

# Ordinance No. 00251

[Council Meeting Minutes 00/12/04](#)

ORDINANCE NO. 251

AN ORDINANCE of the City Council of the City of Lakewood, Washington, creating and establishing a new Chapter 2.48, "Protection and Preservation of Landmarks" of the Lakewood Municipal Code, relating to the protection and preservation of landmarks in Lakewood, creating a Landmarks and Heritage Agency, and options, establishing procedures for designation and preservation of landmarks and providing for enforcement and prescribing penalties for violation

WHEREAS, the protection, enhancement, perpetuation, and use of buildings, sites, districts, structures and objects of historical, cultural, architectural, engineering, geographic, ethnic and archaeological significance located in Lakewood are necessary and in the interest of the prosperity, civic pride and general welfare of the people of Lakewood; and,

WHEREAS, the collection, preservation, exhibition and interpretation of historic and prehistoric materials, artifacts, records and information pertaining to the heritage of Lakewood are likewise necessary and in the interest of the prosperity, civic pride and general welfare of the people of Lakewood; and,

WHEREAS, such cultural and historic resources are a significant part of the heritage, educational and economic base of Lakewood; and,

WHEREAS, the economic, cultural and aesthetic well-being of the City cannot be maintained or enhanced by disregarding its heritage and by allowing the unnecessary destruction, alteration or defacement of such resources.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN as Follows:

Section 1. That Title 2 of the Lakewood Municipal Code is hereby amended by the addition of a new chapter thereto, to be known and designated as Chapter 2.48, reading as follows:

Chapter 2.48

Protection and Preservation of Landmarks

Sections

2.48.010 Purpose.

2.48.020 Definitions.

2.48.030 Landmarks and Heritage Advisory Board authorized.

2.48.040 Designation criteria.

2.48.050 Nomination procedure.

2.48.060 Designation procedure.

2.48.070 Certificate of appropriateness procedure.

2.48.080 Evaluation of economic impact.

2.48.090 Appeal procedure.

2.48.100 Funding.

2.48.110 Penalty for violation of this chapter.

2.48.120 Special valuation for historic properties.

2.48.130 Severability.

2.48.010 The purposes of this Chapter are to:

A. Designate, preserve, protect, enhance, and perpetuate those sites, buildings, districts, structures and objects which reflect significant elements of the city's, county's state's and nation's cultural, aesthetic, social, economic, political, architectural, ethnic, archaeological, engineering, historic and other heritage;

B. Foster civic pride in the beauty and accomplishments of the past;

C. Stabilize and improve the economic values and vitality of landmarks;

D. Protect and enhance the city's tourist industry by promoting heritage-related tourism;

E. Promote the continued use, exhibition and interpretation of significant sites, districts, buildings, structures, objects, artifacts, materials and records for the education, inspiration and welfare of the people of Lakewood;

F. Promote and continue incentives for ownership and utilization of landmarks;

G. Assist, encourage and provide incentives to public and private owners for preservation, restoration, rehabilitation and use of landmark buildings, sites, districts, structures and objects;

H. Assist, encourage, and provide technical assistance to public agencies, public and private museums, archives and historic preservation associations and other organizations involved in the preservation, exhibition, protection and interpretation of Lakewood's heritage.

I. Work cooperatively to identify, evaluate and protect historic resources in furtherance of the purposes of this chapter.

2.48.020 Definitions. The following words and terms shall, when used in this Chapter, be defined as follows unless a different meaning clearly appears from the context:

A. "Alteration" is any construction, demolition, removal, modification, excavation, restoration or remodeling of a landmark.

B. "Building" is a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Building may refer to a historically related complex, such as a courthouse and jail or a house and barn.

C. "Certificate of appropriateness" is written authorization issued by the Agency or its designee permitting an alteration to a significant feature of a designated landmark.

D. "Agency" is the Landmarks and Heritage Agency authorized and empowered by this Chapter, whether through an Advisory Board of the City created through Ordinance or Resolution, through the Lakewood City Council or a Committee thereof, or through a Contract with a public or private entity qualified to act on behalf of the City in connection herewith.

