

ORDINANCE NO. 1970

AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING CHAPTER 8.05 OF THE PALM SPRINGS MUNICIPAL CODE RELATIVE TO PROCEDURES FOR ALTERATION AND DEMOLITION OF HISTORIC BUILDINGS AND STRUCTURES, AND GENERAL REVISIONS TO HISTORIC PRESERVATION STANDARDS CASE 5.1454.

***City Attorney's Summary***

*This Ordinance amends Chapter 8.05 of the City's Municipal Code to update the City's regulations and procedures governing the preservation, alteration and demolition of historic and potentially historic resources within the City. This Ordinance updates and clarifies the City's procedures for the designating of historic resources and historic districts. It also provides a detailed process for City review of applications to alter or demolish designated historic or potentially historic resources. This Ordinance incorporates Federal, State and local historic preservation laws, standards and practices as indicated herein.*

THE CITY COUNCIL FINDS AND DETERMINES AS FOLLOWS:

- A. On January 24, 2018, the City Council appointed an Ad Hoc Remodel of Historic Homes City Council Subcommittee, and directed staff to work with the Historic Site Preservation Board (HSPB) to study and investigate measures to preserve the character of historic and potentially historic buildings.
- B. On May 8, 2018, the HSPB appointed an Ad Hoc Demolition Subcommittee to work with staff in reviewing alteration and demolition procedures from other California cities and in drafting proposed updates to the City's historic preservation ordinance.
- C. On October 9, 2018, at a noticed public meeting of the HSPB, the Ad Hoc Demolition Subcommittee presented draft revisions to the historic preservation ordinance for consideration, and the HSPB voted 6 to 0 to recommend approval of the draft ordinance to the City Council.
- D. On December 5, 2018, January 9, 2019, the City Council held noticed public hearings on the proposed ordinance in accordance with applicable law.
- E. The proposed ordinance is not subject to the California Environmental

Quality Act (Public Resources Code Section 21000 et. seq.) pursuant to Section 15060(c)(2) and 15060(c)(3) of the State Guidelines, because the ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a "project," as that term is defined in Section 15378 of the State Guidelines.

F. The City Council has carefully reviewed and considered all of the evidence presented in connection with the hearing on the proposed ordinance, including, but not limited to, the staff report, and all written and oral testimony presented.

G. The City Council finds that approval of the proposed ordinance would:

1. Assist in preserving the historic character of buildings that have yet to be designated on the local register, but may qualify for designation based on aesthetic or historic significance;
2. Clarify the process and criteria for historic designation of qualifying buildings and structures, and outline criteria and procedures for alterations to historic buildings and structures;
3. Outline the procedures for designation, alteration, and demolition of historic and potentially historic structures within the boundaries of the Agua Caliente Indian Reservation, in accordance with the adopted Land Use Contract;
4. Implement Policy CD28.1 of the Community Design Element of the General Plan, which supports the preservation of historically, architecturally, or archaeologically significant structures and sites; and
5. Implement Action CD28.1 of the Community Design Element of the General Plan, which encourages an update of the historic preservation ordinance to provide a clear review process for the development or alternation of historically significant properties.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. That the findings and determinations reflected above are true and correct, and are incorporated by this reference herein as the cause and foundation for the action taken by the and through this Ordinance.

SECTION 2. Rescind and replace Chapter 8.05 of the Palm Springs Municipal Code (PSMC) as follows:

**Chapter 8.05 Historic Preservation**

## **Article I: General Provisions**

**8.05.010 Purpose and Authority.** This chapter is adopted pursuant to the authority of Government Code Section 37361 for the purpose of preserving areas and specific buildings of the city which reflect elements of its cultural, social, economic, political, architectural and archaeological history. This chapter is intended to stabilize and improve buildings, structures or areas which are considered to be of historical, architectural, archaeological or ecological value, to foster civic beauty, to strengthen the local economy and to promote the use of historic resources for the education and welfare of the citizens.

**8.05.020 Definitions.** For the purposes of this chapter, the following terms have the meanings ascribed to them:

"Allotted Trust Land" means any real property located on the Reservation owned by any member of the Tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States or any real property located on the Reservation owned by a member of any other federally recognized Indian tribe that is held in trust by the United States.

"Alteration" means any exterior change or modification to a building, structure or object. For the purposes of this chapter, an "alteration" shall include, but not be limited to, exterior changes to or modification of architectural details or visual characteristics such as paint color and surface texture, grading, surface paving, new buildings or structures, a structural addition, cutting or removal of trees and other natural features, disturbance of archaeological sites or areas, and the placement or removal of any exterior objects such as signs, plaques, light fixtures, street furniture, walls, fences, steps, planting and landscape accessories affecting the exterior visual qualities of the historic resource. The term "alteration" shall not include the reconstruction or replacement of any feature of a historic resource with a suitable substitute on a "like for like" basis, as determined by the Director.

"Building" means a construction that is completely roofed and which is built and maintained to shelter any form of human activity, such as a house.

"Character-defining features" means the distinguishing architectural and aesthetic characteristics of a historic resource, or those generally found throughout a historic district, which fulfill the criteria for historic designation.

"Class 1 historic resource" means any site, structure, building or object not located on Tribal Trust or Allotted Trust Land designated by resolution of the City Council as having historic, architectural, archaeological, cultural or aesthetic significance that contributes to an understanding and awareness of the community's history. A Class 1 historic resource may include a structure, building or object on the site, or may include all or a portion of the site itself.

**"Class 2 historic resource"** means a site, structure, building or object not located on Tribal Trust or Allotted Trust Land that does not qualify for Class 1 historic resource designation under this chapter, but is otherwise deserving of official recognition as having historic, architectural, archaeological, cultural or aesthetic significance and is designated as a Class 2 historic resource by resolution of the City Council. A Class 2 historic resource may lack some aspects of historic integrity, or may include a site where the structure, building or object of historic significance has been lost, damaged or removed.

**"Class 3 building"** means any building which is not a Class 1 or Class 2 historic resource, but is identified in a City historic resources survey as eligible for designation as a historic resource. A building may be a Class 3 building regardless of its construction date.

**"Class 4 building"** means any building which is not a Class 1 or Class 2 historic resource or a Class 3 building, and which was constructed before January 1, 1978, or whose age cannot be determined. The City Council shall review this date and update it as appropriate through amendment to this chapter.

**"Contributing resource"** means a site, structure, building or object within a historic district which individually meets the criteria for historic designation, or contributes generally to the overall distinctive character of a historic district and is united historically or visually by plan or physical development.

**"Demolition"** means the total (100%) tearing down or destruction of a building, structure or object.

**"Department"** means the Department of Planning Services, unless otherwise specified herein.

**"Director"** means the Director of the Department of Planning Services, or their designee, unless otherwise specified herein.

**"Historic district"** means any delineated geographic area of the city of Palm Springs, excluding Tribal Trust or Allotted Trust Land, containing a number of buildings, structures, natural features or sites having historic, architectural, archaeological, cultural or aesthetic significance and designated by the City Council as a historic district under the provisions of this chapter.

**"Historic resource"** means any site, structure, building or object not located on Tribal Trust or Allotted Trust Land which has been designated Class 1 or Class 2 status, or any identified contributing resource within a designated historic district.

