

## Chapter 17.40 - HISTORIC OVERLAY DISTRICT<sup>[19]</sup>

Footnotes:

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**Editor's note**— Ord. No. 08-1014, adopted July 1, 2009, repealed Chapter 17.40 in its entirety and enacted new provisions to read as herein set out. Prior to amendment, Chapter 17.40 pertained to similar subject matter. See Ordinance Disposition List for derivation.

### 17.40.010 - Purpose.

It is declared as a matter of public policy that the protection, enhancement, perpetuation and use of improvements of special character or special historical or aesthetic interest or value is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people. The purpose of this chapter is to:

- A. Effect and accomplish the protection, enhancement and perpetuation of such improvements and of districts which represent or reflect elements of the city's cultural, social, economic, political and architectural history;
- B. Safeguard the city's historic, aesthetic and cultural heritage as embodied and reflected in such improvements and districts;
- C. Complement any National Register Historic districts designated in the city;
- D. Stabilize and improve property values in such districts;
- E. Foster civic pride in the beauty and noble accomplishments of the past;
- F. Protect and enhance the city's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided;
- G. Strengthen the economy of the city;
- H. Promote the use of historic districts and landmarks for the education, pleasure, energy conservation, housing and public welfare of the city; and
- I. Carry out the provisions of LCDC Goal 5.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 10-1003, § 1(Exh. 1), 7-7-2010)

### 17.40.030 - Designated.

- A. The historic overlay district shall apply to the following:
  - 1. Historic districts, upon designation in accordance with this section;
  - 2. Conservation districts designated in accordance with this section;
  - 3. Landmarks as designated by this section; and
  - 4. Historic corridors designated in accordance with this section.
- B. The boundaries of the historic districts, the boundaries of conservation districts, historic corridors, the location of buildings and structures in conservation districts and the location of landmarks shall be designated on a special city zoning map or maps.
- C. The following are designated within the historic overlay district:

1. The Canemah Historic District; the minimum boundaries of which are those designated by the United States Department of the Interior on the National Register of Historic Places as indicated in the city comprehensive plan.
2. The McLoughlin Conservation District; the surveyed buildings indicated by map in the comprehensive plan shall constitute the designated structures in the McLoughlin Conservation District, along with any structures designated through the Historic Review Board designation process since initial adoption of the comprehensive plan on March 13, 1980.
3. The Oregon Trail-Barlow Road Historic Corridor: properties identified in the 1993 Barlow Road Historic Corridor inventory of the Barlow Road by Clackamas County.
4. Designations undertaken pursuant to Section 17.40.050. The established historic overlay district shall allow for the designation of two types of districts so that areas with a high concentration of historic structures are designated historic districts and areas with a lower concentration are designated conservation districts. Also allowed is the designation of structures of historic or architectural significance not located in an historic or conservation district as landmarks.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 10-1003, § 1(Exh. 1), 7-7-2010)

#### 17.40.040 - Citizen involvement.

- A. The planning department shall be authorized to incur expenses in holding public workshops in the historic districts and conservation districts, distribute written information, show slides and answer questions on remodeling and rehabilitation of older buildings, and to educate the public in the need to comply with state and federal laws protecting or encouraging protection of antiquities and other related matters concerning historic preservation.
- B. Citizens making applications for district or landmark designations or for exterior alterations or new construction in an historic or conservation district, and historic corridor or on a landmark site may consult with and receive advice from the planning department staff concerning their applications.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 10-1003, § 1(Exh. 1), 7-7-2010)

#### 17.40.050 - Designation procedure—Application—Review.

- A. Institution of Proceedings. The city commission, the planning commission, the historic review board, a recognized neighborhood group or any interested person may initiate the proceedings for designation of an historic or conservation district, landmark, or historic corridor as follows:
  1. The city commission or the historic review board may initiate designation proceedings by sending a written proposal or application to the planning staff. Such proposal is not subject to any minimal information requirements other than a description of the boundaries of the area to be designated.
  2. Any interested person or recognized neighborhood group may start designation proceedings by sending a written application to the planning staff.
- B. Application Information. The planning staff may specify the information required in an application and may from time to time change the content of that information, but at all times the planning staff shall require the following information:
  1. The applicant's name and address;
  2. The owner's name and address, if different from the applicant;
  3. A description of the boundaries of the proposed district or a description of the proposed landmark;

