TITLE 12

HISTORIC SITES

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CHAPTER 1

GENERAL PROVISIONS

SECTION:

12-1-1: Title
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12-1-1: **TITLE:** This Title shall be known and may be cited to as the *WALLACE PRESERVATION OF HISTORIC SITES ORDINANCE*. (Ord. 492, 7-14-1987)

12-1-2: **AUTHORITY:** This Title is adopted pursuant to authority granted by Idaho Code section 67-4601 et seq., and as may be amended from time to time. (Ord. 492, 7-14-1987; amd. 2000 Code)

12-1-3: **PURPOSE:** It is hereby declared as a matter of public policy the recognition, preservation, enhancement, perpetuation and use of structures, natural features, sites and areas within the City having historic, architectural, archeological, cultural or aesthetic significance is required in the interest of the health, economic prosperity, cultural enrichment, and general welfare of the people. The purpose of this Title is to:

A. Safeguard the heritage of the City by providing for the protection of historic districts representing significant elements of its history;

B. Enhance the visual character of the City by encouraging and regulating the compatibility of architectural styles within historic districts reflecting unique and established architectural traditions;

C. Foster public appreciation of and civic pride in the beauty of the City and the accomplishments of its past;

D. Strengthen the economy of the City by protecting and enhancing the City's attractions to resident, tourists and visitors;

E. Stabilize and improve property values within the City; and

F. Promote the private and public use of historic districts for the education, prosperity, and general welfare of the people. (Ord. 492, 7-14-1987)

12-1-4: **NOTICE**[1]: When notice is required to be mailed under this Title, notice shall be deemed given as of the date of mailing. (Ord. 492, 7-14-1987)

1. See also Section 12-5-5 of this Title.

CHAPTER 2

HISTORIC PRESERVATION COMMISSION[1]

SECTION:

12-2- 1: Commission Created
12-2- 2: Membership; Appointment
12-2- 3: Term; Reappointment
12-2- 4: Membership Requirements
12-2- 5: Officers
12-2- 6: Powers And Duties
12-2- 7: Meetings
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12-2-1: **COMMISSION CREATED:** There is hereby created a Wallace Planning and Zoning Historic Preservation Commission, hereinafter referred to as "Commission". (Ord. 492, 7-14-1987; amd. 2000 Code)

12-2-2: **MEMBERSHIP; APPOINTMENT:** The Commission shall consist of not less than five (5) nor more than seven (7) members who shall be appointed by the Mayor, with the advice and consent of a full majority of the full City Council. (Ord. 505, 8-16-1989; amd. 2000 Code)

12-2-3: **TERM; REAPPOINTMENT:** Initial appointments of the Commission shall be made as follows: Four (4) 1-year terms and three (3) 2-year terms. All subsequent appointments shall be made for two (2) years. Any Commission member may be reappointed to serve additional terms. (Ord. 505, 8-16-1989)

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1. See also Sections 13-2-1, 13-2-3 and 13-8-3 of this Code.

12-2-4: MEMBERSHIP REQUIREMENTS:

A. Residency: All Commission members shall be residents of the City or its impact area.

B. Ineligibility: Commission members shall not include any employees of the City, the Mayor, or members of the City Council.

C. Qualifications: All members of the Commission shall have a demonstrated interest, competence, or knowledge in history or historic preservation. The Council shall endeavor to appoint at least two (2) members with professional training or experience in the disciplines of architecture, history, architectural history, urban planning, archaeology, engineering, law, or other historic preservation related disciplines, to the extent that such expertise is available in the community. (Ord. 492-A, 7-14-1998; amd. 2000 Code)

12-2-5: OFFICERS:

A. Election: The Commission shall elect a chair and vice-chair from the Commission's members.

B. Term: The chair and vice-chair shall serve a term of one year from the meeting at which they are elected and until their successors are duly elected.

C. Voting; Quorum: Neither the chair or vice-chair shall be disqualified from voting or disqualified from being counted toward a quorum.

D. Powers And Duties:

1. Chair: The chair shall preside at all meetings of the Commission, authorize calls for any special meetings, appoint all committees, execute all documents authorized by the Commission, and generally perform all duties associated with that office.

2. Vice-Chair: The vice-chair, in the event of absence or disability of the Chair, or a vacancy in that office, shall assume and perform the duties and functions of the chair. (Ord. 492, 7-14-1987)

12-2-6: **POWERS AND DUTIES:** In addition to the powers and duties described elsewhere in this Title, the Commission shall have the following powers and duties:

A. Conduct Survey: Conduct, or cause to be conducted, a comprehensive survey of properties of historic significance within the boundaries of the City. Publicize and periodically update survey results.

B. Maintain Local Register: Maintain a local register of historic districts within the City.

C. Review And Comment: Review and comment upon the conduct of land use, housing and redevelopment, Municipal improvement, and other types of planning and programs undertaken by any agency of the City, the County, or State, as they relate to the cultural or historic resources of the City.

D. Recommend Purchases: Recommend to the City Council the purchase of fee or less-than-fee interests in property for purposes of historic preservation.

E. Investigate And Report Funding Sources And Mechanisms: Investigate and report to the City Council on the use of various Federal, State, local, or private funding sources and mechanisms available to promote cultural resources and historic preservation in the City.

F. Preserve, Restore, Maintain And Operate Properties: Preserve, restore, maintain, and operate cultural or historic properties under the ownership of the City or control of the Commission subject to approval of expenditures by the City Council.

G. Approve/Disapprove Applications: Approve or disapprove, in whole or in part, applications for certificates of appropriateness, pursuant to this Title.

H. Review Applications: Review all applications for permits, environmental assessments, environmental impact reports, environmental impact statements, and other similar documents and instruments as set forth in this Title, pertaining to cultural resources, historic preservation, or related neighboring properties within public view. The City Council shall forward all such documents to the Commission for review and comment. The Commission shall forward its comments to the City Council.

I. Hire Staff, Consultants: Subject to prior approval of the City Council, hire staff, retain consultants, and conduct studies, as the Commission deems desirable or necessary.

J. Contract: Subject to prior approval of the City Council, contract with County, State, or Federal government, or any agency or subdivision of said government, or with any other organization.

K. Cooperate With Governments: Cooperate with local, County, State, and Federal governments in the pursuit and the objectives of historic preservation.

L. Keep Minutes, Records: Keep minutes and records of all meetings and proceedings including voting records, attendance, resolutions, findings, determinations, and decisions. All such material shall be public record.

M. Render Advice, Guidance: Render advice and guidance, upon the request of the property owner or occupant, on the restoration, alteration, decoration, landscaping or maintenance of any property located within a historic district, or other property located within the City.

