

# **City of Hutchinson Historic Preservation Ordinance**

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# **Preservation Ordinance – Chapter 4 of the City Code**

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## **Article I. In General**

### **Sec. 4-101. Title.**

This chapter shall be known as the "Historical Preservation Chapter" of the City, may be cited as such, and will be referred to herein as "this chapter."

### **Sec. 4-102. Statement of Purposes.**

a. The purposes of this chapter are to:

1. Preserve buildings and sites of historic and architectural importance and safeguard the heritage and culture of Hutchinson;
2. Promote orderly, efficient and harmonious development, including harmony in the outward appearance of buildings;
3. Stabilize and improve property values;
4. Encourage the maintenance of historic and architecturally significant structures, property and areas;
5. Foster pride in Hutchinson and the appearance of the community, assist in attracting visitors to Hutchinson and help improve the overall economy of Hutchinson;
6. Promote the restoration and productive use of historic and architecturally significant structures, property and areas; and
7. Promote the study of history, culture and architectural design.

b. These purposes will be achieved by, among other things:

1. Creation of a Landmark Commission;
2. Designation of historic and architecturally important structures, properties and districts;
3. Reviewing and approving alterations to designated landmarks and structures or properties within landmark districts;
4. Reviewing and approving new construction within landmark districts;
5. Reviewing and commenting on proposed demolitions of designated landmarks, structures or properties;

6. Establishing minimum maintenance standards for designated structures, properties or districts; and
7. Establishing a procedure whereby the City may accept preservation easements.

c. The regulations and standards listed herein have been made after reasonable consideration was given to the nature and character of historic and architecturally important structures, properties and districts within the City.

**Sec. 4-103. Application.**

This chapter shall apply to all historically and architecturally important structures and properties located within the City limits. This chapter also may apply to new construction within the City limits where such development may affect historically and architecturally important structures, properties and districts.

**Sec. 4-104. Definitions.**

For the purposes of this chapter, certain terms and words are hereby defined. Words used in the present tense include the future, words in the singular number include the plural and words in the plural number include the singular. The word "shall" is mandatory and not directory.

**Accessory Structure**--A subordinate structure or portion of the main structure, located on the same property and the use of which is clearly incidental to that of the main structure or to the use of the property on which it is located. Customary accessory structures include but are not limited to garages, carports, garden houses, small storage sheds and children's playhouses.

**Accessory Use**--A subordinate use which serves an incidental function to that of the principal use of the property. Customary accessory uses include but are not limited to tennis courts, swimming pools, air conditioners, barbecue ovens, fireplaces and off-street parking.

**Acquisition**--The act or process of acquiring fee title or interest other than fee title of real property, including development rights or remainder interest.

**Adaptive Use**--The process of changing the use of a structure or property to a use other than that for which the structure or property was originally designed.

**Adjacent**--A structure or parcel having a common parcel boundary or located immediately next to a structure or parcel.

**Administrator**--The designated individual assigned by the Governing Body to administer, interpret and enforce this chapter.

**Alley**--A dedicated public right-of-way, other than a street, which provides only a secondary means of access to abutting property, the right-of-way of which is twenty feet or less in width.

**Alteration**--As applied to a structure, a change or rearrangement in the structural parts of an existing structure. Enlargement, whether by extending a side, increasing in height, or the moving from one location or position to another shall be considered as an alteration.

**Applicant**--The owner, or duly designated representative, of a structure or property proposed to be listed as a landmark or within a landmark district, or the owner, or duly designated representative, that has applied for a building permit, demolition or clearance permit, or preservation easement.

**Area**--Properties, near to or adjacent to one another, capable of being described with such definiteness that their collective location may be established and boundaries definitely ascertained.

**Building**--A structure, such as a house, barn, church, hotel, courthouse, city hall, social hall, commercial building, library, factory, mill, train depot, theater, school, store or similar construction, created to shelter any form of human activity. The term also may refer to a small group of buildings consisting of a main building and subsidiary buildings which constitute a historically and functionally related unit such as a courthouse and jail, house and barn, mansion and carriage house, church and rectory, and farmhouse and related out-buildings.

**City**--The municipal corporation named the City of Hutchinson, Kansas.

**City Limits**--The established corporate boundary of the City of Hutchinson, Kansas.

**City's Legal Counsel**--Any qualified and competent attorney specified by the Governing Body as responsible for assisting in the implementation of the provisions of this chapter.

**Commission**--The Hutchinson Landmarks Commission.

**Contributing**--A building, site, structure or object which adds to the architectural qualities, historic association or archeological values of a district for which a property is significant because:

- a. It was present during the pertinent historical time;
- b. It possesses integrity and reflects its significant historic character or is capable of yielding important information about the pertinent historic period; or
- c. It independently meets the standards and criteria of this chapter.

**County**--Reno County, Kansas.

**County Engineer**--The County Engineer or other licensed professional engineer designated by the County Engineer or the Board of County Commissioners to provide engineering assistance in administering these and other regulations governing areas of the normal responsibilities assigned to the County Engineer.

**County Health Officer**--The Director of the County Health Department or such person designated to administer the health regulations of the County.

**Dedicate**--The transfer of property rights from the property owner to another individual or entity.

**Developer**--The legal property owner, the holder of a purchase option or contract, an entity having an interest in real property, or any agency of the legal property owner of any structure or property to be included in a development:

- a. Who causes it to be used for development;
- b. Who sells, leases or develops; offers to sell, lease or develop; or advertises for sale, lease or development any lot, plot, parcel, site, unit of interest, or structure for development; or
- c. Who engages directly or through an agent in the business or occupation of selling, leasing, developing, or offering for sale, lease or development, any lot plot, parcel, site, unit of interest, or structure for development.

**Development**--A subdivision; the construction or reconstruction of streets and utilities; the construction, expansion or remodeling of structures; a change in the use of a structure or parcel; or the clearing of land.

**District**--An area that possesses a significant concentration, relationship between, or continuity of sites, buildings, structures or objects united historically or architecturally by plan or physical development. Districts include college campuses, the downtown area, residential areas, commercial areas, industrial complexes, civic centers, planned street systems and large parks. The term also may apply to individual associated or functionally related sites, buildings, structures or objects which are geographically separated. In such cases, visual continuity should not be necessary to convey the historic relationship of a group of related resources.

**Easement**--The authorization by a property owner to allow specific uses of a designated part of a property by another individual, individuals or entity.

**Exterior Feature**--Elements and components of the outer surface of a structure including, but not limited to, building materials, windows, outside doors, outdoor light fixtures, attached signs, fixtures, carvings, columns, railings, stairs and steps, retaining walls, fences and fence posts, hitching posts, decorations, dormers, chimneys, false fronts, paint colors, surface textures or parapets.

**Exterior Lighting**--Lights installed outdoors on an outside wall, a roof, a standard pole or other device, not including lights that shine on or which are a part of a sign but including security lights, flood lights, decorative lights, parking lot lights and similar lights.

**Fence**--An unroofed barrier or unroofed enclosing structure.

**Governing Body**--The City Council of the City of Hutchinson, Kansas.

**Historically or Architecturally Important**--That quality present in a structure, property or district because it:

- a. Is associated with an event or events that significantly contributed to the broad patterns of the history or architectural heritage of the City, Reno County, the state or the nation;
- b. Is associated with the lives of a person or persons significant in the history of the City, Reno County, the state or the nation;
- c. Embodies distinctive characteristics of a type, design, period or method of construction;
- d. Represents the work of a master or possesses high artistic value;
- e. Exemplifies the cultural, political, economic, social or historic heritage of the City;
- f. Contains elements of design, detail, materials or craftsmanship which represent a significant construction innovation;
- g. Is part of or related to a square, park or other distinctive area that was or should be developed or preserved according to a plan based on a historic or architectural motif;
- h. Is an established and familiar visual feature of a neighborhood or the entire community; and
- i. Has yielded, or is likely to yield archeological artifacts and/or information.

**Historic Preservation**--The study, identification, protection, restoration and rehabilitation of buildings, sites, structures, objects, districts and areas significant in the history, architecture, archeology or culture of the City, Reno County, the state or the nation.

**Improvement**--Any physical change in a structure or property including the addition of exterior features, any change in landscape features, alteration of a structure, new construction, painting or repainting, reconstruction, restoration or remodeling, but excluding normal maintenance.

**Interior Feature**--Elements and components of the inside of a structure including, but not limited to, building materials, inside doors, door and window moldings, wall covering, paint colors, indoor light fixtures, lamps, furniture, draperies, fireplace hearths, stairways, appliances, heating and ventilating equipment, carvings, columns, railings, decorations and surface textures.

