

**Chapter 40, Historic Preservation Ordinance Draft
(Revised Version Based on Consultant Recommendations)
(Draft #6, August 6, 2019)**

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Article I: General Information and Definitions

Section 40-01: Short Title

This ordinance shall be known and may be cited as “The City of Las Cruces Historic Preservation Ordinance” and may be referred to as “the historic preservation ordinance.”

Section 40-02: Declaration of Policy and Intent

The City of Las Cruces declares as a matter of public policy that the protection, preservation, maintenance, care, and use of historic buildings and cultural properties is a public necessity conducive to the general welfare of the people and beneficial to the furtherance of the community’s economic prosperity and quality of life. The purposes of this ordinance include, but are not limited to:

The promotion, protection, and use of the City’s historic building inventory for the education, pleasure, and welfare of residents and visitors;

The protection, enhancement, and perpetuation of historic architectural and cultural resources which represent and / or reflect distinctive and important aspects of human habitation and activity in Las Cruces, southern New Mexico, and the Mesilla Valley;

The evaluation, recognition, preservation, protection, enhancement, restoration, and promotion of architectural cultural properties, cultural resources, and cultural landscapes significant to the city's, region's, state's, and nation's architectural, archaeological, cultural, social, economic, ethnic, and political history, and to develop, enhance, and protect appropriate settings for such places;

The enhancement and fostering of civic pride in the aesthetics and history of the built environment and in the accomplishments of earlier inhabitants in the Mesilla Valley;

The integration of historic preservation planning into the City's comprehensive plan;

The stabilization and improvement of property values as a positive economic development objective that recognizes and protects the rights of owners of historic properties and owners of properties adjacent to cultural properties and historic districts;

The strengthening of the City's economy through heritage tourism and real estate for the benefit of residents and tourists through promotion and use of historic buildings and cultural sites; and

The avoidance of the irreversible and irreplaceable loss through demolition or neglect of buildings and sites that convey a sense of the City's heritage, cultural diversity, and history by encouraging the conservation, through rehabilitation and reuse, of historically, architecturally, or archaeologically significant properties.

Section 40-03: Authority and Jurisdiction

This ordinance is created pursuant to the authority set forth in Chapter 3, Ordinance 22, New Mexico State Statutes Annotated (NMSA) 1978, the Historic District and Cultural property Act.

Section 40-04: Administration of the Historic Preservation Program

The historic preservation program of the City of Las Cruces shall be administered under the direction of the city manager's office, including appropriate staffing and administrative support of the program subject to budget appropriations approved and authorized by the city council.

Section 40-05: Definitions

For the purpose of this ordinance, the following definitions shall apply and are applicable to the definitions provided in **Ordinance III, Definitions, of the City of Las Cruces 2001 Zoning Code, as amended in January 2007, as well as the definitions included in the City's architectural design guidelines for historic districts and structures.**

Accessory Building: A detached building or structure which may include, but is not limited to, a casita, a garage, a storage building, or a carriage house.

Addition: Any act or process that changes one or more of the exterior architectural features of a building or structure by increasing the size or capacity of a structure through new construction or by joining one or more existing structures.

Administrative Review: The process by which the Historic Preservation Specialist or designee administratively approves, approves with modifications, or denies submitted applications in accordance with the Administrative Review Design Guidelines.

Administrative Review Design Guidelines: The written standards adopted by the City Council which are intended to provide the Historic Preservation Specialist accepted treatment practices for minor scopes of work and for non-structural alterations to an existing building, structure, object, or site.

Adverse Effects: Any act through physical destruction or damage, or alterations inconsistent with appropriate review standards and design guidelines, that may alter, directly or indirectly, or diminish the architectural and/or structural integrity of the property's location, design, setting, materials, workmanship, or association.

Alteration: Any change to the exterior of a building, site, object, or structure including, but not limited to, the construction, reconstruction, or removal of any architectural or structural elements; or changes to an interior space of a publicly-accessible building designated as a cultural property; or any changes to landscape features.

Applicant: The Owner of Record of a nominated property and/or its agent or representative; or a contract purchaser of a nominated property; or another interested party who is a resident of the City of Las Cruces; or a group of residents; or an association whose membership includes residents of the City of Las Cruces; or the Historic Preservation Commission seeking authority from the City to undertake a course of action related to a specific property or parcel.

Architectural Integrity: A determination of the extent that a historic property retains its historic design character to convey its significance.

Area: A specific and clearly defined geographical portion of the City of Las Cruces.

Area of Potential Effect (APE): The geographical area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of cultural properties, if such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Building Permit: A written record issued by the City of Las Cruces Building Official authorizing the construction of an entirely new building or structure; or authorizing improvements or alterations to an existing building or structure; or authorizing the demolition, in whole or in part, of an existing building or structure.

Certificate of Appropriateness: A written record issued by the Historic Preservation Commission, and / or the Historic Preservation Specialist on behalf of the Commission, authorizing plans for alterations, construction, removal, or demolition of a building, structure, object, or site located within a historic district or designated as a cultural property.

Certificate of Appropriateness Application: A written form, applicable for individually-designated cultural properties and properties within historic districts, provided upon request to an applicant by the Historic Preservation Specialist or designee which details proposed scopes of work, information about the subject property, and the types and specifications of replacement or repair materials.

Certificate of Economic Hardship: A written record of relief issued by the Historic Preservation Commission, following the denial of a Certificate of Appropriateness, that authorizes plans for additions, alterations, construction, removal, continuation of a non-compliant condition, or demolition in whole or part of a building, structure, object, or site that is located within a historic district or designated as a cultural property when the property owner is unable to either fund the required work, put the property to a reasonably beneficial use, and/or cannot obtain a reasonable economic return thereon without completion of the requested course of action.

Certified Local Government (CLG): A unit of local government (town, city, or county) that has met the requirements of, and has applied for, certification to become a fully participating partner in national and state historic preservation programs.

Character-Defining Architectural Element: A distinctive architectural feature, quality, or combination thereof, that distinguishes one structure from another, or which is unique to an individual structure, or is characteristic of a particular style, period, or architect.

Commissioners: The members of the City of Las Cruces Historic Preservation Commission, appointed by the Mayor and City Councillors, who are assigned the duty to review and render decisions on Certificate of Appropriateness applications placed before the Commission.

Compatibility: The positive relationship of alterations to existing buildings and designs for new construction to their environs, measured by consistent application of accepted design guidelines and standards that define the individual visual character, function and use, and architectural features of a specific geographic area.

Comprehensive Plan: The City-adopted, policy document that serves as a long-range planning vision to guide municipal decision-makers for capital improvements as a tool for managing changes that may affect the physical development and environment of Las Cruces.

Construction: Any act or process which requires a building permit.

Contributing Property: A building, object, site, or structure in a historic district that enhances the district's historical and / or architectural significance through location, design, setting, materials, workmanship, and / or association.

Cultural Landscape: A geographic area, including both cultural and natural resources, associated with a historic event, activity, or person, or exhibiting other cultural or aesthetic values. The four general types of cultural landscapes are: prehistoric / historic sites, historic designed landscapes, historic vernacular landscapes, and ethnographic landscapes.

Cultural Properties Review Committee (CPRC): The committee appointed by the Governor of the State of New Mexico and established by the Cultural Properties Act of 1978 as amended through 2005 to serve as a professional policy-making and advisory board for historic preservation in New Mexico.

Cultural Property: Any building, structure, object, district, or site of particular historic or aesthetic significance to the city, the state, or the nation where cultural, political, spiritual, economic, educational, archaeological, social, or artistic history of the community, state, or nation is reflected or exemplified.

Cultural Property Designation Report: A report prepared by the Historic Preservation Specialist which shall provide the history of a property, a map of its location, and historic and current views of the property, and shall include a determination of eligibility based upon the application of the National Register Criteria for Evaluation to present before the City Council.

Cultural Resource: See Cultural Property.

Demolition: Any act or process which requires a building permit for the purpose of removing or destroying, in whole or in part, any improvement to a site, per the building code as adopted and used by the City of Las Cruces.

Demolition by Neglect: Any voluntary or involuntary act or process which results in a failure to maintain a building, structure, object, or site in sound condition when such act or process, over a period of time, results in the visible deterioration or removal, in whole or in part, of any man-made component on the site.

Demolition Review Form: A form provided by the Historic Preservation Specialist to an applicant seeking to secure a building permit to demolish all or part of a cultural property or a property within a historic district.

Design Guidelines: The written standards adopted by the City which are intended to provide technical advice and guidance to the Historic Preservation Commission, the Historic Preservation Specialist, and the applicant to evaluate Certificate of Appropriateness applications to preserve the historic, cultural, and / or architectural character of an area or of a building, object, site, or structure.

Designated Property: A property that has been recognized as historically significant at the local, state, and/or national level by being entered into the Register of Cultural Properties, the State Register of Cultural Properties, and/or the National Register of Historic Places.

Effect: Any change in the quality of the historical, architectural, archaeological, or cultural significance of a building, object, site, or structure, or in the characteristics that qualify such resources as historically important.

Exterior Appearance: The visual character of all outside surfaces of a structure, including the kind and texture of materials, signs, light fixtures, steps, or appurtenant elements.

Exterior Features: Architectural or structural elements that define the architectural style and general design patterns of the exterior of a building or structure, including the type and texture of building materials and the type, style, and general arrangement of all windows, doors, ornamental features, light fixtures, signs, fences, walls, and other elements, as well as other natural features such as vegetation, trees, and shrubbery.

Finding of Fact: The conclusions found to be true as determined by the Historic Preservation Commission from an examination of the underlying evidence and testimony of a case under consideration in accordance with established review criteria.

Good Repair: A condition which not only meets minimum standards of health and safety, but which also guarantees the continued aesthetic integrity, structural soundness, and usefulness of a structure.

Historic Character: Those architectural forms, materials, elements, features, construction methods or craftsmanship, spatial arrangements, and architectural style that, when combined, result in a distinctive setting, feeling, building, or area.

Historic Context: Summary information about the period, local setting and / or surroundings, circumstances, associations, and events that created, influenced, or resulted in the development of a specific property or group of properties, collected to assist in the development of a full understanding and assessment of the property.

Historic Cultural Properties Inventory Form (HCPI): The form provided by the Historic Preservation Specialist upon request to an applicant interested in nominating a property or properties **within a potential district** for inclusion in the local Register of Cultural Properties in which baseline information is compiled to determine potential nomination eligibility.

Historic District: An area designated under local, state, or federal authority that contains within definable geographic boundaries one or more properties zoned with a Historic Preservation Overlay, including accessory buildings, fences, and other appurtenances, as well as vegetation and landscape features, having historical, cultural, and archaeological significance, and which may contain an assortment of properties classified as significant, contributing, non-contributing, and intrusive.