**"Major alteration"** means any alteration that does the following:

- A. Removes (i) twenty-five (25) percent or more of the lineal footage of the elevation(s) of the building, structure or object (including site and garden walls) facing a public street or right-of-way (or a street-facing elevation if the parcel is a through-lot or landlocked), or (ii) more than fifty (50) percent of the lineal footage of all exterior elevation(s) of the building or structure, so that they no longer function as exterior elevation(s) of the building or structure.
- B. Encloses and/or modifies (i.e., new window and/or window relocation) (i) twenty-five (25) percent or more of the lineal footage of the elevation(s) of the building, structure or object (including site or garden walls) facing a public street or right-of-way (or a street-facing elevation if the parcel is a through-lot or landlocked), or (ii) more than fifty (50) percent of the lineal footage of all exterior elevation(s) of the building or structure, so that they no longer function as exterior elevation(s) of the building or structure.
- C. Removes fifty (50) percent or more of the cumulative area of the building, structure or object's footprint.
- D. The Director shall have the authority to render determinations as to whether this definition applies to a particular project.

"Minor alteration" means any alteration that is not demolition or a major alteration.

"Non-contributing resource" means a site, structure, building or object within a historic district which does not individually meet the criteria for historic designation, or does not contribute generally to the overall distinctive character of a historic district.

"Object" means a construction primarily artistic in nature or relatively small in scale, such as a sign or a statue.

"Reservation Fee Land" means real property located on the Reservation owned by members of the Tribe or non-members, which is not held in trust by the United States or subject to a restriction against alienation imposed by the United States.

"Reservation" means the Agua Caliente Indian Reservation and includes all lands within the exterior boundaries of the Reservation as established by Presidential Executive Order, federal patent or deed, and any other lands beyond the exterior boundaries of the Reservation held in trust by the United States for the Tribe or its members.

"Site" means a location with a defined geographic boundary, and any natural or constructed features thereon.

“Structure” means a construction made for purposes other than sheltering human activity, such as a bridge, wall, or tower.

“Tribal Trust Land” means any real property located on the Reservation owned by the Tribe that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.

“Tribe” means the Agua Caliente Band of Cahuilla Indians, a federally-recognized Indian tribe.

## **Article II: Historic Site Preservation Board and Staff**

**8.05.030 Historic Site Preservation Board – Established.** There is hereby established the Historic Site Preservation Board (HSPB). The principal roles of the HSPB are (i) to issue decisions regarding Certificates of Appropriateness to alter or demolish designated historic resources; (ii) to make recommendations to the City Council regarding the designation of historic resources; (iii) to advise the City Council and/or Planning Commission in all matters concerning historic preservation; and (iv) educate and inform the community on matters pertaining to historic preservation.

**8.05.040 Historic Site Preservation Board – Membership and Qualifications.** The HSPB shall consist of seven members, who shall be appointed by the City Council. Each member must have a demonstrated interest in or knowledge of the cultural, socioeconomic, architectural or archaeological history of the area, either through experience, training, education, or occupation.

### **8.05.050 Historic Site Preservation Board – Organization and Meetings.**

- A. **Term of Members.** The term of each board member shall be in accordance with the provisions of Chapter 2.06 (“Boards and Commissions – General Provisions”) of the Palm Springs Municipal Code.
- B. **Attendance and Vacancies.** Board members are subject to the attendance requirements as outlined in Chapter 2.06 of the Palm Springs Municipal Code. The chair of the board shall notify the City Council of any vacancy.
- C. **Quorum.** Four (4) members of the HSPB shall constitute a quorum for the purpose of conducting business. A majority vote of those present shall be necessary to approve any item of business.
- D. **Appointment of Officers.** The HSPB shall select a chair and vice-chair from among its members. The chair and vice-chair shall serve for a term of one

year and until a successor of each is selected and takes office. The secretary of the HSPB shall be the Historic Preservation Officer.

- E. **Adoption of Rules.** The HSPB shall adopt rules of procedure for the transaction of its business. The rules of procedure shall address the time and occurrence of regular meetings, procedures for scheduling special meetings, procedures for transaction of business items, duties of officers, and any other procedures as may be necessary.
- F. **Records.** The HSPB shall maintain a public record of its resolutions, transactions, findings, and determinations, and shall report its business to the City Council as may be requested.

**8.05.060 Historic Preservation Officer.** The Director shall appoint a Historic Preservation Officer (HPO), who shall be a City employee or retained consultant, and not an appointed member of the HSPB. The HPO shall have a demonstrated interest in historic preservation and be a qualified professional in one or more pertinent fields such as historic preservation, architecture, urban design, archaeology, landscape architecture, or land use planning. The duties of the HPO shall include but not be limited to the following:

- A. Serving as the Secretary to the HSPB, facilitating its efforts, and, with other City staff as necessary, providing administrative support.
- B. Accepting and reviewing applications as identified in this chapter.
- C. Acting as an intermediary between the HSPB and City departments.
- D. Providing technical and background information to the HSPB and members of the public, as required.
- E. Acting as the approval authority concerning applications for minor alteration of a historic resource or Class 3 building, or for major or minor alteration of a Class 4 building, or where there is a need to act immediately to protect life or property. The review and decision-making process shall be in accordance with procedures and criteria outlined herein.
- F. Reporting to the HSPB any action taken pursuant to Paragraph (E) of this Section.
- G. Preparing annual reports of HSPB activities to be submitted to the State Office of Historic Preservation (OHP) and made available to the public.

- H. Maintaining a register of designated historic resources and historic districts, and preparing plaques to demarcate historic resources, as may be directed by the HSPB.
- I. Processing, reviewing, administering and maintaining all Mills Act contracts entered into by the City.

**Article III: Procedures for Designation of Historic Resources and Historic Districts**

**8.05.070 Procedures and Criteria for the Designation of Class 1 and Class 2 Historic Resources.** The City Council may designate Class 1 and Class 2 historic resources if they demonstrate exceptional historical significance pursuant to the criteria established in this Section.

- A. Application and Documentation for Designation of Class 1 and Class 2 Historic Resources.
  - 1. Owner Application. The designation of a historic resource may be made upon application by the owner or owner's authorized representative of the site, structure, building or object. A pre-application conference with the HPO is required prior to submitting an application. Application shall be made to the HPO on such forms as may be established by the Department, and the application shall be accompanied by such fees as may be established by the City Council. Applications shall be signed and notarized by the owner(s) of record of the site, structure, building or object for which the designation is sought.
  - 2. City Application. The designation of a historic resource may also be made upon application by an authorized representative of the City. Applications shall be signed by the authorized City representative.
  - 3. Documentation. An application for historic resource designation shall include the following items:
    - a. A report that describes how the proposed site, structure, building or object is eligible and appropriate for designation under this Section. The report shall include at a minimum:
      - (i) Photographs of the exterior of the proposed site, structure, building or object;
      - (ii) Information about the architect(s), designer(s), planner(s), and/or developers of the proposed site, structure, building or object;



- (iii) Date and method of construction of any structure, building or object upon the proposed site;
    - (iv) A detailed assessment of the character-defining features of the site, structure, building or object, such as materials, architectural or landscape elements, architectural style, and other relevant descriptors;
    - (v) Ownership and address history; and
    - (vi) Identify the source of the information provided in the application, such as building permit numbers, publications, organizations or individuals.
  - b. An assessment of the integrity of the site, structure, building or object, relevant to its design, materials, workmanship, location, setting, feeling, and association, as established in the Secretary of the Interior's Standards.
  - c. Letter of property owner consent, or in the case of a City application, a letter of authorization to file the application on behalf of the City.
  - d. Any other documentation or research as may be deemed necessary by the HPO to determine the qualifications of the site, structure, building or object for historic designation.
- B. Application Procedure for Designation of Class 1 and Class 2 Historic Resources.**
- 1. **HPO Analysis.** Upon receipt of a completed application package, the HPO shall compile a staff report concerning the site, structure, building or object proposed for historic designation, and shall forward a copy of the application to the Tribe's Historic Preservation Officer. The report shall address the location, condition, significance and integrity of the historic features; identify the character-defining features; and provide a recommendation based on an evaluation of the application as to whether or not the site, structure, building or object should be historically designated.
  - 2. **Public Hearing Notice Requirements.** Applications for historic designation shall be reviewed at public hearings of the HSPB and City Council. Public hearings shall be noticed in accordance with Section 94.09.00 ("Public Hearing Procedure") of this Code.