**Junk**--Old or scrap copper; brass; rope; batteries; paper trash; rubber debris; iron; steel; waste; junked, dismantled or wrecked automobiles or parts thereof; and other ferrous or nonferrous material.

**Kansas Register**--The current State Register of Historic Places as prepared, approved and amended by the State Historic Sites Board of Review and authorized by K.S.A. 75-2701 and following.

**Key Contributing**--A building, site, structure or object of such an outstanding quality and state of preservation that it significantly adds to the architectural qualities, historic association, or archeological values of a landmark district because:

- a. It was present during the pertinent historic time;
- b. It possesses integrity and reflects its significant historic character or is capable of yielding important information about the pertinent historic period; and
- c. It independently meets the standards and criteria of this chapter.

**Landscape Feature**--Any element or component of outdoor open space including, but not limited to, fences, walls, retaining walls, gates, sidewalks, walkways, driveways, parking lots, patios, terraces, decks, ground covers, trees, plants, outdoor furniture, exterior light standards, fountains, statuary, detached signs and other such elements.

**Lot**--A portion of a subdivision or other parcel of land intended as a unit of ownership and occupied or intended to be occupied by one main structure and accessory structures or a complex of structures, including open spaces and parking. A lot may be more than one lot of record or may be a metes-and-bounds-described tract, having its principal frontage upon a street or officially approved place.

**Lot of Record**--A lot which is a part of a subdivision, the plat of which has been recorded in the office of the Register of Deeds or a lot described by metes-and-bounds, the description of which has been recorded in the office of the Register of Deeds.

**National Register**--The current National Register of Historic Sites established by passage of the National Historic Preservation Act of 1966, 16 U.S.C. 470 and following, as amended.

**Noncontributing**--A building, site, structure or object that does not add to the architectural qualities, historic association or archeological values of a landmark or landmark district because:

- a. It was not present during the pertinent historic time;
- b. Due to alterations, disturbances, additions or other changes, it no longer possesses integrity, reflects its significant historic character or is capable of yielding important information about the pertinent historic period; or
- c. It does not independently meet the standards and criteria of this chapter.

**Normal Maintenance and Repair**--Any improvement or work for which a building permit is not required by City chapter, designed to correct deterioration, decay or damage and restore, as may be practicable, a structure or property to the condition that existed prior to the deterioration, decay or damage.

**Nuisances**--Physical conditions (affecting land, water, groundwater, the air, noise levels or other elements of the environment) that endangers human health or safety, injures persons or property or constitutes a clear danger to property.

**Object**--Those constructions that are primarily artistic in nature or are relatively small in scale and simply constructed. While an object may be by nature or design movable, it should be located in a specific setting or environment appropriate to its significant historic use, role or character. Objects include sculpture, monuments, street signs, fence posts, hitching posts, mileposts, boundary markers, statuary and fountains.

**Off-Street Parking**--An area on a property specifically set aside and constructed to provide for vehicle parking.

**Open Space**--Land outside or not underneath any structure.

**Owner or Owners**--Those individuals, partnerships, firms, corporations, public agencies or any other legal entity holding fee simple title to or sufficient proprietary interest in property, but not including legal entities holding easements or less than fee simple interests, including leaseholds, of any nature.

**Parking Lot**--Any lot used for the storage of motor vehicles which contains space rented or available for use at no charge to the general public by the hour, day, week, month or year.

**Person**--Any individual, firm, association, organization, partnership, business, trust, corporation or company.

**Preservation**--The application of measures designed to retain and sustain the existing nature, form, integrity, material and extent of a historically or architecturally important structure, property or district. Preservation may include initial work to halt the process of decay as well as ongoing maintenance of the building, site, structure or object.

**Project**--Activities involving the issuance of a lease, permit, license, certificate or other entitlement for use to any party, by the City.

**Property**--An area of land, undivided by any street, alley, railroad, stream or similar physical feature, under single ownership or control, which is or will be occupied by one structure or land use, and any accessory structures and uses. A property could be made up of one or more lots of record, one or more portions of a lot or lots of record, or any combination thereof. The term shall include landscape features.

**Protection**--The application of measures to defend, guard, cover or shield a building, site, structure or object from deterioration, loss, attack, danger or injury. In the case of buildings, structures or objects, such measures generally are of a temporary nature and usually precede preservation. In the case of archeological sites, the protective measures may be temporary or permanent.

**Reconstruction/Reconstruct**--The reproduction of the exact form and detail of a vanished building, site, structure, object or a part thereof, as it appeared at the pertinent time, using both original and modern materials and based on precise historical documentation and physical evidence.

**Rehabilitation/Rehabilitate**--The act of returning a building, site, structure or object to a useful state through its repair and/or alteration while retaining the characteristic features of the property which are significant to its historical and architectural value.

**Remodel**--The modification and modernization of a structure or property without striving to return to or replicate the original historical and architectural character of the structure or property.

**Restoration/Restore**--The act of accurately recovering the form and details, based on precise historical documentation and physical evidence, of a building, site, structure or object as it appeared at a pertinent time, including the removal of improvements that are not appropriate and the replacement of missing or deteriorated features.

**Right-of-way**--A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or for another special use.

**Sign**--Any surface, fabric, device or display designed to visually convey information to the general public.

**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 or archeological value, regardless of the value of any existing structure. Examples of sites include habitation sites, burial sites, village sites, hunting and fishing sites, ceremonial sites, battlefields, ruins of historic buildings and structures, campsites, ruins of industrial works, sites of treaty signings, trails, cemeteries, designed landscapes, natural features, springs, and landscapes having cultural significance.

**Stabilization**--Taking measures to return an unsafe or deteriorated building, site, structure or object to a safe and secure condition while maintaining the existing form and detail of the building, site, structure or object.

**State Historic Preservation Officer**--The person who has been designated by law and by the governor of the State of Kansas to administer the state historic preservation program.

**State Historic Preservation Program**--The program established by the State of Kansas and approved by the U.S. Secretary of the Interior for the purpose of carrying out the provisions of the National Historic Preservation Act of 1966, as amended, and related laws and regulations.

**State or Any Political Subdivision of the State**--The State of Kansas; any office, department, agency, authority, bureau, commission, board, institution, hospital, college or university of the state; or any county, township, city, school district, special district, regional agency, redevelopment agency or any other political subdivision of the state.

**State Review Board**--The state historic sites board of review as established by K.S.A. 75-2719a, as amended.

**Street**--A right-of-way, other than an alley, dedicated to the public use, which provides principal access to adjacent properties.

**Street Lights**--Lights installed within the public right-of-way, which illuminate public streets and/or sidewalks.

**Structure**--Anything constructed, erected or maintained for purposes, usually, other than creating shelter. Examples of structures included: Fire towers, dams, power plants, corncribs, silos, highways, windmills, grain elevators, fortifications, railroads, rail locomotives and cars, and aircraft.

**Use**--The specific purpose for which a structure or property is utilized.

**Variance**--A variation from a specific requirement of this chapter, as applied to a specific structure or property.

## **Article II. Landmarks Commission**

### **Sec. 4-201. Creation of the Landmarks Commission.**

The Hutchinson Landmarks Commission is hereby created. The commission shall consist of seven members. Commission members shall either be residents of the City or own property within the City. The commission shall be composed of both professional and lay members, all of whom have demonstrated an interest, knowledge, or training in fields closely related to historic preservation. Such fields include history, architecture, landscape architecture, architectural history, archeology, planning, real estate, law, finance, building trades, urban design and geography. At least forty percent of the members shall be preservation related professionals such as an architect, architectural historian, archeologist, historian, landscape architect or planner. The Administrator shall maintain a record of the credentials of the commission members.

**Sec. 4-202. Appointment and terms of members.**

The Mayor, with the consent of the Governing Body, shall appoint all members of the Commission. Each Commission member shall be appointed to a term of three years; provided, that of those first appointed to the Commission, one shall serve a one year term, two shall serve two year terms, and two shall serve three year terms. Should a Commission member resign, the vacancy shall be filled by appointment for the unexpired term only. The Mayor and Governing Body shall act within 60 days to fill any vacancy on the Commission. Commission members may serve consecutively for no more than one partial term plus two three year terms. The Mayor, with the consent of the Governing Body, may remove any member of the Commission. Commission members shall serve without compensation but may be reimbursed for necessary expenses incurred in the performance of their duties.

