyed by “fire, other casualty or natural disaster,” not by demolition or removing a manufactured home to allow replacement by a new manufactured home. Given the unique situation the existing manufactured homes are in, the proposed amendments grant them relief to replace an aging manufactured home without restriction by the non-conforming use regulations.

The proposed amendments add language explaining what “immediately adjacent” means. The amendments reduce the number of lots where a MH would be prohibited. It is not uncommon for parties to a land use hearing, when it supports their position, to cast doubt on the definition of “abutting,” “adjacent,” “contiguous” and other similar terms. The amendments recognize the many

shapes and locations of lots, i.e., that lots across a public right-of-way are not immediately adjacent, and that a lot whose frontage is on a different street is not immediately adjacent, and that a lot whose property corner, and only the corner, touches the corner of a Designated Landmark property is not immediately adjacent, and that a lot whose frontage is on the same street as the Designated Landmark property, but is separated from a Designated Landmark property by another property, and whose side or rear property lines only partially touch the Designated Landmark property, is not immediately adjacent. Goal 10 is met.

Goal 11, Public Facilities and Services: Goal 11 is not applicable. The proposal does not address Goal 11 issues.

Goal 12, Transportation: Goal 12 is not applicable. The proposal does not address Goal 12 issues.

Goal 13, Energy Conservation: Goal 13 is not applicable. The proposal does not address Goal 13 resources.

Goal 14, Urbanization: Goal 14 is not applicable. The proposal does not address Goal 14 issues. The proposed amendments to the Development Code are consistent with the Statewide Goals 1, 2 and 10, and the remaining Goals are not applicable because the amendments do not affect issues addressed by Goals 3 – 9 and 11 - 14.

D. The amendment is appropriate as measured by at least one of the following criteria:

1. It corrects identified error(s) in the provisions of the plan.

FINDINGS: As indicated in the explanation for each of the proposed amendments, the amendments correct identified errors in the text of the Development Code and provide additional language to effectuate ORS 197.314(3).

2. It represents a logical implementation of the plan.

FINDINGS: Not applicable because the proposed amendments are measured by Subsection D, 1, above.

3. It is mandated by changes in federal, state, or local law.

FINDINGS: Not applicable because the proposed amendments are measured by Subsection D, 1, above.

4. It is otherwise deemed by the council to be desirable, appropriate, and proper.

FINDINGS: Not applicable because the proposed amendments are measured by Subsection D, 1, above.

VI. STAFF RECOMMENDATION

Based upon the staff report and the above findings, first, staff recommends the Planning Commission pass an oral motion confirming the City Manager's initiation of the amendments, and second, staff recommends the Planning Commission pass a second motion adopting the staff report and the findings as shown above and recommending the City Council approve the proposed amendments.

VII. PLANNING COMMISSION ACTIONS – Sample Motions

A. Action 1: Adopt as presented.

First Motion: I move the Planning Commission confirm the City Manager's initiation of the proposed amendments.

Second Motion: I move the Planning Commission adopt the staff report and the findings as shown above and recommend the City Council approve the proposed amendments.

B. Action 2: Adopt with changes.

First Motion: I move the Planning Commission confirm the City Manager's initiation of the proposed amendments.

Second Motion: I move the Planning Commission adopt the staff report and the findings as shown above and recommend the City Council approve the proposed amendments with the following changes...and state the changes.

C. Action 3: Do not adopt.

First Motion: I move the Planning Commission confirm the City Manager's initiation of the proposed amendments.

Second Motion: I move the Planning Commission pass a motion recommending the City Council deny the proposed amendments because...and state the reasons.

D. Action 4: Continue the Hearing.

First Motion: I move the Planning Commission confirm the City Manager's initiation of the proposed amendments.

Second Motion: I move the Planning Commission continue the public hearing to a date/time/location certain for staff to provide more information on the following issues...and state the issues.