3. **Failure to Receive Notice.** The failure of any person or entity to receive notice given pursuant to this Section shall not constitute grounds for any court to invalidate the actions of the City.
  4. **HSPB Public Hearing and Recommendation.** An application for historic designation shall be reviewed at a public hearing of the HSPB. The HSPB shall consider the HPO's report concerning an application, along with any evidence or testimony offered at the public hearing. The HSPB shall evaluate the application and make findings with reference to the applicable criteria set forth in subsection (C) below and make a recommendation to the City Council. The HSPB may recommend designation as proposed; designation with modifications to the proposal; or recommend denial of designation. A resolution shall be adopted reflecting the HSPB's action, its findings relative to the criteria for designation, a list of the historic character-defining features of the site, structure, building or object, and any applicable conditions imposed. Any recommendation by the HSPB for designation shall be void if the designation has not been approved by the City Council within one (1) year after the HSPB's recommendation.
  5. **City Council Public Hearing.** Upon receipt of a recommendation from the HSPB, the City Council shall hold a public hearing to consider the application. The public hearing shall be noticed in accordance with the requirements listed in Paragraph (2) above. The City Council shall consider the HPO's report, the recommendation of the HSPB, and any evidence or testimony offered at the public hearing, and shall evaluate the application and make findings with reference to the applicable criteria set forth in subsection (C) below. The City Council may approve designation as proposed; approve designation with modifications; deny designation; or remand the application to the HSPB for further study and proceedings. A resolution shall be adopted reflecting the City Council's action, its findings relative to the criteria for designation, a list of the historic character-defining features of the site, structure, building or object, and any applicable conditions imposed. The resolution shall be recorded with the office of the county recorder.
- C. **Criteria and Findings for Designation of Class 1 and Class 2 Historic Resources.** In considering applications for Class 1 or Class 2 historic designation, the HSPB and City Council shall evaluate the application and make findings for conformance with the following criteria:
1. **Criteria for the Designation of Class 1 Historic Resources.** A site,

structure, building or object may be designated as a Class 1 historic resource, provided both of the following findings are met:

- a. The site, structure, building or object exhibits exceptional historic significance and meets one or more of the criteria listed below:
    - (i) The resource is associated with events that have made a meaningful contribution to the nation, state or community; or
    - (ii) The resource is associated with the lives of persons who made a meaningful contribution to national, state or local history; or
    - (iii) The resource reflects or exemplifies a particular period of national, state or local history; or
    - (iv) The resource embodies the distinctive characteristics of a type, period or method of construction; or
    - (v) The resource presents the work of a master builder, designer, artist, or architect whose individual genius influenced his age, or that possesses high artistic value; or
    - (vi) The resource represents a significant and distinguishable entity whose components may lack individual distinction, as used in evaluating applications for designation of historic districts, for parcels on which more than one entity exists; or
    - (vii) The resource has yielded or may be likely to yield information important to national, state or local history or prehistory.
  - b. The site, structure, building or object retains one or more of the following aspects of integrity, as established in the Secretary of the Interior's Standards: integrity of design, materials, workmanship, location, setting, feeling, or association.
2. **Criteria for the Designation of Class 2 Historic Resources.** A site, structure, building or object may be designated as a Class 2 historic resource, provided the site, structure, building or object exhibits

significance and meets one or more of the criteria listed in subsection (C)(1)(a) above. A Class 2 historic resource shall not be required to meet the findings for integrity as described in subsection (C)(1)(b) above.

**8.05.080 Class 3 and Class 4 Buildings.** All buildings that are not Class 1 or Class 2 historic resources, but that are identified in a City-approved historic resources survey as eligible for designation as a historic resource, are hereby defined by this ordinance as Class 3 buildings and no formal action by the HSPB or City Council is required. All buildings that are not a Class 1 or Class 2 historic resource or a Class 3 building, but which were either constructed before January 1, 1978 or whose age cannot be determined, are hereby defined by this ordinance as Class 4 buildings and no formal action by the HSPB or City Council is required. All Class 3 and Class 4 buildings are subject to the regulations contained in Article IV of this chapter. Any Class 3 or Class 4 building may be designated as a Class 1 or Class 2 historic resource, subject to the procedures set forth in Section 8.05.070.

**8.05.090 Procedures and Criteria for Designation of Historic Districts.** The City Council may designate historic districts if the district demonstrates exceptional historical significance pursuant to the criteria established in this Section.

- A. **Application and Documentation for Designation of Historic Districts.**
1. **Application.** The designation of a historic district may be made upon application by a member of a recognized Neighborhood Organization, or by an authorized representative of the district under consideration. A pre-application conference with the HPO is required prior to submitting an application. Application shall be made to the HPO on such forms as may be established by the Department for that purpose, and the application shall be accompanied by such fees as may be established by the City Council. Applications shall be signed and notarized by the board member of the Neighborhood Organization or by an authorized representative as described above. If the proposed district has multiple owners, the applicant shall provide the City with a list of all persons and entities with an ownership interest in the proposed district if not all owners have signed the application.
  2. **City Application.** The designation of a historic district may also be made upon application by an authorized representative of the City. The application shall be signed by the authorized City representative.
  3. **Documentation.** An application for designation of a historic district shall also be accompanied by the following items:

- a. A report that describes the manner in which the district is eligible and appropriate for designation under this Section. The report shall include at a minimum:
  - (i) A map of the proposed district boundaries, identifying all potentially contributing resources, and including a list of all parcel numbers, addresses, and ownership within the proposed district boundaries;
  - (ii) Photographs of all sites within the proposed district boundaries;
  - (iii) Information about the architect(s), designer(s), planner(s), and/or developers of potentially contributing resources within the district;
  - (iv) Dates and methods of construction as may be applicable;
  - (v) Identification of the period of significance of the proposed district which the contributing resources collectively represent;
  - (vi) Distinctive characteristics such as historic materials, architectural or landscape elements, and architectural style(s) of structures, buildings or objects; and
  - (vii) List of historic resource records used to compile the report, including building permit information, publications, and other similar historic records.
- b. Proposed historic district design guidelines, which shall include, but not be limited to, development standards, aesthetic standards, and approval criteria that assist in preserving the character of the district and contributing structures therein.
- c. Letters or forms demonstrating written approval of the historic district designation from no less than fifty-one percent (51%) of all property owners within the boundaries of the proposed district, or in the case of a City application, a letter of authorization to file the application on behalf of the City.