N. Participate In, Promote And Conduct Public Programs: Participate in, promote, and conduct public information, educational, and interpretive programs pertaining to historic preservation and historic districts.

O. Perform Other Functions: Perform any other functions that may be designated by resolution or ordinance of the City Council. (Ord. 492, 7-14-1987)

12-2-7: **MEETINGS:**

A. Regular Meetings: The Commission's regular meeting shall be held on the first Thursday of each month, at the Wallace City Hall, Wallace, Idaho. Where no business is scheduled or requested to be brought before the regular meeting, the Commission chair may cancel the meeting. (Ord. 92-3, 11-10-1992)

B. Special Meetings: Special meetings may be called by the chair or at the request of a majority of Commission members for the transaction of business as stated in the call for the meeting. Special meetings may be held upon such notice as is appropriate to the

circumstances, or as otherwise provided by law. (Ord. 492, 7-14-1987)

12-2-8: **QUORUM:**

A. Required: The presence of a quorum shall be required for the transaction of business at either regular or special meetings of the Commission. All decisions or actions of the Commission shall be made by a majority vote of those members present at any meeting where a quorum exists.

B. Number Required: The following numbers will constitute a quorum for the transaction of business: If five (5) Commission members, a quorum consists of three (3); if six (6) Commission members, a quorum consists of four (4); if seven (7) Commission members, a quorum consists of four (4). (Ord. 505, 8-16-1989)

12-2-9: **VACANCY:** A vacancy shall occur upon the death, resignation, or removal by the City Council of a member. In the event of a vacancy, the Mayor, with the advice and consent of a majority of the full City Council, shall appoint a person to fill the remainder of the unexpired term. (Ord. 492, 7-14-1987)

12-2-10: **REMOVAL:** A Commission member shall be removed by a majority of the full City Council at such time when such member no longer possesses the qualifications of office set forth in Section 12-2-4 of this Chapter. A member may be removed by a majority of the full City Council for cause, at any time. Removal for cause shall include, but not be limited to, a failure to attend four (4) regular or special meetings of the Commission during any twelve (12) consecutive month period. (Ord. 492, 7-14-1987)

CHAPTER 3

HISTORIC DISTRICT DESIGNATION CRITERIA

SECTION:

12-3-1: Qualifications For Designation
12-3-2: Ineligible Unless Integral Part Of District
12-3-3: Significant As A Whole
12-3-4: Interpretation

12-3-1: **QUALIFICATIONS FOR DESIGNATION:** For the purposes of this Title, any area within the City may be designated as an historic district by the City Council pursuant to Chapter 4 of this Title, if the quality of significance in American, Idaho, or Wallace history, architecture, archeology, or culture is present in the sites, buildings, structures, and objects that constitute such district, and that they possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

A. Events: That are associated with events that have made a significant contribution to the broad patterns of such history; or

B. People: That are associated with the lives of persons significant to such history; or

C. Distinctive Characteristics: That embody the distinctive characteristics of a type, period, or method of construction or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable area whose components may lack individual distinction; or

D. Prehistory; History: That have yielded, or may be likely to yield, information important in prehistory or history. (Ord. 492, 7-14-1987)

12-3-2: **INELIGIBLE UNLESS INTEGRAL PART OF DISTRICT:** Ordinarily, 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 fifty (50) years shall not be considered eligible for inclusion within an historic district. However, such properties will qualify for inclusion within an historic district if they are integral parts of such districts that otherwise do meet such criteria or if they fall within the following categories:

A. Religious Property: A religious property deriving primary significance from architectural or artistic distinction or historical importance; or

B. Building Or Structure Moved From Original Location: A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with an historic person or event; or

C. Birthplace; Grave: A birthplace or grave of an historic figure of outstanding importance, if there is no other appropriate site or building directly associated with his or her productive life; or

D. Cemetery: A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

E. Reconstructed Building: A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

F. Commemorative In Intent: A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or

G. Exceptional Importance: A property achieving significance within the past fifty (50) years if it is of exceptional importance. (Ord. 492, 7-14-1987)

12-3-3: **SIGNIFICANT AS A WHOLE:** An historic district shall be significant as a whole even though it may be composed of components-sites, buildings, structures, and objects that lack individual

distinction or historic integrity, as long as the district conveys overall a sense of the time and place of the period of which the elements of the district gained historic significance. (Ord. 492, 7-14-1987)

12-3-4: **INTERPRETATION:** The City Council and Commission shall interpret the application of the above criteria with due regard for the guidelines set forth in the National Park Service publication "How to Apply the National Register Criteria for Evaluation", dated June 1, 1982 and subsequent revisions. (Ord. 492, 7-14-1987)

CHAPTER 4

HISTORIC DISTRICT DESIGNATION PROCEDURE

SECTION:

12-4-1: Investigation By Commission
12-4-2: Report Of Preliminary Findings
12-4-3: Public Hearing
12-4-4: Final Report Of Commission
12-4-5: City Council Action
12-4-6: Issuance Of Permits

12-4-1: **INVESTIGATION BY COMMISSION:** The Commission, at its own initiative, or upon the request of the City Council, shall make an investigation of the historical, architectural, archeological, and cultural significance of the buildings, structures, features, sites, or surroundings included in any proposed historic district, using the criteria set forth in Chapter 3 of this Title. (Ord. 492, 7-14-1987)

12-4-2: **REPORT OF PRELIMINARY FINDINGS:**

A. If the members of the Commission do not constitute a majority of the members of the Planning and Zoning Commission, the Commission shall report its preliminary findings to the Planning and Zoning Commission for its consideration and recommendations, allowing the Planning and Zoning Commission sixty (60) days' notice of the time and place of the hearing described in Section 12-4-3 of this Chapter.

B. If the members of the Commission constitute at least a majority of the membership of the Planning and Zoning Commission, then this Section shall be of no force or effect. (Ord. 492, 7-14-1987)

12-4-3: **PUBLIC HEARING:**

A. Hearing Required: Subsequent to its preliminary decision upon creating or not creating an historic district, the Commission shall hold a public hearing.