E. "Community landmark" is an historic resource which has been designated pursuant to terms of this ordinance but which may be altered or changed without application for or approval of a certificate of appropriateness.

F. "Council" is the Lakewood City Council.

G. "Designation" is the act of the Agency determining that a historic resource meets the criteria established by this chapter.

H. "Designation report" is a report issued by the Agency after a public hearing setting forth its determination to designate a landmark and specifying the significant feature or features thereof.

I. "District" is a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may

also comprise individual elements separated geographically but linked by association or history.

J. "Heritage" is a discipline relating to history, ethnic history, traditional cultures, folklore, archaeology and historic preservation.

K. "Historic preservation officer" is the Lakewood historic preservation officer or his or her designee, as provided in Paragraph G of Section 2.48.030 of this Chapter or its successor provision.

L. "Historic resource" is a district, site, building, structure or object significant in American and/or local history, architecture, archaeology and/or culture.

M. "Incentives" are such compensation, rights or privileges or combination thereof, which the council or other local, state or federal public body or agency, by virtue of applicable present or future legislation, may be authorized to grant to or obtain for the owner(s) of designated landmarks. Examples of economic incentives include but are not limited to tax relief, conditional use permits, rezoning, street, vacation, planned unit development, transfer of development rights, facade easements, gifts, preferential leasing policies, private or public grants-in-aid, beneficial placement of public improvements or amenities, or the like.

N. "Interested person of record" is any individual, corporation, partnership or association which notifies the Agency or the council in writing of his/her/its interest in any matter before the Agency.

O. "Landmark" is an historic resource designated as a landmark pursuant to this chapter.

P. "Nomination" is a proposal that a historic resource be designated a landmark.

Q. "Object" is a material thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

R. "Owner" is a person having a fee simple interest, a substantial beneficial interest of record or a substantial beneficial interest known to the Agency in a historic resource. Where the owner is a public agency or government, that agency shall specify the person or persons to receive notices hereunder.

S. "Person" is any individual, partnership, corporation, group or association.

T. "Person in charge" is the person or persons in possession of a landmark, including, but not limited to, a mortgagee, or vendee in possession, an assignee of rents, a receiver, executor, trustee, lessee, tenant, agent, or any other person directly or indirectly in control of the landmark.

U. "Preliminary determination" is a decision of the Agency determining that a historic resource which has been nominated for designation is of significant value and is likely to satisfy the criteria for designation.

V. "Significant feature" is any element of a landmark which the Agency has designated pursuant to this chapter as of importance to the historic, architectural or archaeological value of the landmark.

W. "Site" is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains a historical or archaeological value regardless of the value of any existing structures.

X. "Structure" is any functional construction in addition to that which is described as a "building" hereinabove.

Y. "Lakewood Landmarks and Heritage Advisory Board (the "Advisory Board")" is an option reserved by the Lakewood City Council as a method of accomplishing the purposes hereof, which if created, may be empowered to act as the Landmarks and Heritage Agency, as described herein.

#### 2.48.030 Landmarks and Heritage Advisory Board authorized.

The City Council here identifies its authority, as an option to provide the purposes hereof, to create and empower a citizens' committee to act as the Agency for and on the City's behalf, which if so created shall be empowered to function and act as the Agency herein.

If such Advisory Board is created by separate Ordinance or Resolution, whether as a standing advisory board or an ad hoc committee, its organizational structure shall be governed by the following, unless specifically provided otherwise in the Ordinance or Resolution:

## Membership and organization.

A. The Lakewood Landmarks and Heritage Advisory Board (Advisory Board), if created, shall consist of seven regular members selected as follows:

1. Of the seven regular members of the Advisory Board at least three shall be professionals who have experience in identification, evaluation, and protection of historic resources and have been selected from among the fields of history, architecture, architectural history, historic preservation, planning, cultural anthropology, archaeology, cultural geography, landscape architecture, American studies, law or other historic preservation-related disciplines.