Historic District Designation Report: A report prepared by the Historic Preservation Specialist which shall provide the history of the properties within the boundaries of the proposed district, a map showing their locations, historic and contemporary views of the properties, and which includes a determination based upon the application of the National Register Criteria for Evaluation **to present before the City Council.**

Historic Integrity: **A determination of the extent that a site, structure, object, building, or area retains its defining archaeological, historic, and / or cultural attributes associated with one or more of the National Register Criteria for Evaluation.**

Historic Interior: **An architecturally or historically significant interior space which remains substantially intact in terms of original configuration; original volume; and / or original architectural ornamentation and decoration, which exhibits surviving original historical finishes or has the potential for accurate restoration of such finishes; and which is open, to be used by, or may be used by the public.**

Historic Cultural property: See Cultural Property.

Historic Preservation Commission: Hereinafter in the remaining sections of this ordinance referred to as the Commission, the board created by the City Council upon the adoption of this ordinance, and authorized to direct and assist in the preparation and updating of the City of Las Cruces historic preservation plan; to create and review design guidelines for historic districts and cultural properties; to review and render decisions upon Certificate of Appropriateness applications; and to advise the Historic Preservation Specialist in initiating and implementing relevant preservation planning programs.

Historic Preservation Fund: A Federally supported assistance program managed by the National Park Service to assist State, Tribal, and local historic preservation offices with a variety of historic preservation and community projects focused on heritage preservation.

Historic Preservation Fund Grants Manual: A Federal publication describing the framework for the operation of the Historic Preservation Fund grants-in-aid program authorized by the National Historic Preservation Act, as amended.

Historic Preservation Overlay Zone: A zoning layer that protects and preserves individual structures and neighborhoods composed of architecturally and historically significant buildings; this zoning layer shall be in addition to any other zoning layer in place, and may be applied to buildings, structures, objects, sites, and districts.

Historic Preservation Plan: A component of a community's comprehensive plan that includes preservation planning practices and accounts for historic building inventory and cultural resources in the long-range land-use management of a community.

Historic Preservation Program: The City's policy initiative under the direction of the City Council to encourage historic preservation through education, advocacy, outreach, and incentives, and to oversee the application and enforcement process of designated cultural properties.

Historic Preservation Specialist: The Community Development Department staff person for the City of Las Cruces authorized to support the City-wide historic preservation program; administer the historic preservation ordinance; oversee and administer the permitting of proposed improvements and alterations to designated cultural properties and properties within historic districts; and serve as the liaison to the Historic Preservation Commission.

Historic Property: See Cultural Property.

Infill Development: The utilization of or the construction upon vacant or underused parcels of land within historic districts or adjacent to individual cultural properties whereby new construction or any alterations to the site are undertaken in accordance to design guidelines to ensure compatibility with neighboring structures which regard to height, setbacks, landscaping, aesthetics, mass, and materials.

Intrusion: A building, object, site, or structure which detracts from a district's historical significance because of its incompatibility with the district's sense of time, place, and historical development; or its incompatibility of scale, materials, or architectural design whose integrity has been irretrievably lost; or whose physical deterioration or damage renders it infeasible to rehabilitate.

Landscape Feature: Character-defining elements that are associated with the architectural or cultural significance of a site or property, including, but not limited to, naturally-occurring topographical forms, intentionally-designed lawns, hedges, walkways, driveways, fences, walls, arbors, pergolas, trellises, terraces, water features, topography, lighting standards, and furnishings.

National Historic Preservation Act (NHPA): The Federal statute, known as Public Law 102-575 as amended, approved on October 15, 1966, “to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes.”

National Register Criteria for Evaluation: The criteria listed in the *Code of Federal Regulations, Title 36, Part 60* (36 CFR 60) used to evaluate districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and: A) that are associated with events that have made a significant contribution to the broad patterns of American history; or B) that are associated with the lives of persons significant in American history; or C) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or D) that have yielded, or may be likely to yield, information important in prehistory or history.

National Register of Historic Places: The official list of the nation’s places worthy of preservation; established under the National Historic Preservation Act of 1966, the register is administered by the National Park Service under the auspices of the Department of the Interior.

New Mexico Historic Preservation Division (NMHPD): A division within the Department of Cultural Affairs in the State of New Mexico authorized to identify and protect New Mexico’s cultural resources, including its archaeological sites, architectural and engineering achievements, cultural landscapes, and diverse heritage.

New Mexico Historic Preservation Loan Fund: A state supported program offered by the Historic Preservation Division, Department of Cultural Affairs, to provide owners of registered cultural properties in New Mexico with low-cost financial assistance in the restoration, rehabilitation, and repair of properties listed in the State Register of Cultural Properties or National Register of Historic Places.

Non-Contributing Property: A building, object, site, or structure in a historic district that does not possess individual architectural, historic, or structural significance or integrity **within the context of the historic district**.

Object: A material thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

Ordinary Repairs and Maintenance: Any work done on or replacement of any part of a building or structure for which a permit issued by a building official is not required. The purpose and effect of such work or replacement is generally to correct any deterioration or decay of or damage to such building or structure or any part thereof and to restore the same, as nearly as may be practicable, to its condition prior to the occurrence of such deterioration, decay, or damage.

Owner Consent: The act or result of reaching consensus and agreement, through reason and deliberation, by the owner(s) of real estate when cultural property designation is proposed at the suggestion of another party.

Owner Objection (Historic District Designation): The right of an owner (or owners) of record to object to the inclusion of its real property within a proposed historic district, potentially resulting in a modification to the district's proposed boundaries.

Owner Objection (Cultural Property Designation): The right of all owners of record to object to a proposed cultural property designation of its buildings, structures, and / or objects, and the parcel of land to which those improvements are **built upon**.

Owner of Record: The person, corporation, or other legal entity identified as the property owner in the official records of the **Doña Ana County Assessor's Office**.

Period of Significance: The finite span of time during which important events and activities associated with a specific cultural property or group of cultural properties occurred.

Permit Review Table: A chart, as periodically revised by action of the Historic Preservation Commission, that **identifies proposed scopes of work and** defines which ~~building permit~~ **Certificate of Appropriateness** applications may be reviewed by the Historic Preservation Specialist and which shall be reviewed by the Historic Preservation Commission.

Preservation: The act or process of applying measures necessary to sustain the existing form, integrity, and materials of a cultural property, **including any buildings, objects, structures, and landscape features on the site**.

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

Register of Cultural Properties: The list maintained by the Historic Preservation Specialist enumerating the physical addresses or locations of designated historically, architecturally, archaeologically, and culturally significant local buildings, structures, objects, and sites within the City's municipal boundaries.

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

Relocation: Any repositioning of a building, structure, or object on its existing site, or the act of moving a building, structure, or object to another site.

Remodel: The process of altering existing structural components or architectural features and / or finishes of a resource or property; to reconfigure an existing resource or property in such a manner as to remove, cover, replace, or rearrange elements of defining character.

Repair: Any minor construction undertaken to remedy an existing condition that has deteriorated but, otherwise, is not defined as construction, alteration, demolition, remodeling, removal, or relocation.

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

Shall: Refers to actions that are required to be completed.

Should: Refers to actions that are recommended, but not mandatory.

Significant Cultural Property: Buildings, objects, sites, or structures possessing such historical, cultural, architectural, or archaeological importance whose demolition, destruction, or otherwise loss or adverse damage would constitute an irreplaceable loss to a community.

Site: The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, and / or archeological value regardless of the value of any existing structure.

State Historic Preservation Officer (SHPO): The director of the New Mexico Historic Preservation Division, appointed by the Governor, who manages the State's Historic Preservation Plan and coordinates historic preservation activities at all levels of government in the State and with individuals, private organizations, and traditional communities.

State Register of Cultural Properties: The official list of historic properties worthy of designation in New Mexico; authorized in 1969 and administered by the New Mexico Historic Preservation Division, the register is periodically updated by the Cultural Properties Review Committee.

Stop Work Order: A written order issued by a City building official to a property owner or the person performing the work to immediately cease all activity on any building, structure, object, or site when it has been or is being implemented contrary to the provisions of this ordinance, contrary to the conditions of an approved Certificate of Appropriateness, or in an unsafe and dangerous manner.

Structure: A functional construction that differs from a building in that it is made usually for purposes other than creating human shelter.

Structural Integrity: An unimpaired condition relating to the functional stability of major building components in relationship to their original or altered function; a measure of the quality of construction and the ability of the structure to function as designed or **intended**; and the quality or state of being complete or uncompromised.

Survey: A systematic gathering of information related to the architectural, historic, scenic, and / or archaeological significance of buildings, structures, objects, and / or landscape features within a specified geographic area through an assessment of field and archival documentation for the purpose of identifying properties that may be designated as cultural properties or historic districts.

Survey (Reconnaissance): An examination of all or part of an area accomplished in sufficient detail to make generalizations about the types and distributions of historic properties that may be present.

Survey (Intensive): A systematic, detailed examination of an area designed to gather information about historic properties sufficient to evaluate them in accordance to criteria of significance within specific historic contexts.

Traditional Cultural Property: A cultural property where associated cultural practices or beliefs of a living community occur that are both rooted in a community's history and important in maintaining the continuing identity of the community.

***Unreasonable Economic Hardship*: An economic burden imposed upon an owner of record which is unduly excessive and prevents a realization of a reasonable rate of return upon the value of a property.**

***Vista*: A view through or along a right-of-way opening, including those along natural features, such as rivers, forests, plains, and mountains, which as a view corridor, frames, highlights, or accentuates a prominent building, object, site, structure, scene, or panorama, or patterns or rhythms of buildings, objects, sites, or structures, including views of areas at a distance, such as remote view of the built environment or natural landscapes.**

Article II: Historic Preservation Commission

Section 40-06: Historic Preservation Commission

This ordinance creates and establishes the Historic Preservation Commission, hereinafter referred to as "the Commission."

The Commission shall consist of seven members appointed by the mayor and city councillors. Each Commissioner shall possess a professional background from among several relevant fields, including architecture, history, engineering, law, architectural history, historic preservation,

landscape architecture, archaeology, land-use planning, or real estate. Absent any of these professional backgrounds, a potential Commissioner may be eligible to serve due to residency within a historic district or as a member of a history-based organization.

The Commission shall schedule and hold a public meeting once per month. At said public meetings, the Commission shall exercise its duties to review and consider the effects on cultural properties significant on the local, State, and / or National level; grant or deny applications for Certificates of Appropriateness; request information from the Historic Preservation Specialist with regard to on-going inventories or research, preservation planning practices, and the overall status of historic preservation efforts within the City.