B. Notice Of Hearing: Except as provided in Section 12-4-2 of this Chapter, notice of the date, time, place, and purpose of the hearing shall be given by first class mail, postage prepaid, to the owners of all property to be included in such historic district, at least fourteen (14) days prior to the date of said public hearing, using the name and addresses of such owners as shown either in the records of the City, or on the latest equalized assessment rolls, and shall further be advertised once in a daily newspaper of general circulation at least five (5) days prior to the date of the hearing. (Ord. 492, 7-14-1987)

12-4-4: **FINAL REPORT OF COMMISSION:** At the conclusion of the public hearing, but in no event more than twenty (20) days from the date of the hearing, the Commission shall submit a final report to the City Council with its recommendations, and if a recommendation of the creation of an historic district, a draft of a proposed ordinance creating such an historic district. (Ord. 492, 7-14-1987)

12-4-5: **CITY COUNCIL ACTION:** The City Council shall approve the proposed ordinance in whole or in part, or shall disapprove it in its entirety. (Ord. 492, 7-14-1987)

12-4-6: **ISSUANCE OF PERMITS:** No building, alteration, demolition, or removal permits for any improvement, building, or structure located within an historic district proposed by the Commission shall be issued, subsequent to the Commission's notice of public hearing, until such time as the City Council has disapproved the proposed ordinance or has not included such property within the historic district. In the event that such property is included within an historic district created by ordinance by the City Council, such property and such applications shall be subject to the terms of this Title. (Ord. 492, 7-14-1987)

CHAPTER 5

CERTIFICATE OF APPROPRIATENESS

SECTION:

12-5- 1: Certificate Required
12-5- 2: Interior Arrangement Of Building
12-5- 3: Change In Use
12-5- 4: Application
12-5- 5: Hearing; Notice Of Hearing
12-5- 6: Intervenors
12-5- 7: Findings Of Commission
12-5- 8: Approval; Issuance
12-5- 9: Disapproval
12-5-10: Ordinary Maintenance And Repair Allowed

12-5-1: CERTIFICATE REQUIRED:

A. Required After Designation Of Historic District: After the designation of a historic district, no exterior portion of any building or other structure (including walls, fences, light fixtures, steps and pavements, or other appurtenant features) nor aboveground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the Commission.

B. Required Prior To Issuance Of Other Permits: The City shall require such a certificate to be issued by the Commission prior to the issuance of a building permit or other permit granted for purposes of construction or altering structures. A certificate of appropriateness shall be required whether or not a building permit is required.

C. Definition: For the purposes of this Title, "exterior features" shall include the architectural style, general design and general arrangement of the exterior of a building or other structure, including the color, the kind of texture of the building material and type and

style of all windows, doors, light fixtures, signs, or other appurtenant fixtures and natural features such as trees and shrubbery.

In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, materials size and location of all such signs. All applications shall be accompanied with color, material and graphics samples along with scaled drawings or sketches of the proposed sign or signs, their mountings, and location, and any other visual aids such as photographs or drawings that may support the application.

D. Each Zone Separate: Each application will be considered separately as to zone and historic appropriateness within that zone. (Ord. 92-3, 11-10-1992)

12-5-2: **INTERIOR ARRANGEMENT OF BUILDING:** The interior arrangement of a building shall not be subject to the provisions of this Title unless the construction, reconstruction, alteration, restoration, or demolition of such interior features in any way effects either the structural integrity of the building or the exterior portion of any building, or is apparent or observable from the exterior of any such building, in which such event a certificate of appropriateness is required. (Ord. 492, 7-14-1987)

12-5-3: **CHANGE IN USE:** No change in the use of any structure of property within a designated historic district shall be permitted until after an application for a certificate of appropriateness has been submitted to and approved by the Commission. The City shall require such a certificate to be issued by the Commission prior to the approval of any change of zoning classification within the historic district. (Ord. 492, 7-14-1987)

12-5-4: **APPLICATION:**

A. Form: An application for a certificate of appropriateness shall be made by filing an application for such certificate with the City Clerk/Treasurer on forms provided by the Commission.

B. Required Information: An application for a certificate of appropriateness shall include the following:

1. A clear statement of the proposed work, to include such things as colors, materials, landscaping, and signs;

2. Plans, elevations, and specifications in sufficient detail to accurately describe the size, height, and completed appearance of the proposed work;

3. A site plan showing all existing buildings, and structures on the proposed site and the proposed work;

4. In cases where the application is for a demolition, the need, justification, and necessity for demolition and the proposed plans for the site.

5. A signed verification by the applicant that the statements contained in the application are true and correct.

6. Any other information deemed necessary by the Commission as set forth in the Commission's application forms. (Ord. 492, 7-14-1987; amd. 2000 Code)

C. Time Of Filing: An application for a certificate of appropriateness must be received by the City Clerk/Treasurer seven (7) calendar days prior to the first Wednesday of each month to be considered at the next regular monthly Commission meeting. (Ord. 492, 7-14-1987; amd. Ord. 508, 11-14-1989; 2000 Code)

12-5-5: **HEARING; NOTICE OF HEARING**[1]: Within forty five (45) days after the filing of an application for a certificate of appropriateness, the Commission shall hold a public hearing thereon. Notice of the date, time, place, and purpose of the hearing shall be given to the applicant by first class mail, postage prepaid, at least ten (10) days prior to the date of the hearing, and shall be advertised once in a daily newspaper of general circulation at least five (5) days prior to the date of the hearing. (Ord. 492, 7-14-1987)

12-5-6: **INTERVENORS:** Any resident of the City or property owner of property located within the City may intervene as an interested party at the hearing upon an application for a certificate of

1. See also Section 12-1-4 of this Title.

appropriateness. The applicant and all intervenors shall be given an opportunity to be heard at the public hearing. (Ord. 492, 7-14-1987)

12-5-7: **FINDINGS OF COMMISSION:** At the public hearing, the Commission shall make findings of fact and conclusions of law, as to whether or not the proposed construction, reconstruction, alteration, moving, or demolition is appropriate. The Commission, in making its determination, shall act in accordance and in conformity with the design guidelines and standards set forth in Chapter 8 of this Title, and the criteria and procedures for evaluation of economic impact set forth in Chapter 9 of this Title. (Ord. 492, 7-14-1987)

12-5-8: **APPROVAL; ISSUANCE:**

A. No intervenors: If no party has intervened at the hearing and testified against the issuance of the certificate of appropriateness, and if the Commission determines that a certificate of appropriateness should be issued, then the Commission shall forthwith approve the application and issue the certificate of appropriateness.