2. The seven regular members of the Advisory Board shall be appointed by the Lakewood Mayor, subject to confirmation by the council. All regular members shall have a demonstrated interest in historic preservation.

B. Appointments of Advisory Board members shall be made for a three-year term. Each regular member shall serve until his or her successor is duly appointed and confirmed. Appointments shall be effective on January 1 of each year. In the event of a vacancy, an appointment shall be made to fill the vacancy in the same manner and with the same qualifications as if at the beginning of the term, and the person appointed to fill the vacancy shall hold the position for the remainder of the unexpired term. Any members may be reappointed, but may not serve more than two consecutive three-year terms. A member shall be deemed to have served one full term if such member resigns at any time after appointment or if such member serves more than two years of an unexpired term. The members of the Advisory Board shall serve without compensation.

C. The initial appointments made to the Advisory Board shall be three members appointed for a three-year term, two members appointed for a two-year term and two members appointed for a one-year term. For purposes of the limitation on consecutive terms set forth in paragraph B, an appointment for a one- or two-year term shall be deemed an appointment for an unexpired term.

D. The chair shall be a member of the Advisory Board and shall be elected annually by the regular Advisory Board members. The Advisory Board shall adopt rules and regulations, including procedures consistent with this chapter. The Advisory Board shall not conduct any public hearing required under this chapter until rules and regulations have been filed with the City Clerk.

E. A majority of the Advisory Board members (4) shall constitute a quorum for the transaction of business. All official actions of the Advisory Board shall require a majority vote of the members present and eligible to vote on the action voted upon. No member shall be eligible to vote upon any matter which requires a hearing unless that member has attended the hearing or familiarized him or herself with the record. Members must be present to vote; no absentee ballots are allowed.

F. The Advisory Board may from time to time establish one or more committees to further the policies of the Advisory Board, each with such powers as may be lawfully delegated to it by the Advisory Board.

G. The director of the City of Lakewood department with authority over landmarks and cultural resources, as designated by the City Manager, shall provide staff support to the Advisory Board, and shall serve as a "historic preservation officer" for the City, or supervise a person functioning in that capacity, as authorized by the City Manager and approved by the City Council. The historic preservation officer shall further perform such tasks and provide such other services as are consistent with the City Manager's direction, including as applies, use of employment resources, act as custodian of the Advisory Board's records, and other duties as assigned.

H. The Advisory Board shall meet at least once each quarter for the purpose of considering and holding public hearings on nominations for designation and applications for certificates of appropriateness. Where no business is scheduled to come before the Advisory Board seven days before the scheduled monthly meeting, the chair of the Advisory Board may cancel the meeting. All meetings of the Advisory Board shall be open to the public. The Advisory Board shall keep minutes of its proceedings, showing the action of the Advisory Board upon each question, and shall keep records of all official actions taken by it, all of which shall be filed in the office of the historic preservation officer and shall be public records.

I. At all hearings before and meetings of the Advisory Board, all oral proceedings shall be electronically recorded. Such proceedings may also be recorded stenographically by a court reporter if any interested persons at his or her expense shall provide a court reporter for that purpose. A tape recorded copy of the electronic record of any hearing or part thereof shall be furnished to any person upon request and payment of the reasonable expense thereof.

J. The Advisory Board is authorized, subject to the availability of funds budgeted for that purpose and approval of the expenditure by the City Council, to expend monies to compensate experts, in whole or in part, to provide technical assistance to property owners in connection with requests for certificates of appropriateness upon a showing by the property owner that the need for such technical assistance imposes an unreasonable financial hardship on such property owner.

K. Advisory Board records, maps, or other information identifying the location or archaeological sites and potential sites shall be exempt from public access in order to avoid looting and depredation of such sites.