**B. Procedure for Designation of Historic Districts.**

1. **Neighborhood Outreach and Meetings.** A minimum of three public meetings shall be held prior to consideration of the proposed historic district designation by the HSPB and City Council. The meetings shall be attended by City staff, in addition to the board members of the recognized Neighborhood Organization or authorized district representatives, and shall be held in a location convenient to residents, business owners and property owners within the proposed district. The meetings shall discuss:
  - a. The historic district designation process;
  - b. The proposed plan for historic district designation, including proposed district boundaries, and the requirements that would apply to contributing and non-contributing resources within the district;
  - c. Findings of any historic surveys and studies; and
  - d. Proposed historic district design guidelines.
2. **HPO Analysis.** Upon receipt of a completed application package, the HPO shall forward a copy of the application to the Tribe's Historic Preservation Officer, and shall compile a staff report concerning the district proposed for historic designation. The report shall address the district boundaries; the location, condition, significance and integrity of the potentially historic resources within the district; and provide an evaluation of the application.
3. **Public Hearing Notice Requirements.** Consideration of applications for designation of a historic district shall be reviewed at public hearings of the HSPB and City Council. Public hearings shall be noticed in accordance with Section 94.09.00 ("Public Hearing Procedure") of this Code.
4. **Failure to Receive Notice.** The failure of any person or entity to receive notice given pursuant to this Section shall not constitute grounds for any court to invalidate the actions of the City.
5. **HSPB Public Hearing and Recommendation.** An application for historic district designation shall be reviewed at a public hearing of the HSPB. The HSPB shall consider the HPO's report concerning the application, along with any evidence or testimony offered at the public hearing, and shall evaluate the application and make findings with reference to the applicable criteria set forth in subsection (C)

below and make a recommendation to the City Council. The HSPB may recommend designation as proposed; designation with modifications to the proposal; or recommend denial of designation. A resolution shall be adopted reflecting the HSPB's action, its findings relative to the criteria for designation, a list of contributing and non-contributing resources within the proposed district, and any applicable conditions imposed. Any recommendation by the HSPB for designation shall be void if the designation has not been approved by the City Council within one (1) year after the HSPB's recommendation.

6. **City Council Public Hearing.** Upon receipt of a recommendation from the HSPB, the City Council shall hold a public hearing to consider the application. The public hearing shall be noticed in accordance with the requirements listed in Paragraph (3) of this Section. The City Council shall consider the HPO's report, the recommendation of the HSPB, and any evidence or testimony offered at the public hearing, and shall evaluate the application and make findings with reference to the applicable criteria set forth in subsection (C) below. The City Council may approve designation as proposed; approve designation with modifications; deny designation; or remand the application to the HSPB for further study and proceedings. A resolution shall be adopted reflecting the City Council's action, its findings relative to the criteria for designation, a list of the contributing and non-contributing resources within the proposed district, the inclusion of any design guidelines for the district as an attachment to the resolution, and any applicable conditions imposed. The resolution shall be recorded with the office of the county recorder.

If owners of twenty percent (20%) or more of the area of the parcels to be included in the proposed district protest the proposed historic district designation in writing, the City Council may only designate the district by vote of four-fifths (4/5) of the entire membership of the City Council. If any member of the City Council is unable to vote on an application because of a conflict of interest, the required number of favorable votes shall be no less than a majority of the entire membership of the City Council. A written protest is effective only if it is filed with the City Clerk prior to the close of the public hearing before the City Council.

- C. **Criteria and Findings for Designation of Historic Districts.** In considering an application for designation of a historic district, the HSPB and City Council shall evaluate the application and make findings for conformance with the following criteria and a district may be designated provided the following findings are met:

1. The proposed district exhibits exceptional historic significance and meets one or more of the criteria listed below:
  - a. Is associated with events that have made a meaningful contribution to the nation, state or community; or
  - b. Is associated with the lives of persons who made a meaningful contribution to national, state or local history; or
  - c. Reflects or exemplifies a particular period of national, state or local history; or
  - d. Embodies the distinctive characteristics of a type, period or method of construction; or
  - e. Presents the work of a master builder, designer, artist, or architect whose individual genius influenced his age, or that possesses high artistic value; or
  - f. Represents a significant and distinguishable entity whose components may lack individual distinction; or
  - g. Has yielded or may be likely to yield information important to national, state or local history or prehistory.
  
2. The proposed district:
  - a. Contains contributing resources on a majority of the sites within the proposed district which individually meet the criteria in paragraph (1) of this section, as well as other structures, buildings, or archaeological sites which contribute generally to the overall distinctive character of the area and are related historically or visually by plan or physical development;
  - b. Includes non-contributing properties or vacant parcels only to the extent necessary to establish appropriate, logical or convenient boundaries.

**8.05.100 Effect of Designation.** The designation of Class 1 historic resources, Class 2 historic resources, and historic districts shall be indicated on the City's official zoning map. Demolition or alteration of contributing resources within a designated historic district shall be subject to the same regulations as Class 1 historic resources under this chapter. The use and development of property affected by a designation shall be governed by Article IV of this Section and any



applicable design guidelines adopted hereunder, as well as by the regulations pertaining to the underlying zoning classification for the property, any other provisions of the Municipal Code, the General Plan and any applicable specific plan.

**Article IV: Rules and Regulations for Development of Historic Resources and within Historic Districts**

**8.05.110 Demolition or Alteration of Class 1 and Class 2 Historic Resources – Certificate of Appropriateness.**

- A. **Certificate of Appropriateness Required.** Prior to the demolition or alteration of any Class 1 or Class 2 historic resource, or of a contributing resource within a designated historic district (collectively "historic resource"), the applicant shall obtain a Certificate of Appropriateness for such demolition or alteration. A Certificate of Appropriateness shall be required prior to the issuance of any building, zoning or other development permit which is required for such demolition or alteration. Approval of a Certificate of Appropriateness indicates conformance with the historic preservation provisions of this chapter only, and does not constitute or imply project approval by any City department or other approval authority having jurisdiction with respect to other development permits.
- B. **Exceptions.** No Certificate of Appropriateness shall be required for the following activities, as determined by the HPO:
1. Standard maintenance or repair work to a historic resource;
  2. Modifications to the interior of a historic resource, except as otherwise required under this section for public buildings;
  3. The repainting of a historic resource, where such repainting work will not impact the character-defining features of the historic resource and is generally the same color as presently exists or as existed historically;
  4. Alterations to signage, where the proposed alteration is consistent with a sign program for the site which has been previously approved under a Certificate of Appropriateness;
  5. The demolition or alteration of a historic resource's or contributing resource's features which have been previously approved under a Certificate of Appropriateness.
- C. **Approval Authority.** The HPO or HSPB may issue a Certificate of

**Appropriateness as follows:**

- 1. Demolition or Major Alterations.** A Certificate of Appropriateness must be issued by the HSPB as the approval authority for demolition or major alteration to a historic resource.
- 2. Minor Alteration.** A Certificate of Appropriateness may be issued by the HPO for minor alteration to a historic resource. Any minor alteration which, in the judgment of the HPO, may (i) significantly impact the character-defining features of a historic resource or contributing resource; or (ii) impact the integrity of a historic resource or contributing resource; or (iii) materially impair the historic resource or contributing resource, may be referred to the HSPB for review and action.

