

Current to February 1, 2010

**Chapter 30 LANDMARK PRESERVATION**  
**ARTICLE I. IN GENERAL**

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

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

**Sec. 30-2. Definitions.**

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

- (1) Alteration shall mean any act or process which changes one (1) or more of the exterior architectural features of a designated structure for preservation or district for preservation.
  - (1.1) Concept of integrity shall mean the ability of a structure or district to be recognized as belonging to its particular time and place in Denver's history. The integrity of the structure or district means that it reflects its original time and place.
  - (1.2) Concept of significance shall mean the idea that a structure or district is important to the history, architecture or geography of the city and thus makes a special contribution to Denver's distinctive character.
- (2) Contributing shall mean a structure in a district:
  - a. That was designated as contributing in the ordinance establishing the district;
  - b. That was not designated as either contributing or noncontributing in the ordinance establishing the district, but which adds to the historical or architectural qualities of the district, was present during the period of significance and is recognizable as having been present during the period of significance because it retains its physical integrity; or
  - c. That is so designated by the commission because no period of significance and no other means for designating contributing structures was specified in the ordinance establishing a district for preservation, and the structure adds to the historical or architectural qualities of the district, retains its physical integrity, and was built at least thirty (30) years prior to the determination by the commission that it is a contributing structure.
- (3) District shall mean any structure or improvement and its surrounding environs or a group of structures or improvements or both, and their surrounding environs.
- (4) Exterior architectural feature shall mean the architectural style, design, general arrangement and components of all the outer surfaces of a structure or improvement, including but not limited to the color, texture, materials, type and style of all windows, doors, lights, signs and other fixtures appurtenant to the structure or improvement.
  - (4.1) Historic context (historic framework) is an organizing framework for interpreting history that clusters information about historic structures that share a common theme, common geographical area, and a common time period. The historic context is necessary to determine whether the characteristics and associations of a particular structure or district are significant.
- (5) Improvement shall mean any building, structure, place, work of art or other object constituting a physical betterment of real property or any part of such betterment.

(6) Noncontributing shall mean a structure in a district:

- a. That was designated as noncontributing in the ordinance establishing the district (but see section 30-11(1)(b)); or
- b. That was not designated as contributing in the ordinance establishing the district, and which does not add to the historical or architectural qualities of the district, was not present during the period of significance or because of alterations or deterioration it has lost its physical integrity.

(6.1) Period of significance shall mean the time period during which a structure or district gained its architectural, historical or geographical importance. A district's period of significance may cover a longer period of time than a structure's, in order to encompass the period during which the district developed.

(6.2) Physical integrity shall mean the ability of a structure or district to convey its historic and architectural significance. To have physical integrity means that a structure or district can be recognized as belonging to its particular time and place in Denver's history. The seven qualities that, in various combinations, define integrity are:

- a. Location: The place where the historic structure was constructed or the place where the historic event occurred.
- b. Setting: The physical environment of a historic structure.
- c. Design: The combination of elements that create the form, plan, space, structure, and style of a structure.
- d. Materials: The physical elements that were combined or deposited during a particular period of time in a particular pattern or configuration to form a historic structure.
- e. Workmanship: The physical evidence of a particular culture or people's craft during any given period in history.
- f. Feeling: A structure's expression of the aesthetic or historic sense of a particular period or time.
- g. Association: The direct link between an important historic event or person and a historic structure.

(7) Replacement structure shall mean a primary structure for a use by right, except surface parking and storage, that takes the place of a designated structure for preservation.

- (8) Structure: anything which is constructed or erected and the use of which requires more or less permanent location on the ground or attachment to something having permanent location on the ground, not, however, including wheels; any physical feature of the site; any improvement on the site; an edifice or building of any kind.

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

A structure or district may be designated for preservation, if it meets at least one (1) criterion in two (2) or more of the following three (3) categories:

- (1) History. To have historical significance, the structure or district shall be thirty (30) or more years old or have extraordinary importance to the historical development of Denver, and shall:
- a. Have direct association with the historical development of the city, state, or nation;
  - b. Be the site of a significant historic event; or
  - c. Have direct and substantial association with a person or group of persons who had influence on society.
- (2) Architecture. To have architectural significance, the structure or district shall have design quality and integrity, and shall:
- a. Embody distinguishing characteristics of an architectural style or type;
  - b. Be a significant example of the work of a recognized architect or master builder;
  - c. Contain elements of architectural design, engineering, materials, craftsmanship, or artistic merit which represent a significant or influential innovation; or
  - d. Portray the environment of a group of people or physical development of an area in an era of history characterized by a distinctive architectural style.
- (3) Geography. To have geographical significance, the structure or district shall:
- a. Have a prominent location or be an established, familiar, and orienting visual feature of the contemporary city;
  - b. Promote understanding and appreciation of the urban environment by means of distinctive physical characteristics or rarity; or
  - c. Make a special contribution to Denver's distinctive character.

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

- (1) Initiation of procedure. An application for designation shall be submitted to the landmark preservation commission for due consideration through the process described herein. Such an application shall describe the appearance of the structure or district and shall demonstrate how the structure or district meets the criteria for designation set forth herein. The landmark preservation commission shall provide an application form and instructions that set out the required information for designation applications.
- (2) Preliminary investigation. The commission staff shall conduct an investigation to determine whether the application is complete, and whether the structure or district is eligible for designation. If the applicant is not the owner of the property, the owner shall be notified at every stage of the designation proceedings. If the commission is not in receipt of the written consent to designation by the owner of a proposed structure for designation, an explanation of why the commission should proceed without such consent shall be given. If preliminary review determines the structure or district to be eligible for designation, the review shall proceed as described. If not, the applicant shall be advised of the reasons the application is incomplete or the structure or district does not meet the criteria for designation, however, the applicant may require that the application be forwarded to the commission, which shall then decide whether to send it to a public hearing.
- (3) Schedule designation hearing. The commission shall review the application and staff's recommendation to determine if the application is complete and the structure or district is potentially eligible for designation. If the commission finds the application complete and the property potentially eligible for designation it shall schedule a public hearing on the question of designation, hereinafter called a designation hearing, at a specified time, date and place.
- (4) (Deleted)
- (5) Notice of hearing. Notice of the designation hearing shall be given as follows:
  - (a) Written notice of the time, date, place and subject of the hearing shall be sent not less than twenty-five (25) days nor more than forty (40) days prior to the hearing to all owners of record as determined from records in the assessor's office who own property containing a structure being proposed for designation for preservation or within a proposed district for preservation. The written notice to owners of property containing a structure being proposed for designation for preservation shall be by certified mail. The written notice to owners of property within a proposed district shall be by first class mail.
  - (b) Signs indicating the proposed action and the time, date and place of the hearing, shall be posted by the commission for a period of not less than fifteen (15) days immediately preceding the hearing on all property proposed for designation as a structure for preservation and on the boundaries of all areas proposed for designation