**Sec. 4-203. Rules of Procedure.**

The Commission shall adopt rules of procedure. The rules of procedure shall specify attendance requirements and cover potential conflicts of interest for members. The rules of procedure shall be available for public inspection. All meetings of the Commission shall be open to the public. Minutes of all meetings shall be kept by the administrator and shall be available for public inspection. The administrator shall provide a copy of the minutes for each Commission meeting to the Kansas Historic Preservation Department at the time minutes are distributed to Commission members.

The following rules were established by the Landmarks Commission on 2/18/93:

1. Members of the Landmarks Commission are required to attend sixty percent of all meetings during any six month period. The Chairman of the Landmarks Commission will request that the City Commission appoint a new member if a members attendance drops below sixty percent for any six month period.
2. No more than two consecutive meetings may be missed. A notice from the chairman will be sent to any member who misses two consecutive meetings. The Chairman of the Landmarks Commission will request that the city Commission appoint a new member after a member has missed three consecutive meetings.

**Sec. 4-204. Officers.**

The Commission shall elect a chairman and vice-chairman from its members. The administrator shall serve as secretary of the Commission. In the absence of the chairman and vice-chairman, the secretary may convene a meeting of the Commission. In such case, the first order of business shall be to elect a temporary chairman who shall conduct the meeting. The chairman and vice-chairman shall serve for a term of one year. The chairman and vice-chairman may succeed themselves. The chairman or vice-chairman may resign from office. In such event, the Commission shall elect another member for the unexpired term of office.

**Sec. 4-205. Meetings.**

The times, dates and locations of Commission meetings may be established by the chairman or a majority of the Commission members. The chairman or, in the absence of the chairman, the vice-chairman, shall approve meeting agendas before the meeting. A simple majority of Commission members shall constitute a quorum of the Commission. There must be a quorum present before the Commission may take any formal action but the Commission may discuss items of business in the absence of a quorum.

**Sec. 4-206. Annual Report.**

The Commission shall prepare an annual report of its activities. The report shall be prepared by August 1 of each year and shall pertain to the period of July 1 through June 30. The report shall be submitted to the Governing Body and the Kansas Historic Preservation Department by August 1 of each year. The report shall include, but not be limited to:

- a. A report on the number and types of cases reviewed and their disposition;
- b. A list of new landmark and landmark district designations made during the year;
- c. A list of new appointments to the Commission and the resumes of these new members;
- d. The attendance records of Commission members;
- e. A list of educational meeting attended by Commission members;
- f. All minutes of meetings at which National Register nominations were considered; and
- g. The goals and objectives for the coming year.

**Sec. 4-207. Authority and Responsibilities.**

a.The geographic area of authority of the Commission shall be the area contained within the City limits.

b.The City shall enforce state and local legislation, as appropriate, for the designation and protection of historic properties. The City shall observe any requirements placed on it by the protective clause of the Kansas Historic Preservation Act. The City shall cooperate with the Kansas Historic Preservation Officer in any matters arising under that statute.

c.The Commission shall review all proposed National Register nominations for properties within the City limits according to the procedures and regulations contained in Article III of this chapter. When the Commission reviews a National Register nomination or other actions which are normally evaluated by a professional in a specific discipline and that discipline is not represented on the Commission, the Commission shall seek the advice of experts in that discipline before rendering its decision.

d.The Kansas Historic Preservation Officer may, at his discretion and by mutual agreement between the State and the City, delegate responsibilities to the Commission.

e.Each member of the Commission shall attend at least one information or training meeting each year. Such information and training meetings shall be approved by the Kansas Historic Preservation Department as pertaining to the work and functions of the Commission or to historic preservation in general. The Kansas Historic Preservation Department is committed to providing at least one workshop each year which will be primarily intended for local government landmark commission members. The Kansas Historic Preservation Department intends to cooperate in other ways to make information and training available to Commission members.

f.The City shall maintain a system for the survey and inventory of historic properties. The City shall maintain a detailed inventory of the buildings, sites, structures, objects and districts that have been designated landmarks or landmark districts. The inventory shall be maintained in a form compatible with the current Kansas Historic Structures Inventory form and with the state comprehensive historic preservation planning process. All inventory materials shall be available to the public. All inventory materials shall be kept up to date. All new surveys and inventories of buildings, sites, structures and objects shall utilize the Kansas Historic Structures Inventory form and the "Urban Study Unit" manual prepared by the Kansas Historic Preservation Department for the preservation planning element of survey projects. All survey efforts shall integrate with the Kansas historic preservation planning process. Duplicate copies of materials from all survey efforts conducted by the City shall be provided to the Kansas Historic Preservation Department unless already in the files of such Department.

g.The City shall provide for adequate public participation in all aspects of the implementation of this chapter, including the process of recommending properties for nomination to the National Register. All meetings of the Commission shall adhere to the provisions of the Kansas Open Meetings Act, K.S.A. 75-4317 and following. The Commission shall meet at least four times each year at regular intervals. Reasonably detailed minutes of all decisions and actions of the Commission or the Governing Body, including the reasons for making those decisions, shall be kept on file and available for public inspection. All decisions of the Commission or the Governing Body shall be made in a public forum and applicants shall be given written notification of any actions or decisions.

h.In addition to other responsibilities specified in this chapter, the Commission may:

1.Develop and participate in public information programs concerning the values of the preservation of historically and architecturally important structures and properties;

2.Make recommendations to the Governing Body concerning the use of City funds to promote the preservation of historically or architecturally important structures, properties or districts;

3.Review, evaluate and comment on the Hutchinson Comprehensive Plan and other plans, policies and decisions being considered or made by public agencies and which affect historically or architecturally important structures, properties or districts; and

4.Any other responsibilities which may be designated by resolution or motion of the Governing Body.

i.To further the purposes of this chapter, the Commission may apply for and receive, with the approval of the Governing Body, any gift, grant, bequest, devise, lease, fee or lesser interest, development right, easement, covenant, contractual right or conveyance, whether in whole or with conditions, limitations or reversions, in any property within the City limits. To further the purposes of this chapter, the Commission may apply for, receive or expend, with the approval of the Governing Body, any federal, state or private grant, grant-in-aid, gift or bequest.

j. The Commission shall review this chapter at least every five years. It shall prepare a report to the Governing Body which:

1. Makes an assessment of progress in preserving the historical and architecturally important structures and properties within the City limits;

2. Analyzes the numbers, types, locations and disposition of applications for designation of landmarks and landmark districts, landmark certificates, demolitions, preservation easements, appeals and variances as provided for in this chapter;

3. Analyzes the continued validity of any regulations imposed by this chapter; and

4. Recommends changes in this chapter, if necessary.

### **Article III. Landmarks and District Regulations**

#### **Sec. 4-301. Establishing Landmarks and Landmark Districts.**

- a. There is hereby established a List of Hutchinson Landmarks and Landmark Districts (the "List"). The List shall include buildings, sites, structures, objects and districts ("landmark" or "landmarks") located within the City and designated in accordance with this article as landmarks or landmark districts. The List may include landmarks which are listed on the National Register, the State Register or which have special historical or architectural value necessitating their preservation, restoration, reconstruction or rehabilitation. Landmarks may be listed individually or may be designated as a Hutchinson Landmark District.
- b. There is hereby established a Map of Landmark Districts (the "Map"), upon which shall be recorded the boundaries of duly designated Hutchinson Landmark Districts. In case of uncertainties regarding boundaries of such districts, they shall be presumed to follow:
  1. City boundaries;
  2. Centerlines of streets, alleys or public rights-of-way;
  3. Lot lines, parcel boundaries or property lines;
  4. Centerlines of the main tracks of railroad lines;
  5. Centerlines of creeks, streams, rivers or drainage channels; or
  6. Specific distances from a street line or other physical features when so indicated on the Map.

- c. The List, the Map and all notations, symbols, dimensions and references shown thereon shall be as much a part of this chapter as though fully set forth herein, and they shall be maintained current by the planning department.
- d. Landmarks and landmark districts may include:
  - 1. The interior, or any portion thereof, of a structure; provided, that it is customarily open or accessible to the public or is an area into which the public is customarily invited;
  - 2. A structure or part thereof;
  - 3. A property or part thereof;
  - 4. An abutting property or part thereof, used as and constituting a part of the premises on which another landmark is situated; or
  - 5. A landscape feature or aggregate of landscape features.
- e. Landmark districts may include two or more landmarks. Individual landmarks within a landmark district shall be classified and designated on the List. Individual landmarks shall be classified as:
  - 1. Key contributing;
  - 2. Contributing; or
  - 3. Non-contributing.