Section 40-07: Duties and Responsibilities of the Historic Preservation Commission

The Commission shall exercise, but not be exclusively limited by, the following duties and responsibilities:

1. Advise the Historic Preservation Specialist to conduct surveys within the municipal limits of the City of Las Cruces to identify properties, neighborhoods, archaeological sites, and buildings for evaluation and potential designation as cultural resources.
2. Recommend to the Mayor and City Council properties to be designated and entered in the Register of Cultural Properties.
3. Review and render decisions on Certificates of Appropriateness during open, public hearings, in accordance to the New Mexico Open Meetings Act.
4. Recommend to the Mayor and City Council the adoption of design guidelines to ensure proper restoration and rehabilitation practices for historic building inventory; to ensure architectural and aesthetic compatibility within historic districts and in proximity to cultural properties; and to guide infill development to achieve comparable aesthetics and massing with existing, neighboring buildings, objects, structures, and sites.
5. Assist in the dissemination of information to the public concerning historic preservation and seek input from groups, individuals, and organizations on these matters.
6. Consider methods for encouraging and incentivizing historic preservation efforts and provide recommendations to these ends to the Mayor and City Council.
7. Advise the Mayor and City Council on any proposed public alterations which may impact the exterior appearance of cultural properties and historic districts to avoid any potential adverse effects.
8. Consider alternative options and actions when reviewing applications seeking the demolition in part or in whole of designated cultural properties.
9. Recommend to the Mayor and City Council integration of the goals and objectives of the historic preservation program into City's comprehensive plan, into the citywide historic preservation plan, and other related municipal, state, or federal planning efforts.
10. Advise the Mayor and City Council on the relative merits of proposals involving the use of public funds to restore, preserve, and protect historic properties, and to secure state,

federal, and / or other grants or assistance in support of such projects, and to monitor and comment on such projects during their duration.

11. Seek any benefits which may be granted under the National Historic Preservation Act, as amended, or any other state or federal legislation, including, but not limited to, the benefits which are received from communities under the Certified Local Government program with regard to training, grant funding, and technical assistance.
12. Prepare an annual report with the assistance of the Historic Preservation Specialist to be presented to the Mayor and City Council and the State Historic Preservation Officer of the Commission's activities and the effects of the historic preservation program on the economic development and general welfare of the city and its residents.

Section 40-08: Surveys and Inventories

The Commission shall advise the City in ongoing surveys and inventories to identify neighborhoods, areas, sites, buildings, structures, and objects in the City of Las Cruces that possess historic, community, architectural, aesthetic, cultural, archaeological, or traditional importance, interest, or value related to the development of the community.

As part of the survey, the Commission shall recommend to the Historic Preservation Specialist to review and evaluate prior surveys and studies by any government entity or private organization, and recommend the compilation of appropriate research findings, including descriptions, newspapers accounts, land-use records, maps, deeds, photographs, and / or other useful sources.

The Commission shall assist the City's efforts in identifying potential cultural properties and historic districts, and apply procedures to nominate those potential cultural properties and historic districts that are at least fifty (50) years of age based on the following criteria:

- The potential cultural properties are situated in a single, identifiable neighborhood or distinct geographical area of the community, or;
- The potential cultural properties are associated with a particular person, event, and / or era of the community's past, or;
- The potential cultural properties are of a particular architectural style, school, or building technique; or of a particular architect, engineer, builder, designer, craftsman, or artisan, or;
- Such other criteria as may be adopted by the Commission to assure systematic surveys and inventories of potential cultural properties and historic districts within the municipal boundaries.

The Commission shall direct the Historic Preservation Specialist to apply eligibility criteria to potential cultural properties and historic districts and seek recommendations from the Historic Preservation Specialist to nominate such properties as procedurally outlined in this ordinance for inclusion in the Register of Cultural Properties, the State Register of Cultural Properties, or the

National Register of Historic Places. Nominations of local properties that may also be eligible on the State and / or National levels shall be reviewed in conjunction with the New Mexico Cultural Properties Review Committee.

The Commission shall conduct surveys and inventories in accordance with the guidelines for surveys from the SHPO / NMHPD and shall be recorded in a compatible format that is complementary to the New Mexico Cultural Resources Information System (NMCRIS) and in a format which is compatible with and easily integrated into the statewide comprehensive historic preservation planning processes.

Each property designated by local ordinance as a cultural property or within a historic district shall have a completed survey and inventory form. Designated archaeological sites shall be documented with a Laboratory of Anthropology (LA) Site Records form, while buildings, sites, objects, and structures shall prepare a Historic Cultural Property Inventory (HCPI) form.

Surveys shall be updated periodically to reflect changes, alternations, and demolitions. Surveys and inventory materials shall be maintained securely and be accessible to the public except when confidentiality of site location is required.

Section 40-09: Cultural Property Designation

A. Standards for the Designation of a Cultural Property or Cultural Properties

Upon the successful evaluation of eligibility criteria on which to base a recommendation for designation, the Commission shall recommend to the City Council a justification for a property's inclusion in the Register of Cultural Properties contingent upon that property meeting all six (6) of the following requirements:

1. Located within the corporate boundaries of the City; and,
2. At least fifty (50) years old, in whole or in part, or else of exceptional significance; and,
3. Possesses integrity of design, materials, workmanship, setting, location, feeling, and association, as defined for listing in the National Register of Historic Places; and,
4. Embodies such other qualities and characteristics as in the judgment of the Commission should be considered for designation as a cultural property; and,
5. Be listed in the National Register of Historic Places, and / or be determined eligible for such listing by the State Historic Preservation Officer; and,
6. Possesses one or more of the following criteria:
 - a) A broad cultural, political, economic, or social association with the historic development of the community, the state, or the nation, and / or;
 - b) Identification with a historic person or with important events in local, state, and / or national history, and / or;

- c) Possesses distinguishing characteristics of an architectural type inherently valuable for the study of a period, style, method of construction, or use of indigenous materials or craftsmanship, and / or;
- d) Possesses authenticity of its period of significance as evidenced by the survival of its characteristics, historic fabric, and architectural elements from that period; and / or
- e) Is a notable work of a master builder, designer, or architect, and / or;
- f) Possesses or may likely yield information important in prehistory or history, and / or;
- g) Possesses other qualities and characteristics that, in the judgment of the commission should be considered for designation as a cultural property.

B. Procedure for the Designation of a Cultural Property

Any nomination application for a proposed cultural property shall be subject to the following review process:

1. *Pre-Application Meeting*: Prior to submitting an application for cultural property designation, an applicant shall meet with the Historic Preservation Specialist or **designee** to review the nomination proposal. The Historic Preservation Specialist shall explain to the applicant the procedure and standards to nominate a property for designation, and include the historic context and any known architectural, cultural, or archaeological significance associated with the property. Additionally, when the applicant is not the owner of record, the Historic Preservation Specialist shall encourage the applicant to contact the owner(s) of record prior to proceeding with the application process to secure the owner(s)'s consent.

2. *Applicant Eligibility*: Nominations for cultural property designation may be made by any property owner(s) of record; a contract purchaser of a nominated property; an individual, a group, or an association; or the Historic Preservation Commission.

3. *Property Eligibility*: Any building, structure, object, or site that meets the criteria outlined in Section 40-09 A is eligible for consideration to be nominated for designation.

4. *Owner Consent*: In every case, the owner(s) of record must provide written approval of the application. If the applicant is not the owner of record, owner consent must be received before moving forward with the cultural property designation nomination process.

5. *Application*: Upon the applicant's request, the Historic Preservation Specialist shall provide a Historic Cultural Property Inventory Form (HCPI). The applicant shall complete the form, which shall include, among other information, a legal description of the building, structure, object, or site. At the applicant's request, the Historic Preservation Specialist or designee may assist with the completion of the designation form.

6. *Filing*: Upon the applicant's delivery of the completed Historic Cultural Property Inventory Form (HCPI), the Historic Preservation Specialist shall review the application within thirty (30)

business days of its filing, and notify the applicant in writing of any deficiencies that must be corrected and / or clarified prior to the scheduling of a public hearing. Failure of the applicant to provide amended information within forty-five (45) business days of the notice of deficiencies will result in an automatic withdrawal of the application.

7. *Notice:* Within five (5) business days of the filing of an application, whether or not deemed complete, the Historic Preservation Specialist shall notify in writing the owner(s) of record of the proposed designation nomination, except in the cases when the applicant is the owner of record, or the owner of record previously provided consent in writing to the Historic Preservation Specialist.

8. *Schedule a Public Hearing:* Upon receipt of a completed Historic Cultural Property Inventory Form (HCPI), the Historic Preservation Specialist shall schedule a public hearing for an upcoming regularly-scheduled meeting of the Historic Preservation Commission in accordance to the City's notification requirements for public hearings.

9. *Notice of Public Hearing:* Notice of the public hearing shall be published on the City of Las Cruces webpage and in a newspaper of general circulation within the City not less than fifteen (15) calendar days nor more than thirty (30) calendar days in advance of the date of the hearing. The notice shall identify the applicant, property owner(s) of record, legal description of the property, and common address of the property, and the criteria for which the property is nominated.

10. *Mailing:* Not less than fifteen (15) calendar days prior to the public hearing, the Historic Preservation Specialist shall mail a written notice to the owner(s) of record of the subject property and the owner(s) of record of all properties within [250 feet, 300 feet, 500 feet?]. Written notice shall include the date, time, and location of the scheduled public hearing and information regarding access to a digital or written copy of the completed application of the Historic Cultural Property Inventory Form (HCPI).

11. *Public Hearing Sign:* The Historic Preservation Specialist shall direct the placement of at least one sign upon the public right-of-way adjacent to the property that is the subject of the public hearing at least fifteen (15) calendar days in advance of the date of the public hearing.

12. *Public Hearing:* The Commission shall conduct the public hearing and a record of such proceedings shall be preserved in such a manner as prescribed by the City of Las Cruces.

13. *Withdrawal of Application:* An applicant may at any time during the nomination process withdraw an application for cultural property designation by providing notice, in writing, to the Historic Preservation Specialist.

14. *Historic Preservation Commission Action:* At the public hearing, the Commission shall take statements presented by the owner(s) of record of the subject property, as well as statements,

either oral or written, from any interested parties concerning the eligibility and / or effect of the potential designation on the proposed cultural property.

The Commission may invite and consider testimony to evaluate information provided either during the nomination process or during the public hearing. A public hearing may be continued at a later date in the event that the Commission determines that additional information, unavailable at the public hearing, is warranted and necessary for the purpose of making a finding of fact or to provide time to evaluate fully new evidence presented at the public hearing.