4. A map illustrating the boundaries of the proposed district or the location of the proposed landmark;
5. A statement explaining the following:
  - a. The reasons why the proposed district or landmark should be designated,
  - b. The reason why the boundaries of the proposed district are adequate and suitable for designation,
  - c. The positive and negative effects, if any, which designation of the proposed district or landmark would have on the residents or other property owners of the area.
- C. The planning staff shall deliver a proposal or an application for the designation to the historic review board within thirty days after the day on which a proposal or application is received. The historic review board shall review the proposal on the application and prepare a written recommendation or decision approving or rejecting the proposed designation.
- D. In preparing the recommendation or decision, the historic review board shall limit its review to:
  1. Whether the proposed district or landmark would serve the purpose of the historic overlay district as stated in Section 17.40.010; and
  2. Conformity with the purposes of the city comprehensive plan.
- E. City Commission Review of District.
  1. The historic review board shall deliver a copy of its recommendation to the city commission within thirty days.
  2. The city commission shall hold a public hearing pursuant to procedures contained in Chapter 17.68.
  3. After the hearing, the city commission may engage in one of the following actions:
    - a. Refuse to designate the proposed district; or
    - b. Designate the proposed district by a duly enacted ordinance; or
    - c. Remand the matter to the historic review board for additional consideration of a specific matter or matters.
  4. The city commission may limit itself to the proposed district, and as so modified, approve it. Enlargement of the proposed district shall require additional notice and public hearing. The commission may hold such hearing or hearings.
  5. The approval or disapproval of the designation by the city commission shall be in writing and shall state the reasons for approval or disapproval.
  6. Amendment or Rescission. The district designation may be amended or rescinded after the board and city commission have utilized the same procedures required by this title for establishment of the designation. The board shall give priority to designation of potential districts and landmarks indicated in the city comprehensive plan.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 10-1003, § 1(Exh. 1), 7-7-2010)

#### 17.40.060 - Exterior alteration and new construction.

- A. Except as provided pursuant to subsection I of this section, no person shall alter any historic site in such a manner as to affect its exterior appearance, nor shall there be any new construction in an historic district, conservation district, historic corridor, or on a landmark site, unless a certificate of appropriateness has previously been issued by the historic review board. Any building addition that is thirty percent or more in area of the historic building (be it individual or cumulative) shall be

considered new construction in a district. Further, no major public improvements shall be made in the district unless approved by the board and given a certificate of appropriateness.

- B. Application for such a certificate shall be made to the planning staff and shall be referred to the historic review board. The application shall be in such form and detail as the board prescribes.
- C. Archeological Monitoring Recommendation. For all projects that will involve ground disturbance, the applicant shall provide,
  - 1. A letter or email from the Oregon State Historic Preservation Office Archaeological Division indicating the level of recommended archeological monitoring on-site, or demonstrate that the applicant had notified the Oregon State Historic Preservation Office and that the Oregon State Historic Preservation Office had not commented within forty-five days of notification by the applicant; and
  - 2. A letter or email from the applicable tribal cultural resource representative of the Confederated Tribes of the Grand Ronde, Confederated Tribes of the Siletz, Confederated Tribes of the Umatilla, Confederated Tribes of the Warm Springs and the Confederated Tribes of the Yakama Nation indicating the level of recommended archeological monitoring on-site, or demonstrate that the applicant had notified the applicable tribal cultural resource representative and that the applicable tribal cultural resource representative had not commented within forty-five days of notification by the applicant.

If, after forty-five days notice from the applicant, the Oregon State Historic Preservation Office or the applicable tribal cultural resource representative fails to provide comment, the city will not require the letter or email as part of the completeness review. For the purpose of this section, ground disturbance is defined as the movement of native soils.