**Sec. 4-302. Application for Designation of Landmarks and Landmark Districts.**

To obtain the designation of a landmark or landmark district, a property owner or owners, a developer, an organization, the Commission or the Governing Body may file an application. In most instances, the property owner or owners should approve submission of an application. In cases where the property owner or owners do not submit an application for designation of a landmark, the property owner or owners shall be consulted to seek their approval of the submission of the application. Applications for landmark districts shall include written approval of the submission of the application by the owners of at least 50% of the property located within the proposed landmark district. Written approval may consist of a signature on a petition, separate letters or other form with an original signature executed by the property owner or an authorized agent. The applications shall be filed with the administrator. The applications shall contain, at the least:

- a. The legal description and address of the pertinent structures and/or properties;
- b. The name and address of all owners;
- c. The approximate date of original construction and the date of any major improvement or alteration, if known;
- d. The names of the architect and builder, if known;
- e. A description of the historical or architectural importance of the structures and/or properties; and
- f. Black and white photographs of the structures and/or properties.

**Sec. 4-303. Designation of Landmarks and Landmark Districts.**

- a. Upon receipt of an application for designation of a landmark or landmark district, the following procedures shall apply:
  - 1. The administrator shall set the date for hearing on the application. The hearing shall be held within 30 days following submission of the application, and may be held in conjunction with a regular or special meeting of the Commission.
  - 2. The administrator shall publish notice of such hearing in the official City newspaper at least 10 days before the hearing date. The notice shall describe the proposed designation in general terms and state the time, date and place of the hearing.
  - 3. The administrator shall prepare a report which shall be completed and available to the public at least 7 days before the hearing date.
  - 4. At least 5 days before the hearing, the administrator shall mail or deliver a notice thereof to all owners of buildings, sites, structures or objects proposed to be designated a landmark or included within a landmark district and to all owners of property adjacent to such proposed landmark or landmark district. The administrator shall also mail or deliver such notice to all persons and organizations which have previously requested the same. Such notice shall include the time, date and place of the hearing and shall invite interested persons to appear and be heard. The failure of any person, other than an owner of a building, site, structure or object proposed for designation as a landmark, to receive such notice shall not invalidate any action subsequently taken on an application.
  - 5. The Commission shall conduct the hearing according to its adopted procedures, if any, and consistent with Kansas law. During the hearing, the administrator shall make such recommendations as he or she deems appropriate. The hearing may be recessed from time to time.
- 6. The Commission may recommend such action as it deems appropriate to the Governing Body, including a recommendation that an application be made for listing on the National Register or the Kansas Register.

7.The Governing Body shall consider the application at a regular or special meeting, and may by resolution designate buildings, sites, structures or objects as landmarks or as a landmark district, and direct their addition to the List or the Map, as appropriate. The Governing Body may likewise authorize application for listing on the National Register or the Kansas Register. No building, site, structure or object shall be designated as a landmark under the provisions of this section if any owner thereof submits a written protest to such designation on or before the date of the public hearing thereon.

8.Within 7 days after adoption of a resolution designating a landmark or landmark district, the administrator shall mail notice thereof to the owners of each landmark so designated, and shall likewise notify the Building Official of such designation.

b.The Commission may recommend and the Governing Body may designate a landmark or landmark district which includes a portion of the structures and/or properties under consideration and described in any notice.

c.The Commission may recommend and the Governing Body may amend or rescind designation of a landmark or landmark district in the same manner and by the same procedure as is followed in designation of a landmark or landmark district.

d.Action on building or demolition permit applications shall not be delayed if the building or demolition permit application was submitted prior to the submission of a pertinent landmark or landmark district application. Otherwise, action on building or demolition permit applications pertaining to buildings, sites, structures or objects proposed to be designated landmarks or included within a landmark district, shall be delayed until final action has been taken on such designation.

e.The administrator shall cause to be recorded in a timely manner at the office of the Reno County Register of Deeds a record of any designation of a landmark, amendment of such a designation or rescision of such a designation.

**Sec. 4-304. Preservation Associations.**

a.The purposes of this chapter can best be achieved through a partnership between private property owners and the City. The City seeks to:

- 1.Encourage the involvement of citizens in the implementation of this chapter;
- 2.Integrate neighborhood needs and desires in the implementation of this chapter; and

3. Provide information on local preservation issues to the City residents and property owners.
- b. Organizations may register as a preservation association. The registration application shall contain such information and be in such form as is approved by the Commission. The registration application shall list the types of preservation issues and cases that interest the organization. Organizations may register interest in, but are not limited to, the following types of issues and cases:
  1. Designation of landmarks and landmark districts;
  2. Administration or the use of preservation fund sources;
  3. Building permit applications pertaining to all landmarks and landmark districts, a specific type of landmark or a specific landmark district;
  4. Preparation, review or amendment of standards for review of building permit applications;
  5. Demolition and clearance permit applications pertaining to landmarks and landmark districts, a specific type of landmark or a specific landmark district;
  6. Preparation, review or amendment of standards for review of demolition and clearance permit applications;
  7. Agreements between the City and other units of government made in accordance with the provisions of this chapter;
  8. Efforts to encourage the maintenance of landmarks and properties in landmark districts;
  9. Proposed preservation easement donations; and
  10. Amendments to this chapter.
- c. The Commission and the administrator may encourage the creation and registration of preservation associations.
- d. The administrator shall notify registered preservation associations of all issues or cases that are of interest to the organization. Such notification shall be provided upon the submission of an application or when a decision to consider an issue has been made. The administrator shall promptly provide to preservation associations:
  1. Copies of any correspondence, evidence, information and other materials pertaining to a case or issue of interest to the organization;

2.Minutes of meetings at which the Commission or Governing Body considered a case or issue of interest to the organization; and

3.Any action taken on a case or issue of interest to the organization.

e.Preservation associations shall be afforded special opportunities to participate in public hearings and consideration of cases or issues of interest to the organization.

**Sec. 4-305. Preservation Fund.**

a.There is hereby established the Hutchinson Preservation Fund (the "Fund"). The Fund shall be administered as directed by and according to any limitations and regulations imposed by the Governing Body and according to State law. The City may apply for, receive and place in the Fund any federal, state or private fees, grants, grants-in-aid, gifts or bequests. The Governing Body may budget and incorporate City revenues into the Fund. Fees and fines imposed according to this chapter shall be placed in the Fund.

b.The Commission may recommend and the Governing Body may approve, on a case by case basis, use of the resources of the Fund for:

1.The purchase of fee simple title to landmarks or properties located in a landmark district;

2.The purchase of preservation easements regarding landmarks or properties located in a landmark district;

3.The purchase of fee simple title to landmarks or properties located in a landmark district with the eventual objective of property resale to a preservation association;

4.Payment of installments and fees according to a contract to purchase fee simple title to landmarks or properties located in a landmark district or a preservation easement regarding a landmark or property located in a landmark district;

5.Grants and/or loans to owners, developers and organizations for preservation and/or rehabilitation of landmarks and properties in a landmark district;

6.Grants and/or loans to organizations for programs and projects designed to achieve one or more of the purposes of this chapter;

7.The maintenance of landmarks and properties in landmark districts or the maintenance of preservation easements;

8.The costs of conducting and preparing surveys of historically and architecturally important buildings, sites, structures and objects;

9. The costs of preparing nominations of buildings, sites, structures or objects to the National Register or the Kansas Register;
  10. The costs of the preparation and presentation of reports, instructions, brochures, meetings, maps, press releases, conferences and other measures designed to acquaint citizens, owners and developers with the purposes of this chapter; and
  11. Reasonable administrative, planning, architectural, engineering, financial, real estate, appraisal and/or legal costs associated with the purchase of property, the purchase and enforcement of preservation easements, the sale of property, the negotiation of contracts and the preparation of grant applications and legal actions.
- c. The Commission may recommend and the Governing Body may approve criteria, standards, rules, limitations and regulations for projects and programs established pursuant to the requirements of this section.

