

# Oregon Model Historic Preservation Ordinance

## October 2019

The Oregon State Historic Preservation Office provides this ordinance to our partners as a starting point. The document meets the requirements of the Certified Local Government (CLG) program by establishing a commission; creating inventory, designation, and design-review processes; allowing for appeals of commission decisions; and requiring the commission to follow existing national and state preservation laws. The model also complies with Oregon's Administrative Rule for Statewide Planning Goal 5 (OAR 660-023-0200), addressing inventory, designation, and protection of historic resources; owner consent; removal of a historic resource from the resource list; and protection of properties listed in the National Register of Historic Places.

The document includes highlighted text and text boxes, they indicate the following:

- Blue highlighted text sets out the minimum requirements to comply with federal and state law and participation in the CLG program. The wording of the blue text can vary in some circumstances, but check with the SHPO before changing the text.
- Green highlighted text notes where the text must be edited to meet the specific needs of the local government.
- Text boxes explain where a local government has flexibility to adapt the model ordinance to fit their existing regulatory structure and the reasoning for including certain provisions.

The model ordinance relies on two organizing principals:

- The creation of a Historic Preservation Officer who is responsible for carrying out the provisions of this ordinance. Identifying a single position with specific duties makes it clear who is responsible for the ordinance's administrative processes and decisions not made by the Commission.
- The intentional creation of documents through public process that assist in the ongoing administration of the program. The Historic Resource Inventory, Resource List, Record of Designation, Certificate of Appropriateness, and other documents named in the ordinance provide evidence of due process, and may be referred back to for design review, creation of educational outreach programs, or other purposes.

The State Historic Preservation Office encourages every community to write the ordinance that is right for them. Communities looking for a more robust ordinance can use this document as a basis to create ambitious incentive programs or more specific regulations. This sample can also be adjusted for those communities that prefer fewer regulations and simpler processes. Others may choose to borrow passages or concepts from this model to include in their own existing ordinances.

This model ordinance assumes that your community's planning code already includes procedures to address economic hardship, appeals of land use decisions, resubmission of land use applications, and code enforcement. The SHPO strongly encourages these provisions be included in preservation ordinance if not already in the local land use code.

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1. **Title.** The (City of \_\_\_\_\_ / \_\_\_\_\_ County) Historic Preservation Ordinance.
2. **Policy.** It is hereby declared to be the policy of the (City of \_\_\_\_\_ Council / \_\_\_\_\_ County Commission) in carrying out the historic sites and structures goal and policy of the (City of \_\_\_\_\_ / \_\_\_\_\_ County) (comprehensive plan/other planning document as applicable) to identify Significant Historic Resources and to encourage and promote their restoration and preservation.
3. **Purpose.** The (City of \_\_\_\_\_ / \_\_\_\_\_ County) adopts this Historic Preservation Ordinance to identify, designate, and preserve Significant Historic Resources associated with the community's history and prehistory; encourage the rehabilitation and ongoing viability of designated Significant Historic Resources, archaeological objects, sites, and sites of archaeological significance; strengthen public support for historic preservation efforts within the community; foster civic pride; and encourage cultural heritage tourism.

#### **Sections 4, Applicability**

*Oregon Administrative Rule 660-023-0200 became effective on February 23, 2017. The rule states that properties listed in the National Register of Historic Places before this date are subject to all local regulations in existence prior to this date until amended or repealed. Properties listed in the National Register after this date are not subject to local land use laws unless they are designated to the resource list as described in Section 11 or "additional protections" are applied as described in Section 13.*

4. **Applicability.** These regulations are applicable in the following manner:
  - a. These regulations must apply to all Locally Significant Historic Resources.
  - b. Sections 13, 14, 15, and 16 of these regulations must apply to National Register Resources listed after February 23, 2017.
  - c. Regulations adopted prior to February 23, 2017 (Insert reference to existing Regulations or add those regulations to this Historic Preservation Ordinance as a separate section. Alter this paragraph as needed) regarding the preservation, restoration, rehabilitation, reconstruction, alteration, relocation, and demolition of a National Register Resource apply until removed or amended by the (City of \_\_\_\_\_ / \_\_\_\_\_ County (Name decision making body)).
  - d. No provision of these regulations must be construed to prevent the ordinary maintenance of a Significant Historic Resource when such action (does not change the design, materials, or appearance / or other standard).

#### **Sections 5, Severability, and Section 6, Conflicts with Other Laws**

*These provisions are "housekeeping" provisions that some local governments may find useful, but are not required.*

5. **Severability.** If any portion of these regulations is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion must be deemed a separate, distinct, and independent provision and such holding must not affect the validity of the remaining portions of these regulations that must remain in force and effect.

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6. **Conflicts with Other Laws.** If the provisions of these regulations are found to be in conflict with federal or state laws the federal or state law must prevail. In cases of conflict with other city ordinances or regulations the previously established statute must take precedence.

### **Section 7, Definitions**

*"Archaeological Site" and "Archaeological Object" are defined in ORS 358.905 and may not be changed.*

*Demolition is defined in OAR 660-023-0200 (1)(a); however, a local government may adopt a different or use an existing definition when reviewing the demolition of a Locally Designated Historic Resource when the local comprehensive plan or land use regulations contain a different definition. OAR 660-023-0200(1)(a) establishes the definition of "demolition" for National Register Resources. The definition applies directly, regardless of the definition established in local regulations in this specific instance.*

*The definitions for Eligible/Contributing, Eligible/Significant, Non-Contributing and Not in Period are based on SHPO definitions for historic resource inventories and may not be changed.*

*The definitions for "Historic Context Statement," "Historic Preservation Plan," "Historic Resources," "Locally Significant Historic Resource," "National Register Resource," "Owner," and "Significant Historic Resource" are based in definitions provided in OAR 660-023-0200(1) and may only be changed after consultation with the SHPO.*

7. **Definitions.** The following words, terms and phrases, when used in this chapter, must have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:
- a. **Alteration:** means a physical modification of the exterior of a Significant Historic Resource and the interior of a Significant Historic Resource owned by the (City/County) identified as significant in the record of Designation. Alterations do not include painting, color selection, or ordinary maintenance or repair of a Significant Historic Resource unless such activity alters a character-defining feature.
  - b. **Archaeological Object:** means an object that is at least 75 years old; is part of the physical record of an indigenous or other culture found in the state or waters of the state; and is material remains of past human life or activity that are of archaeological significance including, but not limited to, monuments, symbols, tools, facilities, technological by-products and dietary by-products.
  - c. **Archaeological Site:** means a geographic locality in Oregon, including but not limited to submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects and the contextual associations of the archaeological objects with each other; or biotic or geological remains or deposits. Examples of archaeological sites include but are not limited to shipwrecks, lithic quarries, house pit villages, camps, burials, lithic scatters, homesteads and townsites.
  - d. **Building:** means a house, barn, church, hotel, or similar construction created principally to shelter any form of human activity.
  - e. **Certificate of Appropriateness:** means a document issued by the Historic Preservation Officer indicating that the applicant satisfactorily met the provisions of this regulation for the preservation, rehabilitation, reconstruction, alteration, relocation, or demolition of a Significant Historic Resource, or new construction within the designated boundary of a Significant Historic Resource.