as a district for preservation, such signs to be prominently displayed and easily readable from abutting public ways.

- (c) A legal notice indicating the nature of the hearing, the property involved, and the time, date and place of the scheduled public hearing, shall be published once in an official publication of the city not less than ten (10) nor more than fifteen (15) days prior to the hearing.
  - (d) Written notice of the proposed designation, including the identification of the property, the basis for commencing the designation procedure, and the time, date and place of the hearing shall be given to the planning board, and to the director of the building inspection not less than twenty-five (25) days prior to the hearing.
- (6) Review by planning board. The planning board may review the proposed designation with respect to:
- (a) Its relationship to the comprehensive plan;
  - (b) The effect of the designation upon the surrounding neighborhood; and
  - (c) Such other planning considerations as may be relevant to the proposed designation.
- The board may recommend approval, rejection or modification of the proposed designation and if a recommendation is made it shall contain a statement of the basis therefor. If a recommendation is made by the board, said recommendation shall be delivered to the city council for council's consideration. If the board fails to act prior to the public hearing before city council, the proposed designation shall be deemed to have received a recommendation of approval by the board.

(7) Hearing:

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

- (8) Findings and recommendations of the commission. The preservation commission shall act officially on each proposed designation within forty-five (45) days after the hearing thereon. The commission may approve, reject or modify any proposal, but no proposal may be extended beyond the boundaries of the land described in the final application for designation unless the initiation and hearing procedure is repeated for the enlarged boundaries. The commission shall set forth in its recommendation the findings of fact which constitute the basis for its decision. If the commission fails to act within the forty-five-day period, the designation shall be deemed to have been rejected, and the designation procedure terminated.
- (9) Transmittal to city council. Within fifteen (15) days after reaching its decision, the preservation commission shall either (1) transmit to the city council and to the director of the building department the commission's recommendation on the designation of a structure or district for preservation, including the description of the property involved, and the findings upon which the recommendation was based; or (2) terminate the designation procedure. If more than one (1) property is involved in the designation procedure, the commission may approve in part and terminate in part. Each part shall then be treated as a separate action. In no event may any property be added to the area described in the final application for designation without instituting a new designation procedure.
- (10) Action by city council. Upon receipt of the recommendations transmitted by the preservation commission, the city council may, by ordinance, designate property as a structure for preservation or a district for preservation. Due consideration shall be given to the written views of owners of affected property, and the city council shall hold public hearings on any proposed structure for preservation or district for preservation designation. However, if no bill for an ordinance to designate a structure or district is filed within ninety (90) days after transmittal of the recommendation, the designation procedure is terminated.
- (11) Recording of designation. Within fifteen (15) days of the effective date (date of final publication) of an ordinance designating property as a structure for preservation or a district for preservation, the preservation commission shall notify the director of building inspection of the official designation and shall record among the real property records of the clerk and recorder either (1) a certified copy of the ordinance designating specified property as a structure for preservation or a district for preservation, or (2) a notice stating that specified property has been designated as a structure for preservation or a district for preservation, and citing the ordinance and the effective date thereof which made the designation effective. Failure to record such ordinance or notice within the required time shall suspend the effective date of the designation until the recording has been made.
- (12) Notification. Within twenty (20) days after the recording of the ordinance or the notice of designation, the secretary of the preservation commission shall send to the owner of each property affected by the designation a letter outlining the reasons for such designation and the obligations and restrictions created by such designation.

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

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

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

- (1) Protection from demolition during designation proceedings and review of properties prior to demolition.
  - (a) Upon or after receipt by community planning and development (CPD) of an application for designation of a structure or a district for preservation, no demolition permit shall be issued for said structure or any structure in said district for a period of one hundred and twenty (120) days from the receipt of an application for demolition by CPD. An application for designation shall not be considered received until the application fee is received by CPD. If the preservation commission denies the application for designation or if at the end of the one hundred and twenty (120) day period the structure or district has not been designated by council, the demolition permit shall be issued upon compliance with all Denver Building and Fire Code requirements. If the structure has been designated prior to the end of the one hundred and twenty (120) day period, the provisions of section 30-6(6) shall apply.
  - (b) For a structure that is not pending designation as a structure for preservation or as part of a district for preservation at the time an application for demolition is received by CPD, the demolition application shall be reviewed within ten (10) working days to determine whether the structure has potential for designation.
    - (i) During the ten (10) working day review period no demolition permit shall be issued unless the structure is determined not to have potential for designation by the manager of CPD or the manager's designee (hereinafter in this section "manager"). Any time after the manager makes a determination that the structure does not have potential for designation or if the ten working day period has elapsed without such a determination, and provided no application for designation has been received by CPD, the demolition permit shall be issued upon compliance with all Denver Building and Fire Code requirements.
    - (ii) If the manager determines that the structure may have potential for designation the manager shall notify the person who applied for demolition, the property owner, the city council person in whose district the structure lies, the at-large council persons, the registered neighborhood organizations the boundaries of

which encompass or are within two hundred (200) feet of the structure and appropriate historic preservation entities that the structure has been deemed to have potential for designation and there is a request for demolition pending. The property shall be posted for twenty-one (21) calendar days for comment about the potential for designation of the property. No demolition permit shall be issued for a period of twenty-one (21) calendar days from the date of the above notifications and posting. If an application for designation, along with the applicable fee, is received before the demolition permit is issued, the provisions of section 30-6(1)(a) shall apply. If the posting period has elapsed and no application for designation has been received by CPD, the demolition permit shall be issued upon compliance with all Denver Building and Fire Code requirements.