B. Intervenors: If a party has timely intervened and has testified at the hearing against the issuance of the certificate of appropriateness, and if the Commission determines that the certificate of appropriateness should be issued, the Commission shall approve the application but shall not issue the certificate of appropriateness until the fourteenth day subsequent to the date of the hearing, unless during such time the intervenor has filed a notice of appeal with the City Council. The filing of a notice of appeal within said time shall divest the Commission of the power, authority, and jurisdiction to issue the certificate of appropriateness. (Ord. 492, 7-14-1987)

12-5-9: **DISAPPROVAL:** If the Commission determines that a certificate of appropriateness should not be issued, it shall place upon its records the reasons for such determination and shall forthwith notify the applicant of such determination, forwarding to the applicant an attested copy of its reasons, and all of its findings of fact and conclusions of law, and its recommendations, if any. An applicant aggrieved by such a determination of the Commission may appeal to the City Council by filing a notice of appeal with the City Council within fourteen (14) days from the date that the applicant has been furnished the Commission's findings of fact and conclusions of law. (Ord. 492, 7-14-1987)

12-5-10: ORDINARY MAINTENANCE AND REPAIR ALLOWED: Nothing in this Title shall be construed to prevent the ordinary maintenance or repair of any exterior feature in an historic district which does not involve a change in design, material, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which the Building Official, Mayor, and Commission chairperson shall certify, each in writing, that such work is required by the public safety because of an imminent and immediate unsafe and dangerous condition. (Ord. 492, 7-14-1987)

CHAPTER 6

HEARINGS UPON APPLICATION

SECTION:

12-6-1: Record
12-6-2: Rules Of Conduct
12-6-3: Findings Of Fact
12-6-4: Final Decision
12-6-5: Modification Of Application
12-6-6: Continuation Of Hearing

12-6-1: **RECORD:** All hearings upon an application for a certificate of appropriateness shall be electronically recorded. The record of a hearing before the Commission shall include:

A. The application for a certificate of appropriateness.

B. Evidence received or considered.

C. A statement of matters officially noted.

D. Questions and offers of proof, objections, and rulings thereon.

E. Any proposed findings and exceptions.

F. Any decision, and findings of fact and conclusions of law. (Ord. 492, 7-14-1987)

12-6-2: **RULES OF CONDUCT:** The hearings conducted by the Commission shall be conducted according to Robert's Rules Of Order, and the following:

A. Objection: Objections to evidentiary offers may be made and shall be noted in the record.

B. Written Evidence: When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

C. Documentary Evidence: Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

D. Notice Of Facts: Notice may be taken of generally recognized technical or scientific facts within the Commission's specialized knowledge, if any. The applicant shall be notified either before or during the hearing of the material noticed, and the applicant shall be afforded an opportunity to contest the material so noticed. The Commission's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

E. Evidentiary Rules: The chair shall make all evidentiary rulings, or may refer all evidentiary rulings to be made by the Commission's attorney. (Ord. 492, 7-14-1987)

12-6-3: **FINDINGS OF FACT:** Findings of fact shall be based exclusively on the evidence and on matters officially noticed. (Ord. 492, 7-14-1987)

12-6-4: **FINAL DECISION:** A final decision shall be made at the hearing and stated in the records. Thereafter the final decision shall be transcribed. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If an applicant or intervenor has submitted proposed findings of fact, the decision shall include a ruling upon each proposed findings. (Ord. 492, 7-14-1987)

12-6-5: **MODIFICATION OF APPLICATION:** The Commission may, at the hearing, enter into an agreement with an applicant that, in the event that an applicant were to modify the application at the hearing, the Commission shall issue the certificate of appropriateness to the modified application. (Ord. 492, 7-14-1987)

12-6-6: **CONTINUATION OF HEARING:** The hearing upon an application may, with the consent of the applicant, be continued from time to time for a period of time not to exceed fourteen (14) days from the date of the original hearing date. A continuation of a hearing shall not require additional notice, provided that notice of the time, place, and date of the continuation is given at the hearing being continued. (Ord. 492, 7-14-1987)

CHAPTER 7

APPEALS TO CITY COUNCIL

SECTION:

12-7-1: Notice Of Appeal
12-7-2: Preliminary Hearing
12-7-3: Transcript
12-7-4: Notice Of Appellate Hearing
12-7-5: Appellate Hearing
12-7-6: Appeal

12-7-1: **NOTICE OF APPEAL:** A notice of appeal to the City Council shall contain the following information:

A. The date and heading of the decision from which the appeal is taken.

B. A statement whether the appeal is taken upon matters of law, or upon matters of fact, or both.

C. A statement of the issues that the appellant asserts on appeal.

D. The name and address and signature of the appellant. (Ord. 492, 7-14-1987; amd. 2000 Code)

12-7-2: **PRELIMINARY HEARING:** Within twenty one (21) days from the filing of the notice of appeal, the City Council shall, with ten (10) day written notice to all parties, hold a preliminary hearing to determine:

A. Whether the appeal involved questions of law alone, and if so whether or not the appeal may be determined without ordering a transcript of the hearing before the Commission; or

B. Whether the appeal should be determined by listening to the recording tape; or

C. Whether a transcript of the hearing before the Commission should be ordered;

D. Whether the appeal is pursued frivolously without foundation, in which event the City Council shall summarily dismiss the appeal. (Ord. 492, 7-14-1987; amd. 2000 Code)

12-7-3: **TRANSCRIPT:**

A. No Transcript Required: In the event that the City Council determines that the appeal can be heard as a question of law alone, without the necessity of a transcript, the City Council shall enter an order to that effect stating the issue of law to be determined on appeal and setting a day certain for the hearing upon the appeal.

B. Listening To Recording: In the event that the City Council determines that the appeal should be heard by listening to the tapes of the proceedings before the Commission, it shall enter an order to that effect and direct a time within which the parties and all members of the City Council shall review or listen to the recording tapes and set a date certain for the hearing of the appeal. No City Council member may participate at the appeal hearing unless said City Council member certifies that he or she has listened to the recording tape.

C. Written Transcript:

1. Order For Transcript: In the event that the City Council determines that a transcript is required for the processing of the appeal, the City Council shall enter an order to that effect and direct the appellant to pay to the City Clerk/Treasurer the estimated transcriber fees in the following manner:

a. Estimated Cost: The appellant shall pay the sum of two dollars ($2.00) per page for the original copy of the transcript. The appellant shall pay the estimated cost of the transcript within five (5) days of the City Council order, and shall pay the balance of the costs within five (5) days of completion of the transcript.

b. Preparation: A transcript may be prepared by any competent typist, but the transcript must be examined and certified by the person who took the transcription.

2. Notice Of Filing: Upon completion, the transcript shall be delivered to the City Council. The City Council shall mail or deliver a notice of the filing of the transcript to all parties, advising the parties that they may purchase a copy of the transcript at the rate of fifteen cents ($0.15) per page.