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- f. Character-Defining Feature(s): means the visual and physical aspect(s) of a Locally Significant Historic Resource that convey its historic integrity and historic significance.
- g. Demolition: means any act that destroys, removes, or relocates, in whole or part, a significant historic resource such that its historic, cultural, or architectural character and significance is lost.
- h. District: means a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.
- i. Eligible/Contributing: means a historic resource in existence within the applicable period of significance that retains and exhibits sufficient integrity (location, design, setting, materials, workmanship, feeling, and association) to convey a sense of history. These properties strengthen the historic integrity of an existing or potential historic district.
- j. Eligible/Significant: means a historic resource in existence within the applicable period of significance that retains and exhibits sufficient integrity (location, design, setting, materials, workmanship, feeling, and association) to convey a sense of history. These properties strengthen the historic integrity of an existing or potential historic district, and are likely individually eligible for designation to the Resource List.
- k. Exceptional Significance: means the quality of historic significance achieved outside the usual norms of age, association, or rarity.
- l. Historic Context Statement: means an element of the (City of \_\_\_\_\_ / \_\_\_\_\_ County) comprehensive plan that describes the important broad patterns of historical development in the (City of \_\_\_\_\_ / \_\_\_\_\_ County) and the region and identifies historic resources representative of the important broad patterns of historic development. The Historic Context Statement also identifies Historic Resources that are representative of the important broad patterns of historical development.
- m. Historic Integrity: means the quality of wholeness of historic location, design, setting, materials, workmanship, feeling, and/or association of a historic resource.
- n. Historic Preservation Officer: means the appointed official responsible for the administration of this regulation.
- o. Historic Preservation Plan: means an element of the (City of \_\_\_\_\_ / \_\_\_\_\_ County) comprehensive plan that contains (City's/County's) goals and policies for historic resource preservation and the processes for creating and amending the program to protect Significant Historic Resources.
- p. Historic Resources: means those buildings, structures, objects, sites, or districts that potentially have a significant relationship to events or conditions of the human past.

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- q. Historic Resource Inventory: means the record of buildings, structures, objects, sites, and districts recorded by the (City of \_\_\_\_\_ / \_\_\_\_\_ County) used to identify historic resources that may be determined significant and designated to the Resource List.
- r. Historic Significance: means the physical association of a building, structure, site, object, or district with historic events, trends, persons, architecture, method of construction, or that have yielded or may yield information important in prehistory or history.
- s. Locally Significant Historic Resource: means a building, structure, site, object, or district designated to the (City of ( \_\_\_\_\_ ) / \_\_\_\_\_ County) Resource List.
- t. National Register Resource: means buildings, structures, objects, sites, or districts listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended (PL 89-665; 16 U.S.C 470).
- u. Non-Contributing: means a historic resource in existence within the applicable period of significance that does not retain or exhibit sufficient integrity (location, design, setting, materials, workmanship, feeling, and association) to convey a sense of history. These properties do not strengthen the historic integrity of an existing or potential historic district in their current condition.
- v. Not in Period: means a building, structure, object, or site that was originally constructed outside the applicable period of significance.
- w. Object: A construction that is largely artistic in nature or is relatively small in scale and simply constructed in comparison to buildings or structures, including a fountain, sculpture, monument, milepost, etc.
- x. **Owner:**
  - i. Means the owner of fee title to the property as shown in the deed records of the county where the property is located; or
  - ii. Means the purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or
  - iii. Means, if the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner; and
  - iv. Does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature; or
  - v. Means, for a historic resource with multiple owners, including a district, a simple majority of owners as defined in (i)-(iv).

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- vi. **Means, for National Register Resources**, those individuals, partnerships, corporations or public agencies holding fee simple title to property. Owner or owners does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.
- y. **Period of Significance**: means the time period, from one to several years or decades, during which a Significant Historic Resource was associated with an important historic event(s), trend(s), person(s), architecture, or method(s) of construction.
- z. **Preservation**: means the act or process of applying measures necessary to sustain the existing form, integrity, and materials of a Significant Historic Resource.
- aa. **Record of Designation**: means the official document that describes how a Locally Significant Historic Resource meets the criteria for designation to the Resource List.
- bb. **Reconstruction**: means the act or process of depicting, by means of new construction, the form, features, or detailing of a non-surviving building, or structure for the purpose of replicating its appearance at a specific period of time and in its historic location.
- cc. **Rehabilitation**: means the process of returning a Significant Historic Resource to a state of utility through repair or alteration, which makes possible an use while preserving those portions and features of the Significant Historic Resource and its site that convey its historic significance.
- dd. **Relocation**: means moving of a Significant Historic Resource from its original location described in the Record of Designation.
- ee. **Restoration**: means the act or process of accurately depicting the form, features, and character of a historic-contributing resource or historic-non-contributing resource as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.
- ff. **Resource List**: The list of Locally Significant Historic Resources adopted by (City of \_\_\_\_\_ / \_\_\_\_\_ County) in its (comprehensive plan / historic preservation ordinance / other referenced document) as important to its history and afforded the protection under this regulation.
- gg. **Significant Historic Resource**: means a Locally Significant Historic Resource and/or a National Register Resource.
- hh. **Site**: means the location of a significant event, prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the

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location itself possesses historic, cultural, or archeological value regardless of any existing building, structure, or object.

- ii. Structure: means a functional construction made usually for purposes other than creating human shelter, such as an aircraft, bridge, fence, dam, tunnel, etc.
- jj. Streetscape: means the physical parts and aesthetic qualities of a public right-of-way, including the roadway, gutter, tree lawn, sidewalk, retaining walls, landscaping and building setback.