**D. Application for Demolition or Alteration of Class 1 and Class 2 Historic Resources.**

- 1. Application.** The application for a Certificate of Appropriateness may be made upon application by the owner of the historic or contributing resource or the owner's authorized representative upon such forms as may be established by the Department for that purpose, and shall be accompanied by such fees as may be established by the City Council. Applications shall be signed by the owner(s) of record of the historic or contributing resource for which the Certificate of Appropriateness is sought.
- 2. Documentation.** An application for a Certificate of Appropriateness shall be accompanied by the following items, which detail the proposed alteration:
  - a. Photographs of each exterior side of the historic or contributing resource to be demolished or altered;**
  - b. Drawings for conceptual review of any alteration;**
  - c. Material samples and/or manufacturer's brochures which show and describe the materials to be used in the alteration;**
  - d. A site plan showing the location of the proposed demolition or alteration;**
  - e. If signage is part of the proposed alteration, drawings showing the specifications for the signage and demonstrating conformance to the City's sign ordinance or approved sign**

program; and

- f. Any other information which the HPO deems necessary to accurately describe the scope of the demolition or alteration proposed.
3. Procedure for Evaluating Demolition or Alterations to Class 1 and Class 2 Historic Resources.
    - a. HPO Analysis. Upon receipt of a completed application, the HPO shall review the proposed demolition or alteration for conformance to the criteria established in Paragraph (E) of this Section.
    - b. HPO Approval. For minor alteration applications, the HPO shall act as the approval authority. The HPO shall issue a determination on the Certificate of Appropriateness upon completion of a review of the application, and shall provide the applicant with notice of such determination.
    - c. HSPB Meeting and Approval. An application for demolition or a major alteration shall be reviewed at a public meeting of the HSPB. The HPO shall prepare a report and recommendation for review by the HSPB, providing an analysis as to whether or not the proposed demolition or alteration meets the criteria established in subsection (E) below. The HSPB shall consider the HPO's report, along with any evidence or testimony offered at the public hearing and shall evaluate the application and make findings with reference to the criteria set forth in subsection (E) below. The HSPB may approve the application as proposed; approve the application with modifications; or deny the application. A document reflecting the HSPB's action for approval, modified approval or denial shall be recorded in the archival file for the site, along with its findings relative to the criteria in subsection (E) below, and any applicable conditions imposed. The HPO shall provide the applicant with notice of the action taken, along with the findings made and any conditions or modification imposed by the HSPB.
- E. Criteria and Findings for Alteration of Class 1 and Class 2 Historic Resources. In considering a Certificate of Appropriateness application, the approval authority shall evaluate the application and make findings for conformance to the following criteria:

1. That the proposed alteration does not significantly impact or materially impair the character-defining features of the historic resource as listed in the resolution for historic designation, or, where a character-defining feature may be impacted, the proposed alteration minimizes that impact as much as possible;
  2. That the proposed alteration will assist in restoring the historic resource to its original appearance where applicable, or will substantially aid its preservation or enhancement as a historic resource;
  3. That any additions to the historic resource are consistent with the massing, proportions, materials, and finishes of the existing historic resource, and: (i) can be distinguished from the existing historic resource as may be appropriate; or (ii) are indistinguishable from the historic resource as may be appropriate, and where such alterations are clearly documented in the City's archival file for the historic resource as being non-original to the historic resource;
  4. That, in cases where Federal funds are to be utilized in financing the proposed alterations, the alterations are consistent with the Standards for the Treatment of Historic Properties, as put forth by the U.S. Secretary of the Interior.
- F. Appeal. An applicant may appeal the decision of the HPO or the HSPB on a Certificate of Appropriateness pursuant to the procedures listed in Section 8.05.170.

**8.05.120 Demolition, Alteration or New Construction within a Historic District – Certificate of Appropriateness.**

- A. Certificate of Appropriateness Required. A Certificate of Appropriateness shall be required for the following activities within a historic district:
1. Demolition, major alteration or minor alteration of a contributing resource within the historic district;
  2. New construction on an undeveloped site within a historic district;
  3. Demolition or major alteration of a non-contributing resource within the historic district;
  4. Any major or minor alteration that may materially impair contributing resources within the district, as determined by the HPO.

A Certificate of Appropriateness shall be required prior to the issuance of any building, zoning or other development permit which is required for such work. Approval of a Certificate of Appropriateness indicates conformance with the historic preservation provisions of this chapter only, and does not constitute or imply project approval by any City department or other approval authority having jurisdiction with respect to other development permits.

- B. Exceptions. No Certificate of Appropriateness shall be required for the following activities, as determined by the HPO:
1. Minor alteration of a non-contributing resource, where such alteration does not materially impair contributing resources within the district, as determined by the HPO;
  2. Standard maintenance or repair work to a contributing or non-contributing resource;
  3. The replacement or reconstruction of any exterior feature of a contributing resource with a suitable substitute on a "like for like" basis, as determined by the Director;
  4. Modifications to the interior of a contributing or non-contributing resource, except as otherwise required under this Section for public buildings;
  5. The repainting of a contributing resource, where such repainting work will not impact the character-defining features of the historic district, and is consistent with any design guidelines that have been adopted for the historic district or is consistent with the color as existed historically;
  6. Any demolition, alteration or replacement of features which have been previously approved under a Certificate of Appropriateness.
- C. Approval Authority. The HPO or the HSPB may issue a Certificate of Appropriateness as follows:
1. Demolition or Major Alterations of Contributing Resources. A Certificate of Appropriateness must be issued by the HSPB as the approval authority for demolition or major alteration of any contributing resource within a district.
  2. Minor Alteration of Contributing Resources. A Certificate of Appropriateness may be issued by the HPO for minor alteration to a

contributing resource. Any minor alteration which, in the judgment of the HPO, may (i) significantly impact the character-defining features of a contributing resource; or (ii) impact the integrity of a contributing resource; or (iii) materially impair the historic district, may be referred to the HSPB for review and action.

3. **Demolition or Major Alteration of Non-Contributing Resources.** A Certificate of Appropriateness may be issued by the HPO for demolition or major alteration of a non-contributing resource. Any demolition or major alteration which, in the judgment of the HPO, may (i) significantly impact the character-defining features of a contributing resource; or (ii) impact the integrity of a contributing resource; or (iii) materially impair the historic district, may be referred to the HSPB for review and action.

4. **New Construction on an Undeveloped Site within a Historic District.** A Certificate of Appropriateness may be issued by the HPO for new construction on an undeveloped site within a historic district. Any new construction which, in the judgement of the HPO, may (i) significantly impact the character-defining features of a contributing resource; or (ii) impact the integrity of a contributing resource; or (iii) materially impair the historic district, may be referred to the HSPB for review and action.

D. **Application and Procedure for Demolition, Alteration or New Construction within a Historic District.**

1. **Application.** The application for a Certificate of Appropriateness may be made upon application by the owner of the contributing or non-contributing resource or the owner's representative upon such forms as may be established by the Department, and shall be accompanied by such fees as may be established by the City Council. Applications shall be signed by the owner(s) of record of the contributing or non-contributing resource for which the Certificate of Appropriateness is sought.