3. Objections: The party shall have twelve (12) days from the date of the said notice to file any objections to the transcript. Upon failure of the parties to file any objections to the transcript, the transcript shall be deemed settled. Any objection made to the transcript shall be made at the appellate hearing. (Ord. 492, 7-14-1987; amd. 2000 Code)

12-7-4: **NOTICE OF APPELLATE HEARING:** The City Council shall set an appellate hearing upon the appeal within twenty one (21) days of the date of the preliminary hearing if no transcript is ordered, and if a transcript is ordered, no earlier than twenty one (21) days nor later than forty five (45) days from the date of the preparation of the transcript. At least seven (7) days' written notice shall be given to all parties of the date of the appellate hearing. (Ord. 492, 7-14-1987)

12-7-5: **APPELLATE HEARING:**

A. Hearing: The appeal shall be reviewed by the City Council at an appellate hearing and shall be confined to the record. The City Council shall hear oral argument made by the parties based upon the record of the proceedings before the Commission. The City Council shall not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact. The City Council may affirm the decision of the Commission or remand the application to the Commission for further proceedings. The City Council may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the Commission's findings, conclusions, or decisions are:

1. In violation of constitutional or statutory provisions; or

2. In excess of the authority of the Commission; or

3. Made upon unlawful procedure; or

4. Affected by other error of law; or

5. Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

6. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

B. Recording: All hearings before the City Council shall be electronically recorded. The City Council shall make all rulings and decisions upon the record. All rulings and orders made at the preliminary hearing and all rulings and decisions made upon the appellate hearing shall be forthwith transcribed with copies sent to all parties. (Ord. 492, 7-14-1987)

12-7-6: **APPEAL:** An appeal of the decision of the City Council shall be taken to the District Court of the First Judicial District of the State of Idaho, in and for the County of Shoshone, in the manner prescribed by law. (Ord. 492, 7-14-1987)

CHAPTER 8

DESIGN GUIDELINES AND STANDARDS

SECTION:

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12-8- 2: Area Of Application
12-8- 3: Site Orientation And Directional Expression
12-8- 4: Scale, Proportion And Rhythm
12-8- 5: Form, Detail And Treatment
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12-8- 8: Criteria And Procedures For Evaluation Of Economic Impact
12-8- 9: Change In Use Of Landmark Property
12-8-10: Special Restrictions
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12-8-13: Duty To Keep In Good Repair
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12-8-1: GUIDELINES:

A. Basis: The City Council has determined that several aspects of architectural design have a significant impact on the character and value of the City's historic districts and that preserving and enhancing this character requires the existence of a certain harmony and compatibility in these aspects, from one building to the next and throughout the district. These design guidelines are based on existing design characteristics commonly observed in the City and will serve as a baseline description against which plans for new construction and reconstruction can be judged for harmony, compatibility and appropriateness.

B. Intent: The intent of these guidelines is not to require particular architectural features or dictate architectural style. Rather it is to identify a range of design options which will encourage development compatible with the existing character of the City and which will

discourage introduction of incompatible features. Contemporary designs and materials, used in a manner compatible with the sense of the past that is being preserved, are not only permitted but encouraged. Economic feasibility and durability of proposed improvements, along with aesthetic harmony, are primary concerns.

C. Interpretation: A strict interpretation of these guidelines may be waived by the Historic Preservation Commission if the applicant develops a design solution which meets the spirit and intent of these design guidelines in a better manner. In the same sense, the guidelines presented here are not fixed and immutable through time, but are subject to continuing study and revision by the Historic Preservation Commission as the desirability for such modification becomes apparent.

D. Historic Period: Although the criteria for historic designation set forth in Chapter 3 of this Title covers a range of architectural styles and historic periods, the City's predominant architectural character is primarily derived from the numerous buildings and homes that were erected during the period 1890 through 1920. It was also during this time that the City rose to prominence and acquired its greatest historical significance. In the guidelines that follow, this period from 1890 to 1920 is referred to as the "historic period", and shall represent a general benchmark to which new and reconstruction building designs should compatibly relate.

E. Exceptions: Exceptions may occur in cases where reconstruction work is proposed for buildings of a distinct style but which are different from that which was typical of the "historic period". In these cases the appropriate design choice shall be to respect the distinct style significant; in its own right and seek to retain the building's particular architectural character, especially in terms of its unique form, scale, proportions, rhythm, modeling, and massing. (Ord. 492, 7-14-1987)

12-8-2: **AREA OF APPLICATION:** The Historic Preservation Commission will be reviewing three (3) different kinds of construction activity that require certificates of appropriateness, and each kind will require a slightly different application of these guidelines:

A. New Construction: For the construction of new buildings and parts of buildings in historic districts, the focus of the guidelines is on the compatibility of new construction with the existing predominant historic character of the City without dictating style or taste.

B. Reconstruction, Remodeling, Repair: For reconstruction, remodeling, and repair of existing buildings in historic districts, the guidelines seek to guide and encourage restoration in line with the original character of the structure.

C. Relocation: For relocation of buildings to sites within an historic district, the guidelines seek to ensure that buildings moved to sites within the district are compatible with the predominant historical character of surrounding buildings and are suitably situated on the lot.

Unless otherwise stated in the text, the guidelines shall apply equally to construction activity in both the designated commercial historic district and the designated residential historic district(s). (Ord. 492, 7-14-1987)

12-8-3: **SITE ORIENTATION AND DIRECTIONAL EXPRESSION:** An important factor affecting the character of an historic district concerns the relationship between an historic building and its orientation toward adjacent structures and the street. An orderly rhythm in site orientation and directional expression can also lend harmony to an historic district and evoke a stronger sense of its historical character.

A. Setbacks: In addition to the setback regulations prescribed in Title 13 of this Code, the street-facing facade of new and reconstructed buildings in the commercial landmark district should be erected in line with the street front setback of existing buildings from the historic period on the same block.

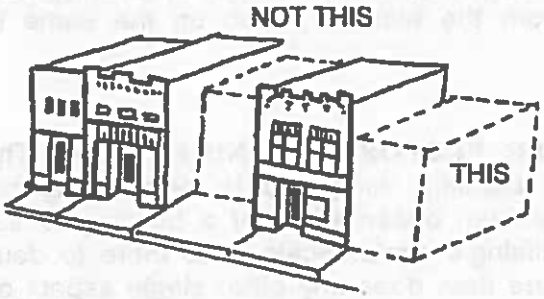


Figure 1. SETBACKS: The street facing facade of new and reconstructed buildings in the commercial historic district should be erected in line with the street front setback of existing buildings from the historic period.