#### 2.48.040 Designation criteria.

A. An historic resource may be designated as a Lakewood landmark if it is more than fifty years old or, in the case of a landmark district, contains resources that are more than fifty years old, and possesses integrity of location, design, setting, materials, workmanship, feeling and association, and:

1. Is associated with events that have made a significant contribution to the broad patterns of national, state or local history; or
2. Is associated with the lives of persons significant in national, state or local history; or
3. Embodies the distinctive characteristics of a type, period, style or method of design or construction, or that represents a significant and distinguishable entity whose components may lack individual distinction; or
4. Has yielded or may be likely to yield information important in prehistory or history; or
5. Is an outstanding work of a designer or builder who has made a substantial contribution to the art.

B. An historic resource may be designated a community landmark because it is an easily identifiable visual feature of a neighborhood or city and contributes to the distinctive quality or identity of such neighborhood or the city or because of its association with a significant historical events or historic themes, association with important or prominent persons in the community or county, or recognition by local citizens for substantial contribution to the neighborhood or community. An improvement or site qualifying for designation solely by virtue of satisfying criteria set out in this section shall be designated a community landmark.

C. Cemeteries, birthplaces or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past forty years shall not be considered eligible for designation. However, such a property shall be eligible for designation if it is:

1. An integral part of districts that meet the criteria set out in this chapter or if it is:
2. A religious property deriving primary significance from architectural or artistic distinction or historical importance; or
3. A building or structure removed from its original location but which is significant primarily for its architectural value, or which is the surviving structure most importantly associated with a historic person or event; or
4. A birthplace, grave or residence of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his or her productive life; or
5. A cemetery that derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
6. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner or as part of a restoration master plan, and when no other building or structure with the same association has survived; or
7. A property commemorative in intent of design, age, tradition, or symbolic value has invested it with its own historical significance; or
8. A property achieving significance within the past forty years if it is of exceptional importance.

#### 2.48.050 Nomination procedure.

A. Any person, including any member of the Agency, may nominate an historic resource for designation as a landmark or community landmark. Procedures set forth may be used to amend existing designations or to terminate an existing designation based on changes which affect the applicability of the criteria for designation. The nomination or designation of an historic resource as a landmark shall constitute nomination or designation of the land which is occupied by the historic resource unless the nomination provides otherwise. Nominations shall be made on official nomination forms provided by the historic

preservation officer, shall be filed with the historic preservation officer and shall include all data required.

B. Upon receipt by the historic preservation officer of any nomination for designation, the officer shall review the nomination, consult with the person or persons submitting the nomination, and the owner, and prepare any amendments to or additional information on the nomination deemed necessary by the officer. The historic preservation officer may refuse to accept any nomination for which inadequate information is provided by the person or persons submitting the nomination. It is the responsibility of the person or persons submitting the nomination to perform such research as is necessary for consideration by the Agency. The historic preservation officer may assume responsibility for gathering the required information or appoint an expert or experts to carry out this research in the interest of expediting the consideration.

C. When the historic preservation officer is satisfied that the nomination contains sufficient information and complies with the Agency's regulations for nomination, the officer shall give notice in writing, certified mail/return receipt requested, to the owner of the property or object, to the person submitting the nomination and interested persons of record that a preliminary or a designation determination on the nomination will be made by the Agency. The notice shall include:

1. The date, time and place of hearing;
2. The address and description of the historic resource and the boundaries of the nominated resource;
3. A statement that, upon a designation or upon a preliminary determination of significance, the certificate of appropriateness procedure set forth will apply;
4. A statement that, upon a designation or a preliminary determination of significance, no significant feature may be changed without first obtaining a certificate of appropriateness from the Agency, whether or not a building or other permit is required. A copy of the provisions of this code shall be included with the notice;
5. A statement that all proceedings to review the action of the Agency at the hearing on a preliminary determination or a designation will be based on the record made at such hearing and that no further right to present evidence on the issue of preliminary determination or designation is afforded pursuant to this chapter.

D. The historic preservation officer shall, after mailing the notice required herein, refer the nomination and all supporting information to the Agency for consideration on the date specified in the notice. No nomination shall be considered by the Agency less than thirty nor more than forty-five calendar days after notice setting the hearing date has been mailed except where the historic preservation officer or members of the Agency have reason to believe that immediate action is necessary to prevent destruction, demolition or defacing of a historic resource, in which case the notice setting the hearing shall so state. Notice of hearings must be published in a local paper at least 10 days in advance.