- D. [1.] The historic review board, after notice and public hearing held pursuant to Chapter 17.50, shall approve the issuance, approve the issuance with conditions or disapprove issuance of the certificate of appropriateness.
  - 2. The following exterior alterations to historic sites may be subject to administrative approval:
    - a. Work that conforms to the adopted Historic Review Board Policies.
- E. For exterior alterations of historic sites in an historic district or conservation district or individual landmark, the criteria to be used by the board in reaching its decision on the certificate of appropriateness shall be:
  - 1. The purpose of the historic overlay district as set forth in Section 17.40.010;
  - 2. The provisions of the city comprehensive plan;
  - 3. The economic use of the historic site and the reasonableness of the proposed alteration and their relationship to the public interest in the structure's or landmark's preservation or renovation;
  - 4. The value and significance of the historic site;
  - 5. The physical condition of the historic site;
  - 6. The general compatibility of exterior design, arrangement, proportion, detail, scale, color, texture and materials proposed to be used with the historic site;
  - 7. Pertinent aesthetic factors as designated by the board;
  - 8. Economic, social, environmental and energy consequences; and
  - 9. Design guidelines adopted by the historic review board.
- F. For construction of new structures in an historic or conservation district, or on an historic site, the criteria to be used by the board in reaching its decision on the certificate of appropriateness shall include the following:

1. The purpose of the historic conservation district as set forth in Section 17.40.010;
  2. The provisions of the city comprehensive plan;
  3. The economic effect of the new proposed structure on the historic value of the district or historic site;
  4. The effect of the proposed new structure on the historic value of the district or historic site;
  5. The general compatibility of the exterior design, arrangement, proportion, detail, scale, color, texture and materials proposed to be used in the construction of the new building or structure;
  6. Economic, social, environmental and energy consequences;
  7. Design guidelines adopted by the historic review board.
- G. For construction of new structures in an historic corridor, the criteria to be used by the board in reaching its decision on the certificate of appropriateness shall include the following:
1. The purpose of the historic overlay district as set forth in Section 17.40.010;
  2. The policies of the city comprehensive plan;
  3. The impact on visible evidence of the trail;
  4. The impact on archaeological evidence when there exists documented knowledge of archeological resources on the property;
  5. The visual impact of new construction within the historic corridor; and
  6. The general compatibility of the site design and location of the new construction with the historic corridor considering the standards of subsection G of this section.
- H. The following standards apply to development within historic corridors:
1. Within the Oregon Trail-Barlow Road historic corridor, a minimum of a thirty-foot wide-open visual corridor shall be maintained and shall follow the actual route of the Oregon Trail, if known. If the actual route is unknown, the open visual corridor shall connect within the open visual corridor on adjacent property.
  2. No new building or sign construction shall be permitted within required open visual corridors. Landscaping, parking, streets, driveways are permitted within required open visual corridors.
- I. In rendering its decision, the board's decision shall be in writing and shall specify in detail the basis therefore.
- J. Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any exterior architectural features which does not involve a change in design, material or the outward appearance of such feature which the building official shall certify is required for the public safety because of its unsafe or dangerous condition.
- K. The following exterior alterations may be made subject to the administrative procedures as outlined below:
- Construction of fences on historic sites.
- Exterior alterations, excluding additions, to incompatible structures in the Canemah Historic District.
1. A notice of the proposed certificate of appropriateness shall be mailed to the following persons:
    - a. The applicant;
    - b. All owners of property within three hundred feet of the property which is the subject of application;