### **Section 8, Historic Preservation Commission**

*A community must have a landmarks commission of at least three people and meet a minimum of four times a year to be a Certified Local Government (CLG). The membership of that commission can vary. CLGs must actively seek to fill at least half of the commission positions with recognized professionals in fields such as historic preservation, architecture, archaeology, community history, building trades, real estate, or related specialties. However, if your community doesn't have all these specialties it can still participate in the CLG program as long as the commission members have a "demonstrated interest, knowledge, or competence" in historic preservation and there is an effort to put professionals on the commission when seats are available. In general, the sitting members of the local planning commission do not meet these requirements. Because of this, the SHPO strongly recommends that the preservation commission be a separate body.*

*While sample language is provided here, the process for establishing a commission and maintaining its membership should be the same or similar to already existing commissions.*

8. **Historic Preservation Commission.** The (City of \_\_\_\_\_ / \_\_\_\_\_ County) Historic Preservation Commission is hereby established with the following provisions:
- a. The (Mayor / City Council / County Commission / City Manager / Planning Director – Choose one or specify a process. Instead of describing an appointment process, this passage may name a city position to serve in this role, like the Planning Director) must appoint a Historic Preservation Officer to serve as staff to the Historic Preservation Commission and to carry out the administrative provisions of this regulation. The Historic Preservation Officer may appoint a designee(s) to carry out responsibilities under this regulation.
  - b. The (Insert chief elected official), subject to (Insert decision-making body) approval, must appoint a Historic Landmark Commission, hereinafter referred to as the "Commission," of (three, five, seven, or nine) members with a demonstrated positive interest in and knowledge or competence in historic preservation. All reasonable efforts must be made to appoint those with professional experience in the fields of preservation, architecture, archaeology, community history, building trades, real estate, or related specialties. The members must (Insert any desired residency requirements). (Members must serve without compensation, but are eligible for reimbursement of expenses related to their service).
  - c. Initial appointments to the Commission must be for terms of (one, two, and three years). (Insert language that will specify which positions will serve for each period of time. The goal is to ensure a staggering of terms to avoid replacing the entire commission every several years). Subsequent terms of appointment must be for (identify number of years) years, or in the case of a replacement, for the remainder of the unexpired term. Members must be eligible for reappointment. (Insert term limits if desired).

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- d. (Two, three, four, or five – based on number of members selected in 8b) members must be present to establish quorum to conduct official business. The concurring vote of the members present must be required for approval or disapproval of any motion or other action of the Commission.
- e. A Chair and Vice-Chair must be elected annually by and from the seated membership. Officers are eligible for reelection.
- f. The Commission must meet at least four times a year, and as required to conduct business in a timely fashion.
- g. The Historic Preservation Officer must request that the (City Council / County Board of Commissioners) consider declaring the position vacant of any member who is absent from three meetings in a single calendar year without being excused prior to the meeting by the Chair of the Commission.

### **Section 9, Commission Duties**

*Commissions may have a wide range of duties depending on the needs of the community. The list can be added to or shortened as needed.*

*Commissions can be set up as quasi-judicial bodies, like a planning commission, or as advisory bodies. Either is acceptable as long as the commission has an opportunity to comment on the identification, evaluation, designation, alteration, relocation, and demolition of Significant Historic Resources in a meaningful way. For an advisory board, that means that the ordinance must require the decision-making body to consider the commission's recommendations as part of the process. This model ordinance establishes the Commission as a decision-making body.*

- 9. **Commission Duties.** The Commission must have the following duties:
  - a. Employing the procedures and criteria in these regulations, the Commission must identify and evaluate Historic Resources in the (City of \_\_\_\_\_ / \_\_\_\_\_ County), determine the historic integrity and historic significance of Historic Resources and maintain a Historic Resource Inventory consistent with the standards of the Oregon State Historic Preservation Office.
  - b. Employing the procedures and criteria in Section 11, the Commission must recommend to the (City Council/ County Board of Commissioners) Historic Resources for designation to the Resource List.
  - c. Employing the procedures and criteria in these regulations, the Commission must review and act upon applications for the preservation, rehabilitation, reconstruction, alteration, relocation, or demolition of Significant Historic Resources, and new construction within the designated boundary of a Significant Historic Resource as described in this regulation.

*Communities participating in the CLG program must abide by all existing federal and state laws concerning the preservation of historic and archaeological resources for all local government projects.*



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- d. The Commission must support the enforcement of all federal and state laws relating to the protection of National Register Resources, Archaeological Sites, and Archaeological Objects regardless if they are designated to the Resource List.
- e. Upon request, the Commission must provide the Oregon State Historic Preservation Office written comments on or before the stated deadline regarding the eligibility of historic resources for listing in the National Register of Historic Places. The Commission must hold a noticed, public hearing as part of their deliberations and take into account public testimony when writing comments.
- f. The Commission must perform any other functions that may be designated by resolution or motion of the [City Council/County Board of Commissioners].
- g. The Commission may assume responsibility for functions of the Oregon State Historic Preservation Office under state and federal law as delegated by the Oregon State Historic Preservation Office.

*A commission may provide written guidance, or design guidelines, describing how to apply the standards adopted as part of this ordinance. New standards or changes to existing standards must be adopted by the local government as a code amendment. Design guidelines may be adopted by reference in a code amendment. If adopting design guidelines now, or in the future, add a reference to these documents in Section 12.*

- h. The Commission may adopt and publish and adopt written and graphic guidelines and example materials to clarify the standards in this regulation and to assist applicants in developing complete and viable applications to preserve, rehabilitate, reconstruct, alter, relocate and demolish a Significant Historic Resource, and or erect new construction within the designated boundary of a Significant Historic Resource.
- i. The Commission must undertake to inform the citizens of, and visitors to the [City of \_\_\_\_\_ / \_\_\_\_\_ County], regarding the community's history and prehistory; promote research into its history and prehistory; collect and make available materials on the preservation of historic resources provide information on state and federal preservation programs and incentives; and document historic resources prior to their alteration, demolition, or relocation and archive that documentation.
- j. The Commission may recommend to the [City Council / County Board of Commissioners] to seek, accept, and expend public appropriations; seek, accept, and expend grant and gift funds; cooperate with public and private entities; and assist the owners of Significant Historic Resources in securing funding for the preservation of their properties.
- k. The Commission may recommend incentives and code amendments to the [Insert appropriate decision-making body] to promote historic preservation in the community.
- l. The Commission may comment on local, state, or federal issues, laws, and requests relating to historic preservation.

*If the Historic Preservation Ordinance is not a part of the planning code or other body of local law with a passage dealing with conflicts of interest or ex-parte communication a specific section addressing this topic should be added here as required by state law. It is preferable to follow your community's established procedures for dealing with these issues instead of creating new or differing regulations.*

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### Section 10, Inventorying, evaluating, and determining significance of Historic Resources

Communities participating in the CLG program must include in their ordinances a program to inventory and evaluate historic resources that meets SHPO's practices. The requirement is addressed in provision (d). Provisions (e) and (f) respond to the requirements of OAR 660-023-0200. Provision (a) is a matter of state law. See Section 15 and related comment box. The other provisions in this Section are "best practices" that SHPO recommends, but are not required for participation in the CLG program.