#### 2.48.060 Designation procedure.

A. The Agency may approve, deny, amend or terminate the designation of a historic resource as a landmark or community landmark only after a public hearing. At the designation hearing the Agency shall receive evidence and hear argument only on the issues of (1) whether the historic resource meets the criteria for designation of landmark or community landmark as specified in this chapter and merits designation as a landmark or community landmark, and (2) the significant features of the landmark. The hearing may be continued from time to time at the discretion of the Agency. In the event the hearing is continued, the Agency may make a preliminary determination of significance if the Agency determines, based on the record before it, that the historic resource is of significant value and likely to satisfy the criteria for designation set out in this chapter. Such preliminary determination shall be effective as of the date of the public hearing at which it is made. Where the Agency makes a preliminary determination, it shall specify the boundaries of the nominated resource, the significant features thereof and such other description of the historic resource as it deems appropriate. Within five working days after the Agency has made a preliminary determination, the historic preservation officer shall file a written notice of such action with the City Manager and mail copies of the same, certified mail/return receipt requested, to the owner, the person submitting the nomination and interested persons of record. Such notice shall include:

1. A copy of the Agency's preliminary determination;
2. A statement that while proceedings pursuant to this chapter are pending, or six months from the date of the notice, whichever is shorter, and thereafter if the designation is approved by the Agency, the certificate of appropriateness procedures set out in this chapter, a copy of which shall be enclosed, shall apply to the described historic resource whether or not a building or other permit is required. The decision of the Agency shall be made after the close of the public hearing or at the next regularly scheduled public meeting of the Agency thereafter.

B. Whenever the Agency approves the designation of an historic resource under consideration for designation as a landmark, it shall, within fourteen calendar days of the public meeting at which the decision is made, issue a written designation report which shall include:

1. The boundaries of the nominated resource and such other description of the resource sufficient to identify its ownership and location.
2. The significant features and such other information concerning the historic resource as the Agency deems appropriate;
3. Findings of fact and reasons supporting the designation with specific reference to the criteria for designation set forth in this chapter;
4. A statement that no significant feature may be changed, whether or not a building or other permit is required, without first obtaining a certificate of appropriateness from the Agency pursuant to the provisions of this chapter, a copy of which shall be included in the designation report. The subsection shall not apply to historic resources designated as community landmarks.

C. Whenever the Agency rejects the nomination of an historic resource under consideration for designation as a landmark, it shall, within fourteen calendar days of the public meeting at which the decision is made, issue a written decision including findings of fact and reasons supporting its determination that the criteria set forth in this chapter have not been met. If an historic resource has been nominated as a landmark and the Agency designates such historic resource as a community landmark, such designation shall be treated as a rejection of the nomination for Lakewood landmark status and the foregoing requirement for a written decision shall apply. Nothing contained herein shall prevent renominating any historic resource rejected under this subsection as a Lakewood landmark at a future time.

D. A copy of the Agency's designation report or decision rejecting a nomination shall be delivered or mailed to the owner, to interested persons of record and the City Manager within five working days after it is issued. If the Agency rejects the nomination and it has made preliminary determination of significance with respect to such nomination, it shall include in the notice to the City Manager a statement that the provisions of this chapter no longer apply to the subject historic resources.

E. If the Agency approves or amends a landmark designation, the provisions of this chapter shall apply as approved or amended. A copy of the Agency's designation report or designation amendment shall be filed with the appropriate City office together with a legal description of the designated resource and notification that the provisions of this chapter apply. If the Agency terminates the designation of an historic resource, the provisions of this chapter shall no longer apply to said historic resource.