If the Commission continues a public hearing to await additional information, the application shall be scheduled for a subsequent regularly-scheduled meeting of the Historic Preservation Commission. The Commission shall render a decision to either approve or deny the application by a simple majority. Nominations deemed for approval shall be forwarded to City Council, whereas denied nominations may be appealed in accordance to Section 40-18 B of this ordinance.

15. *City Council Action:* Upon considering the Commission’s finding of fact regarding a nomination, the City Council shall grant or deny the Cultural Property Designation Report and application for cultural property designation with a simple majority or greater vote ~~in favor of the designation.~~

Upon designation as a cultural property by the City Council, a notice of the designation will be sent by the City Clerk to the applicant and /or owner(s) of record of the building, structure, object, or site, and a copy of the resolution effectuating the designation shall be recorded with the Doña Ana County Recorder of Deeds. A copy of the recorded resolution shall be returned to the Community Development Department within thirty (30) calendar days of City Council approval of a cultural property designation. When designated as a cultural property, the property shall be included in the City of Las Cruces Register of Cultural Properties and shall be identified on the City’s Geographic Information Systems (GIS) mapping layers with the appropriate shorthand designation as a cultural property.

16. *Suspension of Work:* During the period beginning with the filing of an application for cultural property designation and ending with the final action of the City Council granting or denying said application, no exterior architectural feature of any building, structure, object, or site that is the subject of an application for cultural property designation may undergo alteration, construction, demolition, or removal if such alteration, construction, demolition, or removal would be subject to a building permit issued after the filing of a cultural property application. Nothing in this subsection shall operate to bar ordinary repair and maintenance or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition.

17. *Re-application following Denial or Withdrawal of an Application:* In the event that an application for cultural property designation is denied by the Commission and / or City Council or the application is withdrawn by the applicant, no subsequent application for cultural property

designation of the same building, structure, object, or site shall be made within twelve (12) months of the date of the denial. If the applicant withdraws the application prior to review by the Commission, a subsequent application may be submitted at any time.

18. *Amendments*: Any property owner of record; a contract purchaser of a nominated property; individual, group, or association; or the Historic Preservation Commission may request that the designation of a cultural property be amended by the same procedures and according to the same criteria set forth herein for designation. An amended application relating to the same property may be entertained by the Commission at any time following City Council action designating any building, structure, object, or site as a cultural property. Minor, material amendments, excluding boundary amendments, may be completed administratively without a public hearing or public meeting.

19. *Rescinding of Designation*: Any property owner of record; a contract purchaser of a nominated property; individual, group, or association; or the Historic Preservation Commission, on its own initiative and with prior consent of the City Council, may request that the designation of a cultural property be rescinded by the same procedures and according to the same criteria set forth herein for designation. The City Council may rescind cultural property designation of any designated property provided that the vote to rescind the designation is not less than a two-thirds (2/3) vote of the councillors holding office.

20. *Appeals*: Any property owner of record; a contract purchaser of a nominated property; individual, group, or association; or the Historic Preservation Commission may appeal the action taken by the City Council to grant, deny, or rescind cultural property designation, provided that the appeal is filed to the City within ten (10) calendar days of the City Council decision.

Section 40-10: Historic District Designation

A. Standards for Designation of Historic Districts

The Historic Preservation Commission shall not recommend, nor the City Council grant, a designation of a historic district unless each body makes findings based upon the evidence presented to it in each specific case, and that the proposed historic district meets all of the following seven (7) requirements:

1. Located within the corporate boundaries of the City; and,
2. Includes one or more cultural properties along with such other buildings, structures, objects, or sites which, while not of such historic significance to be designated as individual cultural properties, nevertheless, contribute to the overall visual characteristics which have been identified as significant within the proposed historic district; and,
3. At least fifty (50) years old, in whole or in part, **or else of exceptional significance**; and,
4. Possesses integrity of design, materials, workmanship, setting, location, feeling, and association, as defined for listing in the National Register of Historic Places; and,

5. Establishes a sense of time and place; and,
6. Be listed in the National Register for Historic Places, and / or be determined eligible for such listing by the State Historic Preservation Officer; and,
7. Includes a significant number of buildings, structures, objects, or sites potentially eligible cultural properties that possess one or more of the following criteria:
 - a) A broad cultural, political, economic, or social association with the historic development of the community, the state, or the nation, and / or;
 - b) Identification with a historic person or persons or with important events in local, state, and / or national history, and / or;
 - c) Possess distinguishing characteristics of an architectural type inherently valuable for the study of a period, style, method of construction, or use of local materials or craftsmanship, and / or;
 - d) Possess authenticity of its period of significance as evidenced by the survival of its characteristics, historic fabric, and architectural elements from that period; and / or
 - e) Represent a notable work of a master builder, designer, or architect, and / or;
 - f) Possess or may likely yield information important in prehistory or history, and / or;
 - g) Possess architectural or land-use characteristics that are repeated throughout the area in a manner which distinguishes the proposed historic district from the rest of the city, and / or;
 - h) An area with other qualities and characteristics that, in the judgment of the Commission, should be considered for designation as a historic district.

B. Procedure for the Designation of a Historic District

Any nomination application for a proposed historic district shall be subject to the following review process:

1. *Pre-Application Meeting*: Prior to submitting an application for historic district designation, an applicant shall meet with the Historic Preservation Specialist or designee to review the nomination proposal. The Historic Preservation Specialist shall explain to the applicant the procedure and standards to nominate an area for designation, and include any known architectural, cultural, or archaeological significance associated with the area. Additionally, the Historic Preservation Specialist shall instruct the applicant to secure support for the proposed historic district nomination in the form of petition signatures of at least twenty percent (20%) of the owners of record within the boundaries of the proposed historic district.

2. *Applicant Eligibility*: Nominations for historic district designation may be made by any property owner(s) of record; a contract purchaser of a nominated property; an individual, group, or association; or the Historic Preservation Commission.

3. *Owner Consent*: Consent must be attained from at least twenty (20) percent of the owners of record within the boundaries of the proposed historic district, and this support among property owners shall be achieved in the form of gathering signatures on a petition.

4. *Application*: Upon the applicant's request, the Historic Preservation Specialist shall provide a Historic Cultural Property Inventory Form (HCPI), which shall be completed and contain all of the following information:

- a) A map delineating the boundaries of the area proposed for designation;
- b) A written statement setting forth the character of the area and justification for designation of the proposed area;
- c) Drawings or photographs of significant buildings, structures, sites, or objects within the boundaries of the proposed area;
- d) Descriptions of the historic condition and use, existing condition and use, and approximated or exact age of each property within the boundaries of the proposed district; and
- e) Such other information as prescribed by the Historic Preservation Commission.

5. *Filing*: Upon the applicant's delivery of the completed Historic Cultural Property Inventory Form (HCPI), the Historic Preservation Specialist shall review the application within thirty (30) business days of its filing, and notify the applicant in writing of any deficiencies that must be corrected and / or clarified prior to the scheduling of a public hearing. Failure of the applicant to provide amended information within forty-five (45) business days of the notice of deficiencies will result in an automatic withdrawal of the application.

6. *Schedule a Public Hearing*: Upon receipt of a completed Historic Cultural Property Inventory Form (HCPI), the Historic Preservation Specialist shall schedule a public hearing for an upcoming regularly-scheduled meeting of the Historic Preservation Commission **in accordance to the City's notification requirements for public hearings.**

7. *Notice*: Within fifteen (15) business days prior to the public hearing, the Historic Preservation Specialist shall notify in writing the owners of record within the boundaries of the proposed designation nomination. Said notification shall identify the boundaries of the proposed district and provide a date, time, and location for the public hearing and information regarding access to a digital or written copy of the completed application of the Historic Cultural Property Inventory Form (HCPI).

8. *Notice of Public Hearing*: Notice of the public hearing shall be published on the City of Las Cruces webpage and in a newspaper of general circulation within the City not less than fifteen (15) calendar days nor more than thirty (30) calendar days in advance of the date of the hearing. The notice shall identify ~~the applicant, property owner(s) of record,~~ the legal description of the ~~property~~ **proposed boundaries, the name of the subdivision(s) (if applicable), and a general description of the area bounded by the proposed historic district** ~~common address of the property,~~ **and the criteria for which the property is nominated.**

9. *Public Hearing Sign*: The Historic Preservation Specialist shall direct the placement of at least four (4) signs upon the public right-of-way adjacent to **the boundaries of the area** that is the subject of the public hearing at least ten (10) calendar days in advance of the date of the public hearing.

10. *Public Hearing*: The Commission shall conduct the public hearing and a record of such proceedings shall be preserved in such a manner as prescribed by the City of Las Cruces. The hearing's purpose shall be to provide information regarding the details and the potential land-use impacts of the proposed historic district. Owners of record shall be informed of the right to object to the proposed historic district. Opportunity for public comments regarding the merits and potential impacts of the proposed historic district will be provided at the public hearing.

11. *Withdrawal of Application*: An applicant may at any time during the nomination process withdraw an application for historic district designation by providing notice, in writing, to the Historic Preservation Specialist.

12. *Owner Objection*: In the event that owners of record ~~of twenty percent (20%)~~ of the individual real properties within the proposed historic district object to the designation of the proposed historic district, ~~the City Council may designate the proposed historic district only by an approval vote of not less than two thirds (2/3) vote of the City Councillors holding office~~ those objections shall be made on forms provided by the Community Development Department; completed forms shall be notarized and filed with the City Clerk at any time but not later than thirty (30) calendar days following the final adjournment of the public hearing.

16. *Historic Preservation Commission Action*: At the public hearing, the Commission shall consider statements presented by the owners of record **of any property within the boundaries of the proposed historic district**, as well as statements, either oral or written, from any interested parties concerning the effect of the proposed designation on the **affected properties**.

The Commission may invite and consider testimony to evaluate information provided either during the historic district nomination process or during the public hearing. A public hearing may be continued at a later date in the event that the Commission determines that additional information, unavailable at the public hearing, is warranted and necessary for the purpose of making a finding of fact or to provide time to evaluate fully new evidence presented at the public hearing.

~~In the case of an application for Historic District for a property nominated, with owner objection, the Commission, by a simple majority vote, may forward a recommendation to grant or deny the application for Cultural Property designation.~~ The Commission shall make written findings of fact and shall assist the Historic Preservation Specialist to submit same in the form of a Historic District Designation Report, together with its recommendation, to the City Council within forty-five (45) calendar days following the close of the public hearing. Said report shall include a map of the proposed district's boundaries, current and historic photographs, histories of the ~~building~~

properties, floor plans and drawings (if available and if applicable), and a determination on the eligibility criteria.