**Sec. 4-306. Improvements Involving Landmarks and Landmark Districts.**

- a. Owners, tenants, lessees or developers may commence any improvement to a building, site, structure or object that has been designated a landmark or is located in a landmark district, for which a building permit must be first issued, only in conformance with this chapter. Owners, tenants, lessees or developers planning or making improvements to a building, site, structure or object that has been designated a landmark or is located in a landmark district, for which a building permit is not required, are encouraged to voluntarily abide by the requirements of this chapter. Before owners, tenants, lessees or developers prepare a building permit application, they may voluntarily submit improvement and/or development plans to the Commission for summary review and comment prior to preparation of construction plans and the application for a building permit. Any comments made by Commission members during such a summary review shall not be considered binding upon the Commission, the Governing Body or the City. Nothing in this chapter shall preclude the making of an improvement ordered by a public official to correct a serious deficiency in the case of an outright emergency.
- b. The administrator shall refer to the Commission only those building permit applications which pertain to landmarks and properties located in a landmark district. Improvements to the interiors of single household dwellings shall be exempt from the provisions of this chapter and building permits pertaining to such improvements shall not be referred to the Commission by the administrator. The Commission shall prepare and adopt additional guidelines for determining which types of building permit applications will be referred to the Commission. The guidelines may be amended from time to time by the Commission. The Governing Body shall approve guidelines and any amendments thereto before such standards or amendments thereof shall become effective. The administrator shall refer to the Commission only those building permit applications which comply with the guidelines.
- c. When a building permit application is referred to the Commission, the following procedures shall apply:

1.The administrator shall provide such written notice to the State Historic Preservation Officer of building permit applications as may be required by state law, K.S.A. 75-2701 and following, as amended.

2.The administrator may set the date of a preliminary hearing concerning building permit applications for buildings, sites, structures or objects that are not listed on the National Register or the Kansas Register. The preliminary hearing shall be held, at the least, 7 days after the referral of the application. The hearing may be held during a regular meeting of the Commission or during a special meeting of the Commission.

3.The Commission shall conduct the preliminary hearing according to any adopted procedures and consistent with Kansas law.

4.Immediately following the preliminary hearing, the Commission may issue a certificate of approval or direct the administrator to schedule a hearing. The Commission may issue a certificate of approval after holding a preliminary hearing if, in the judgment of the Commission, the proposed improvement complies with the standards established according to subsection "f" of this section.

5.If a certificate of approval is not issued after holding a preliminary hearing, the administrator shall set the date of a hearing concerning the building permit application. The hearing shall be held, at the most, 30 days after the referral of the application. The hearing may be held during a regular meeting of the Commission or during a special meeting of the Commission.

6.The administrator shall prepare a report. The report shall be completed and available to the public at least 7 days prior to the hearing date.

7.Prior to the hearing, the administrator shall mail or deliver a notice to all persons and organizations that have submitted a request to receive such notices. The notice shall indicate the time and place of the hearing and invite interested individuals to appear and be heard. The failure of any such person or organization to receive a notice shall not invalidate any subsequent action taken on the application.

8.Prior to the hearing, the administrator shall notify the Commission of the case, transmit copies of the application and report, forward copies of any associated correspondence and provide other pertinent reports and materials.

9. The Commission shall conduct the hearing according to any adopted procedures and consistent with Kansas law. In regard to building permit applications referred to the State Historic Preservation Officer, the administrator shall report whether the state historic preservation officer has determined that the proposed construction will encroach upon, damage or destroy any property listed on the National Register or the Kansas Register. During the hearing, the administrator shall make what recommendations he/she deems appropriate. The hearing may be recessed from time to time.

10. Immediately following the hearing, the Commission may issue a certificate of approval in whole or in part, issue a certificate of approval subject to certain modifications, deny the building permit or suspend action on the building permit for a period not to exceed 90 days.
  11. Within 7 days after Commission action, the administrator shall notify the applicant in writing of the decision. The administrator, as soon as reasonably possible, shall notify the building official of the Commission's decision.
- d. In such cases when the State Historic Preservation Officer has determined that the proposed construction will encroach upon, damage or destroy any property listed on the National Register or the Kansas Register, the building permit application shall not be approved until the requirements of state law (K.S.A. 75-2701 and following, as amended) shall have been met. The failure of the State Historic Preservation Officer to initiate an investigation of any building permit application within 30 days from the date of receipt of notice thereof shall constitute approval of the application by the State Historic Preservation Officer.
  - e. In those instances when the Commission denies a building permit application, the following regulations shall apply:
    1. The Commission shall state, in the motion, the reasons for such disapproval and list acceptable project alternatives;
    2. The administrator shall transmit these reasons and list of acceptable alternatives to the applicant;
    3. The applicant may alter the project to comply with the motion of the Commission; and
    4. The administrator may issue a certificate of approval and the building permit may be issued for an altered project that complies with the motion of the Commission.
  - f. The Commission shall prepare and adopt standards for review of building permit applications as necessary to implement and supplement the provisions of this section. The Commission shall prepare and adopt separate standards for review of building permit applications involving non-contributing properties located in landmark districts. In general, standards for non-contributing properties shall only concern whether the proposed improvement detrimentally affects the landmark district. The Commission may prepare and adopt standards for individual landmark district which may differ from standards for other landmark districts and standards for landmarks. The standards for review of building permit applications may be amended from time to time by the Commission. The Governing Body shall approve standards for review and any amendments thereof before such standards or amendments thereto shall become effective. In making its decision the Commission shall consider, among other things:

- 1.The purposes of this chapter;
- 2.The historical and architectural importance of the landmark or landmark district;
- 3.The materials of the pertinent building, site, structure or object;
- 4.The relationship of the pertinent building, site, structure or object to other landmarks or properties in a landmark district;
- 5.The effect of the proposed improvement on the exterior, interior and landscape features of the pertinent building, site, structure or object;
- 6.The extent to which the proposed improvement would be harmonious with or incongruous to the historic and architectural aspects of its surroundings. Harmony shall be evaluated in terms of the suitability of materials, scale, size, height, placement and use of the pertinent building, site, structure or object;
- 7.Whether the project will avoid destruction of distinguishing features of the building, site, structure or object;
- 8.Whether buildings, sites, structures or objects will be recognized as a product of their time;
- 9.Whether significant changes made in the past will be recognized and respected;
- 10.Whether distinctive features and skilled craftsmanship will be treated with sensitivity;
- 11.Whether significant features will be repaired rather than replaced where feasible and, if replacement is necessary, a satisfactory effort will be made to match new materials with original features;
- 12.Whether the gentlest means possible will be used to clean surfaces and sandblasting will not be used;
- 13.Whether archeological sites will be protected and preserved;
- 14.Whether contemporary alterations and additions will be compatible with, in size, scale, color and material, and complement rather than copy landmarks or properties in landmark districts; and
15. Whether new additions will be so designed that, if removed, the original building, site, structure or object will be unharmed (reversibility).

- g. If the Commission fails to act on a building permit application within 30 days from the date of submission of a complete building permit application, such application shall be deemed to have been approved and, if all other requirements of the City have been met, the building official may issue the building permit.
- h. All work performed and improvements made shall comply with the certificate of approval and the requirements thereof. It shall be the duty of the building official or designated representative to inspect from time to time any work performed and assure such compliance. In the event work is performed not in compliance with the certificate of approval, the building official or authorized representative shall issue a stop work order and all work shall cease. The building official shall cancel the stop work order when reasonably certain that the developer will comply with the pertinent certificate of approval. No person, firm or corporation shall undertake any work on such project as long as the stop work order continues in effect. In the event that there is a violation of this chapter, the provisions of section. 4-405 of this chapter shall apply.

**Sec. 4-307. Demolition and Clearance Applications.**

- a. Owners, tenants, lessees or developers may commence any demolition and/or clearance of all or part of a building, site, structure or object that has been designated a landmark or is located in a landmark district, only in conformance with this chapter. Owners, tenants, lessees or developers may voluntarily submit demolition and/or clearance plans to the commission for review and comment prior to preparation of the application for a demolition and/or clearance permit. Nothing in this chapter shall preclude a demolition and/or clearance ordered by a public official to correct a serious deficiency in the case of an outright emergency.
- b. The administrator shall refer to the Commission all demolition or clearance permit applications which apply to a landmark or a property located in a landmark district.
- c. When a demolition or clearance application is referred to the Commission, the following procedures shall apply:
  - 1. The administrator shall provide such written notice to the State Historic Preservation Officer of demolition or clearance applications as may be required by state law (K.S.A. 75-2701 and following, as amended).
  - 2. The administrator may set the date of a preliminary hearing concerning a demolition or clearance application for buildings, sites, structures or objects that are not listed on the National Register or the Kansas Register. The preliminary hearing shall be held, at the least, 7 days after the referral of the application. The hearing may be held during a regular meeting of the Commission or during a special meeting of the Commission.

3.The Commission shall conduct the preliminary hearing according to any adopted procedures and consistent with Kansas law.

4.Immediately following the preliminary hearing, the Commission may issue a certificate of approval or direct the administrator to schedule a hearing. The Commission may issue a certificate of approval after holding only a preliminary hearing if, in the judgment of the Commission, the proposed demolition or clearance clearly complies with subsection "f" of this section.