2. **Documentation.** An application for a Certificate of Appropriateness shall be accompanied by the following items, which detail the proposed demolition, alteration or construction work:

a. A brief description of the proposed demolition, alteration or new construction;

b. Photographs of each exterior side of the structure or building to be demolished, altered or constructed;

- c. Drawings for conceptual review of any alteration or new construction work;
  - d. Material samples and/or manufacturer's brochures which show and describe the materials to be used in the alteration or new construction;
  - e. A site plan showing the location of the proposed demolition, alteration or new construction work;
  - f. If signage is part of the proposed alteration work, drawings showing the specifications for the signage and demonstrating conformance to the City's sign ordinance or approved sign program ; and
  - g. Any other information which the HPO deems necessary to accurately describe the scope of alteration or new construction work proposed.
3. Procedure for Evaluating Demolition, Alteration or New Construction within a Historic District.
- a. HPO Analysis. Upon receipt of a completed application, the HPO shall review the proposed work for conformance to the criteria established in subsection (E) of this Section.
  - b. HPO Approval. For those applications within the HPO's approval authority as set forth in subsection (C) above, the HPO shall issue a determination on the Certificate of Appropriateness upon completion of a review of the application, and shall provide the applicant with notice of such determination.
  - c. HSPB Meeting and Approval. An application for demolition or major alteration of a contributing resource shall be reviewed at a public meeting of the HSPB. The HPO shall prepare a report and recommendation for review by the HSPB, providing an analysis as to whether or not the proposed demolition or alteration meets the criteria established in subsection (E) below. The HSPB shall consider the HPO's report, along with any evidence or testimony offered at the public meeting and shall evaluate the application and make findings with reference to the criteria set forth in subsection (E) below. The HSPB may approve the application as proposed; approve the

application with modifications; or deny the application. A document reflecting the HSPB's action for approval, modified approval or denial shall be recorded in the archival file for the site, along with its findings relative to the criteria in subsection (E) below, and any applicable conditions imposed. The HPO shall provide the applicant with notice of the action taken, along with the findings made and any conditions or modifications imposed by the HSPB.

- E. **Criteria and Findings for Demolition, Alterations or New Construction within a Historic District.** In considering a Certificate of Appropriateness application, the approval authority shall evaluate the application and make findings for conformance to the following criteria:
1. That the proposed demolition or alteration of a contributing resource does not significantly impact the character-defining features of the contributing resource or the historic district, as listed in the resolution for historic designation, or where a character-defining feature may be impacted, the proposed demolition or alteration minimizes that impact as much as possible;
  2. That the proposed alteration to a contributing resource will assist in restoring it to its original appearance where applicable, or will substantially aid its preservation or enhancement as a historic resource;
  3. That the proposed demolition or alteration to a non-contributing resource is consistent with the design guidelines for the historic district and will not materially impair the preservation or enhancement of character-defining features of a contributing resource of the historic district;
  4. That any additions to a contributing resource are consistent with the massing, proportions, materials, and finishes of the existing contributing resource, and: (i) can be distinguished from the existing contributing resource as may be appropriate; or (ii) are indistinguishable from the contributing resource as may be appropriate, and where such alterations are clearly documented in the City's archival file for the contributing resource as being non-original to the resource;
  5. That the proposed alteration or new construction is consistent with any design guidelines adopted for the historic district;
  6. That, in cases where Federal funds are to be utilized in financing the



proposed alteration or new construction, the alteration or new construction is consistent with the Standards for the Treatment of Historic Properties, as put forth by the U.S. Secretary of the Interior.

**8.05.130 Demolition or Alteration of Class 3 and Class 4 Buildings.**

- A. **Permit Required.** Prior to demolition or alteration of any Class 3 or Class 4 building, the applicant shall file a permit application with the City, which shall be reviewed in accordance with the procedures identified herein.
- B. **Exceptions.** HSPB or HPO review of a demolition or alteration permit application shall not be required where the demolition or alteration has been ordered by final court ruling, administrative order, or similar decision to abate a public nuisance or otherwise correct a violation of Federal, State or local law occurring in or on the structure or building.
- C. **Application and Procedure for Demolition or Alteration of Class 3 and Class 4 Buildings.**
  1. **Reviewing Authority.** The HPO or HSPB may review an application for demolition or alteration of a Class 3 or Class 4 building as follows:
    - a. **HSPB Review.** The HSPB shall review a demolition permit application for:
      - (i) Demolition or major alteration of any Class 3 building;  
or
      - (ii) Demolition of any Class 4 building.
    - b. **HPO Review.** The HPO shall review permit applications for:
      - (i) Minor alteration of any Class 3 building; or
      - (ii) Major or minor alteration of any Class 4 building.
  2. **Application.** A request for demolition or alteration of a Class 3 or Class 4 building may be made to the City upon application by the owner or the owner's authorized representative upon such forms as may be established by the Department and shall be accompanied by such fees as may be established by the City Council. Applications shall be signed by the owner(s) of record of the building for which the permit is sought.
  3. **Documentation.** An application for demolition or alteration of a Class

3 or Class 4 building shall be accompanied by the following items, as may be deemed necessary by the HPO, which detail the proposed demolition or alteration work:

- a. Photographs of each exterior side of the building to be demolished or altered;
  - b. Drawings that detail the floor plan and elevations of the building to be demolished or altered, and showing the extent of the demolition or alteration work;
  - c. Historical data for the building to be demolished or altered, including building permit history, identification of the architect or designer, identification of the builder/contractor, and former owners of the property;
  - d. An analysis of the historical integrity of the building, identifying any additions, previous demolition or alteration work, modifications to the exterior materials or architectural details, or any other modifications to the original building;
  - e. A written description of any items, materials or objects to be salvaged, reused, or recycled;
  - f. Schematic plans and elevations of any new construction that is proposed to replace the demolished or altered building, or portion thereof to be demolished or altered; and
  - g. Justification for demolition or alteration of all or a portion of the building.
4. Procedure for Reviewing Applications for Demolition or Alteration of Class 3 and Class 4 Buildings.
- a. No Issuance of Permit Pending Review. The City may not issue a permit for demolition or alteration of a Class 3 or Class 4 building which is subject to this section unless and until the application has been reviewed as described herein. Any permit issued prior to HSPB or HPO review shall be void and of no effect.
  - b. Demolition Permit Issuance Contingent upon Entitlement and Permits for Replacement Building. The City shall not issue a demolition permit for a Class 3 or Class 4 building which is subject to this section unless and until an entitlement for a

replacement building or structure on the site has been granted by the City, and building permits for such entitlement have been issued.