17. *City Council Action*: The City Council, when no owner objection is filed in accordance with this ordinance, shall grant or deny the nomination for historic district designation with not less than a majority vote of the councilors holding office. When an owner of record, or owners of record, properly file objections with the City Clerk in accordance with this ordinance, the City Council may grant the proposed designation upon the condition that demonstrable support of the designation by a simple majority of owners of record within the proposed historic district's boundaries can be presented.

Upon designation as a historic district by the City Council, a notice of the designation will be sent by the City Clerk to the owners of record of the properties within the boundaries of the designated district, and a copy of the resolution effectuating the designation shall be recorded with the Doña Ana County Recorder of Deeds. A copy of the recorded resolution shall be returned to the Community Development Department within sixty (60) calendar days of City Council approval of a historic district designation. When designated as a historic district, the historic district shall be included in the City of Las Cruces Register of Cultural Properties and shall be identified on the City's Geographic Information Systems (GIS) mapping layers with the appropriate shorthand designation as a historic district.

18. *Suspension of Work*: During the period beginning with the filing of an application for historic district designation and ending with the final action of the City Council granting or denying said application, no exterior architectural feature of any building, structure, object, or site that is the subject of an application for historic district designation may undergo alteration, construction, demolition, or removal if such alteration, construction, demolition, or removal would be subject to a building permit issued after the filing of a historic district application. Nothing in this subsection shall operate to bar ordinary repair and maintenance or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition.

19. *Re-application following Denial or Withdrawal of an Application*: In the event that an application for historic district designation is denied by the Commission and / or City Council or the application is withdrawn by the applicant, no subsequent application for historic district designation of the same building, structure, object, improvement, or site shall be made within twelve (12) months of the date of the denial. If the applicant withdraws the application prior to review by the Commission, a subsequent application may be submitted at any time.

20. *Amendments*: Any property owner of record; a contract purchaser of a nominated property; individual, group, or association; or the Historic Preservation Commission, on its own initiative and with prior consent of the City Council, may request that the designation of a historic district be amended by the same procedures and according to the same criteria set forth herein for designation. An amended application relating to the same district may be entertained by the Commission at any time following City Council action designating a historic district. Minor,

material amendments, excluding boundary amendments, may be completed administratively without a public hearing or public meeting.

20. *Rescinding of Designation*: Any property owner of record; a contract purchaser of a nominated property; individual, group, or association; or the Historic Preservation Commission, on its own initiative and with prior consent of the City Council, may request that the designation of a historic district be rescinded by the same procedures and according to the same criteria set forth herein for designation. The City Council may rescind historic district designation of ~~any designated property~~ provided that the vote to rescind the designation is not less than a two-thirds (2/3) vote of the Councillors holding office.

21. *Appeals*: Any property owner of record within the boundaries of the historic district; a contract purchaser of a nominated property; individual, group, or association; or the Historic Preservation Commission may appeal the action taken by the City Council to grant, deny, or rescind historic district designation, provided that the appeal is filed to the City within ten (10) calendar days of the City Council decision.

Section 40-11: Review Standards for Cultural Properties and Historic District

In making recommendations for proper and accepted treatments for the rehabilitation and restoration of historic buildings and older building inventory, the Historic Preservation Commission shall be governed by the following review standards and design principles:

A. Standards for Review of Cultural Properties and Historic District Properties

The review of plans for changes affecting the exterior appearance of designated cultural properties will be based upon the Secretary of the Interior's "Standards for Rehabilitation" as follows, as amended:

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

B. Design Principles for Cultural Properties and Historic District Properties

Any new construction such as primary buildings, secondary, and accessory buildings and additions to historic buildings and structures at a cultural property or at a property within a designated historic district shall conform, subject to the restrictions of the City of Las Cruces Zoning Code, to the following general design principles:

1. Relationship of Building Mass and Space. The relationship between the open space between existing structures and adjoining structures shall be proportionate and compatible to the adjacent neighborhood;
2. Scale of Structure. The scale of any alterations, modifications, or additions, or of any new construction shall be compatible with the existing, surrounding structures;
3. Height. The height of any proposed alteration, addition, or new construction shall be compatible with the existing structure and with neighboring structures;
4. Directional Expression of Principal Façade. Any proposed alteration or new construction shall be compatible with the predominant horizontal or vertical expression of the historic structure and, for wholly new construction, the predominant horizontal or vertical expression along the street block;
5. Proportions of Street-facing Façades. The relationship between the width and height of any historic structure and any proposed modification, alteration, or addition at a street facing façade shall be compatible with one another and the relationship between the width and height of any proposed new structure shall be compatible with nearby structures;
6. Relationship of Windows and Doors. The relationship between and among doors and windows shall be compatible with and in proportion to each other and be compatible with the historic character of such elements;
7. Architectural Details. Architectural details and materials shall be incorporated, as necessary, to relate new construction with historic construction to preserve and enhance the inherent characteristics of the historic property and/or neighboring properties; and
8. Roof Form. The design of any roof shall be compatible with the roof forms and materials of the historic roof of any existing improvement, building, structure, or object.

In addition to the foregoing, the Historic Preservation Commission may apply review standards as further set forth in any policy, preservation plan, or design guidelines adopted by the Commission; the U.S. Secretary of the Interior's Standards for Rehabilitation, as amended; and/or the National Park Service's Guidelines for Rehabilitating Historic Buildings, each as amended from time-to-time.

C. Standards for Requests for Demolition

With regard to applications to demolish a cultural property and any building, structure, object or site located within a historic district, the following matters shall be considered:

1. Its historical, architectural, cultural and aesthetic significance.
2. Its use, its intended use and/or the use for which the building, structure, object or site was originally designed and the feasibility of the continuation of its designed use.
3. Its importance to the City of Las Cruces and the extent to which its historical or architectural value is such that its removal will be detrimental to the historic district and/or to the public interest.
4. The extent to which it is of such unusual or uncommon design, craftsmanship, texture or material that it could not be reproduced or could be reproduced only with great difficulty.
5. The extent to which its retention would be of economic value, attract tourists, educate citizens regarding the city's heritage or make the city a more attractive and desirable place in which to live.
6. The probable impact of its removal upon the ambience and integrity of the historic district.
7. The structural soundness and integrity of the building, structure, object or site and the economic feasibility of its restoration or rehabilitation so as to allow for its reasonable use.
8. The threat to the public health and safety as a result of deterioration or disrepair of the building, structure, object or site.
9. The technological feasibility of structural rehabilitation.
10. The interference with the charitable purposes of any nonprofit or charitable organization if demolition is not permitted.

D. Criteria regarding relocation of historic buildings or structures.

The following factors shall be considered with regard to an application to move to a new location or site any cultural property or any building, structure or object located within a historic district:

1. The impact of the loss of integrity suffered as a result of removal from the original and/or historic location; and, if located within a historic district, the impact of that loss of integrity upon the district as a whole.
2. The relative value to the applicant of the proposed relocation contrasted to the value to the community as a whole in allowing it to remain at its original and/or historic site.
3. The compatibility, nature and character of the areas adjacent to both the present site and the proposed site as they relate to the protection of historic properties and districts.
4. In the event that a proposed new location is in a historic district, the impact on the visual compatibility of adjacent buildings, structures, objects or sites.
5. The likelihood of significant damage to the physical integrity of the building or structure itself.

Section 40-12: Review of Proposed National Register of Historic Places Nominations

Before a property located within the municipal boundaries of the City of Las Cruces may be considered for inclusion in the National Register of Historic Places, the State Historic Preservation Officer (SHPO) or designee in the New Mexico Historic Preservation Division (NMHPD) shall notify the applicable chief local elected official and the Historic Preservation Commission according to the following procedure:

- a. The SHPO / NMHPD shall forward a copy of the completed National Register nomination to the City for all properties located in the City's jurisdiction with thirty (30) calendar days of receipt unless the City initiated the nomination. If the City initiates its own nomination, it shall provide the completed nomination to SHPO / NMHPD within thirty (30) days of completion.
- b. Within sixty (60) days, the Commission shall provide opportunity for public comment by including the National Register nomination on the agenda of the next regularly-scheduled public meeting.
- c. The Commission shall prepare a report regarding the eligibility of the property and whether or not, in its opinion, the property meets the criteria for listing in the National Register of Historic Places.
- d. Within sixty (60) days of notice from the SHPO / NMHPD, the chief local elected official shall transmit the report of the Commission and the elected official's recommendation to the SHPO / NMHPD.
- e. If either or both the Commission and the chief elected official agree that the property should be nominated, the nomination will be scheduled for review by the Cultural Properties Review Committee and make the report and recommendations available to the Secretary of the Interior.

If both the Commission and the chief elected official recommend that a property not be nominated to the National Register of Historic Places:

- a. The SHPO / NMHPD shall take no further action, unless within thirty (30) days of the receipt of such recommendation an appeal is filed with the SHPH / NMHPD.
- b. If such an appeal is filed, the SHPO / NMHPD shall follow the procedures for making and submitting a nomination.
- c. Any report and recommendations made that the property should not be nominated shall be submitted to the Secretary of the Interior.

Article III: Plan Review, Certificates of Appropriateness, and Economic Hardship

Section 40-13: Plan Review of Cultural Properties and Historic District Properties

~~Construction~~ Plan Review shall be completed for any new construction, addition, remodeling, rehabilitation, renovation, or restoration, **or proposed demolition** of the exterior of any building, structure, object, or site that **meets the following criteria**:

- A. visible from a public right-of-way, excluding public alleyways at the rear of a property; and,
- B. proposed for an individually-designated cultural property or for any property within a designated historic district; and,
- C. requires a building permit as defined by the City of Las Cruces Building Ordinance and/or City Building Official.

~~Construction~~ Plan Review submittal requirements and review standards are based on the property location within the City; the age of the property; and the significance rating of the property as assigned by survey, as amended from time-to-time.

Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of any designated cultural property or property within a historic district. The destruction, alteration, or removal of original distinguishing **qualities elements** or architectural features of a building, structure, object, or site and its environment shall be avoided.

~~Construction~~ Plan Review for compliance with historic preservation standards will be completed in conjunction with code compliance review by the City of Las Cruces Building Official, City of Las Cruces Fire Department, and the City of Las Cruces Public Works Department.

Each Applicant may request one or more pre-application/~~concept review~~ meetings with City staff to review proposed **scopes of** work and compliance with historic preservation design standards, building codes, zoning requirements, and other applicable regulations.

Submittal requirements identified herein satisfy historic compliance review but shall not be construed to reflect the submittal requirements of other review authorities. Applicants should consult with appropriate City staff prior to submitting an application for building permit application review.