(c) In order to provide certainty in the demolition process, an owner of a structure that is not pending designation and is neither designated nor in a district for designation may apply to CPD to have the structure officially declared to be non-historic and have a certificate to that effect (The “certificate”). Said certificate shall prevent an application for designation going forward without the owner’s consent for a period of five (5) years from the date of issuance, and for said five (5) year period will allow an application for demolition to be processed without further review as to the structure’s potential for designation.

i. Upon receipt of a complete application for a certificate, including any required fee, the manager shall determine if the structure has potential for designation. If before 10 working days have elapsed since the application, the manager has determined that the property does not have potential for designation the manager shall issue a certificate.

ii. If no determination is made before 10 working days have elapsed since the application, or if the manager has determined that the property does have potential for designation the manager shall notify the person who applied for the certificate, the property owner, the city council person in whose district the structure lies, the at-large council persons, the registered neighborhood organizations the boundaries of which encompass or are within two hundred (200) feet of the structure and appropriate historic preservation entities that the structure has been deemed to have potential for designation and there is a request for a certificate pending. The property shall be posted for twenty-one (21) calendar days for comment about the potential for designation of the property. If an application for designation, along with the applicable fee, is received before the certificate is issued no certificate shall be issued unless and until the commission or city council ultimately decides not to designate the property, provided, however, if the structure is not designated within one hundred and twenty (120) days after the request for the certificate is filed, the certificate shall be issued and designation proceedings shall be terminated. If the posting period has elapsed and no application for designation has been received by CPD, the certificate shall be issued.

iii. In this section 30-6(1) “potential for designation” shall mean a structure which after initial review appears to meet the designation criteria.

(2) Design review standards, policies and guidelines.

- (a) The commission shall adopt the secretary of the interior’s standards for rehabilitation and design review policies and guidelines (in such form as it deems appropriate) to aid in its review of design review and permit applications.
  - (b) For the purposes of this section “permit” includes building permit, curb cut permit, demolition permit, revocable permit, zoning construction permit and request for zoning lot amendment, unless one or more type of permit is specified or excluded.
- (3) Review of permit. The commission shall review any application for a permit for any of the following acts:
- (a) Alteration of, reconstruction of, or addition to the exterior of any structure which constitutes all or part of a designated structure for preservation or all or part of a structure located in a designated district for preservation or the modification of a zone lot in a designated district for preservation or all or part the zone lot of a designated structure for preservation;
  - (b) Demolition of any structure which constitutes all or part of a designated structure for preservation or all or part of a structure located in a designated district for preservation;
  - (c) Construction of, erection of, or any addition to any structure upon any land in a designated district for preservation or on any land included in the area designated as a structure for preservation.
  - (d) Application for a zone lot amendment in a designated district for preservation or for any land included in the area designated as a structure for preservation.
- (4) Approval of permit. The permit shall not be issued without written approval of the preservation commission or its designated representative, except as provided in subsection 30-6(7).
- (5) Action on proposed alterations, reconstruction, or additions. (See section 30-6(6) for action on proposed demolitions.) The commission shall base reviews of applications on adopted standards, policies, and guidelines. The commission may request additional information as necessary to undertake its review. When dealing with a proposed alteration of, reconstruction of, or addition to the exterior of a contributing structure in a district for preservation or of a structure for preservation, the commission shall place the emphasis on applying the appropriate design guidelines to said structure with a view to preserving the historic significance of the basic structure. When dealing with a proposed alteration of, reconstruction of, or addition to the exterior of a noncontributing structure in a district for preservation or a noncontributing structure within the designated land area of a structure for preservation, the commission shall place the emphasis on preserving the historic character of the district or structure for preservation rather than preserving the character of the structure to be altered, reconstructed or added. The commission staff may administratively

approve applications which clearly meet the guidelines, unless the commission has determined that certain types or applications or projects must be brought before the commission. All other applications shall be sent to the commission which shall approve, approve with conditions, or deny said applications. The commission shall take action on the application within thirty (30) days of receipt of all information requested by the commission or commission staff.

- (a) Upon the request of any affected property owner or receipt of an application for a permit, other than a curb cut, demolition or revocable permit, the preservation commission shall review any proposal for altering, constructing, erecting, or adding to any structure covered by subsections 30-6(3)(a) or (3)(c). If the commission finds that the proposed work is of a nature which will not destroy or adversely affect any architectural feature of the structure and is appropriate or consistent with the spirit and purposes of this chapter, it shall so indicate in writing. No substantial change shall be made to the work as presented in an application approved by the commission without resubmittal to the commission and approval of such changes in the same manner as the original application.
- (b) If upon review of the proposed work, the commission finds portions thereof to be unacceptable, the application may be approved with conditions which shall be adhered to.
- (c) If upon review of the proposed work, the commission finds said work to be unacceptable, the application shall be denied. The commission shall state the reasons for the denial in writing, citing adopted standards, policies, and guidelines. The applicant may seek relief through economic hardship review set forth in section 30-6(8) or withdraw the proposal.
- (d) Upon approval of a permit, a Certificate of Appropriateness shall be issued which shall state the approved work and any conditions to said approval. A copy of the Certificate shall be displayed along with and in the same manner as any building permits issued for the same work. The Certificate of Appropriateness shall be valid for three years from the date of issuance. If construction has not started within said three year period the applicant must submit a new application.

(5.5) Action on a proposed zone lot amendment. The commission shall base reviews of applications on adopted standards, policies and guidelines. The commission may request additional information as necessary to undertake its review. When dealing with a zone lot amendment in a district for preservation, the commission shall determine whether the amendment adversely affects character or integrity of the neighborhood or any contributing structure in the neighborhood. When dealing with a zone lot amendment encompassing all or part of the land area of a structure for preservation, the commission shall determine whether the amendment adversely affects the character or integrity of the structure for preservation.