#### 2.48.070 Certificate of appropriateness procedure.

A. At any time after a designation report and notice have been filed with the City Manager and for a period of six months after notice of a preliminary determination of significance has been mailed to the owner and filed with the City Manager, a certificate of appropriateness must be obtained from the Agency before any alterations may be made to the significant features of the landmark identified in the preliminary determination report or thereafter in the designation report. The designation report shall supersede the preliminary determination report. This requirement shall apply whether or not the proposed alteration also requires a building or other permit.

B. Ordinary repairs and maintenance which do not alter the appearance of a significant feature and do not utilize substitute materials do not require a certificate of appropriateness. Repairs to or replacement of utility systems do not require a certificate of appropriateness provided that such work does not alter a significant exterior feature.

C. There shall be three types of certificates of appropriateness, as follows:

1. Type I, for restorations and major repairs which utilize in-kind materials.
2. Type II, for alterations in appearance, replacement of historic materials and new construction.
3. Type III, for demolition, moving and excavation of archaeological sites.

D. In addition, the Agency shall establish and adopt an appeals process concerning Type I decisions made by the historic preservation officer with respect to the applications for certificates of appropriateness.

E. The historic preservation officer may approve Type I certificates of appropriateness administratively without public hearing, subject to procedures adopted by the Agency. Alternatively the historic preservation officer may refer applications for Type I certificates of appropriateness to the Agency for decision. The Agency shall adopt an appeals procedure concerning Type I

decisions made by the historic preservation officer.

F. Type II and III certificates of appropriateness shall be decided by the Agency and the following general procedures shall apply to such Agency actions:

1. Application for a certificate of appropriateness shall be made by filling out an application for such certificate with the historic preservation officer on forms provided by the Agency.

2. If an application is made to the City Manager or designee for a permit for any action which affects a landmark, the City Manager shall promptly refer such application to the historic preservation officer and such application shall be deemed an application for a certificate of appropriateness. The City Manager may continue to process such permit application, but shall not issue any such permit until the time has expired for filing with the City Manager the notice of denial of a certificate of appropriateness or a certificate of appropriateness has been issued pursuant to this chapter.

3. After the Agency has commenced proceedings for the consideration of any application for a certificate of appropriateness by giving notice of a hearing pursuant to subsection 3 of this section, no other application for the same or similar alteration may be made until such proceedings and all administrative appeals therefrom pursuant to this chapter have been concluded.

4. Within forty-five calendar days after the filing of an application for a certificate of appropriateness with the Agency or the referral of an application to the Agency by the City Manager, except those decided administratively by the historic preservation officer pursuant to subsection 2 of this section, the Agency shall hold a public hearing thereon. The historic preservation officer shall mail notice of the hearing to the owner, the applicant, if the applicant is not the owner, and parties of record at the designation proceedings, not less than ten calendar days before the date of the hearing. No hearing shall be required if the Agency, the owner and the applicant, if the applicant is not the owner, agree in writing to a stipulated certificate approving the requested alterations thereof. This agreement shall be ratified by the Agency in a public meeting and reflected in the Agency meeting minutes. If the Agency grants a certificate of appropriateness, such certificate shall be issued forthwith and the historic preservation officer shall promptly file a copy of such certificate with the City Manager.

5. If the Agency denies the application for a certificate of appropriateness, in whole or in part, it shall so notify the owner, the person submitting the application and interested persons of record setting forth the reasons why approval of the application is not warranted.

G. The Agency shall adopt such other supplementary procedures consistent with the City Code as it determines are necessary to carry out the intent of this section.

#### 2.48.080 Evaluation of economic impact.

A. At the public hearing on any application for a Type II or Type III certificate of appropriateness, or Type I if referred to the Agency by the historic preservation officer, the Agency shall, when requested by the property owner, consider evidence of the economic impact on the owner of the denial or partial denial of a certificate. In no case may a certificate be denied, in whole or in part, when it is established that the denial or partial denial will, when available incentives are utilized, deprive the owner of a reasonable economic use of the landmark and there is no viable and reasonable alternative which would have less impact on the features of significance specified in the preliminary determination section of the designation report.