A. Procedure to Apply for Building Permits and Certificates of Appropriateness

Any application for a building permit to undertake any work at a designated cultural property or at any property within a designated historic district shall be subject to the following review process:

1. *Application for a Building Permit to Alter an Existing Structure:* Applicants shall provide the following information as part of a building permit application:
 - a) a completed Building Permit Application and a completed Certificate of Appropriateness Application; and,
 - b) a site map or aerial view of the parcel of land on which the subject building, object, structure, site, or improvement is located; and,
 - c) photographs of the current exterior condition of the subject area; and,
 - d) historic images of the subject property, if available; and,
 - e) material samples and/or product specifications for any proposed new or repair materials including, but not limited to, siding materials and installation pattern; masonry color, texture, and bonding pattern; roof shingles; major architectural elements (e.g. doors, windows, columns, decorative architectural features, etc.); and,
 - f) drawings and/or specifications detailing the proposed rehabilitation scope of work including, but not limited to, building elevations, floor plans, and significant architectural details; and,
 - g) other reasonable information that may be requested by City staff.

Information submitted for review by the Historic Preservation Commission must be provided in a format as required by the Historic Preservation Specialist but not less than one (1) printed copy of all requested documentation; one (1) sample of proposed materials; and one (1) electronic or digital copy (only jpeg or gif format unless another format is approved prior to submittal; any electronic submittal must be clearly legible when printed at 11" x 17" format).

2. *Fees:* Fees shall be calculated and collected by the Community Development Department. Applicable deposits and fees shall be set by resolution and collected according to the current fee schedule for building permits.
3. *Filing:* The Certificate of Appropriateness application shall be submitted to the Historic Preservation Specialist. Upon receipt of all required information, the application will be determined to be complete, and the Historic Preservation Specialist shall schedule a hearing before the Historic Preservation Commission to review and render a decision on the application. ~~All applications shall be made to the Building Division on forms provided by the Building Official; applications may be submitted, in person or electronically, in approved formats and via approved delivery portals.~~
4. *Plan Review of Cultural Properties and Historic District Properties:* Certificate of Appropriateness applications may be reviewed either administratively by a subcommittee within the Community Development Department or before the Historic Preservation Commission based on the level of review identified in the Permit Review Table. The subcommittee may review minor scopes of work in accordance with the Permit Review Table, whereas extensive scopes of work and alterations shall be reviewed by the Historic Preservation Commission. All proposed alterations shall be evaluated in accordance to

the Review Standards for Cultural Properties and Historic District as stated herein this ordinance under Section 40-11.

5. *Schedule a Public Hearing:* Upon receipt of a completed Certificate of Appropriateness application, the Historic Preservation Specialist shall schedule a public hearing for the next regularly-scheduled meeting of the Historic Preservation Commission in accordance to the City's notification requirements for public hearings. [One factor to follow up is the time frame in advance to prepare review packets for the Commission.]
6. *Appropriateness Report:* Prior to the public hearing on the Certificate of Appropriateness application, the Historic Preservation Specialist, at the behest of the Commission, shall conduct an analysis of the subject property and prepare a report containing preliminary findings on the historic, cultural, architectural and aesthetic significance of the property. The analysis shall be provided in writing to the Commission and made available to the public in advance of the public hearing.
7. *Public Hearing:* The Commission shall conduct the public hearing and a record of such proceedings shall be preserved in such a manner as prescribed by the City of Las Cruces.
8. *Withdrawal of Application:* An applicant may at any time during the review process withdraw a Certificate of Appropriateness application by providing notice, in writing, to the Historic Preservation Specialist.
9. *Historic Preservation Commission Action:* The Commission shall act upon completed Certificate of Appropriateness applications in a timely manner. The Commission may request modifications to the proposed scope of work as a condition of approval of a Certificate of Appropriateness; it may approve the application without modifications; or it may deny the application. No decision rendered by the Commission shall conflict with provisions in the zoning code adopted by the City.
10. *Issuance of a Certificate of Appropriateness:* Upon the approval of a Certificate of Appropriateness application, either administratively or by the Commission, the Historic Preservation Specialist shall issue a Certificate of Appropriateness to the applicant as a component, and in conjunction to other requirements, to be issued a building permit.
11. *Suspension of Work:* During the period beginning with the filing of a Certificate of Appropriateness application and ending with the final action of either the Historic Preservation Commission or the City Council taken on the Certificate of Appropriateness, granting or denying said application, no exterior architectural feature of any building, structure, object, improvement, or site that is the subject of an application may undergo any alteration or construction, if such work would be subject to Construction Plan Review and issuance of a building permit.
12. *Final Inspection:* The Building Official and/or Building Inspector(s), in consultation with the Historic Preservation Specialist, shall complete, prior to issuance of a Final Occupancy Permit, an inspection of any work approved under a Certificate of Appropriateness to assure compliance with the approvals granted by the Commission or on its behalf. Nothing in this subsection shall operate to bar repair and maintenance or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition.
13. *Lapse of a Certificate of Appropriateness:* An approved Certificate of Appropriateness shall be valid for one (1) year from the date of issuance to the applicant to complete the proposed scope of work. In the event the applicant is unable to complete the approved scope of work, the Historic Preservation Specialist may approve up to two six-month

extensions to complete the scope of work. In the event the approved scope of work remains incomplete upon the expiration of twenty-four (24) months since issuance, the applicant will be required to submit a new Certificate of Appropriateness application.

Section 40-14: Plan Review for Municipal-Owner Cultural Properties

Plan Review shall be completed for any new construction, addition, remodeling, rehabilitation, renovation, or restoration, or proposed demolition of the exterior of any building, structure, object, or site, or historic interior, of any cultural property owned by the City of Las Cruces, in accordance with the following criteria:

1. The cultural property must be municipally owned and accessible to the public on a full or partial basis; and,
2. The plan review process shall adhere to the procedures as stated herein this ordinance under Section 40-13; and,
3. The proposed scope of work shall be reviewed by the Historic Preservation Specialist and/or the Historic Preservation Commission in accordance with the Review Standards for Cultural Properties and Historic District Properties as stated here in this ordinance under Section 20-11.

Section 40-15: Demolition of Cultural Properties or Historic District Properties

Requests for demolition of any portion of or the entirety of any building, structure, site, or object shall require review by the Historic Preservation Commission when such demolition requests affect:

- A. More than twenty-five percent (25%) of any exterior street façade of a building, structure, improvement, site, or object;
- B. More than twenty-five percent (25%) of any combination of exterior foundations, walls, and/or roofs;
- C. Any purposefully-designed landscape by a notable individual; or,
- D. A significant, naturally-occurring land or geological formation when such ~~building, structure, object, or~~ site has been designated as a cultural property or is located within the boundaries of a designated historic district.

Demolition shall be considered only when all other redevelopment options for a building, structure, object, or site have been exhausted.

A. Procedure for the Demolition of Designated Cultural Properties and Historic District Properties

Any application for a demolition permit for all or part of any cultural property or at any property within a historic district shall be subject to the following review process:

1. *Pre-Application Meeting*: Prior to submitting a demolition request, an applicant shall meet with the Historic Preservation Specialist, Building Official, City Planner, and/or Director of Community Development to review the demolition proposal. At that time, the Historic Preservation Specialist shall identify to the applicant any known historic significance classification or documentation pertaining to the property.
2. *Application*: All applications for a demolition permit shall be submitted on forms provided by the Historic Preservation Specialist. No demolition permit application shall be accepted for processing unless it is complete and is accompanied by all applicable fees, deposits, bonds, and all items required by City ordinance. A complete demolition permit application shall contain the following:
 - a) a legible, dimensioned, and accurate Plat of Survey, prepared and sealed by a New Mexico licensed surveyor within twelve (12) months of application, indicating location of all improvement proposed for demolition;
 - b) written affidavit of the owner(s) of record of the property acknowledging the proposed demolition when the applicant is not the owner of record;
 - c) sketch of floor plans of all levels of the building or structure proposed to be demolished;
 - d) photographs of all existing conditions including all exterior elevations, all significant architectural features (exterior and interior), and all rooms or spaces (exterior and interior) affected by the proposed demolition work;
 - e) historic images of the property and general area of proposed demolition, if any available;
 - f) a written chain of title investigation that identifies previous owners of the property upon which demolition is proposed;
 - g) a detailed report of non-code-compliant elements and structural deficiencies, prepared by a registered architect and/or structural engineer with expertise in the rehabilitation of existing contemporary and/or historic properties;
 - h) a detailed list of irreparable or deteriorated building features, components, or elements;
 - i) a detailed cost estimate for the rehabilitation of the improvement, property, or site, prepared by a design professional or licensed contractor with expertise in the renovation of existing contemporary and/or historic properties;
 - j) a comparison of the estimated rehabilitation cost of the property proposed for demolition with market values for comparable improvements, properties, or sites within the municipal boundaries;
 - k) a detailed cost estimate for the restoration of the site per City code in the event that no new construction activity commences following demolition;
 - l) a summary of potential sites, if any, to which the resource could be relocated within the historic district with an estimate of the cost of the move to each proposed location, if any, by a qualified building mover;
 - m) a proposed schedule for demolition activities;

- n) a completed Building Permit application and a written justification outlining the reasons demolition is sought; and,
 - o) other reasonable information required by City ordinance or that may be requested by City staff or the Historic Preservation Specialist.
3. *Fees*: Fees shall be calculated and collected by the Community Development Department. Applicable deposits and fees shall be set by resolution and collected according to the current fee schedule for building permits.
 4. *Filing*: An application for demolition shall be filed with the Building Official and the Historic Preservation Specialist. Within ten (10) business days of the filing of an application, the Historic Preservation Specialist shall review the submitted application for demolition and inform the applicant, in writing, of any deficiencies which must be corrected and/or clarified prior to the scheduling of a public hearing. Failure of the applicant to provide amended information within thirty (30) business days of the notice of deficiencies will result in an automatic withdrawal of the application.
 5. *Notice*: Upon receipt of a complete demolition application, the Historic Preservation Specialist shall schedule a public hearing for any cultural property or property located within a historic district, except for those properties designated as non-contributing due to a lack of architectural, historic, or structural significance or integrity, at the next, regularly-scheduled meeting of the Commission that is possible in accordance with the stipulated public notice procedure. Demolition permit applications for non-contributing buildings with no architectural, historical, or structural significance or integrity shall be reviewed at a regular public meeting and shall not be subject to a public hearing or any stipulation related to noticing of a public hearing.
 6. *Notice of Public Hearing*: Notice of a public hearing shall be published on the City of Las Cruces webpage and in a newspaper of general circulation within the City not less than fifteen (15) calendar days nor more than thirty (30) calendar days in advance of the date of the hearing. The notice shall identify the applicant, property owners of record, legal description of the property where demolition work is proposed, and the common address of the property where demolition work is proposed.
 7. *Public Hearing Sign*: The Historic Preservation Specialist shall direct the placement of at least one (1) sign at the public right-of-way adjacent to the property that is the subject of the public hearing at least ten (10) calendar days in advance of the date of the public hearing. Said sign shall include the words "Proposed for Demolition" in addition to the date, time, and place of such public hearing.
 8. *Mailing*: Not less than ten (10) calendar days prior to the public hearing, the Historic Preservation Specialist shall mail a written notice to the owners of record of the property proposed for demolition and to the owners of record of all properties identified herein for notification [500 feet?]. Written notice shall include the date, time, and location of the scheduled public hearing and information regarding access to a digital or written copy of the demolition application.
 9. *Commission Property Analysis*: Prior to the public hearing, the Historic Preservation Specialist and the Building Official shall visit the site to familiarize themselves with the

existing condition of the property proposed for demolition. The Historic Preservation Specialist and the Building Official shall confer on their evaluation of the property.