(6) Action on proposed demolition of a structure for preservation or structure in a district for preservation. Application for a proposed demolition covered by subsection 30-6(3)(b)

(Hereinafter in this section (6) called an “application for demolition”) must be made in writing to the commission. An application for a demolition permit or a letter of intent fulfills this requirement. In no event (except in the case of (b)iv. below) shall a demolition permit be issued until the commission has approved a replacement structure or site development.

(a) If the structure proposed for demolition is a non-contributing ancillary structure or outbuilding, the commission staff may approve the application for demolition or forward the application for demolition to the commission with a recommendation for approval or disapproval.

(b) The commission may approve or disapprove without a public hearing an application for demolition if the structure to be demolished is:

- i. A noncontributing structure in a district;
- ii. A noncontributing addition to a structure or site;
- iii. An ancillary structure or outbuilding of a contributing structure or site; or
- iv. Determined, in accordance with 30-6(7), to be imminently dangerous to life, health or property and its demolition remedies said dangerous condition.

The commission shall take action on such an application at the regularly scheduled meeting at which it receives the application or at one of the two regularly scheduled meetings next following said receipt of the application or within 30 days of receipt of all requested information, if the commission makes such a request of the applicant.

(c) Upon receipt of an application for demolition of a contributing ancillary structure or outbuilding, the commission may require a public hearing if it finds that the ancillary structure or outbuilding has historic, architectural or geographic significance of its own, and its removal would affect the historic integrity of the site.

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

Written notice of the public hearing shall be sent to the owner of the property and to the building permit applicant (if different from the owner), giving the time, date, place and subject of the public hearing, not less than thirteen (13) days prior to the hearing. Signs indicating the proposed action and the time, date and place of the hearing shall be posted by the commission on the property being considered not less than thirteen (13) days prior to the hearing. Such signs shall be prominently displayed and easily readable from abutting public ways.

(e) Determination. Either at the final meeting during which the public hearing is held, or at the next regularly scheduled meeting after the public hearing is closed, the preservation commission shall make a determination to approve or deny the application for demolition. The findings of the commission shall be based on consideration of specified design standards, presented plans, public testimony and related findings of fact. Notification of the commission's determination shall be made in writing to the applicant and such persons as requested notification at the public hearing. Notification shall also be sent to the building inspection division within five (5) days after the determination. If the application for demolition is approved, the commission shall require a replacement structure or site development as a condition of the demolition approval.

(f) If the application for demolition is denied, the applicant may seek relief through the economic hardship process, defined in section 30-6(8).

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

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

(8) Procedure to demonstrate economic hardship. Application to demonstrate economic hardship shall be made on a form prepared by the preservation commission. The notice of intent to initiate the procedure shall be given to the commission within thirty (30) days of the denial of the application to alter or demolish. The commission shall schedule a public hearing concerning the application and any person, including the applicant, may testify. The public hearing shall be conducted as in section 30-6(6) above.

- (a) The commission may solicit expert testimony and require that the applicant make submissions concerning any or all of the following information before it makes a determination:
- (i) Estimate of the cost of the proposed construction, alteration, demolition, or removal and an estimate of any additional cost that would be incurred to comply with the conditions of approval set out in section 30-6(5) or (6) above.
  - (ii) A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation.
  - (iii) In the case of a proposed alteration, the cost of the project proposed by the applicant compared with the changes required by the preservation commission. In the case of a proposed demolition, the estimated market value of the property in its current condition, after rehabilitation, and after demolition shall be compared, in addition to actual project costs.
  - (iv) Amount paid for the property, the date of purchase or acquisition, and the party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the property was purchased.
  - (v) All appraisals obtained within the previous two (2) years by the owner or applicant in connection with the purchase, financing, or ownership of the property.
  - (vi) Any listing of the property for sale or rent, price asked, and any written offers received within the previous two (2) years.
  - (vii) The actual or market value of the land and improvements thereon according to the most recent assessment.
  - (viii) Real estate taxes for the previous two (2) years.
  - (ix) In the case of a proposed demolition, a proposal for a replacement structure for the property and financial proof of the ability to complete the replacement project.
  - (x) For income producing property, the annual gross income from the property for the previous two (2) years; itemized operating and maintenance expenses for the previous two (2) years.
- (b) The commission shall make a determination of economic hardship within ten (10) days of the public hearing. The determination to approve or deny shall be based

upon the submissions of the applicant and testimony of experts and the public. If approved, the action of the applicant may proceed without further delay imposed by reasons of this chapter. In either case, the commission shall provide a written record of its decision.

- (9) This Section 30-6 shall apply to all districts for preservation and structures for preservation except for all structures in the Lower Downtown Historic District (LDHD) including any structures for preservation located therein. Erection, construction, reconstruction, alterations to or demolition of structures in the LDHD shall be governed by Article III (Lower Downtown Historic District) of this Chapter 30.

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

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

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

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

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

- (1) It shall be unlawful to violate any provision of this chapter, or to disobey or fail to follow any order, decision or ruling of the Landmark Preservation Commission or the Lower Downtown Design Review Board. Any person violating any provision of this chapter shall be subject to the penalties provided by this Code.
- (2) In case any building or structure is erected, constructed, externally reconstructed, externally altered, added to or demolished in violation of this chapter, the preservation commission, or if the building or structure is in the (LDHD), the Lower Downtown Design Review Board (LDDRB), may order any such building or structure to be returned to its condition prior to such unlawful erection, construction, reconstruction, exterior alteration, addition or demolition. This may specifically include ordering the reconstruction of a structure that was demolished to replicate as closely as possible the original structure. Furthermore, the city or any proper person may institute an appropriate action or proceedings to prevent such an unlawful erection, construction, reconstruction, exterior alteration, addition or demolition.
- (3) The imposition of any penalty hereunder, or pursuant to Chapter 2, Article XII, Administrative Citations, shall not preclude the city or any proper person from instituting any proper action or proceeding to require compliance with the provisions of this chapter and with administrative orders and determinations made hereunder.