10. **Inventorying, Evaluating, and Determining Significance of Historic Resources.** The following procedures must be used to identify Historic Resources that may be considered for designation as a Locally Significant Historic Resource on the Resource List.
  - a. The Historic Resource Inventory and Resource List must be maintained as a public record with the exception of archaeological sites, the publication of which is prohibited by state law.
  - b. The Commission must determine and periodically revise priorities for the Historic Resource Inventory based on the community's needs and interests, goals established in the (City of \_\_\_\_\_ / \_\_\_\_\_ County) Historic Preservation Plan, and Historic Context, if these documents are adopted.
  - c. The Commission may take photographs and create physical descriptions based on on-site observations, or obtain information concerning Historic Resources through archival research, oral histories, or any other appropriate method allowed by law.
  - d. Historic Resources must be evaluated for their historic integrity and significance and recorded in the Historic Resource Inventory as Eligible/Significant (ES), Eligible/Contributing (EC), Non-Contributing (NC), or Not in Period (NP). Evaluation and documentation of properties in the Historic Resource Inventory must follow the document "Guidelines for Historic Resource Surveys in Oregon, 2010" or most recent guidance for such efforts published by the Oregon State Historic Preservation Office and be supplied to the agency within six (6) months of the completion of the study.
  - e. Historic Properties added to the Historic Resource Inventory are not subject to the regulations described in Sections 12, 13, 14, 16, 17, and 18.
  - f. The objection of an owner must not prevent a property being inventoried, evaluated, or determined significant for placement on the Historic Resource Inventory.

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### Section 11, Designating Historic Resources to the Resource List

All participating CLGs must have a local landmark register consistent with the requirements of OAR 660-023-0200 and referred to in this document as the "Resource List." The Resource List may be included in the community's Comprehensive Plan or the community's Historic Preservation Code. See OAR 660-023-0030(5). OAR 660-023-0200(6) states that any Historic Resource designated to the Resource List "must be adopted or amended as a land use decision." The designation criteria in Section 11 are similar to those used for the federal National Register of Historic Places Program and reflect standard, good practice, but may be customized to meet your community's needs and current land-use processes.

The Oregon SHPO strongly recommends that local governments that have existing lists of identified significant historic resources or that previously regulated properties listed in the National Register of Historic Places under an existing code prior to the February 23, 2017 effective date of the revised Goal 5 Rule designate these properties to the Resource List created by this ordinance. In this case, the state owner consent law, ORS 197.722 does not apply because these properties were previously designated if all procedural requirements were met at the time of designation. See OAR 660-023-0030(9)(a)(A-D) and definition of "owner," OAR 660-023-0030(1)(h)." Some local governments may choose to address this topic in Section 4, Applicability, and include prior lists of Significant Historic Resources by reference.

Based on land use cases decided by the Oregon Land Use Board of Appeals, the Oregon SHPO strongly recommends that the Record of Designation specifically call out the Character-Defining Features of the Significant Historic Resource and that these records be kept up to date to ensure that local governments can effectively protect their significant historic properties. See *Carlton Dev., LLC v. City of Portland*, No. 201-068, 2010 WL 4364753 (2010) and *Paulson v. Washington County*, No. 2001-079, 40 Or LUBA 345 (2001).

Local governments are not required to complete an Economic, Social, Environmental, and Energy (ESEE) analysis to designate a Historic Resource to the Resource List. See OAR 660-023-050(2)(c).

Additional protections may be added to National Register Resources in two ways in this model ordinance. National Register Resources may be designated as Locally Significant Historic Resources to the Resource List following the procedures in Section 11. Separately, additional protections may be added in a distinct process described in Section 13. In both cases, an owner may not object to the addition of additional protections or designation to the Resource List because the federal National Register of Historic Places Program already includes an owner consent process in the nomination process.

11. **Designation Historic Resources to the Resource List.** Historic Resources, including buildings, structures, sites, objects, historic districts may be designated to the Resource List as provided in this Section.
  - a. A Historic Resource need not be recorded in the Historic Resource Inventory before designation to the Resource List.
  - b. The Commission may recommend that the (Insert decision making body or reference to specific process here and edit provision as needed) designate a Historic Resource to the Resource List at a public meeting as a land-use action to provide recognition of its significance.
  - c. The Commission may recommend additional protections to supplement the regulations in this Historic Preservation Ordinance to the (Insert decision making body) as part of the designation process necessary for the protection of a Historic Resource recommended for designation to the Resource List.
  - d. The Commission must evaluate and determine that a historic resource has sufficient historic integrity and historic significance to merit designation to the Resource List as a Locally Significant Historic Resource using the following criteria:
    - i. The Historic Resource is located within the boundaries of the (City of \_\_\_\_\_ / \_\_\_\_\_ County).

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- ii. The Historic Resource is over fifty (50) years of age or is of exceptional significance, or in the case of a district, the majority of the properties are over fifty (50) years old or have exceptional significance.
- iii. The Historic Resource possesses sufficient historic integrity to convey its significant relationship to events or conditions of the human past.
- iv. The Historic Resource has historic significance as demonstrated by meeting at least one of the following criteria:
  - 1. Association with events that have made a significant contribution to the broad patterns of local, regional, state, or national history; and/or
  - 2. Association with the lives of persons significant to local, regional, state, or national history; and/or
  - 3. Embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction;
  - 4. Yielding, or being likely to yield information important in prehistory or history; or
  - 5. Relevance within the local Historic Context and priorities described in the Historic Preservation Plan when such documents exist.
- v. The Commission must consider the factors described in Section 13(d)(2)(a-f) when considering designating a National Register Resource to the Resource List.
- e. Designation Procedure. The (City of \_\_\_\_\_ / \_\_\_\_\_ County) and any person, group, or government agency may nominate a Historic Resource for designation to the Resource List, provided the proposed Historic Resource is not the subject of a pending application for alteration, relocation, or demolition. Designation of a Historic Resource to the Resource List must be processed as (insert reference to appropriate code for a type IV land use procedure). The designation procedures are as follows:
  - i. The proposed designation of a Historic Resource to the Resource List must include a description of the boundaries of the proposed nominated area and the buildings, structures, objects, sites, and districts contained therein; a description of the historic resource(s)' Character-Defining Features and how these reflect the Historic Resource(s)' Historic Significance and Historic Integrity; a statement explaining how the historic resource(s) meet(s) the criteria under provisions of this Section; photos, maps, drawings, and other appendices to support the assertions made in the submitted documentation. The Historic Preservation Officer may establish additional standards for a complete application.

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ii. Upon acceptance of a complete application, **(Insert reference or description of local notification procedure)**. The owner(s) must be notified in writing of the designation process and their right to support or object to the designation of the Historic Resource to the Resource List under the provisions of ORS 197.772.

1. An owner may object to the designation of the Historic Resource to the Resource List **(Insert reference to beginning of public notice period)**. Such a refusal to consent must be submitted on the public record and must remove the Historic Resource from any consideration for designation to the Resource List.
2. An owner's objection to the designation of a Historic Resource to the Resource List does not remove the Historic Resource from the Historic Resource Inventory.