5.If a certificate of approval is not issued after holding a preliminary hearing, the administrator shall set the date of a hearing concerning the demolition or clearance permit application. The hearing shall be held, at the most, 30 days after the referral of the application. The hearing may be held during a regular meeting of the Commission or during a special meeting of the Commission.

6.The administrator shall prepare a report. The report shall be completed and available to the public at least 7 days prior to the hearing date.

7.Prior to the hearing, the administrator shall mail or deliver a notice to all persons and organizations that have submitted a request to receive such notices. The notice shall indicate the time and place of the hearing and invite interested individuals to appear and be heard. The failure of any such person to receive a notice shall not invalidate any subsequent action taken on the application.

8.Prior to the hearing, the administrator shall notify the Commission of the case, transmit copies of the application and report, forward copies of any associated correspondence and provide other pertinent reports and materials.

9.The Commission shall conduct the hearing according to any adopted procedures and consistent with Kansas law. In regard to demolition or clearance permit applications referred to the State Historic Preservation Officer, the administrator shall report whether the state historic preservation officer has determined that the proposed demolition or clearance will encroach upon, damage or destroy any property listed on the National Register or the Kansas Register. During the hearing, the administrator shall make what recommendations he/she deems appropriate. The hearing may be adjourned from time to time.

10.Immediately following the hearing, the Commission may issue a certificate of approval in whole or in part, issue a certificate of approval subject to certain modifications, deny the demolition and/or clearance permit application, or suspend action on the demolition or clearance permit application.

11.Within 7 days after Commission action, the administrator shall notify the applicant in writing of the decision. The administrator, as soon as reasonably possible, shall notify the building official of the decision of the Commission.

- d. In such cases when the State Historic Preservation Officer has determined that the proposed demolition or clearance will encroach upon, damage or destroy any property listed on the National Register or the Kansas Register, the demolition or clearance permit application shall not be approved until the requirements of state law (K.S.A. 75-2701 and following, as amended) shall have been met. The failure of the State Historic Preservation Officer to initiate an investigation of any demolition or clearance permit application within 30 days from the date of receipt of notice thereof shall constitute approval of the application by the State Historic Preservation Officer.
  
- e. In those instances when the Commission denies a demolition or clearance permit application, the following regulations shall apply:
  - 1. The Commission shall state, in the motion, the reasons for such disapproval and list acceptable project alternatives;
  - 2. The administrator shall transmit these reasons and list of acceptable alternatives to the applicant;
  - 3. The applicant may alter the project to comply with the motion of the Commission; and
  - 4. The administrator may issue a certificate of approval and the demolition or clearance permit may be issued for an altered project that complies with the motion of the Commission.
  
- f. The Commission shall prepare and adopt standards for review of demolition or clearance permit applications as necessary to implement and supplement the provisions of this section. The Commission shall prepare and adopt separate standards for review of demolition or clearance permit applications involving non-contributing properties located in landmark districts. In general, standards for non-contributing properties shall only concern whether the proposed demolition or clearance detrimentally affects the landmark district. The Commission may prepare and adopt standards for other landmark districts and standards for landmarks. The standards for review of demolition or clearance permit applications may be amended from time to time by the Commission. The Governing Body shall approve standards for review and any amendments thereto before such standards or amendments shall become effective. In making a decision, the Commission may consider whether:
  - 1. The building, site, structure or object is of such historical or architectural importance that its removal or clearance would be a detriment to the public interest;
  - 2. The building, site, structure or object is of such an old and uncommon design, texture and/or material that it could not be easily reproduced;
  - 3. Retention of the building, site, structure or object would help preserve and protect another landmark or a landmark district;
  - 4. The building, site, structure or object may be put to a reasonable beneficial use;

5.The benefit to the public should the building, site, structure or object be retained outweigh the loss to the developer should the demolition application be denied;

6.The developer has definite plans to construct a new structure on the site if the demolition application is approved;

7.The building, site, structure or object is a health or safety danger to individuals or private property or constitutes an attractive nuisance for children or adults;

8.It is physically and economically feasible to preserve, restore, reconstruct or rehabilitate the building, site, structure or object;

9.There is any reasonable economic use of the building, site, structure or object; and

10.It is impractical to sell or lease the building, site, structure or object, or no market exists for the building, site, structure or object at a reasonable price.

g.Should the Commission decide to suspend action on the demolition permit the developer may demolish and clear the pertinent building, site, structure or object; provided, that the owner proves, by the submission of substantial evidence, that his property cannot be put to a reasonable beneficial use without the approval of a demolition or clearance permit. The Commission shall determine whether the owner has submitted such proof. Substantial evidence shall include, but not be limited to, documentation that:

1.The owner has made a bona fide offer to sell the building, site, structure or object to any person, firm, corporation or government at a price reasonably related to its fair market value, based on a professional appraisal, and given a reasonable assurance that the building, site, structure or object will be preserved, restored, reconstructed and/or rehabilitated;

2.No bona fide contract, binding upon all parties, shall have been executed for the purchase of the building, site, structure or object; and

3.The offer to sell the building, site, structure or object shall have been in effect for a minimum offer to sell period of 90 days.

h.Should the Commission decide to suspend action on the demolition permit the Commission may take such steps as it deems necessary to preserve the pertinent building, site, structure or object. The Commission may consult with civic groups, public agencies and interested citizens. The Commission may recommend that public or private entities acquire the building, site, structure or object. The Commission may explore moving one or more buildings, structures or objects to a new location.

**Sec. 4-308. Property Owned by Public Agencies.**

- a. In the City, many of the historically and architecturally important buildings, sites, structures and objects are owned by government entities. The preservation of buildings, sites, structures, objects and districts significant in American history, architecture, archeology, engineering and culture is established as national policy in the National Historic Preservation Act of 1966, as amended. The Kansas Historic Preservation Act, as amended, declares that the historical, architectural, archeological and cultural heritage of Kansas is an important asset of the state and that its preservation and maintenance should be among the highest priorities of government. To accomplish the adopted policies of the federal and state governments and to accomplish the purposes of this chapter, the following regulations promote the preservation of publicly owned, historically and architecturally important buildings, sites, structures and objects.
- b. For properties in the City, the Commission may recommend and the Governing Body may authorize the submission of an application to list a building, site, structure, object or district, owned by a unit of government, on the National Register or the Kansas Register. In general, the authorization of the pertinent unit of government, if other than the City, should be obtained before submission of such an application.
- c. To further the purposes of this chapter, the City may enter into agreements with other units of government. The City shall specifically seek to negotiate an agreement with the State Historic Preservation Officer whereby the state delegates certain responsibilities to the City, including but not limited to the review of building permit applications and demolition and/or clearance permit applications. The Commission may recommend and the Governing Body may authorize, in behalf of the City, entering into such agreements. Such agreements may address:
  1. Designation of landmarks and landmark districts;
  2. Administration of the use of preservation fund resources;
  3. Improvements to landmarks, properties in landmark districts and properties adjacent to landmarks or landmark districts;
  4. Demolition and clearance of all or a portion of landmarks, properties in landmark districts and properties adjacent to landmarks or landmark districts;
  5. Efforts to encourage the maintenance of landmarks and properties in landmark districts; and
  6. Other mutually acceptable provisions.

- d. Proposed improvements to a building, site, structure or object, owned by the City and designated as a landmark or located in a landmark district, shall be approved according to the procedures and regulations listed in section 4-306 of this ordinance. Proposed demolition and/or clearance of a building, site, structure or object, owned by the City and designated as a landmark or located in a landmark district, shall be approved according to the procedures and regulations listed in section 4-307 of this chapter.

**Sec. 4-309. Maintenance of Landmarks and Properties in Landmark Districts.**

a. In order to preserve, protect and enhance landmarks and landmark districts, such properties should receive reasonable care, maintenance and upkeep. In general, the City encourages but shall not require that owners, tenants or lessees correct deterioration, decay, damage, structural defects and nuisances including:

1. Structural or property features which may fall and injure members of the public or may fall and cause damage to property;

2. Deteriorated or inadequate foundations, flooring or floor supports;

3. Members of walls, partitions or other vertical supports that are split, lean, list or buckle due to defective material or deterioration or which are of insufficient size or strength to carry imposed loads with safety;

4. Members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split, or buckle due to defective material or deterioration or which are of insufficient size or strength to carry imposed loads with safety;

5. Fireplaces or chimneys which list, bulge or settle due to defective material or deterioration or which are of insufficient size or strength to carry imposed loads with safety;

6. Deteriorated, crumbling or loose plaster, mortar, cement or similar material;

7. Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken windows and doors or weathering due to the lack of paint or other protective covering; and

8. Deteriorated or ineffective sanitary sewer lines, septic tanks, septic systems or other sanitary sewage systems.

b. The Commission may recommend and the Governing Body may approve programs to encourage and assist owners to care for and maintain landmarks and properties in landmark districts. Resources for such programs may come from the preservation fund. Such programs may include grants and loans to owners or organizations for:

1. Maintenance and cleanup projects;

2. Establishment of libraries of how-to materials;

3. Establishment of a tool lending program; and
4. The joint purchase, in bulk and at a discount, of maintenance equipment and supplies.