- c. Analysis of Application.**
- (i)** Upon receipt of a completed application, the HPO shall process the application in accordance with the procedures herein, and shall forward a copy of the application to the Tribe's Historic Preservation Officer. Where HPO review is required, the HPO shall also review the application as provided in subparagraph (d) below to determine whether the building proposed for demolition or alteration should be considered for redesignation as a Class 1 or Class 2 historic resource; however, no public meeting shall be required.
  - (ii)** In cases that involve demolition or alteration of Class 3 or Class 4 buildings within the boundaries of the Reservation, the HPO shall also forward a copy of the application to the Tribe's Historic Preservation Officer. The application shall be processed pursuant to Section 8.05.210 of this Chapter.
  - (iii)** Where HSPB review of a permit application is required, the HPO shall prepare a report and recommendation, providing an analysis as to whether the building proposed for demolition or alteration should be considered for redesignation as a Class 1 or Class 2 historic resource. Upon completion of the report, the HPO shall schedule the application for review by the HSPB on the next available agenda.
- d. HPO/HSPB Review.** The HPO or HSPB, as applicable, shall review the permit application and any supporting documentation, including the HPO's report concerning the application, and any evidence or testimony offered at the HSPB meeting. Review by the HSPB need not be a public hearing. The HPO or HSPB, as applicable, shall evaluate the application and make findings with reference to the applicable criteria set forth in subsection (D) below. After completing the review, the HPO or HSPB shall either:
- (i)** Direct and authorize the processing of an application to consider whether the building qualifies for designation

as a Class 1 or Class 2 historic resource. Redesignation to a Class 1 or Class 2 historic resource shall be in accordance with the requirements and criteria listed in Article III of this chapter. If the HPO or HSPB takes this action, the permit shall be automatically stayed for a period of one-hundred twenty (120) days to allow time for processing the application. The HPO or HSPB, whichever is applicable, may extend the stay of the permit for one additional sixty (60) day period pending a decision; or

- (ii) Take no further action and refer the permit application to the Director for further administrative processing. The Director shall thereafter administratively issue the demolition permit if otherwise in compliance with the provisions of this Code.
- (iii) If the HPO/HSPB does not render a decision by the end of the stay, as it may be extended, the HPO/HSPB shall be deemed to have taken no action and to have referred the permit application to the Director for further processing, as set forth in subparagraph (C)(4)(d)(ii) above.

D. **Criteria and Findings.** If the HPO/HSPB makes the following findings with respect to a Class 3 or Class 4 building, the HPO/HSPB shall direct the processing of a redesignation application as set forth in subparagraph (C)(4)(d)(i) above:

1. That the Class 3 or Class 4 building possesses exceptional historic, architectural, archaeological, cultural or aesthetic significance to warrant redesignation as a Class 1 or Class 2 historic resource; and
2. That the Class 3 or Class 4 building retains sufficient historical integrity relative to its original configuration, architectural features, or character.

If the HPO/HSPB is unable to make either of these findings, the HPO/HSPB shall take no further action and shall refer the application to the Director for further administrative processing, as set forth in subparagraph (C)(4)(d)(ii) above.

#### **8.05.140 Maintenance and Repair of Historic Resources.**

A. **General Maintenance Requirements.** The property owner is responsible for

ordinary maintenance and repair of a designated historic resource. Such maintenance and repair may be performed without specific approval from the HPO or the HSPB if such maintenance and repair does not materially impair the character-defining features of the historic resource.

- B. Deterioration of a Historic Resource.** The property owner of a designated historic resource shall not permit it to fall into a state of disrepair so as to result in the deterioration of any significant exterior character-defining feature of the historic resource or that of a historic district in which the site, structure, building or object is located. Examples of deterioration for which the property owner is responsible under this Section include, but are not limited to, the following:
1. Excessive erosion, reverse drainage, and other preventable site conditions which may adversely affect significant historic resources or districts;
  2. Loss of structural integrity due to deterioration of footings, foundations, load-bearing walls or columns, beams, trusses, or other support members;
  3. Weathering or damage to exterior elements such as wall and roof surfaces, chimneys, balustrades, doors, windows, and other architectural features;
  4. Loss of weather-tightness or security due to any of the above;
  5. Deterioration resulting in public nuisances or other hazardous conditions which would warrant demolition of the building, or a portion thereof, in the interest of public safety.

For purposes of evaluating deterioration under this Section, the condition of the historic resource at the time of its designation shall be the standard of reference.

- C. Abatement of Violations/Public Nuisances.** In order to avoid demolition necessitated by deterioration described in subsection (B) above, the City may repair a historic resource and assess the cost of such repairs to the property owner in the same as the abatement of public nuisances provided in Section 11.72.270 of this Code.
- D. Enforcement.** Enforcement of this Section shall be the responsibility of the City Manager, City Attorney or designee.

#### **8.05.150 Placement of Alternative Energy Systems on Historic Resources.**

- A. **HPO Review of Alternative Energy Systems.** Applications to install alternative energy systems on a historic resource, such as solar and wind conversion technologies, shall be reviewed by the HPO to determine their impact on the historic resource, as well as the impact to adjacent contributing resources within a historic district, if applicable. The HPO shall review these applications in accordance with any timelines established by State law or local ordinance.
  
- B. **Location of Alternative Energy Systems.** Alternative energy systems shall be located on a historic resource in a manner that is discrete and fully reversible in order to avoid materially impairing the character-defining features of the historic resource, as well as materially impairing the character-defining features of adjacent contributing resources within a historic district, if applicable.
  - 1. **Solar Technologies.** In the use of solar technologies, such as solar panels and solar water heaters, ground systems that can be placed at the rear of the property, at an appropriate height to minimize visibility, are encouraged. If equipment is to be roof mounted, low-reflective or non-reflective materials are encouraged, and all mechanical equipment shall be painted to match the existing surrounding material color. Visible roof-mounted installations shall be designed and positioned to be appropriately scaled with a structure's roofline, while maintaining a balance, scale, and proportion with other features of that elevation. Where possible, roof-mounted installations shall be located behind a parapet wall or at the rear of the roof, so as to be screened from view of adjacent streets.
  
  - 2. **Wind Technologies.** In the use of wind technologies, such as wind turbines, free-standing tower-mounted systems are preferred over building-mounted installations. Free-standing towers and ancillary structures are to be placed to have the least visual impact to the historic resource or district. All structures are to be muted in color, have no graphics, and be appropriately screened where possible.

**8.05.160 Violations and Enforcement – Withholding of Future Permits.**

- A. It shall be unlawful for an owner to alter or demolish a site, structure, building or object within the City in violation of this chapter.
  
- B. **Criminal Penalties.** Any owner who alters or demolishes a site, structure, building or object within the City in violation of this chapter shall be guilty of a misdemeanor. Any person convicted of a misdemeanor hereunder shall be punished by a fine of not more than \$1,000 or by imprisonment in the

County Jail for a period of not more than six months, or by both.

**C. Civil Action.**

1. The City may also institute civil proceedings in a court of competent jurisdiction for injunctive and monetary relief, including civil penalties, against an owner for violations of this chapter.
2. If the City is the prevailing party in any civil action under this subsection (C), an owner in violation of this chapter may be liable to the City for civil penalties of not more than the following:
  - a. for an ongoing and correctable violation (e.g., removable addition or reversible alteration), \$1,000 per day until corrected for each proven violation of this chapter; or
  - b. for a permanent and non-correctable violation (e.g., demolition or irreversible alteration) \$25,000 for each proven violation of this chapter.
3. The prevailing party in any civil action under this subsection (C), or any appeal arising therefrom, shall be entitled to recover reasonable attorneys' fees, pursuant to an order of the Court. Attorneys' fees shall not be recoverable unless the City Manager, City Attorney or designee, for and on behalf of the City, elects in writing at the initiation of that individual action or proceeding to seek recovery of the City's own attorneys' fees. If the City is the prevailing party in any civil action under this subsection (C), the City shall be entitled to the costs of enforcing this chapter, including all costs, fees and expenses, incidental or otherwise, incurred by the City, pursuant to an order of the Court.