*OAR 660-023-0200(10) prohibits local governments from issuing a permit for demolition of a Historic Resource under consideration for designation to the Resource List for 120 days from the date of an owner's refusal to consent to designation or the date of an application to demolish or modify that resource if it is not already designated. This provision of the state rule applies directly.*

3. **A permit to demolish or modify a Historic Resource under consideration for designation to the Resource List must not be issued for 120 days from the date of the owner's refusal to consent to designation or the application to alter, relocate, or demolish the Historic Resource, whichever occurs first.**

iii. Following the Historic Preservation Officer must prepare a Record of Designation that includes a description of the boundaries of the proposed nominated area and the buildings, structures, objects, sites, and districts contained therein; a description of the historic resource(s)' Character-Defining Features and how these reflect the Historic Resource(s)' Historic Significance and Historic Integrity; a statement explaining how the historic resource(s) meet(s) the criteria under provisions of this Section; photos, maps, drawings, and other appendices to support the assertions made in the submitted documentation.

iv. Applications recommended for approval or denial by the Commission must be forwarded to the **(Note if the City Council or Planning Commission will vote on designation and any related processes)** with the Record of Designation.

f. The **(City of \_\_\_\_\_ / \_\_\_\_\_ County)** and any person, group, or government agency may amend a Record of Designation for a Significant Historic Resource on the Resource List, provided the proposed Significant Historic Resource is not the subject of a pending application for alteration, relocation, or demolition. The Commission may establish standards for a complete amendment application. An amendment to a Record of Designation must be processed as **(insert reference to appropriate code for a type IV land use procedure)**, and processed as described in Section 11(a-d). The Commission

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must find that the amendment meets the Criteria described in Section 11(e). An owner(s)' objection must not prevent an amendment to a Record of Designation.

### **Section 12, Design Review for Locally Significant Historic Resources Designated to the Resource List**

OAR 660-023-0200(2)(a) and (6) requires local governments to "protect" Significant Historic Resources designated to the Resource List. "Protect" is defined in the rule as "local government review of applications for demolition, relocation, or major exterior alteration of a historic resource, or to delay approval of, or deny, permits for these actions in order to provide opportunities for continued preservation." Designation to a Resource List may not be purely honorific. However, the rule does not define "Major Exterior Alteration," providing local governments with the opportunity to define this term within reason.

The applicability statement below, 12(a), is written broadly, but may be narrowed to include only permitted work, exclude non-contributing and not-in-period resources.

If your community has written guidelines, or intends to create them, reference them in this Section. Written guidance may describe how to apply the standards adopted in this ordinance, but may not create new standards or change existing standards. New standards or changes to existing standards must be adopted by the local government as a code amendment.

Local governments may adopt discretionary standards for the regulation of housing within designated historic areas. Passed in the 2017 legislative session, Oregon State House Bill 1051 made changes to how local governments review and permit housing projects. Oregon Revised Statute (ORS) 197.307(4) requires that local governments establish "clear and objective standards, conditions, and procedures regulating the development of housing, included needed housing" and that these regulations may not have the "effect of discouraging needed housing." ORS 197.307 provides an exception for historic areas, and HB 1051 did not change this provision. ORS 197.307(5)(b) states that the clear and objective standard does not apply to "an application or permit for residential development in historic areas designated for protecting under a land use planning goal protecting historic areas."

12. **Design Review for Locally Significant Historic Resources Designated to the Resource List.** No exterior portion of a Locally Significant Historic Resource or Non-Contributing or Not in Period resource; new construction within the boundary of a Locally Significant Historic Resource; or interior of a Locally Significant Historic Resource owned by the (City/County) identified as significant in the Record of Designation must be constructed, preserved, rehabilitated, or altered without a Certificate of Appropriateness signed by the Historic Preservation Officer as provided in this Section. Certificates must be presented to the (Building Official) before a permit may be issued.
- a. In approving a permit for the preservation, restoration, rehabilitation, reconstruction, or rehabilitation of a Significant Historic Resource the (Building Official) may find that under state law that the Significant Historic Resource does not meet current building code but is not dangerous and approve the land use action.
  - b. Activities not subject to the provisions of this Section when not specifically noted in the Record of Designation as a Character-Defining Feature. (Add more if appropriate).
    - i. Alterations to building interiors, except those that are owned by The (City of \_\_\_\_\_ / \_\_\_\_\_ County) and noted as significant in the Record of Designation as a character-defining feature.
    - ii. Application of exterior or interior paint.
    - iii. Alterations to vegetative landscape features, including tree removal.

*This passage assumes that any alteration not explicitly exempted will be reviewed by the Commission. In Oregon, local governments have the authority to regulate alterations to historic properties not requiring a building permit. The SHPO recommends that siding, window and door, and roofing replacement be regulated to ensure that a building's historic character is maintained. Items like landscaping and painting and the construction of small auxiliary buildings may not impact the character of historic buildings and could be excluded from review. In some cases, a local government may choose to regulate only work that requires a building permit.*

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- c. The Historic Preservation Officer must prepare a staff report that summarizes the proposed project, notes the criteria specified in these regulations under which the application must be considered, and make a recommendation to the Commission to approve, approve with conditions, or deny the application for a Certificate of Appropriateness. Materials that may be used in the preparation of the staff report include the Record of Designation; and/or National Register nomination document; and/or other archival photos, maps; and/or other documentary evidence specific to the subject property; and/or observations from on-site inspections to document its historic appearance or alteration over time; and/or documents and publications of the National Park Service or Oregon State Historic Preservation Office.
- d. The Commission must review and act upon applications for the alteration, relocation, and demolition of a Locally Significant Historic Resource. Applications for the alteration of a Locally Significant Historic Resource may be approved, approved with conditions, or denied. Applications for the relocation or demolition of a Locally Significant Historic Resource may be approved, approved with conditions, or the action delayed for up to **(Insert desired delay period)**. The Commission must develop written findings to support its decisions. The Historic Preservation Officer must include any conditions imposed by the Commission in the Certificate of Appropriateness pursuant to this Section.
- e. A Certificate of Appropriateness issued for the alteration of a Locally Significant Historic Resource must be effective for a period of **(Insert appropriate time period)** from the date of its issuance. A Certificate of Appropriateness issued for the relocation or demolition of a historic resource must be effective for a period **(Insert appropriate time period)**. **(A Certificate of Appropriateness may/may not be extended – add period and process if extensions are allowed)**.

*Note that provision F allows for the Building Official to issue a demolition permit for a "Significant Historic Resource," which includes both a Locally Significant Historic Resource and a National Register Resource when there is a clear and immediate hazard to public safety.*

- f. A Significant Historic Resource may be altered, relocated, or demolished without a Certificate of Appropriateness when the **(Building Official)** finds that the condition of a Significant Historic Resource poses a clear and immediate hazard to public safety. The written comments of the **(Building Official)** must be provided by the Historic Preservation Officer to the Commission at their next regular meeting.