**Sec. 4-310. Preservation Easements.**

- a. To further the purposes of this chapter, the City hereby establishes a program to accept preservation easements. The City may accept preservation easements on properties that have been designated as a landmark or that have been designated as a key contributing or contributing property located in a landmark district. The Commission shall prepare and adopt a preservation easement application form, a model easement document, a publication explaining the appraisal of preservation easements, standards for review of proposed preservation easements and other materials as are necessary to implement and supplement the provisions of this section. These materials may be amended from time to time by the Commission. The Governing Body shall approve standards for review and any amendments thereof before such standards or amendments shall become effective. Preservation easements shall constitute a perpetual interest in real property. The rights of the City to enforce the provisions of an easement shall be superior to those of any property owner or a holder of any encumbrance, lien or mortgage. Preservation easements may allow inconsistent use of the protected characteristics and features; provided, that it is necessary for the protection of the preservation interests that are the subject of the easement. Preservation easements may specify that:
  1. The demolition and/or clearance of all or part of the pertinent building, site, structure or object shall be prohibited;
  2. The property owner agrees to maintain the pertinent building, site, structure or object in conformance with specified requirements;
  3. City employees and/or the public are granted the right to enter into the pertinent structure or onto the pertinent property at specified times, for specified purposes and according to specified procedures;
  4. The City shall review and approve any uses made either inside or outside of the pertinent building, site, structure or object;
  5. The City shall review and approve any sign on the pertinent building, site, structure or object;
  6. The City may make repairs to the pertinent building, site, structure or object and charge the cost of such repairs to the owner without the consent of the owner; provided, that the owner is notified in writing 15 days prior to the commencement of any work;
  7. The property owner may submit an application for a zoning change or a special use permit only with permission of the City;

8. Insurance coverage as specified by the City and in an amount equal to modified replacement cost shall be purchased by the owner for the pertinent building, site, structure or object; the City shall be named as a co-insured; and the City shall approve any changes in coverage; and

9. The owner shall pay any legal or other costs incurred by the City in its enforcement of easement provisions.

b. Federal law and regulations provide for charitable deductions for preservation easement donations. In order to take such charitable deduction, the property must be individually listed in the National Register or listed as a contributing property to a district listed in the National Register. Properties eligible to be listed in the National Register, in general, will not justify charitable deductions until actually listed in the National Register. It shall be the responsibility of the party donating an easement to determine whether the easement donation meets the requirements of federal law and regulations.

c. When a property owner or developer wants to make a preservation easement donation, the following procedures shall apply:

1. The administrator shall provide the applicant with an application form, a copy of a model easement document and a publication explaining the appraisal of preservation easements.

2. The applicant shall complete and submit to the administrator an application form; photographs showing the portions of the buildings, sites, structures and objects to be included in the easement; and rehabilitation plans, if applicable. The applicant shall indemnify the City at all times against any and all claims arising out of the easement donation application process and the conveyance of the preservation easement, if accepted.

3. The administrator shall review the application and prepare recommendations.

4. The Commission shall review the application and the administrator's recommendations. The Commission may refuse to accept the easement donation or may preliminarily approve the easement donation. Preliminary approval of the easement donation shall not constitute an obligation of the City in any way.

5. To process the application further, the property owner shall pay the non-refundable application fee.

6. The applicant shall submit to the administrator complete copies of all encumbrances and liens against the property, recorded and unrecorded; a title opinion from legal counsel; a certificate that all property taxes and special assessments have been paid in full; copies of any applicable partnership agreements or articles of incorporation; and a properly executed authorization of the property owner or owners agreeing to offer the donation.

7.The applicant shall obtain a qualified and competent appraisal of the value of the easement. The applicant shall submit an adequately documented appraisal report to the administrator.

8.The applicant, the administrator, and the City's legal counsel shall draft an easement document and an easement agreement. The easement agreement may include provisions for payment of an endowment fee, to be placed in the City's preservation fund by the applicant. The endowment fee may be paid over a period of up to five years. The endowment fee shall be negotiated on a case by case basis. The applicant shall pay all legal expenses of the City. Such expenses shall be kept to a minimum.

9.The administrator and the City's legal counsel shall determine whether the applicant must obtain subordination agreements from the holders of all encumbrances and liens and/or other parties having an interest in the property. Such agreements shall subject the interests of these other parties to the obligations of the preservation easement. The applicant shall provide to the administrator copies of any such agreements.

10.The administrator shall make an on-site inspection of the proposed easement and prepare a report which shall include, at least, a description of the easement, a listing of the likely monitoring and enforcement responsibilities of the City, an assessment of whether the acceptance of the proposed easement will promote the purposes of this chapter, an estimate of City costs if the easement is accepted and any recommendations deemed appropriate.

11.The administrator may schedule consideration of the proposed easement donation during a regular or special meeting of the Commission. The administrator shall provide a meeting notice and a copy of the report to the applicant at least 7 days prior to the meeting. The Commission shall review the proposed easement donation and related materials. The Commission may recommend to the Governing Body to accept the preservation easement and execute the easement agreement, accept the preservation easement and execute the easement agreement subject to certain conditions or modifications, or refuse to accept the preservation easement.

12.The Governing Body shall consider the recommendation of the Commission at a regular or special meeting. The Governing Body may accept the preservation easement and execute the easement agreement, accept the preservation easement and execute the easement agreement subject to certain conditions or modifications, or refuse to accept the preservation easement.

13.If the preservation easement is accepted, the administrator shall record the easement in a timely manner at the office of the Reno County Register of Deeds. The administrator shall maintain a record of the easement. The property owner shall inform any party which subsequently purchases the property of the existence and provisions of the easement.

d. The administrator shall inspect on an annual basis, at least, donated easements. In general, the administrator shall inspect the easement in the presence of the owner. The administrator shall prepare an inspection report which shall include a listing of any changes or improvements to the easement, note any violations of the provisions of the easement, recommend maintenance or improvements necessary to preserve the easement, contain photographs that document the condition of the easement and any other recommendations deemed necessary by the administrator. The administrator shall schedule a review of the inspection report by the Commission at a regular or special meeting. The administrator shall provide a meeting notice and a copy of the report to the property owner at least 7 days prior to the meeting. The Commission shall review the report and may make what recommendations to the Governing Body that the Commission deems appropriate. Every effort shall be made to reach a mutual agreement with the property owner regarding compliance with the terms of the easement. The Commission may authorize notifying the property owner by letter of any violation of easement provisions and request compliance with the terms of the easement. If necessary, the Commission may recommend and the Governing Body may authorize the City's legal counsel to take legal action to enforce provisions of the easement.

e. The property owner shall submit plans to the administrator for any improvements which may affect an accepted preservation easement at least 30 days prior to the beginning of any work. The administrator shall review the plans. If the administrator determines that there will be no adverse effect, the administrator shall so notify the property owner and the improvement may commence. If the administrator determines that the improvement may adversely affect an accepted preservation easement, the administrator shall schedule a review of the proposed improvement by the Commission at a regular or special meeting. No improvement that may adversely affect an accepted preservation easement shall be commenced unless approved by the Commission. The administrator shall provide a meeting notice to the property owner at least 7 days prior to the meeting. The Commission shall review the improvement plans and may approve the improvement plans, approve the improvement plans subject to certain modifications or conditions, or refuse to approve the improvement plans. Every effort shall be made to reach a mutual agreement with the property owner. Improvements that have received written final approval from the National Park Service for tax certified rehabilitation shall receive automatic approval from the City.

f. The Commission, with the approval of the Governing Body, may transfer a preservation easement to another qualified organization, as defined by federal laws and regulations. The other organization shall continue to administer and enforce the easement provisions as originally intended. In general, qualified organizations include governmental agencies and publicly supported charities other than school districts and churches. The qualified organization shall be organized or operated primarily or substantially for the conservation of historically and architecturally important buildings, sites, structures and objects and shall have the resources necessary to administer and enforce the provisions of the easement.

g. The provisions of this section shall in no way supersede any other provision of this chapter. The provisions of this section shall be considered as adding to rather than subtracting from the other provisions of this chapter.