B. Directional Expression: To preserve the continuity prevailing along most block faces in the City, the principal facade of new or reconstructed buildings should be oriented parallel to the street it faces.

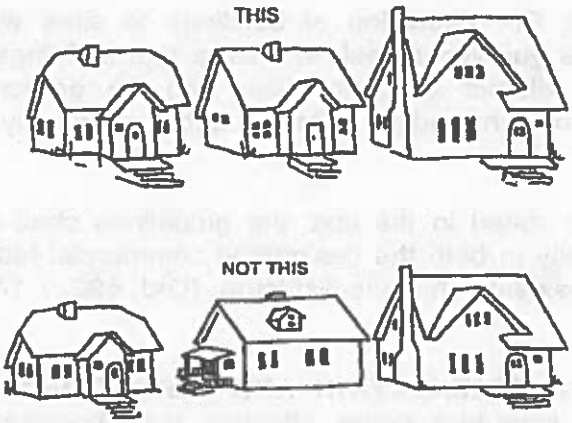


Figure 2. DIRECTIONAL EXPRESSION: The principal facade should be oriented parallel to the street it faces.

C. Front Yard Additions: To preserve the orderly rhythm of front yard spacing and the architectural integrity of street facing facades, front yard additions to existing buildings in the residential historic district should be generally discouraged when such construction will alter or obscure the street-facing facade of a building that has been designated as contributing to the character of the historic district, or if the construction of the addition will result in a street-facing setback of less than eighty percent (80%) of the average setback of existing buildings from the historic period on the same block. (Ord. 492, 7-14-1987)

12-8-4: **SCALE, PROPORTION AND RHYTHM:** The relative portion of a building compared to neighboring buildings, or of a building to a pedestrian observer, or of a building to its surroundings in general, is the building's scale. Scale does more to determine the visual impact of a structure than does any other single aspect of building design. Preserving a harmony and compatibility in scale among the buildings in the City's historic districts focuses attention on several key dimensions, including building height, floor elevations, size and massing.

A. Building Height: New and reconstructed buildings should not be erected to a height greater than ten percent (10%) of the average

height of existing buildings from the historic period on the same and adjacent blocks. In no case should any building in the commercial district be erected to a height greater than the Shoshone County Courthouse.

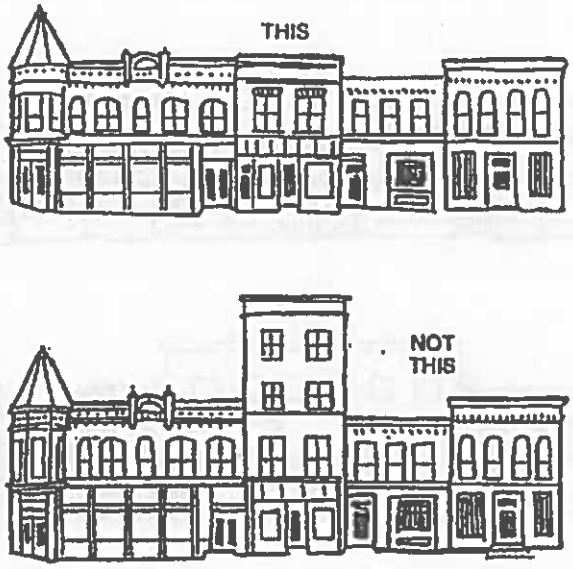


Figure 3. BUILDING HEIGHT: Buildings should not be erected to a height greater than ten percent (10%) of the average height of existing buildings from the historic period on the same and adjacent blocks.

B. Floor Elevations: On new and reconstructed buildings in the commercial district, the first floor elevation above the street curb, the entrance door sill elevation, and the floor-to-floor elevations within the buildings should reflect the average of comparable elevations of existing buildings from the historic period on the same and adjacent blocks.

In the event the applicant successfully demonstrates, pursuant to Chapter 3 of this Title, the economic necessity of altering the original elevation of an interior floor or ceiling, such reconstruction shall be done in a manner that retains the original historic appearance, design, detail, and modeling of the building's street-facing facade(s).

C. Size And Scale: The size and scale of new or reconstructed buildings should be about equal to the average of similar types of

existing buildings from the historic period in the district. Special care should be given to following the building-height-to-building-width ratio of front building facades on adjacent buildings from the historic period.

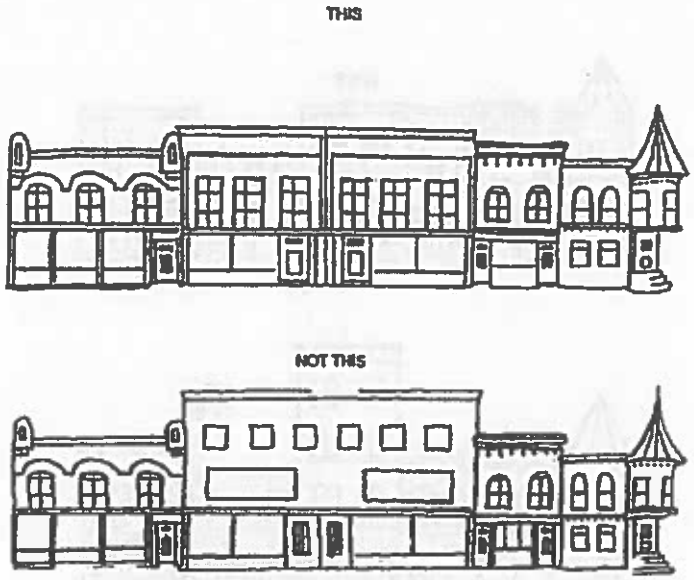


Figure 4. SIZE AND SCALE: The size and scale should be about equal to the average of similar types of existing buildings from the historic period.

In the event it is necessary to construct or reconstruct a building in such a manner that its size and scale will be inconsistent with that of adjacent buildings from the historic period, the front facade of such new or reconstructed buildings should be broken into smaller masses or bays of a size and scale that is consistent with that of adjacent buildings from the historic period.

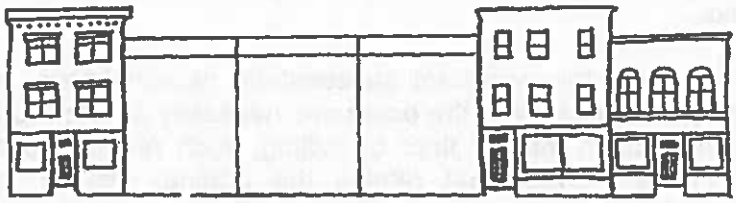


Figure 5. SIZE AND SCALE: Out of scale buildings should be broken into smaller masses or bays of a size

and scale that is consistent with adjacent buildings from the historic period.