*This passage allows communities to insert a list of activities that may be reviewed and approved by staff without Commission review. To minimize legal challenges, the items listed here must have clear and objective criteria that the Preservation Officer or assigned staff person can use to make a decision. Three examples are provided here.*

- g. The Historic Preservation Officer may issue a Certificate of Appropriateness for the alteration of a Locally Significant History Resource when the proposed alteration will not significantly change the qualities that merited the designation of the Locally Significant Historic Resource to the Resource List. A completed Certificate of Appropriateness must be presented to the **(Building Official)** before a permit is issued. The Historic Preservation Officer must make a list of certificates issued in this manner available to the Commission at each regular meeting. Decisions of the Historic Preservation Officer

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are appealable to the Commission. The historic preservation officer may choose to refer any application for a Certificate of Appropriateness to the Commission. Activities eligible for a Certificate of Appropriateness issued as described in this provision include the following:

- i. Construction of a fence that meets **(insert code reference or specific guidance)**.
- ii. Demolition of an Not-In-Period or Non-contributing outbuilding within the designated boundary of a Locally Significant Historic Resource specifically noted as not historically significant in its Record of Designation. **(insert code reference or specific guidance)**.
- iii. Replacement of historic materials when the replacement material exactly matches the material type, dimension(s); color(s), shape(s), texture(s). No more than 20% of exterior siding, details, or the total number of windows may be replaced under this provision in a two-year time period.

*If not already included elsewhere in the local land use code, consider including provisions that allow for pre-application conferences to review concepts and proposals either with staff or ad-hoc Commission sub-committees.*

- h. A public hearing before the Commission and a signed Certificate of Appropriateness must be required for activities not exempted in provisions of this Section.

### **Creating Review Criteria for Your Community**

*There are many ways to approach writing review criteria for a community. Local governments may adopt specific review criteria based on the type of work – porches, roofs, windows, etc.; historic status - contributing, non-contributing, not-in-period historic resources, and new construction; property use – commercial, residential, multi-family. Some adopt regulations specific to the Locally Significant Historic Resource itself. Others combine these approaches. No matter the approach, it is important to think carefully about the types of historic resources that your community is trying to preserve and what are the unique, physical character-defining features that must be preserved for these properties to retain their historic integrity and significance. Generally, more specific review criteria will result in better consistency in decision making over time and more legally-defensible decisions.*

*This model ordinance offers general review criteria that will fit almost any community, but it requires a commission to use discretion when applying the provisions established in 12(j). The review criteria are based on the Secretary of the Interior's Standards for Rehabilitation (Standards) published by the National Park Service. Even if adopting more specific criteria, the SHPO advises adopting the passage as written as general guidelines when specific criteria are not applicable.*

*Provision 12(k) is also based on the Standards, but the passage refines the general review criteria by addressing specific projects. The list provided in Provision 12(k) can be made as long or short as necessary to support the more general criteria. However, SHPO does not recommend attempting to make an exhaustive list because of the varied nature of historic resources. If provision 12(k) becomes too long or unwieldy, consider addressing this issue by type of work, historic status, property use, etc.*

*House Bill 1051 passed during the 2017 legislative session requires clear and objective criteria for housing projects, but the law did not change the provisions of OAR 197.307(5)(b) which exempts "an application or permit for residential development in historic areas designated under a land use planning goal protecting historic areas."*

- i. To approve an application for the alteration of a Locally Significant Historic Resource the Commission must find that the proposal meets the following standards:
  - i. A property must be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships; and/or



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- ii. The historic integrity of a property must be retained and preserved. The relocation of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property must be avoided; and/or
  - iii. A property must be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, must not be undertaken; and/or
  - iv. Changes to a property that have acquired historic significance in their own right must be retained and preserved; and/or
  - v. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property must be preserved; and/or
  - vi. Deteriorated historic features must be repaired rather than replaced. The severity of deterioration requires replacement of a distinctive feature, the new feature must match the old in design, color, texture, and, where possible, materials. Replacement of missing features must be substantiated by documentary and physical evidence; and/or
  - vii. Chemical and physical treatments, if appropriate, must be undertaken using the gentlest means possible. Treatments that cause damage to historic materials must not be used; and/or
  - viii. Archeological resources must be protected and preserved in place. If such resources must be disturbed, mitigation measures must be undertaken; and/or
  - ix. New additions, exterior alterations, or related new construction must not destroy historic materials, features, and spatial relationships that characterize the property. The new work must be differentiated from the old and must be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment; and/or
  - x. New additions and adjacent or related new construction must be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.
- j. In addition to meeting the applicable guidelines in 11(i)(i-x) of this Section, to approve an application for the alteration of a Locally Significant Historic Resource the Commission must find that the proposal meets the following design standards as applicable:
- i. Vacant buildings must be weather- and vandal-proof in order to minimize further deterioration and the threat to public safety; and/or

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- ii. New additions must be subordinate to the original building, meaning lower in height, attached to the rear or set back along the side, smaller in scale, and have less architectural detail; and/or
- iii. Height, width, setback, roof shape, and the overall scale and massing of new buildings within historic districts and on lots with existing Historic Resources, or additions to Historic Resources must be compatible with the existing historic building(s) and, in the case of historic districts, the overall streetscape; and/or
- iv. In historic districts and on lots with existing Locally Significant Historic Resources, materials on at least the primary façade(s) of new buildings must be compatible in size, shape, color, and texture to the original materials on the facades of surrounding historic buildings; and/or
- v. Architectural details on new construction (including wood or metal trim, porches, cornices, arches, and window and door features, etc.) must be complimentary, but must not replicate historic features on surrounding historic buildings; and/or
- vi. Window and door opening should be similar in size and orientation (vertical to horizontal) to openings on historic buildings and should take up a similar percentage of the overall façade as those on surrounding historic buildings; and/or
- vii. In historic districts and on lots with existing Locally Significant Historic Resource the relationship of the width to the height of the principal elevations for new buildings and additions to existing Locally Significant Historic Resources must be in scale with the surrounding structures and streetscape. Wider new building can be divided into segments that more closely resemble the façade widths of historic buildings; and/or
- viii. In historic districts and on lots with existing Locally Significant Historic Resources, the roof shape of new buildings and additions to existing Locally Significant Historic Resources must be visually compatible with the surrounding structures and streetscape. Unusual roof shapes, materials, and pitches are discouraged; and/or
- ix. Any applicable design guidelines adopted by the Commission as part of the body's duties described in Section 9(h).