## **Article IV. Administration**

### **Sec. 4-401. Administrator.**

The Governing Body hereby appoints the City Planner as the administrator of this chapter. The administrator is authorized to enforce and carry out all provisions of this chapter. The administrator is authorized to develop application forms and establish procedures consistent with this chapter. The administrator has the following additional powers and responsibilities:

- a. Make landmark determinations;
- b. Receive, review, process, prepare reports and recommendations and refer to the Commission and the Governing Body applications for designation of landmarks and landmark districts, building permits, demolition and clearance permits, preservation easements, appeals and variances as provided for in this chapter;
- c. Record and file approved landmark and landmark district designations, certificates of approval, preservation easements, decisions on appeals and approved variances;
- d. Revoke any permit mistakenly issued due to factual errors or contrary to the provisions of this chapter;
- e. Maintain an up-to-date copy of the Map as necessary; and
- f. Maintain agendas, minutes and records of all meetings of the Commission, including voting records, attendance, resolutions, findings, determinations and decisions.

### **Sec. 4-402. Landmark Determination.**

- a. Before the building official may issue a building permit for any development, the administrator must make a landmark determination and specify whether the applicable structure or property has been designated as a landmark or is within a designated landmark district. No structure or property may be used, occupied or used in a different manner unless the administrator has made a landmark determination. Landmark determinations shall not authorize any action not in conformance with this chapter. Landmark determinations shall not constitute a defense in any action to abate an unlawful structure or property.
- b. Landmark determinations shall be made on permit applications by the administrator or an authorized representative. The determination shall be issued within two working days after the building permit application has been received by the administrator or it shall be assumed that the structure or property has not been designated as a landmark and is not located within a landmark district.

**Sec. 4-403. Reports.**

The administrator shall be responsible for the preparation of reports as required in this chapter. The reports may summarize the applicable sections of this chapter, describe the historical and architectural significance of pertinent structures and/or properties, indicate the physical condition of the structures and/or properties under consideration, record recent real estate transactions in the neighborhood, list the assessed value of the structures and/or properties under consideration, record whether property taxes have been paid for the pertinent structures and/or properties, list positive and detrimental effects on structures and/or properties if an application is approved or if an application is not approved and provide other appropriate data and information. The report also may contain the recommendations of the administrator. All recommendations shall be made in consideration of the City's comprehensive plan, zoning requirements, projected public improvements and other pertinent policies and plans. The staff report shall be completed at least 7 days prior to the pertinent hearing.

**Sec. 4-404. Fees.**

- a. For the purpose of defraying processing costs, the administrator is authorized to require and accept payment of fees. Such payment shall be made at the time an application is submitted, when review of a case commences or as otherwise specified. The Governing Body may from time to time by resolution set fees. All fees received shall be placed in the preservation fund.
- b. There shall be no application fee for designation of a landmark district.
- c. There shall be an application fee for designation of a landmark and for a preservation easement. Such fees may be based on the notification costs, the number of structures and/or properties included in the application and other factors which affect processing costs.
- d. There shall be a fee for review of building permit applications, demolition and clearance permit applications, appeals and variance applications. Such fees may be based on the notification costs, the number of structures and/or properties included in the application and other factors which affect processing costs. If the Commission or Governing Body eventually and finally approves a building permit application, demolition or clearance permit, an appeal or a variance, the fee shall be returned in full to the applicant.

**Sec. 4-405. Enforcement.**

- a. In the event that an improvement is made to any structure or property or any structure or property is demolished or cleared in violation of the provisions of this chapter, the City may institute an appropriate action or proceeding to prevent or abate such unlawful action. The imposition of any penalty hereunder shall not preclude the City from instituting any proper action or proceeding to require compliance with the provisions of this chapter and with administrative orders and determinations made hereunder.

- b. The administrator shall give written notification of any violation of this chapter to a property owner, lessor, trustee or other legally responsible party. The notification shall describe and explain in clear, precise terms the nature of the violation. The property owner, lessor, trustee or other legally responsible party shall within 30 days correct such violation or give satisfactory evidence that steps have been taken that will lead to correcting such violation within a specified time period. The administrator shall agree that the stated period of time is fair and reasonable.
- c. The City may correct a violation of this chapter; provided, that notification of a violation has been correctly issued and the 30 day time period has elapsed. The cost of correcting a violation by the City may be assessed as a special assessment against the parcel on which the pertinent structure of property is located. The City clerk and the County clerk shall extend the same on the tax rolls of the County against the pertinent lot or parcel of land.
- d. Any person violating any of the provisions of this chapter shall be guilty of a class A misdemeanor. Each day or portion thereof during which any such violation is committed, continued or permitted shall constitute a separate offense. Any fines collected by reason of violations of this chapter shall be placed in the preservation fund.
- e. The City may bring action to require the rebuilding or restoration of a building, site, structure or object, or any part thereof, by any person who alters or improves any building, site, structure or object, or any part thereof, in violation of the provisions of this chapter. Such action shall be in addition to and not in lieu of any criminal prosecution and penalty.

**Sec. 4-406. Appeals.**

- a. Any person aggrieved by, or any office of the City, a governmental agency or other entity affected by, any decision of the administrator or Commission made in administering this chapter may apply for appeal. Appeals shall be heard by the Board of Commissioners.
- b. Applications for appeal shall be filed with the administrator. Applications shall be filed within 15 days after the administrator or Commission made the pertinent decision, order, requirement or determination. Upon receipt of an application for appeal, the following procedures shall apply:
  - 1. The administrator shall set a reasonable time and place for a hearing regarding the application.
  - 2. The administrator shall publish a notice of the hearing in the official City newspaper at least 10 days prior to the hearing. The notice shall contain the time, place and subject of the hearing. Copies of the notice shall be mailed to each party to the application and to the Commission.
  - 3. Prior to the hearing, the administrator shall notify the Governing Body of the case, transmit copies of the application, forward copies of any associated correspondence and provide copies of other pertinent reports and materials.

4.The Governing Body shall conduct the hearing according to any adopted procedures and consistent with Kansas law. The hearing may be recessed from time to time.

5.In most cases, immediately following the hearing but within 15 days at the most, the Governing Body shall make a ruling on the application. The Governing Body may affirm, reverse in whole or in part, or modify any decision, order, requirement or determination of the administrator or the Commission. The Governing Body may attach appropriate conditions. The Governing Body may issue or direct the issuance of a permit.

c.All rulings of the Governing Body shall be final and binding on all parties. Any decision of the Governing Body may be appealed to the district court.

**Sec. 4-407. Variances.**

a.Any property owner or authorized representative may apply for a variance from specific regulations in this chapter. Applications for a variance shall be filed with the administrator. Upon receipt of an application for a variance, the following procedures shall apply:

1.The administrator shall set a reasonable time and place for a hearing regarding the application.

2.Prior to the hearing, the administrator shall mail or deliver a notice to all owners of buildings, sites, structures and objects under consideration and all owners of property adjacent to the property under consideration. The administrator also shall mail or deliver a notice to all persons and organizations that have submitted a request to receive such notices. The notice shall indicate the time and place of the hearing and invite interested individuals to appear and be heard. The failure of such an owner, person or organization to receive a notice shall not invalidate any subsequent action taken on the application.

3.Copies of the application, hearing notice and staff report shall be distributed prior to the hearing by the administrator to the City manager, City engineer, City public works director, City sanitarian, City building official, County health officer and County engineer.

4.Prior to the hearing, the administrator shall notify the Commission of the case, transmit copies of the application, forward copies of any associated correspondence and provide copies of other pertinent reports and materials.

5.The Commission shall conduct the hearing according to any adopted procedures and consistent with Kansas law. The hearing may be recessed from time to time.

6.In most cases, immediately following the hearing but within 15 days at the most, the Commission may approve or deny the variance. The Commission may attach appropriate conditions. The Commission may issue or direct the issuance of a permit.

- b. The Commission may grant a variance from a specific regulation in this chapter if:
1. It would not be contrary to public health, safety and the public interest;
  2. A literal enforcement of regulations in this chapter will result in an unnecessary hardship because of special conditions;
  3. There exists some condition which is unique to the structure or property in question, which was not created by the actions of the owner or applicant;
  4. It will not adversely affect the rights of adjacent property owners or residents; and
  5. It would not be contrary to the general spirit and intent of this chapter.

**Sec. 4-408. Severability.**

If any section, sentence, clause or phrase of this chapter or its application in a specific instance is found to be invalid, the remainder of this chapter shall remain in full force and effect.





