D. Massing: New and reconstructed buildings in any historic district should avoid designs that result in a single, monolithic appearance that is not relieved by variations in massing. When possible, new and reconstructed buildings should be broken into varied masses and forms such as are characteristic of or compatible with typical existing buildings from the historic period.

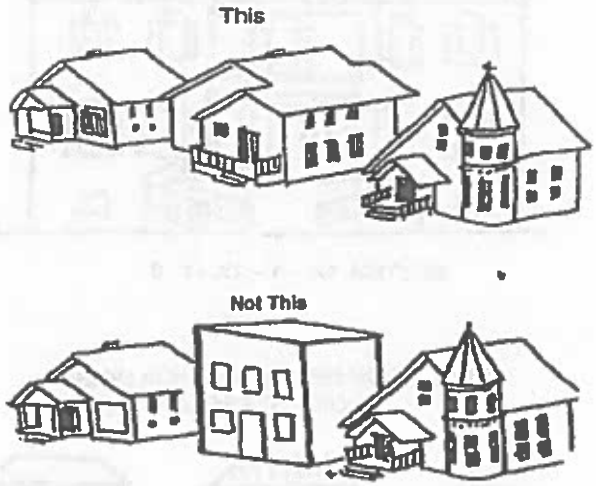


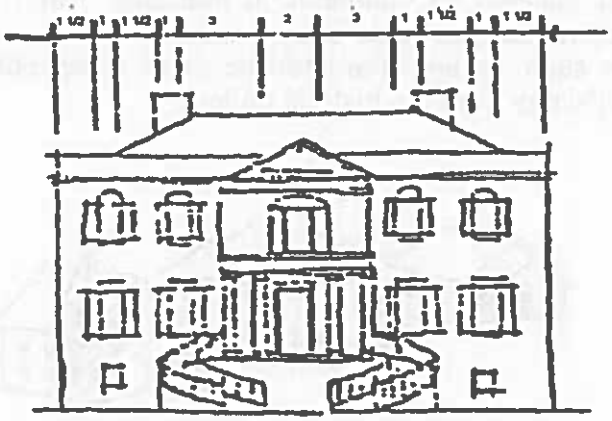
Figure 6. MASSING: Building designs should avoid a monolithic appearance.

E. Rhythm: Architectural rhythm is the ordered recurrent alteration of building masses and spaces across a single facade or along an entire block. Special care should be given to preserving and continuing the rhythm of solids to voids on street-facing facades and the rhythm of spacing of buildings along streets.

(see following page)

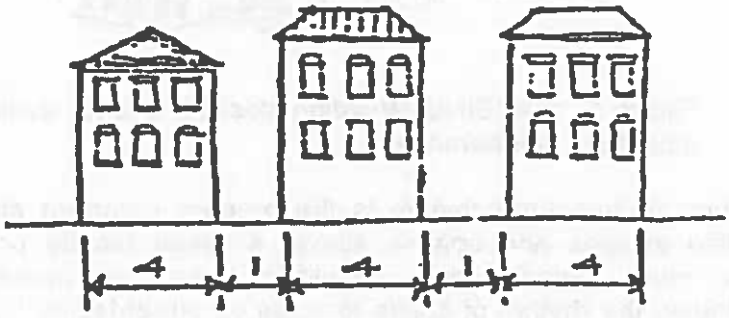
12-8-4

RHYTHM OF SOLIDS TO VOIDS
IN FRONT FAÇADE



RHYTHM 1½ - 1 – 1½ - 1 - 3

RHYTHM OF SPACING OF BUILDINGS
ALONG STREETS



RHYTHM 4 – 1 – 4 – 1 – 4

Figure 7. RHYTHM: The rhythm of solids to voids on street-facing facades and the spacing of buildings along streets should be preserved and continued.

F. Walls Of Continuity: Physical elements such as brick walls, wrought iron fences, evergreen landscape masses, building facades, or combinations of these also contribute to the character and feel of the

architecture of an historic period. The design of any new or reconstructed building should seek to preserve or maintain such character defining walls of continuity whenever possible.

Figure 8. WALLS OF CONTINUITY: Walls of continuity should be maintained.

(Ord. 492, 7-14-1987)

12-8-5: **FORM, DETAIL AND TREATMENT:** In addition to site orientation, directional expression, scale, proportion, and rhythm, the character of the City's historic building stock is also defined by the particular modeling of their vertical facades and roofs. The historic character of the City's existing buildings is best expressed when the separate elements that make up the modeling of their facades and roofs are retained in either their original or essential form. Similarity, the unique character of the City's historic districts is best conveyed when the design of a new building incorporates forms, details, and treatments that either evoke a sense of the architectural style of the historic district or avoid distracting from an observer's sense of the predominant historic character of the district.

Among the most important modeling elements that help define the historic character of the City's buildings are: cornices, storefronts, window patterns, roof shape, siding and roof materials, colors, and textures.

A. Cornices: Many of the buildings erected in the City's commercial landmark district during the early historic period were designed with a horizontal cornice on its principal street-facing facade. The cornice, which protrudes from the plane of the facade, marks and defines the vertical extent of the building and ties it in with adjacent buildings in the commercial historic district. Some cornices in the commercial historic district were also embellished with rich architectural details which today serve as examples of the form of aesthetic expression that was typical of the City's turn of the century architectural design.

 12-8-5

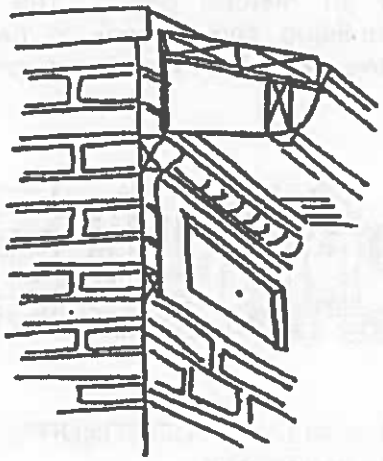


Figure 9. CORNICES: Cornices should be retained.

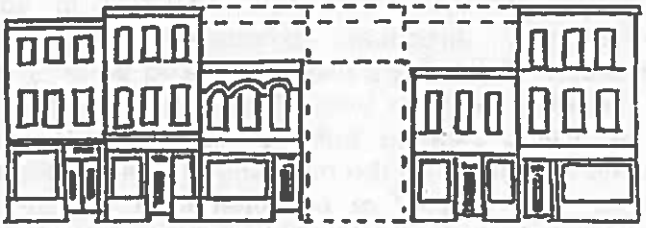


Figure 10. HORIZONTAL CORNICE LINES: Horizontal cornice lines should be continued.