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### Section 13, Additional Protections for National Register Resources

OAR 660-023-0200(8)(b) allows local governments to apply additional protection measures to a National Register Resource listed in the National Register of Historic Places after February 23, 2017, the effective date of the rule, after considering at a public meeting the factors listed in the rule, and included in Section 13(d)(2). The provisions of this rule apply directly.

Properties listed in the National Register after February 23, 2017 may not be "automatically" designated to the Resource List or regulated under the provisions of this ordinance without designating the National Register Resource a Locally Significant Historic Resource or adding additional protections as described in this Section.

ORS 197.772, the owner consent law, applies only to designation by state or local government. The owner consent law does not apply to decisions to impose additional protections after designation occurs. The National Register of Historic Places is a federal program and has its own owner consent provision, which is administered by the Oregon SHPO as part of the designation process.

13. **Additional Protections for National Register Resources.** The Commission may recommend that the [\_\_\_\_\_] City Council / [\_\_\_\_\_] County Commission adopt, amend, or remove additional protections for a National Register Resource, provided the National Register Resource is not the subject of a pending application for alteration, relocation, or demolition. Application of additional protections to a National Register Resource must be processed as [insert reference to appropriate code for a type IV land use procedure]. A National Register Resource need not be designated to the Resource List for additional protections to be applied.
- a. National Register Resources within the corporate boundaries of the [City of \_\_\_\_\_ / \_\_\_\_\_ County] may be designated to the Resource List using the procedures outlined in Section 11 and made subject to the regulations of Sections 12, 13, 14, 15, and 16 as a means of providing additional protections. Application of additional protections must be processed as [insert reference to appropriate code for a type IV land use procedure] and subject to the specific provisions of 13(b-d) of this Section.
  - b. Regulations adopted prior to February 23, 2017 [Insert reference to existing Regulations or add those regulations to this Historic Preservation Ordinance as a separate section] regarding the alteration, preservation, restoration, rehabilitation, reconstruction, relocation, and/or demolition of a National Register Resource may be amended or removed when the proposed National Register Resource is not the subject of a pending application for alteration or demolition. The action must be processed as [insert reference to appropriate code for a type IV land use procedure].
  - c. Additional protections must be applied to National Register Resources without owner consent under the provisions of OAR 660-023-0200(8)(b).
  - d. The [City of \_\_\_\_\_ / \_\_\_\_\_ County] and any person, group, or government agency may propose that a National Register Resource be considered for additional protections. The process for applying additional protections is as follows:
    1. The proposal for adding additional protections to a National Register Resource must include the National Register nomination document and a complete list of the additional protections proposed. The Historic Preservation Officer may establish additional standards for a complete application.
    2. At a public hearing, the Commission must consider all of the following factors:

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- a. The historic characteristics identified in the National Register nomination document; and
- b. The historic significance of the resource; and
- c. The relationship to the historic context statement and historic preservation plan contained in the comprehensive plan, if they exist; and
- d. The goals and policies in the (City of \_\_\_\_\_ / \_\_\_\_\_ County) Comprehensive Plan; and
- e. The effects of the additional protection measures on the ability of Significant Historic Resource owners to maintain and modify features of their Significant Historic Resource; and
- f. Any other relevant factors.

### **Section 14, Demolition and Relocation of Significant Historic Resources**

*This model ordinance does not prohibit the relocation or demolition of Significant Historic Resources; although it is discouraged in the design standards. Instead, relocation and demolition are discouraged by requiring the applicant to have an approved re-use plan for the site. If a proposed relocation or demolition goes forward, the Commission may impose conditions, including delaying the demolition to seek alternatives, or require documentation, salvage, and/or that the applicant assumes responsibility for removing the Significant Historic Resource from the Resource List. Local governments that would like stronger provisions to protect Significant Historic Resources are encouraged to adopt them.*

*While Locally Significant Historic Resources and National Register Resources are addressed together in this Section, the Goal 5 Rule OAR 660-023-0200(8)(a) requires local governments to review the demolition and relocation of buildings, structures, objects, sites, and any portion of a historic district listed in the National Register of Historic Places, regardless of whether they are designated in the Resource List or additional protections have been applied. The rule also defines "demolition," as it relates to this review process for National Register Resources. This provision of the state rule applies directly. Local governments may add additional factors to consider or more specifically define those included in the OAR as long as all factors specified in the OAR are considered.*

*The Goal 5 Rule OAR 660-023-0200(8)(a) allows local governments to exempt accessory structures and buildings, resources, objects and sites specifically identified as "non-contributing" from demolition and relocation review. Local governments should choose whether these*

14. **Demolition and Relocation of Significant Historic Resources.** The Commission must approve, approve with conditions, or deny an application to demolish or relocate a Significant Historic Resource. A public hearing before the Commission (Insert additional decision making body if desired, e.g. Planning Commission or City Council) and a Certificate of Appropriateness signed by the Historic Preservation Officer must be required to demolish or relocate Significant Historic Resource.
- a. The definition of "demolition" for National Register Resources means any act that destroys, removes, or relocates, in whole or part, National Register Resource such that its historic, cultural, or architectural character and significance is lost.
  - b. In addition to the criteria stated in Section 14(c-e), the Commission must consider the following factors when reviewing an application for the demolition or relocation of a National Register Resource: Condition, historic integrity, age, historic significance, value to the community, economic consequences, design or construction rarity, and consistency with and consideration of other policy objectives in the acknowledged comprehensive plan.

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*The Goal 5 Rule allows local governments to exempt from review accessory structures and non-contributing resources listed within the boundary of a National Register Resource. If a local government would like to include this provision, consider the following suggested language: "Accessory structures and buildings and non-contributing buildings, structures, objects and sites included within the boundary of a designated National Register Resource shall be excluded from review under these regulations." This language may be added here as provisions "c."*

- c. The Commission must find the following when approving or approving with conditions the demolition of a Significant Historic Resource:
  - i. The applicant completed a replacement plan for the site, including drawings approved by the (Building Official). If the property is located within a historic district, plans must be submitted for review and approved by the Commission prior to the application to demolish the Significant Historic Resource pursuant to these regulations as they relate to new construction; and
  - ii. The (Building Official) determines and states in writing that the Significant Historic Resource cannot be safely removed from the site; and
  - iii. The value to the community of the proposed use of the Significant Historic Resource outweighs the value of retaining the Significant Historic Resource. Public testimony must be considered when making this determination.
  
- d. The Commission must find the following when approving or approving with conditions the relocation of a Significant Historic Resource:
  - i. If the Significant Historic Resource is located within a historic district, the owner completed a replacement plan for the site, including drawings approved by the (Building Official). Plans must be submitted for review and approved by the Commission prior to the application to demolish the Significant Historic Resource pursuant to these regulations as they relate to new construction; and
  - ii. The value to the community of the proposed use of the Significant Historic Resource outweighs retaining the Significant Historic Resource in its original location; and
  - iii. The relocated Significant Historic Resource remains within the limits of (Enter name of local jurisdiction); and
  - iv. The new site provides a suitable setting and ensures the Significant Historic Resource's long term preservation; and
  - v. The owner has an approved plan for the new site.
  