- c. A recognized neighborhood association and a citizen involvement committee representative of the neighborhood involved, if the property which is the subject of the application lies wholly or partially within the boundaries of such organization.
- 2. The failure of the property owner to receive notice shall not invalidate the action if a good faith attempt was made to notify all persons entitled to personal notice.
- 3. Notice shall also be given by publication in a newspaper of general circulation in the area affected.
- 4. Within ten days of the issuance of notice of the proposed certificate of appropriateness, any person who has received personal notice pursuant to subdivision 1 of this subsection or who demonstrates sufficient interest in the outcome to participate in such proceedings, as determined by the historic review board, may request a public hearing before the historic review board.
- 5. Within forty-five days after a request for public hearing is made, a public hearing shall be held before the historic review board following procedures as established in Chapter 17.50.
- 6. The historic review board shall then deny or approve the application, either with or without conditions, following procedures as established in Chapter 17.50.
- 7. In the event no request for hearing is filed, the historic review board, through its chairperson and planning staff, shall issue a certificate of appropriateness in accordance with the notice given without further hearing.
- 8. The board may adopt policies for review of applications of certificates of appropriateness in the historic overlay district. Such policies shall be adopted only after notice and an opportunity to be heard is provided and shall include specific opportunity for comment by the planning staff, the planning commission, and the city commission. Such policies shall carry out the city's comprehensive plan, especially those elements relating to historic preservation. In the absence of such policies, the board shall apply such elements directly.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 10-1003, § 1(Exh. 1), 7-7-2010)

#### 17.40.065 - Historic preservation incentives.

- A. Purpose. Historic preservation incentives increase the potential for historically designated properties to be used, protected, renovated, and preserved. Incentives make preservation more attractive to owners of locally designated structures because they provide flexibility and economic opportunities.
- B. Eligibility for Historic Preservation Incentives. All exterior alterations of designated structures and new construction in historic and conservation districts are eligible for historic preservation incentives if the exterior alteration or new construction has received a certificate of appropriateness from the Historic Review Board per OCMC 17.50.110(c).
- C. Incentives Allowed. The dimensional standards of the underlying zone as well as for accessory buildings (OCMC 17.54.100) may be adjusted to allow for compatible development if the expansion or new construction is approved through historic design review.
- D. Process. The applicant must request the incentive at the time of application to the Historic Review Board.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 10-1003, § 1(Exh. 1), 7-7-2010)

#### 17.40.070 - Demolition and moving.

- A. If an application is made for a building or moving permit to demolish or move all or part of a structure which is a landmark or which is located in a conservation district or an historic district, the building inspector shall, within seven days, transmit to the historic review board a copy of the transaction.
- B. The historic review board shall hold a public hearing within forty-five days of application pursuant to the procedures in Chapter 17.50.
- C. In determining the appropriateness of the demolition or moving as proposed in an application for a building or moving permit, the board shall consider the following:
  - 1. All plans, drawings and photographs as may be submitted by the applicant;
  - 2. Information presented to a public hearing held concerning the proposed work;
  - 3. The city comprehensive plan;
  - 4. The purpose of this section as set forth in Section 17.40.010;
  - 5. The criteria used in the original designation of the landmark or district in which the property under consideration is situated;
  - 6. The historical and architectural style, the general design, arrangement, materials of the structure in question or its fixtures; the relationship of such features to similar features of the other buildings within the district and the position of the building or structure in relation to public rights-of-way and to other buildings and structures in the area;
  - 7. The effects of the proposed work upon the protection, enhancement, perpetuation and use of the district, which cause it to possess a special character or special historic or aesthetic interest or value;
  - 8. Whether denial of the permit will involve substantial hardship to the applicant, and whether issuance of the permit would act to the substantial detriment of the public welfare and would be contrary to the intent and purposes of this section;
  - 9. The economic, social, environmental and energy consequences.
- D. The failure of the applicant to provide the information required by Subsection C.1.—9. shall be grounds for deeming the application incomplete.
- E. The board may approve or deny the demolition or moving request after considering the criteria contained in Section 17.40.070C. Action by the board approving or denying the issuance of a permit for demolition or moving may be appealed to the city commission by any aggrieved party, by filing a notice of appeal, in the same manner as provided in Section 17.50 for appeals. If no appeal of a demolition permit is filed, the building official shall issue the permit in compliance with all other codes and ordinances of the city.
- F. In any case where the city commission has ordered the removal or demolition of any structure determined to be dangerous to life, health or property, nothing contained in this title shall be construed as making it unlawful for any person, without prior approval of the historic review board, pursuant to this title, to comply with such order.

(Ord. No. 08-1014, §§ 1—3(Exhs. 1—3), 7-1-2009; Ord. No. 10-1003, § 1(Exh. 1), 7-7-2010)