B. To prove the existence of a condition of unreasonable economic return, the applicant must establish, and the Agency must find, both of the following:

1. The landmark is incapable of earning a reasonable economic return without making the alterations proposed. This finding shall be made by considering, and the applicant shall submit to the Agency evidence establishing, each of the following factors:

a. The current level of economic return on the landmark as considered in relation to the following:

(1) The amount paid for the landmark, the date of purchase, and party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the landmark was purchased;

(2) The annual gross and net income, if any, from the landmark for the previous five years; itemized operating and maintenance expenses for the previous five years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period;

(3) The remaining balance on any mortgage or other financing secured by the landmark and annual debt service, if any, during



the prior five years;

(4) Real estate taxes for the previous four years and assessed value of the landmark according to the two most recent valuations;

(5) All appraisals obtained within the previous three years by the owner in connection with the purchase, financing or ownership of the landmark;

(6) The fair market value of the landmark immediately prior to its designation and the fair market value of the landmark (in its protected status as a designated landmark) at the time the application is filed;

(7) Form of ownership or operation of the landmark, whether sole proprietorship, for profit or not-for-profit corporation, limited partnership, joint venture, or both;

(8) Any state or federal income tax returns on or relating to the landmark for the past two years.

b. The landmark is not marketable or able to be sold when listed for sale or lease. The sale price asked, and offers received, if any, within the previous two years, including testimony and relevant documents, shall be submitted by the property owner. The following also shall be considered:

(1) Any real estate broker or firm engaged to sell or lease the landmark;

(2) Reasonableness of the price or lease sought by the owner;

(3) Any advertisements placed for the sale or lease of the landmark.

c. The unfeasibility of alternative uses that can earn a reasonable economic return for the landmark as considered in relation to the following:

(1) A report from a licensed engineer or architect (each with experience in historic restoration or rehabilitation) as to the structural soundness of the landmark and its suitability for restoration or rehabilitation;

(2) Estimates or the proposed cost of the proposed alteration and an estimate of any additional cost that would be incurred to comply with the recommendation and decision of the Agency concerning the appropriateness of the proposed alteration;

(3) Estimated market value of the landmark in the current condition after completion of the proposed alteration; and, in the case of proposed demolition, after renovation of the landmark for continued use;

(4) In the case of proposed demolition, the testimony of an architect, developer, real estate consultant, appraiser or other real estate professional experienced in historic restoration or rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing landmark;

(5) The infeasibility of new construction around, above, or below the historic resource.

d. Potential economic incentives and/or funding available to the owner through federal, state, county, city or private programs.

2. The owner has the present intent and the secured financial ability, demonstrated by appropriate documentary evidence, to compete the alteration.

C. Notwithstanding the foregoing enumerated factors, the property owner may demonstrate other appropriate factors applicable to economic return.

D. Upon reasonable notice to the owner, and subject to the availability of funds budgeted for that purpose and approval of the expenditure by the City Council, the Agency may appoint and hire an expert or experts to provide advice and/or testimony concerning the value of the landmark, the availability of incentives and the economic impacts of approval, the potential for public acquisition, denial or partial denial of a certificate of appropriateness.

E. Any adverse economic impact caused intentionally or by willful neglect shall not constitute a basis for granting a certificate of appropriateness.

2.48.090 Appeal procedure.

A. Any person aggrieved by a decision of the Agency designating or rejecting a nomination for designation of a landmark or

issuing or denying a certificate of appropriateness may, within thirty-five calendar days of mailing of notice of such designation or rejection of nomination, or of such issuance of denial or approval of a certificate of appropriateness appeal such decision in writing to the council. The written notice of appeal shall be filed with the historic preservation officer and the City Clerk, and shall be accompanied by a statement setting forth the grounds of the appeal, supporting documents and argument, and an appeal fee. Unless an appeal fee is set by the City Council specifically applicable to appeals under this Section, the general City of Lakewood fee for filing appeals of administrative decisions shall apply to appeals hereunder.