**D.** The Director shall have the authority to enforce this chapter against violations thereof by any or all of the means provided in this chapter.

**E.** In addition to the above, if the Director determines, based upon substantial evidence, that a violation of this chapter has occurred, the Director shall issue his or her written notice of decision to the owner of the site upon which the violation occurred, as well as to all applicable City departments. Thereafter, the City shall not issue building, demolition or any other development permits for the site upon which the violation occurred for a period of three (3) years from the date of the Director's notice of determination. The Director's notice of determination may be appealed pursuant to Section 8.05.170 of this Chapter. This restriction shall not apply to permits that must be issued by the City to the owner of the site in order

to comply with applicable Federal, State or local law. Once a determination is final, the Director shall record a notice to this effect with the Riverside County Recorder's Office. A final and recorded determination pursuant to this subsection (E) shall run with the land and be binding upon all owners, lessees, affiliates, agents, successors and assigns seeking a building, demolition or other development permit for the subject site.

**8.05.170 Appeals and Review.** An applicant may appeal or a City Councilmember may request Council review of any decision under Article IV of this chapter upon written request as follows:

- A. **Actions of the HPO as the Approval Authority.** Where the HPO is acting as the approving authority for an application, the applicant may appeal the decision to the HSPB by written request. The appeal must be filed with the Office of the City Clerk within ten (10) days following the date the HPO issues notification to the applicant of the decision. The City Council may establish a fee to be paid in connection with the filing of an appeal under this Section. Upon receipt of the appeal request, the HPO shall schedule the appeal for consideration by the HSPB on the next available agenda.
- B. **Actions of the HSPB as the Approval Authority.** Where the HSPB is acting as the approving authority for an application, the applicant may appeal the decision to the City Council by written request. The appeal must be filed with the Office of the City Clerk within ten (10) days following the date of the HSPB's decision. The City Council may establish a fee to be paid in connection with the filing of an appeal under this Section. Upon receipt of the appeal request, the City Clerk shall schedule the appeal for consideration by the City Council on the next available agenda.
- C. **Final Action by the HSPB.** The City shall not deem "final" any action by the HSPB, which action represents the ultimate and determinative action by the City with respect to any application, and is not subject to mandatory review by the City Council unless and until the date that is ten (10) days after the date when (i) the City Council has received written notice of the HSPB action in question, and (ii) the City has posted written notice of the HSPB action in question on the City's website.
- D. **Review by Councilmember.** With respect to any action of the HSPB as the approving authority, any member of the City Council may initiate a review of the action by giving notice thereof to the Office of the City Clerk in the time and manner for filing of a notice of review as prescribed by Section 2.06.030 of the Palm Springs Municipal Code. City Council review of an action by the HSPB shall follow the procedure provided by Section 2.06.030 of the Palm Springs Municipal Code.



## **Article V: Historic Preservation on Tribal Lands**

**8.05.180 Authority.** Pursuant to the amended and restated Land Use Contract ("Contract") between the Tribe and the City of Palm Springs, adopted by the City of Palm Springs on September 20, 2018, and pursuant to the inherent sovereign authority of the Tribe, a federally-recognized Indian tribe with the sole authority to regulate land use within the exterior boundaries of the Reservation, the following sections shall describe the process for the coordination of historic preservation activities between the Tribe and the City.

**8.05.190 Tribal Authority over the Designation of Historic Resources and Historic Districts Located on Tribal Trust and Allotted Trust Lands.** The designation of historic resources and historic districts for Tribal Trust Lands and Allotted Trust Lands shall be the sole authority of the Tribe. Requests for designation on Tribal Trust and Allotted Trust Lands received by the City shall be forwarded directly to the Tribe's Historic Preservation Officer for review and a determination of whether the historic resource or historic district meets the criteria for inclusion on the Agua Caliente Tribal Register of Historic Places pursuant to Tribal law. No action may be taken by the City on requests for designation of historic resources or historic districts on Tribal Trust or Allotted Trust Lands.

**8.05.200 Tribal Review of Applications for Historic Designation (Reservation Fee Land).** In accordance with the Contract, and as a means of promoting coordination of historic preservation activities between the City and the Tribe, all applications for the designation of historic resources and historic districts located on Reservation Fee Land shall be forwarded to the Tribe's Historic Preservation Officer for review and recommendation. The HSPB and City Council shall consider the recommendation of the Tribe's Historic Preservation Officer, where a recommendation is provided, prior to taking action on the application for historic designation.

**8.05.210 Demolition or Alteration of Class 3 or Class 4 Buildings (Reservation Fee Land, Tribal Trust Land, Allotted Trust Land).** Any application for demolition or alteration of a Class 3 or Class 4 building located on Reservation land shall be forwarded to the Tribe's Historic Preservation Officer for review and recommendation. The City shall consider the recommendation of the Tribe's Historic Preservation Officer, where a recommendation is provided, prior to taking action on the application. The demolition or alteration of Class 3 or Class 4 buildings located on Tribal Trust and Allotted Trust Lands shall be the sole authority of the Tribe. Requests for demolition or alteration on Tribal Trust and Allotted Trust Lands received by the City shall be forwarded directly to the Tribe's Historic Preservation Officer for review and determination. No action may be taken by the City on requests for demolition or alteration of Class 3 or Class 4 buildings on Tribal Trust or Allotted Trust Land.

**SECTION 3.** Staff shall provide a report to the City Council on the effectiveness of this Ordinance within nine (9) months of the effective date.

**SECTION 4.** If any section or provision of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, the remaining sections and/or provisions of this ordinance shall remain valid. The City Council hereby declares that it would have adopted this Ordinance, and each section or provision thereof, regardless of the fact that any one or more section(s) or provision(s) may be declared invalid or unconstitutional or contravened via legislation.

**SECTION 5.** The proposed ordinance is not subject to the California Environmental Quality Act (Public Resources Code Section 21000 et. seq.) pursuant to Section 15060(c)(2) and 15060(c)(3) of the State Guidelines, because the ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a "project," as that term is defined in Section 15378 of the State Guidelines.

**SECTION 6.** The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after passage.

**SECTION 7.** Adoption of this ordinance shall effectively terminate the moratorium on demolition or substantial alteration of structures built before 1969, as adopted via Ordinance No. 1963 on September 5, 2018, and extended on October 17, 2018.

ADOPTED THIS 23<sup>RD</sup> DAY OF JANUARY, 2019.

  
\_\_\_\_\_  
ROBERT MOON  
MAYOR

ATTEST:

  
\_\_\_\_\_  
ANTHONY J. MEJIA, MMC  
CITY CLERK

CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) *ss.*  
CITY OF PALM SPRINGS )

I, ANTHONY J. MEJIA, City Clerk of the City of Palm Springs, California, do hereby certify that Ordinance No. 1970 is a full, true, and correct copy, and was introduced at a regular meeting of the Palm Springs City Council on January 9, 2019, and adopted at a regular meeting of the City Council held on the 23<sup>rd</sup> day of January, 2019, by the following vote:

AYES: Councilmember Holstege, Middleton, Roberts, and Mayor Moon  
NOES: None  
ABSENT: Mayor Pro Tem Kors  
ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Palm Springs, California, this 31<sup>st</sup> day of January, 2019.

  
\_\_\_\_\_  
ANTHONY J. MEJIA, MMC  
CITY CLERK