- e. In approving an application for the demolition or relocation of a Significant Historic Resource, the Commission may impose the following conditions:
  - i. Completion of photographic, video, textual and/or drawn recordation of the subject property in its original location; and/or

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- ii. A Significant Historic Resource be relocated to a new site when demolition is proposed, and that, to the extent feasible, the new location is similar to the original site and that the original setback and orientation of the building is replicated on the new lot; and/or
  - iii. The owner obtain permission from the National Park Service to move the National Register Resource in order to retain the property's listing in the National Register of Historic Places and/or assume all responsibility and cost of removing the property from the National Register of Historic Places if permission cannot be obtained; and/or
  - iv. Delay the demolition of the Significant Historic Resource in the interest of exploring reasonable alternatives. **(Revise as necessary to specify number of days for a delay or other needed processes).**
  - v. Other reasonable mitigation measures.
- f. Upon issuing a Certificate of Appropriateness for the demolition of a Significant Historic Resource, the Historic Preservation Officer must post a legal notice **(Insert notification process)** announcing the demolition, the criteria under which the demolition was approved, the historic significance of the property, and invite the public to provide alternatives to the demolition for consideration by the Commission.
  - g. Relocated Significant Historic Resources must remain designated to the Resource List unless removed from the Resource List under the provisions of this regulation.
  - h. Demolished Significant Historic Resources must be removed from the Resource List using the procedures described in this regulation and must not be subject to the provisions of this regulation.
  - i. Notice of this relocation or demolition of a Locally Significant Resource or National Register Resource must be provided to the State Historic Preservation Office.

### **Section 15, Preservation of Archaeological Resources**

*This passage incorporates or references text from the cited Oregon Revised Statutes. Some communities may wish to address archaeological resources more comprehensively. If doing so, the Oregon SHPO recommends reaching out to affected communities, including Oregon's federally-recognized Indian tribes.*

- 15. **Preservation of Archaeological Resources.** The following provisions apply to the preservation of archaeological resources under Oregon State law.
  - a. **Archeological resources must be protected and preserved in place subject to the requirements of federal, state, and local regulations, including the guidelines administered by the Oregon State Historic Preservation Office and ORS 358.905—358.962.**

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- b. A person may not excavate, injure, destroy or alter an archaeological site or object or remove an archaeological object located on public or private lands unless that activity is authorized by a permit issued under ORS 390.235. A violation of this subsection is a misdemeanor.

**Section 16, Removal of Locally Significant Historic Resources from the Resource List**

*The Goal 5 Rule, OAR 660-023-0200(9) limits local governments to only the following four reasons described in Section 16(d) for removing a Locally Significant Historic Resource from the Resource List. This provision of the state rule applies directly.*

16. **Removal of Significant Historic Resources from the Resource List.** A public hearing before the Commission and a Certificate of Appropriateness signed by the Historic Preservation Officer must be required to remove a Significant Historic Resource from the Resource List.
- a. A National Register Resource must first be removed from the National Register of Historic Places before an owner may apply for the National Register Resource to be removed from the Resource List.
  - b. An application to remove a Significant Historic Resource from the Resource List must not be considered for **(one (1) year, or other time period)** after the date of decision for the denial of an application for the relocation or demolition of the same Locally Significant Historic Resource under Section 14.
  - c. Any individual or group, including the Commission acting on its own initiative, may initiate the removal of a Significant Historic Resource by submitting a complete application to the Historic Preservation Officer. The Historic Preservation Officer may establish standards for a complete application.
  - d. In order to approve an application for the removal of a Locally Significant Historic Resource from the Resource List the Commission must find the following:
    - i. The Locally Significant Historic Resource has lost the qualities for which it was originally recognized; and/or
    - ii. Additional information shows that the Locally Significant Historic Resource no longer satisfies the criteria for recognition or did not satisfy the criteria for recognition at time of listing; and/or
    - iii. The **(Building Official)** declares that the Locally Significant Historic Resource poses a clear and immediate hazard to public safety and must be demolished to abate the unsafe condition.
    - iv. The designation of the property to the Resource List was imposed on the property at the time of designation and:
      - 1. The owner has retained ownership since the time of the designation; and

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2. The owner can demonstrate that the owner objected to the designation on the public record; or
  3. Was not provided an opportunity to object to the designation; and
  4. The owner requests in writing that the local government remove the property from the Resource List.
- e. Significant Historic Resources destroyed by flood, fire, or other natural or accidental act or demolished under the provisions of this regulation and meeting the definition of “demolished” as defined in these regulations may be removed from the Resource List by the Historic Preservation Officer. Notice of this action and written and photographic evidence documenting the demolition of the Significant Historic Resource must be provided to the Commission at the next regular meeting. This same documentation must be provided to the State Historic Preservation Office. If a Significant Historic Resource is also listed in the National Register, the Historic Preservation Officer must request that the SHPO remove the property from the National Register if not requiring the owner to do so under the provisions of this regulation.
- f. Upon removing a Significant Historic Resource from the Resource List, the Historic Preservation Officer must **(Insert notification method)** announcing the removal, the criteria under which the removal was approved, and the historic significance of the property.
- g. A Significant Historic Resource removed from the Resource List under the provisions of this Section must not be subject to the regulations of this ordinance.

### **Section 17, Resubmittal of an Application Previous Application and Section 18, Enforcement**

*Section 17 and 18 are housekeeping provisions. If the substance of these provisions exist elsewhere in the local governments land-use code they may be removed. To participate in the CLG program all decisions of the Commission or decision-making body must be appealable. If the local government has a specific process for appeals it should be stated or referenced in the ordinance.*

*Penalties are an unfortunate, but necessary part of any ordinance. Without penalties, compliance is voluntary and unenforceable.*

17. **Re-submittal of a Previous Application.** An application for a Certificate of Appropriateness may be appealed. **(Insert reference to existing appeals procedure for land-use decisions).**
18. **Enforcement.** Penalties for violations of the provisions of these regulations must be the same as for violation of the **(City of \_\_\_\_\_ / \_\_\_\_\_ County) (Insert reference to enforcement ordinance).**

### **Ways to add to this model ordinance**

*There are, of course, many other provisions that could be added to this ordinance other than those already suggested. Including:*

- *Separate guidelines based on property use, or for new construction; contributing, non-contributing, and out-of-period historic resources; or signage.*
- *A demolition by neglect ordinance – such a provision will greatly reduce number of demolitions and relocations.*
- *Additional provisions addressing the preservation of archaeological resources.*