- (4) Any person interested in or aggrieved by a decision or action of the preservation commission may obtain judicial review in accordance with the Colorado Rules of Civil Procedure 106(a)(4). Such action to obtain review must be brought no later than thirty (30) days after the action or decision from which review is sought.

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

- (1) The preservation commission shall act as a reviewing entity for the Colorado historic rehabilitation tax credit. The commission shall adopt a resolution each year stating its intent to act as reviewing entity, as set forth in Section 39-22-514, C.R.S.
- (2) The amount of the fee required to be paid by the taxpayer for such review shall be as set forth in Section 39-22-514, C.R.S.

**Sec. 30-11. Landmark preservation commission designation of contributing properties within districts for preservation.**

When there is no period of significance in the designating ordinance for a district for preservation, and the designating ordinance does not specifically state which structures are contributing, the commission may designate structures as contributing. In determining whether a structure meets the definition of a contributing structure, the commission shall utilize the application for designation of the district as well as the ordinance designating the district and the “criteria for designation of structures and districts for preservation” (section 30-3 of this chapter).

- (1) The commission shall not designate as contributing:
  - a. Any structure built or constructed less than thirty (30) years prior to the date of the commission’s action on designation.
  - b. A structure listed as non-contributing in the designating ordinance, except when:
    1. The structure was present during the period of significance, if any;
    2. The structure has been restored so as to meet the criteria for contributing structures; and
    3. The property owner has requested designation as a contributing structure.
  - c. A structure in a district that has a period of significance included in the designating ordinance and the structure was not present during the period of significance.
- (2) The commission may designate as contributing a structure that was, due to alterations or deterioration, at one time designated by the commission as noncontributing, if the following conditions are met:

- a. The structure has been restored so as to meet the criteria for contributing structures; and
  - b. The property owner requests designation.
- (3) All designations of properties as contributing by the commission shall be by affirmative vote of not fewer than five (5) commissioners.

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

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

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

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

ARTICLE II. PRESERVATION COMMISSION

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

There shall be and hereby is created a preservation commission.

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

The preservation commission shall consist of nine (9) members who shall be residents of the city. Appointments shall be for a three-year term. Each member shall continue to serve in such capacity until the member's successor has been duly appointed and is acting, provided, however, that period shall not exceed ninety (90) days past the expiration of the member's term. The nine (9) members of the commission serving on the effective date of the ordinance from which this section was derived shall serve the balance of the term to which the member was appointed.

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

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

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

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

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

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

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

The staff of the preservation commission shall consist of a secretary and such other assistants as may be authorized by the mayor. The secretary shall be the custodian of the records of the commission, shall conduct official correspondence and generally supervise the clerical and technical work of the commission. The secretary shall be appointed by the mayor with the consent of the commission; provided, however, that nothing herein shall be construed to prevent the mayor from assigning the duties of the secretary as a part-time function of a present employee of the city.

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

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

- (1) Design review committee. A design review committee may be empowered by the commission to act on its behalf in making decisions regarding sections 30-4(2), 30-6(5), 30-6(6), or other matters as assigned.
- (2) District subcommittees. The commission may, at its discretion, appoint a subcommittee to conduct design review, as defined in section 30-6(5), for a specific district for preservation. A report of the subcommittee shall be submitted to the commission for final decision. Such a subcommittee shall consist of at least one (1) member of the commission, at least one (1) design professional, and at least one (1) district resident. Members shall be appointed by the commission for a specified term.

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

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

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

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

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

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

ARTICLE III. LOWER DOWNTOWN HISTORIC DISTRICT

**Sec. 30-45. Designation and Legal Description.**

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

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

**Sec. 30-46 Lower Downtown Design Review Board.**

(a) There shall be and is hereby created a Lower Downtown Design Review Board (“Board”) which shall consist of 7 members. The seven members shall be appointed by the Mayor from nominations from the following persons and organizations or their successors:

- (1) The City Council representative, or representatives, of the Lower Downtown district for preservation (“District”);
  - (2) The Denver chapter of the American Institute of Architects;
  - (3) Historic Denver, Inc.;
  - (4) The Colorado Historical Society;
  - (5) The National Trust for Historic Preservation, Mountain and Plains Region;
- and,
- (6) Registered Neighborhood Organizations which represent all of the District.

(b) The seven members of the Board shall represent the following groups, interests or professions:

- (1) A real estate developer. Nominees shall have experience in the rehabilitation of commercial or residential projects similar in scale to the buildings in lower downtown.
- (2) A practicing architect.
- (3) A historic preservationist.
- (4) A preservation architect.
- (5) A resident of the District.
- (6) A property owner in the District.
- (7) An owner or operator of a business in the District.

(c) Appointments shall be made by the Mayor upon the certification by the Landmark Preservation Commission (“LPC”) that the applicants meet the qualifications for the position.

(d) Two of the four members listed in subsection (b) (1) through (4) above shall not live in, own property in, own or operate a business in, maintain an office in or otherwise represent interests in the District. No member of the Board shall be a member of the LPC.

(e) Each member of the Board shall serve a term of three years. Members may be removed by the Mayor only for cause upon written charges. The Mayor shall appoint three new members, one who shall be a real estate developer, and shall sit for a term of one year, one who shall be a historic preservationist and shall sit for a term of two years, and one who shall be a preservation architect and shall sit for a term of three years. As the Board members’ terms expire, their replacements shall be then appointed by the Mayor for a term of three years so as to attain and then maintain the representation set forth in (b) above. Members may be reappointed to succeed themselves. After following the nomination and selection procedures set forth above in this section, vacancies shall be filled by the Mayor for the unexpired term of any member whose term becomes vacant.

(f) A quorum shall be four (4) members. A concurring vote of a majority of the members present shall be required to pass general business matters of the Board. To approve any design review or demolition application, other than for any project in a special review district, the concurrence of a majority of the Board (four members) shall be necessary. Five (5) of the seven (7) members must concur in order to approve a project in a special review district.