Prior to the public meeting for the purpose of reviewing a demolition application, the Historic Preservation Specialist, at the behest of the Commission, shall conduct an analysis of the submitted documents and a written summary of the site visit as part of a written report containing preliminary findings on the historic, architectural, cultural, and aesthetic significance of the subject property. The analysis shall be provided to the Commission, in writing, and made available to the public in advance of the public hearing.

10. *Public Hearing:* The public hearing for the purpose of reviewing a demolition application shall be conducted by the Historic Preservation Commission and a record of such proceedings shall be preserved in such manner as the Commission shall, by rule, prescribe from time to time.

The applicant bears the burden of proof that the failure to approve the proposed demolition would leave the subject property without an economically viable use, and that the sale, rental, or rehabilitation of the property is not possible, resulting in the property being incapable of earning any reasonable economic return.

11. *Withdrawal of Application:* An applicant may at any time prior to the scheduled public hearing withdraw an application for demolition by providing notice, in writing, to the Historic Preservation Specialist or the Building Official.

12. *Historic Preservation Commission Action:* The Commission shall consider only the property, building, structure, architectural feature, or object proposed for demolition; the merit of any proposed replacement construction or improvement shall not be a standard of review for a demolition request. The Commission may solicit expert testimony to evaluate information provided either as part of a demolition application or at the public hearing. A public hearing may be continued to a date certain in the event that the Commission determines that additional information, unavailable at the public hearing, is warranted and necessary for the purpose of making a finding of fact.

Additionally, the Commission may continue a public hearing to the next regularly scheduled meeting of the Commission to provide time to fully evaluate new evidence presented at the public hearing. Furthermore, the Commission may continue a public hearing regarding a request for demolition for a specified period of time, not to exceed one hundred and twenty (120) calendar days, for the sole purpose of allowing the applicant and the Commission to seek alternatives to demolition when the Commission determines that all of the following conditions exist:

- a) the property itself, or in relation to its environs, has significant historical, architectural, aesthetic or cultural value in its present condition;
- b) realistic alternatives for preservation for the property—including adaptive uses—are believed to be neither cost prohibitive nor beyond the limits of local market value; and

- c) the property, in its existing condition, does not present a public health or safety hazard to individuals, neighboring properties or the greater community.

When the Commission postpones a recommendation regarding a demolition request, the Commission shall retract said postponement when the Commission determines that an applicant has:

- a) made a bona fide and reasonable, but unsuccessful, effort to locate a purchaser for the property who is willing to preserve, rehabilitate, or restore the improvement, property, or site;
- b) made a bona fide and reasonable, but unsuccessful, effort to locate a purchaser for the improvement who is willing and able to relocate the improvement to another property or site;
- c) made a bona fide and reasonable, but unsuccessful, effort to develop a cost effective program for the preservation of the improvement; and
- d) agreed to accept a demolition permit on specified conditions of the Commission.

When the Commission considers a request for demolition, and applicant may be required, as a condition of demolition approval, to prepare and submit, prior to the commencement of demolition work, the following documentation of a building, structure, object, improvement, or site that is designated as a cultural property or identified as a contributing or significant property within a designated historic district:

- a) Site Plan (scale not less than 1 inch equals 20'-0");
- b) Floor Plans of each level (scale not less than 1/8" equals 1'-0");
- c) Elevations of each side of the property improvement (scale not less than 1/8" equals 1'-0"); and
- d) Photographs of each elevation and significant interior or exterior architectural features as determined by the Commission (clear, black and white images).

The Commission shall make written findings of fact within forty-five (45) calendar days following the close of the public hearing.

The Commission may grant a demolition request for a cultural property or a property within a historic district if, upon review of all testimony, the maintenance, use, and/or alteration of the property would cause immediate and substantial hardship for the owner(s) of record because rehabilitation in a manner which preserves the architectural, historic, or structural integrity of the property either:

- a) is infeasible from a technical, mechanical, or structural perspective; or
- b) would leave the property with no reasonable economic value because it would require an unreasonable expenditure when accounting for such factors as current market value, permitted uses of the property, and/or the cost of compliance with local, state, and federal codes applicable to the property.

The Commission, by a simple majority vote, shall grant or deny the application for demolition.

13. *Appeal of a Demolition Denial to City Council:* If an application for any demolition work is not approved by the Historic Preservation Commission, then the applicant may request, in writing, to the Director of Community Development that an appeal of the Commission's decision be made to the City Council.

Both the applicant and the Commission have the right to be heard at the appeal proceedings.

Upon consideration of the written record of the Commission's decision and the applicant's appeal, the City Council shall grant or deny the application for proposed demolition work.

Within thirty (30) calendar days after such an appeal is made, the City Council shall, by resolution, affirm or reverse the Commission's determination according to the applicable standards set forth in this ordinance. In accordance with said standards, the City Council may also modify the Commission's determination. A reversal or modification of the Commission's determination shall be approved by a vote of not less than two-thirds (2/3) of the councillors holding office.

14. *Suspension of Work:* During the period beginning with the filing of an application for demolition and ending with the final action of either the Historic Preservation Commission or the City Council, granting or denying said application, no exterior architectural feature of any building, structure, object, improvement, or site that is the subject of an application for demolition may undergo alteration, construction, demolition, or removal. Nothing in this subsection shall operate to bar ordinary repair and maintenance or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition.
15. *Site Restoration:* Upon completion of any approved demolition, a site must be restored and maintained as required by City code until such time that construction activity resumes at the property.
16. *Lapse of Demolition Approval:* Any approval granted by the Commission or City Council for the demolition, in whole or in part, of any building, structure, object, improvement, or site shall be valid for a period of twelve (12) months from the date of the issuance of a demolition approval. Failure to complete the approved work in a timely fashion will require the re-application for approval of any outstanding demolition work.

B. Standards for Demolition Request Review

The Historic Preservation Commission shall make findings related to a demolition request based upon the evidence presented to it in each specific case and shall not approve a proposed demolition unless demolition action improves or corrects one or more of the following conditions:

1. The property constitutes a hazard to the safety and welfare of the general public or occupants of the property or site as determined, in consultation with the Historic

Preservation Specialist, by the City of Las Cruces Building Official, Code Enforcement Officer, Chief of Police, and Fire Chief;

2. The property is a deterrent to a major improvement program that will be substantial benefit to the community for which the applicant has secured all necessary and required planning and zoning approvals, environmental clearances, and project funding;
3. Retention of the property will cause undue economic hardship to the Owner of Record when a governmental action, an act of God, or other events beyond the control of the Applicant created the hardship and all feasible alternatives to eliminate the financial hardship (which may include sale of the property at fair market value or relocation of the improvement to another site) have been attempted and exhausted by the Applicant; or
4. The retention of the property is not in the best interest of the majority of the community.

C. Demolition by Neglect and Deferred Maintenance

Buildings, structures, and objects designated as a Cultural Property or lying within the boundaries of a historic district shall be maintained and protected from demolition that results from neglect or undeterred deterioration of the exterior features or structural elements.

1. *Duty to Maintain*: Any building, structure, or object designated as a cultural property or lying within the boundaries of a historic district shall be preserved against material deterioration of exterior features and structural elements by its owner of record.
2. *Duty to Repair*: The owner of record for any building, structure, or object designated as a cultural property or lying within the boundaries of a historic district shall, upon written notice from the City Code Enforcement Officer, or other representative on behalf of the City, repair any deficient element that is contributing to material deterioration, including, but not limited to, damage to or decay of:
 - a) Foundations, flooring, or floor supports that causes leaning, sagging, splitting, listing, or buckling of all or part of the building, structure, or object;
 - b) walls or other vertical supports that causes leaning, sagging, splitting, listing, or buckling of all or part of the building, structure, or object;
 - c) ceilings, roofs, and their support systems or other horizontal members, that causes leaning, sagging, splitting, listing, or buckling of all or part of the building, structure, or object;
 - d) fireplaces or chimneys that causes leaning, sagging, splitting, listing, or buckling of all or part of the building, structure, or object;
 - e) exterior finishes, including, but not limited to wood, brick, stone, stucco, mortar or other material;
 - f) any design detail, significant feature, or structural element that results in any appreciable loss of architectural, historic, or structural integrity of the building, structure, or object;
 - g) any window, window frame, door, or doorway that, individually or collectively, results in any appreciable loss of architectural, historic, or structural integrity of the building, structure, or object;
 - h) any feature intended to provide a watertight condition that results in significant moisture infiltration into the building, structure, or object;

- i) any feature or element that results in the creation of a fire hazard or other nuisance to the welfare of the general public; or
- j) any archaeological site or vacant cultural property/property within a historic district shall be adequately secured against unauthorized entry.

D. Natural Destruction or Demolition

In the case of partial or complete destruction or demolition of a cultural property or a building, structure, object, or site within a historic district as a result of an act of God or other natural disaster, the property may be completely demolished without Commission review provided that the Building Official, Fire Department Chief, and Chief of Police, in consultation with the Historic Preservation Specialist, jointly determine the improvement is structurally unsound and poses an immediate or imminent nuisance and/or hazard to the general health, safety, and welfare of the public.

Section 40-16: Certificate of Economic Hardship

In any case in which the proposed work of an applicant is not approved following either administrative, Historic Preservation Commission, or City Council review and the submittal of a written findings of fact, an applicant may apply for a Certificate of Economic Hardship.