B. If after examination of the written appeal and the record, the City Council determines that an error in fact exists in the record, it may remand the proceeding back to the Agency for reconsideration. Otherwise, it shall accept the facts as determined by the Agency. If the City Council determines that the decision of the Agency is based on an error in the application of City Code provisions, it may modify or reverse the decision of the Agency.

C. The City Council's decision shall be based solely upon the closed record, provided that the City Council may at its discretion permit the appellant and the Agency or the historic preservation officer, or their representatives to submit argument, and statements explaining their positions, either in writing or orally at a public hearing held for the purpose, or both.

D. The City Council shall take final action on any appeal from a decision of the Agency by passage of a Resolution, setting forth its findings, conclusions and decision, based on the record.

E. The action of the City Council sustaining, reversing, modifying or remanding a decision of the Agency shall be final unless within twenty calendar days from the date of the action an aggrieved person obtains a Writ of Certiorari from the Superior Court for the purpose of review of the action taken.

F. It is provided, however, that if the Agency consists of the entire City Council, appeal of any Agency decisions shall be directly to the Superior Court through a Writ of Certiorari.

#### 2.48.100 Funding.

A. The Agency shall have the power to make and administer grants of funds received by it from private sources and from local, state and federal programs for purposes of:

1. Maintaining, purchasing or restoring historic resources located within the City of Lakewood which it deems significant pursuant to the goals, objectives and criteria set forth in this chapter if such historic resources have been nominated or designated as landmarks pursuant to this chapter or have been designated as landmarks by the State of Washington or are listed on the National Historic Landmarks Register, the National Register of Historic Places; and

2. Developing and conducting programs relating to archaeology, cultural heritage and technical assistance to heritage museums, heritage organizations and public agencies. The Agency shall establish rules and regulations consistent with City Code provisions and policies governing procedures for applying for and awarding of grant monies pursuant to this section.

B. The Agency may, at the request of the historic preservation officer or the City Manager review proposals submitted to the City for funds made available for grants to be made to the City through the Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq, the State and Local Fiscal Assistance Act of 1971, 31 U.S.C. 1221 et seq., the Museum Assistance Program and other applicable local, state, federal and private foundations funding programs. Upon review of such grant proposals, the Agency shall make recommendations to the department concerning which proposals should be funded, the amount of the grants that should be awarded, the conditions that should be placed on the grant, and such other matters that the Agency deems appropriate. The historic preservation officer shall keep the Agency apprised of the status of grant proposals, deadlines for submission of proposals and the recipients of grant funds.

#### 2.48.110 Penalties for violating this chapter.

A. Any person violating or failing to comply with the provisions of this chapter shall incur a civil penalty of up to five hundred dollars per day, and each day's violation or failure to comply shall constitute a separate offense; provided, however, that no penalty shall be imposed for any violation or failure to comply which occurs during the pendency of legal proceedings filed in any court challenging the validity of the provision or provisions of this chapter as to which such violations or failure to comply is charged.

#### 2.48.120 Special valuation for historic properties.

A. There is hereby established and implemented a special valuation for historic properties as provided in Chapter 221, 1986 Laws of Washington and Chapter 84.26 RCW.

B. The Lakewood Landmark Heritage Agency is hereby designated as the "Local Review Board" for the purposes related to Chapter 221, 1986 Laws of Washington, and is authorized to perform all functions required by Chapter 221, 1986 Laws of Washington, Chapter 84.26 RCW, and Chapter 254.20 WAC.

C. All Lakewood landmarks designated and protected under authority of City Ordinance shall be eligible for special valuation as set forth in Chapter 221, 1986 Laws of Washington and Chapter 84.26 RCW.

2.48.130 Severability.

A. If any provisions of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

Section 2. Effective Date. That this Ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary.

ADOPTED by the City Council this 4th day of December, 2000.

CITY OF LAKEWOOD

\_\_\_\_\_  
Bill Harrison, Mayor

Attest:

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Alice M. Bush, CMC/AE, City Clerk

Approved as to Form:

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Daniel B. Heid, City Attorney

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