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

The Board shall adopt design guidelines in accordance with the Lower Downtown Neighborhood Plan and the Design Guidelines for Landmark Structures and Districts. Such guidelines shall be approved by the LPC.

#### **Sec. 30-48 Design and Demolition Review**

(a) The Design and Demolition Review process shall be as follows:

(1) Demolition Review shall be required and shall commence upon the request of the applicant to demolish a structure. Design Review shall be required and shall commence upon a request by the applicant or upon a request by the applicant for a zoning permit or a building permit. Applicants for Demolition Review must also submit an application for Design Review of a replacement structure. Upon a determination that a building to be demolished is imminently dangerous to life, health or property by the Building Inspection Division, the Department of Health, or the Fire Department and upon notification of such determination to the Board an application for a demolition permit shall be issued without following the remaining provisions of this section and without the requirement for an application of a replacement structure.

(2) Applications which clearly meet the design guidelines may be administratively approved by the staff of the Board. Staff may request additional information if the application is incomplete. Staff must make its decision within 30 days after receiving all requested information.

(3) The applicant may request a decision on an entire project at a single meeting, or may ask for a two or three step review. If the applicant requests a step process,

the first step is to review the request for demolition a structure, if any. The second step is review of the building envelope (the building's height, mass, form, stepbacks, site plan, and contextual fit), and the concept of the basic exterior façade appearances, including identification of major materials. The third step is review of the remainder of the project. If the applicant requests the step process, approval or denial of each step shall be considered a final decision and separately appealable to the LPC.

(4) At least 15 days before the Board reviews a request for demolition of a contributing structure, the property shall be posted indicating the date, time and place of the review.

(5) At each step of the review process, at least 10 days before the Board conducts its review, notification shall be sent to all registered neighborhood organizations within which the property being reviewed is located or whose boundaries are within 200 feet of the property being reviewed.

(6) The Board shall review each step of the completed application within 30 days of its receipt by community planning and development, provided that the Board may request additional information if the application is incomplete in which case the Board shall make it's decision within 30 days of receiving all requested information. The 30 day time period shall not include any period of required notification or posting. If no action is taken within the above specified 30 day time period, then the application shall be deemed to be approved unless the review period is extended by mutual agreement of the applicant and the Board.

(7) The Board may approve, approve with conditions or disapprove the application or any step in the application.

(8) Upon approval of a complete project, a Certificate of Appropriateness shall be issued which shall state the approved work and any conditions to said approval. A copy of the Certificate shall be displayed along with and in the same manner as any building permits issued for the same work. The Certificate of Appropriateness shall be valid for three years from the date of issuance. If construction has not started within said three year period the applicant must submit a new application.

(9) Any person interested in or aggrieved by a decision or action of the Board may obtain judicial review in accordance with the Colorado Rules of Civil Procedure Rule 106(a)(4). Such action to obtain review must be brought no later than thirty (30) days after the action or decision from which review is sought.

(b) The criteria for the design review process shall be as follows:

(1) The purpose of the review process is to protect, enhance, and perpetuate buildings, sites, and areas of the Historic District reminiscent of past eras, events, and persons important in local, state, or national history; to encourage rehabilitation of contributing buildings and ensure new construction is compatible with contributing buildings; to provide significant examples of architectural styles of the past and to develop and maintain appropriate settings and environments for such buildings, sites, and areas to enhance property values, stabilize neighborhoods, promote economic development, job creation, tourist trade, and foster knowledge of the city's living heritage;

(2) The design review process is intended to draw a reasonable balance between private property rights and the public interest in preserving the cultural, historic, and

architectural heritage of the Historic District by providing property owners the opportunity to retain the benefits of property ownership through rehabilitation or alteration of existing buildings or the construction of new buildings which are architecturally compatible with the heritage of the district, ensuring that renovation, rehabilitation, or alteration of buildings and structures contributing to that heritage will be carefully weighted with other alternatives and the economic feasibility of renovation and re-use, and that alterations to such buildings and structures and new construction will respect the character of the District, not by imitating surrounding structures, but by being compatible with them to the extent economically feasible.

(3) The Board will review the application for Design Review in accordance with the purposes of the District, the Design Guidelines for Landmark Structures and Districts, the Lower Downtown Design Guidelines, the design review process, and the following guidelines:

- a. If the proposed work is related to renovation or rehabilitation of a contributing building, the proposed work preserves, enhances or restores and does not damage, destroy or obscure the exterior architectural features of the building;
- b. The proposed work does not adversely affect the special character or special historical or architectural features of the property, and/or the District;
- c. The architectural style, massing, texture, scale, color, arrangement of color, and materials used on existing and proposed structures are compatible with the character of the district;
- d. Height:
  1. 55 feet, excluding cornices, heating, ventilating and air conditioning equipment, stair enclosures and elevator overruns, shall be considered the height by right in the district.
  2. Buildings between 55 and 85 feet in height (excluding cornices, heating, ventilating and air conditioning equipment, stair enclosures and elevator overruns) may be allowed by the Board if they are in context with any contributing buildings within 300 feet of any point on the property line of the proposed building, and if the structure includes residential uses anywhere in the building in a minimum amount equal to the floor area above the 55 foot limit;
  3. Buildings between 85 and 100 feet in height may be allowed, but only: if they are in context with any contributing building within 300 feet of any point on the property line of the proposed building; if the structure includes residential uses anywhere in the building in a minimum amount equal to the floor area above the 55 foot limit; and if the additional 15 feet above the 85 foot limit of 2 above, is a residential penthouse. Notwithstanding the previous sentence, for contributing structures which have no residential uses, the penthouse need not be a residential penthouse, however, all other provisions of this section 30-48 shall apply to such non-residential penthouse. Cornices, heating, ventilating and air conditioning equipment, stair enclosures and elevator overruns must be included in the total height of 100 feet. The residential penthouse shall be used exclusively for

residential or residential support purposes and shall not cover in excess of one third of the roof area at that level. All aspects of the penthouse shall comply with the design guidelines.