A. Procedure to Apply for a Certificate of Economic Hardship

1. *Pre-Application Meeting*: Prior to submitting a Certificate of Economic Hardship request, an applicant shall meet with the Historic Preservation Specialist ~~and Director of Community Development~~ or designee to review the basis for economic hardship relief.
2. *Application*: All applications for a Certificate of Economic Hardship shall be submitted on forms provided by the Historic Preservation Specialist. No Certificate of Economic Hardship application shall be accepted for processing unless it is complete and is accompanied by all applicable items required by City ordinance.
3. *Filing*: The application for a Certificate of Economic Hardship shall be filed with the Historic Preservation Specialist. Within ten (10) working days of the filing of an application, the Historic Preservation Specialist shall review the submitted application for a Certificate of Economic Hardship and inform the applicant, in writing, of any deficiencies which must be corrected and/or clarified prior to the scheduling of a public hearing. Failure of the applicant to provide amended information within thirty (30) working days of the notice of deficiencies will result in an automatic withdrawal of the application.
4. *Notice*: Upon receipt of a complete Certificate of Economic Hardship application, the Historic Preservation Specialist shall schedule a public hearing at the next, regularly scheduled meeting of the Commission that is possible in accordance with the stipulated public notice procedure.
5. *Notice of Public Hearing*: Notice of the public hearing shall be published on the City of Las Cruces webpage and in a newspaper of general circulation within the City not less

than fifteen (15) calendar days nor more than thirty (30) calendar days in advance of the date of the hearing. The notice shall identify the applicant, property owners of record, legal description of the property, and common address of the property.

6. *Public Hearing Sign:* The Historic Preservation Specialist shall direct the placement of at least one (1) sign at the public right-of-way adjacent to the property that is the subject of the public hearing at least ten (10) calendar days in advance of the date of the public hearing.
7. *Mailing:* Not less than ten (10) calendar days prior to the public hearing, the Historic Preservation Specialist shall mail a written notice to the owners of record of the subject property and to the owners of record of all properties identified herein for notification [500 feet?]. Written notice shall include the date, time, and location of the scheduled public hearing and information regarding access to a digital or written copy of the demolition application.
8. *Public Hearing:* The public hearing for the purpose of reviewing a Certificate of Economic Hardship application shall be conducted by the Historic Preservation Commission and a record of such proceedings shall be preserved in such manner as the Commission shall, by rule, prescribe from time to time.
9. *Withdrawal of Application:* An applicant may at any time during the review process withdraw a Certificate of Economic Hardship application by providing notice, in writing, to the Historic Preservation Specialist.
10. *Commission Action:* At the public hearing, the Commission shall take statements presented by the owner(s) of record of the subject property as well as statements from any interested parties concerning the issuance of a Certificate of Economic Hardship. At a minimum, the applicant shall be required to submit evidence at the public hearing to support any of the Standards for a Certificate of Economic Hardship Review as identified herein. Evidence presented by the applicant, shall in the applicant's opinion, contribute to the economic hardship alleged to be incurred if the applicant is not granted a Certificate of Economic Hardship. Specific information and documentation which may be presented by the applicant and/or requested by the Commission may include:
 - a) the amount paid for the property, the date of the purchase, and the party from whom the property was purchased (including a description of the relationship, if any, between the owner and the entity from whom the property was purchased);
 - b) the assessed value of the land and improvements thereon according to the most recent assessments;
 - c) real estate taxes for two years previous to the application for an economic hardship request;
 - d) remaining balance on any mortgage, if any, and annual debt service, if any, for the two years previous to the application for an economic hardship request;
 - e) all appraisals obtained within the two years previous to the application for an economic hardship request by the owner of record or the applicant in connection with the purchase, financing, or ownership of the property;
 - f) any listing of the property for sale or rent, price asked and offers received, if any;

- g) any consideration by the owner of record or the applicant regarding profitable adaptive uses for the property;
- h) if the property is income-producing, the annual gross income from the property for the two years previous to the application for an economic hardship request; itemized operating and maintenance expenses for the previous two years; and annual cash flow before and after debt service, if any, during the same period;
- i) form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture or other; or,
- j) any information including the income tax bracket of the owner of record or the applicant or any other principal investors in the property that is reasonably necessary for a determination as to whether or not the property can be reasonably used or yield a reasonable return on an investment to present or future owners of the property.

The Commission may invite and consider testimony to evaluate information provided either as part of a Certificate of Economic Hardship application or at the public hearing. A public hearing may be continued to a future date in the event that the Commission determines that additional information, unavailable at the public hearing, is warranted and necessary for the purpose of making a finding of fact.

Furthermore, the Commission may continue a public hearing to its next regularly scheduled meeting to provide time to fully evaluate new evidence presented at the public hearing. Provided that the Commission finds that the hardship was not created with the intent of circumventing this ordinance, the Commission, by a simple majority vote, shall grant relief from the rehabilitation standards due to economic hardship only if the Commission finds that:

- a) the subject property cannot be put to any reasonably beneficial use;
- b) the owner of record or the applicant will suffer substantial economic loss if the application for proposed work that will yield a Certificate of Appropriateness [Economic Hardship?] is not approved;
- c) the retention of the resource will cause undue financial hardship to the owner of record or the applicant when a governmental action, an act of God, or other event beyond the owner's control created the hardship, and all feasible alternatives to eliminate the economic hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner of record and/or the applicant.

The Commission shall make written findings of fact within forty-five (45) calendar days following the close of the public hearing.

Upon the Commission's granting of relief due to economic hardship, the Historic Preservation Specialist shall provide to the applicant a written Certificate of Economic Hardship that describes the rehabilitation relief granted and the basis of the economic relief.

11. *Suspension of Work*: During the period beginning with the filing of an application for a Certificate of Economic Hardship and ending with the final action of either the Historic Preservation Commission or the City Council, granting or denying said application, no exterior architectural feature of any improvement, property, or site that is the subject of an application may undergo any alteration or construction, if such work would be subject to a building permit and/or is subject to the issuance of a Certificate of Appropriateness. Nothing in this subsection shall operate to bar ordinary repair and maintenance or any work that is necessary to prevent or correct an imminently dangerous or hazardous condition.
12. *City Council Action*: If an application for a Certificate of Economic Hardship is not approved by the Historic Preservation Commission, the Applicant may appeal the decision to the City Council.

If the Commission fails to grant approval of the applicant's request, or if the applicant objects to the Commission's determination, then the applicant may request, in writing, to the Director of Community Development that an appeal of the Commission's decision be made to the City Council.

Both the applicant and the Commission have the right to be heard at the appeal proceedings. Upon consideration of the written record of the Commission's decision and the applicant's appeal, the City Council shall grant or deny the application for a Certificate of Economic Hardship.

Within thirty (30) calendar days after such an appeal is made, the City Council shall, by resolution, affirm or reverse the Commission's determination according to the applicable standards set forth in this chapter. In accordance with said standards, the City Council may also modify the Commission's determination. A reversal or modification of the Commission's determination shall be approved by a vote of not less than two-thirds (2/3) of the Councillors holding office.

Within seven (7) calendar days of action by the City Council, the ~~Secretary~~ [City Clerk? Historic Preservation Specialist? Who?] shall notify, in writing, the applicant and the Building Official of the City Council's determination.

13. *Revocation of Certificate of Economic Hardship*: If an applicant seeks a building permit for additional work on the same property for which a Certificate of Economic Hardship had been granted at an earlier date, the previously-granted rehabilitation relief may be revoked and approvals for any additional work may include the requirement for completion of rehabilitation work previously deferred due to economic hardship.

B. Standards for a Certificate of Economic Hardship Review

The Historic Preservation Commission shall make findings related to a Certificate of Economic Hardship request based upon the evidence presented to it in each specific case and shall not

approve a Certificate of Economic Hardship unless an applicant can prove one or more of the following conditions:

1. a substantial decrease in the fair market value of the property as a result of the denial of the proposed work;
2. a substantial decrease in financial return to the owners of record or other investors in the property as a result of the denial of the proposed work;
3. a substantial and significant additional cost to complete the proposed construction, alteration, relocation and/or demolition would be incurred to comply with the recommendations of the Commission for changes necessary for the issuance of a Certificate of Appropriateness;
4. the structural instability and a lack of sustainability for rehabilitation of any structure, object, or other improvement on the property; and/or
5. a lack of economically-feasible rehabilitation or adaptive use of the existing building, improvement, site, structure, or object.

Article IV: Conflict of Interest and Enforcement and Appeals

Section 40-17: Conflict of Interest

At any time the Historic Preservation Commission undertakes any official action which will affect a monetary or other vested interest of a member of the Commission, that member shall reveal the existence of that interest to the Commission at the next meeting thereof after the member becomes aware of the conflict of interest and shall recuse from the review of that matter. At any time the Commission reviews a project in which a member of the Commission has an ownership or other vested interest, that member shall be forbidden, as a Commissioner, from voting or discussing the project, and shall recuse from discussion on the project.

Section 40-18: Enforcement and Appeals

This ordinance provides for the penalties applicable for alterations or demolition of cultural properties or properties within the boundaries of historic districts. Furthermore, this ordinance provides relief through an appeal process.

A. Penalty for Alterations or Demolition without a Certificate of Appropriateness

- A. It is unlawful to construct, reconstruct, structurally alter, remodel, renovate, restore, demolish, or raze any cultural property or property within the boundaries of a historic district in violation of this ordinance. The City, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful violation and to restrain, correct, or abate such violation
- B. In addition to any remedies, a person, corporation, or entity is liable to the City if the person demolishes, or causes to be demolished, or otherwise adversely affects the structural, physical, or visual integrity of a cultural property without first obtaining a

permit from the Community Development Department and a Certificate of Appropriateness from the Historic Preservation Commission as required in this ordinance.

B. Appeals to the Historic Preservation Commission and to City Council

1. An applicant may appeal a decision rendered administratively by the Historic Preservation Specialist or designee to the Historic Preservation Commission. Upon considering the appeal, the Commission shall render a final determination.
2. If a procedural error occurred during the review process for a Certificate of Appropriateness application and the Commission subsequently denied the application, the applicant may appeal the decision to the City Council. The applicant may request, in writing, an appeal hearing by notifying the Director of Community Development.
3. If the Commission denies approval of an application due to Review Standards for Cultural Properties and Historic District Properties, the applicant may not appeal the decision to City Council, but may submit a revised Certificate of Appropriateness application as prescribed in this ordinance.
4. Both the applicant and the Commission have the right to be heard at the appeal proceedings. Upon consideration of the written record of the Commission's decision and the applicant's appeal, the City Council shall grant or deny the Certificate of Appropriateness application for the proposed scope of work therein.
5. Within thirty (30) calendar days after such an appeal is made, the City Council shall, by resolution, affirm or reverse the Commission's determination according to the applicable standards set forth in this chapter. In accordance with said standards, the City Council may also modify the Commission's determination. A reversal or modification of the Commission's determination shall be approved by a vote of not less than two-thirds (2/3) of the councillors holding office.