4. Buildings between 100 and 130 feet in height, excluding cornices, heating, ventilating and air conditioning equipment, stair enclosures and elevator overruns, may be allowed by the Board if they are in a Special Review District. The following three areas are defined for purposes of this ordinance as Special Review Districts:

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

ii. District 2 shall include: Lots 12 to 16 inclusive, Block 47, East Denver; Lots 11 to 22, inclusive, including vacated alley between said lots, Block 41, East Denver; Lots 1 to 6 inclusive, Block 46, East Denver; Lots 1 to 6 inclusive, and lots 27 to 32 inclusive, including vacated alley between said lots, Block 42, East Denver; and Lots 27 to 32 inclusive, Block 19, East Denver.

iii. District 3 shall include: Lots 1 to 15 and Lots 22 to 30, all in Block 12, EAST DENVER, and Lots "A" to "G", HOWARD RESUBDIVISION (being a resubdivision of part of block 12 East Denver, and parts of Cherry Creek as shown by Boyds Map of the City of Denver)/

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

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

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

Commencing at the point where the East line of Cherry Creek as shown by Boyds Map of the City of Denver intersects the produced Northwest line of the alley in Block 12, East Denver;

thence Southwest, along said produced Northwest alley line to an intersection with the Northeast line of the Channel of Cherry Creek as defined and described in Ordinance No. 86 Series of 1903; thence Southeast, along said line as so defined to the produced Southeast line of the alley in Block 12, East Denver; thence Northeast, along said produced Southeast Alley line and along said Southeast alley line to the Southwest line of 15<sup>th</sup> Street; thence Northwest, along said Southwest line of 15<sup>th</sup> Street to the Northwest line of the alley in Block 12, East Denver; thence Southwest, along said Northwest alley line and along said Northwest alley line produced, to the POINT OF BEGINNING

5. Special Review District 4, which shall also be known as the Historic Urban Edge District (HUED), is hereby created. It's boundaries shall be that portion of the Lower Downtown Historic District lying southwest of 14<sup>th</sup> Street and a line extending 14<sup>th</sup> Street northwest to Wewatta Street as defined by the southwest edge of the B-7 zone district. There shall be seven sub-areas within the HUED with heights limited as follows:

i. Sub-Area 1 shall consist of that portion of the HUED bounded by: the south ROW line of Walnut St. (North Boundary); the east ROW line of N. Speer Blvd (West Boundary); the north ROW line of Larimer St. (South Boundary); and the northwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (East Boundary). Building height shall be limited to 375 feet, plus up to 25 feet for screened mechanical equipment, stair and elevator overruns and an exceptional architectural feature, such as a spire, provided however that if any portion of the building shall have a height in excess of 85 feet, excluding up to 15 feet for screened mechanical equipment, stair and elevator overruns, the floorplate of said building shall not exceed 7,500 square feet excluding balconies and terraces. If no portion of the building exceeds 85 feet, excluding up to 15 feet for screened mechanical equipment, stair and elevator overruns, the floorplate limitation shall not apply.

ii. Sub-Area 2 shall consist of that portion of the HUED bounded by: the south ROW line of Walnut St. (North Boundary); the northwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (West Boundary); the north ROW line of Larimer St. (South Boundary); and the west ROW line of 14<sup>th</sup> St. (East Boundary). Building height shall be 55 feet plus up to 15 feet for screened mechanical equipment, stair and elevator overruns.

iii. Sub-Area 3 shall consist of that portion of the HUED bounded by: the south ROW line of Blake St. (North Boundary);

the east ROW line of N. Speer Blvd. (West Boundary); the north ROW line of Walnut St. (South Boundary); and the northwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (East Boundary). Between a line 30 feet to the Walnut St. side of a line formed by extending the center line of Blake St. as it is in the non-HUED portion of the Historic District through the HUED (Blake St. extended) and Walnut street, building height shall be limited to 85 feet, plus up to 15 feet for screened mechanical equipment, stair and elevator overruns. Between a line 30 feet to the Blake St. side of Blake St. extended and Blake St., building height shall be limited to 64 feet, plus up to 15 feet for screened mechanical equipment, stair and elevator overruns. Any structure must have residential uses anywhere in the building in a minimum amount equal to the floor area above 55 feet. For a distance of 30 feet on either side of the line of Blake St. extended there shall be no habitable structures.

iv. Sub-Area 4 shall consist of that portion of the HUED bounded by: a line parallel to and 44.72 northwesterly of the southeasterly line of Lot 8 Block 240, West Denver Subdivision, said parallel line being extended southwesterly to the northeasterly ROW line of Speer Boulevard and extended northwesterly from the southwesterly line of said Lot 8, north  $59^{\circ} 36' 28''$  East a distance of 85.48 feet, thence South  $45^{\circ} 26' 13''$  East a distance of 46.31 feet to a point on the northwesterly line of Lot 9, said Block 240 extended northeasterly, thence continuing along the northeasterly extension of the northwesterly line of said Lot 9 to the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (northwesterly boundary); the northeasterly ROW line of Speer Boulevard (southwesterly boundary); the southeasterly line of the Official Channel of Cherry Creek (northeasterly boundary); and the northwesterly line of Wazee Street (southeasterly boundary). The building height provisions generally applicable to contributing structures in the Lower Downtown Historic District shall apply.

v. Sub-Area 5 shall consist of that portion of the HUED bounded by the northwesterly line of lot 7, Block 240, West Denver, lying southwesterly of the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 and extended southwesterly to the northeasterly ROW line of Speer Boulevard (northwesterly boundary); the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (northeasterly boundary); the northeasterly ROW line of Speer Boulevard (southwesterly boundary); and a line lying 44.72' northwesterly of and parallel to the southeasterly line of Lot 8, Said Block 240, said line extended southeasterly to the northeasterly ROW line of Speer Boulevard and also extended to

the northeast North 59° 36' 22" East from the southwesterly line of said Lot 8, a distance of 85.48 feet, thence South 45° 26' 13" East to a point on the northwesterly line of Lot 9, said Block 240, thence along said northwesterly line of Lot 9 extended North 59° 36' 22" East to the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (southeasterly boundary). Building height shall be limited to 86 feet plus up to 15 feet for screened mechanical equipment, stair and elevator overruns. Any structure must have residential uses anywhere in the building in a minimum amount equal to the floor area above 55 feet.

vi. Sub-Area 6 shall consist of that portion of the HUED bounded by: the northwesterly line of Lot 7, Block 240, West Denver, and said northwesterly line lying southwest of the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 and extended to the northeasterly ROW of Speer Boulevard (southeasterly boundary); the southwesterly line of the Official Channel of Cherry Creek as established by ordinance 86 Series of 1903 (northeasterly boundary); the northeasterly ROW line of Speer Boulevard (southwesterly boundary); and a line parallel with and 65 feet southeasterly of the southeasterly ROW line of Wewatta St. as established by the northwesterly line of Block 12, East Denver, extended southwesterly (northwesterly boundary). The building height provisions generally applicable in the Lower Downtown Historic District shall apply.

vii. Sub-Area 7 shall consist of all portions of the HUED not included in any other sub-area. The building height provisions generally applicable in the Lower Downtown Historic District shall apply.

6. Buildings over 130 feet in height, excluding cornices, heating, ventilating and air conditioning equipment, stair enclosures and elevator overruns, shall not be allowed in the district, except in Sub-Area 1 of the HUED.

e. For buildings greater than 85 feet in height, that portion of the building over 85 feet must be set back at least 25 feet along the front zone lot line which is part of the longer dimension of any block; and

f. Contemporary design for additions, alterations, and new construction is not discouraged, and is recognized as an important element in the evolution of individual buildings as well as the district as a whole.

g. The above building heights are maximums and the Board may reduce the height of any proposed structure to comport with the design guidelines.

(c) The Board shall consider the following factors in making a determination on a request for a demolition permit of a contributing structure:

- (1) Significant economic hardship to the property based the following economic factors:
  - a. Structural condition of the building and practicality of rehabilitation and reuse;
  - b. Determination of economic hardship based on a comparison of 1. and 2. below:
    1. Economic feasibility of rehabilitation and reuse of the structure.
    2. Economic feasibility of the proposed redevelopment plans.
    3. This comparison must establish as a base line the property as it is and what value the property contributes to either 1. or 2. above.
- (2) Significant harm to the public interest based on the following preservation factors:
  - a. Age of building.
  - b. Architectural and historic significance of the building as related to the district.
  - c. Extent to which the structure maintains the continuity, scale and massing of adjacent contributing structures, and the prominence of the structure within the block.
- (3) Extent to which reuse or proposed redevelopment implements the goals of the Lower Downtown Neighborhood Plan and the purposes of this district.
- (4) Burden of proof and appeal.
  - a. The burden of proof as to whether the structure should be demolished is on the applicant.
  - b. The applicant may appeal the decision to the LPC under the provisions of Section 30-48(a)(8), above.
- (5) Applications for demolition review of contributing structures shall include, but are not limited to valuation of the property, estimates of the costs and income for rehabilitation of the building, estimates of the costs and income for new development, preliminary development plans, and reports as to the condition of the building prepared by professionals with experience in preservation and rehabilitation. The Board in shall establish the submittal requirements for an application by rules and regulations. Such rules and regulations shall not be effective until approved by the LPC. Such application shall be filed with community planning and development upon forms prescribed by the Board.

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

- (a) Contributing buildings are hereby established as indicated on the map titled “Contributing Building Survey” (“Survey”) as filed with the Office of the Denver City Clerk and Recorder on March 20<sup>th</sup>, 2002, in Filing Number 02-242. Contributing buildings are those buildings shaded on the map. This map also reflects the boundaries of the District as originally designated in Section 1 of Ordinance 109, series of 1988; which boundaries are still in effect.
- (b) The owner of a property may petition the Board to include said property on the Survey as a contributing building. If the Board determines that the property is

a proper candidate for inclusion as a contributing building, the Board shall forward its recommendation to the LPC. The LPC shall review the recommendation of the Board and make its own recommendation to the City Council, which may then by ordinance include said property as a contributing building in the District.

(c) A building cannot be deleted from the Survey, unless it is approved for demolition according to the terms of this ordinance, destroyed by fire, flood, or act of God, or major accidental damage not the fault of the owner.

(d)

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

(a) In the event an applicant for a project proposes to include parking in an amount greater than the minimum parking plus the additional parking allowed by Section 59-239, the applicant shall specifically request permission from the Board to include said excess parking.

(b) Said excess parking shall be considered as part of the design review process, however, any meeting at which excess parking is to be considered shall only be held after appropriate notice, as described in subsection (c) below.

(c) Notice of any meeting at which excess parking shall be considered shall be mailed to any owner of property within 100 feet of the proposed parking, and any affected registered neighborhood organizations no less than 14 days before the meeting, and the property where the excess parking is proposed shall be posted no less than 10 days prior to the meeting. Said mailing and posting shall include the date, time and place of the meeting, and the number of excess parking spaces requested.

(d) The Board shall hold a public hearing on the excess parking.

(e) The Board shall act within 30 days of receiving a request for excess parking, unless the time is extended with the consent of the applicant.

(f) The Board may grant the request, grant it in part, or deny it.

(g) The decision of the Board is a final decision and may be appealed to the LPC as provided in Section 30-48(a)(8) above.

(h) The siting of excess parking within the District shall be carefully considered using the following criteria:

(1) Excess parking may be appropriate if there is minimal impact on the context and social fabric of the neighborhood.

(2) Excess parking may be appropriate in those areas that demonstrate a high parking demand combined with a scarce or fully utilized current parking inventory.

(3) Excess parking should be encouraged in Special Review Districts.

(4) Excess parking should not disrupt street liveliness.

(5) Excess parking should not disrupt established traffic patterns.

(6) Excess parking should not create congestion.

(7) Excess parking should not create unacceptable levels of noise, air or light pollution.

Excess parking should be related to the parking needs of Lower Downtown as discussed in the Neighborhood Plan.