To help assure continuity from one building to the next in the commercial landmark district and to preserve examples of the City's early twentieth century architectural expression, existing cornices and cornice lines should be retained. The heights and depths of these cornices on new construction should be consistent with the average cornice dimensions of adjacent buildings from the historic period.

B. Storefronts:

1. Uniqueness: The traditional storefront is probably the single most important architectural form that expresses the uniqueness and historical character of the City's commercial historic district. The City's existing storefronts convey a strong sense of the early historic

period when commercial architecture and street design were oriented more to the convenience of the pedestrian than that of the passing motorists.

2. Basic Form: Although architectural detailing in the traditional storefront evolved over time and from region to region, its basic form or modeling remained essentially the same. In the City it consisted of a consciously proportioned configuration of less than a dozen interconnected design elements, including (from street level upwards): a low paneled bulkhead surmounted by an expanse of display windows with transom windows above and a storefront cornice or signboard delineating the vertical extent of the first story. Either side of the storefront was typically finished with vertical piers of pilasters, often of masonry construction, that usually extended to the roof cornice and served to frame the sides of the building. The upper stories of the City's storefronts typically consisted of regularly spaced windows, often topped by window hoods, lintels, or voussoirs, and cast against masonry wall. The top of the traditional storefront building was usually finished with a parapet wall and a protruding decorative cornice.

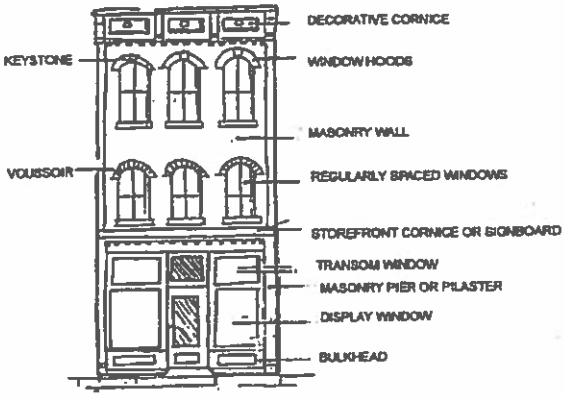


Figure 11. STOREFRONTS: The basic design elements of the storefront should be retained or reclaimed.

3. Retention Of Basic Design Elements: Construction work on Commercial Historic District storefronts should retain these basic storefront design elements where they exist, and seek to reclaim them when they have been altered or lost. Attention should also be given to retaining or restoring the original rhythm and proportions of these design elements on all building facades and exterior walls.

4. New Construction: New construction work in the Commercial Historic District should consider designs that are either compatible with the traditional storefront or allude to its typical form, rhythm, and proportions. In no case, however, should new construction design seek to replicate or imitate specific motifs or details of the traditional storefront design. (Ord. 492, 7-14-1987)

5. Siding: Pre-approved siding styles are available from the City Clerk at Wallace City Hall. When using one or a multiple of these pre-approved items, an application for a certificate of appropriateness indicating the pre-approved choices will not be subject to a public hearing on the application, rather a certificate of appropriateness may be immediately issued, by the City Clerk or the Chair of the commission to the applicant. (Ord. 2013-01, 5-8-2013)

C. Window Patterns: The predominant window configuration on street facing facades in the City exhibit a regularity in proportion and size of window openings and in the rhythm and order with which they are arranged. (Ord. 492, 7-14-1987)

1. Preapproved window styles are available from the City Clerk at Wallace City Hall. When using any one or a multiple of these pre-approved items, an application for a certificate of appropriateness indicating the preapproved choices will not be subject to a public hearing on the application, rather a certificate of appropriateness may be immediately issued, by the City Clerk or the Chair of the commission to the applicant. (Ord. 2007-01, 5-9-2007)

2. Proposed designs for window arrangements in new construction should be compatible with and avoid distracting from the predominant window pattern of adjacent buildings from the historic period. In cases of remodeling or reconstruction in all historic districts, a building's historic window pattern should be retained or reclaimed. Where that is not possible, the predominant window pattern of existing buildings from the historic period should be followed as a design guide. (Ord. 492, 7-14-1987; amd. Ord. 2007-01, 5-9-2007)

Figure 12. WINDOW PATTERNS: Window patterns should be retained and reclaimed.

12-8-5

D. Window Replacement: In cases where the replacement of a window is required, the replacement should match the original window, fill the entire opening, and duplicate the original window pattern. If possible, the original sash and frame material should be matched.

12-8-5

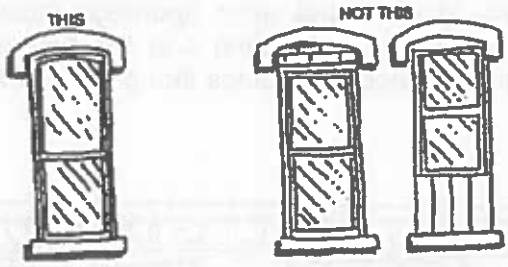


Figure 13. WINDOW REPLACEMENTS: Windows replacements should match the original window, fill the entire opening, and duplicate the original window pattern.

In circumstances where metallic windows must be used, the metallic sashes and frame should be of a dark anodized or baked enamel finish so as to minimize the obtrusiveness of the bright metallic color.

E. Storm Windows: When storm windows are required, they should be designed and installed in such a manner that they appear to be an integral part of the building. If mounted on the exterior of the building, they should resemble the inner window as closely as possible in shape and appearance and should be painted to match the color of the inner window sash. On street facing facades it may be desirable to consider installing storm windows on the inside where they will not be seen from the street.

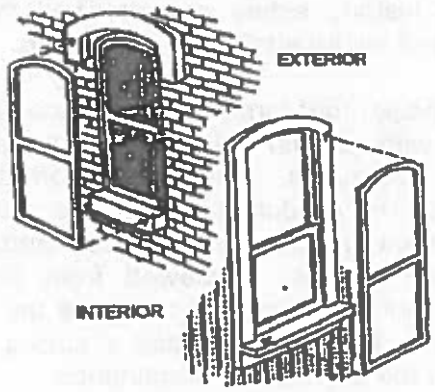


Figure 14. STORM WINDOWS: Storm windows should resemble the inner window as closely as possible in shape and appearance.

F. Blocking Windows And Doors: The practice of blocking-up or blocking-down window and door openings substantially alters the historic appearance of a building and the historic rhythm of forms and openings of adjacent buildings along the block.

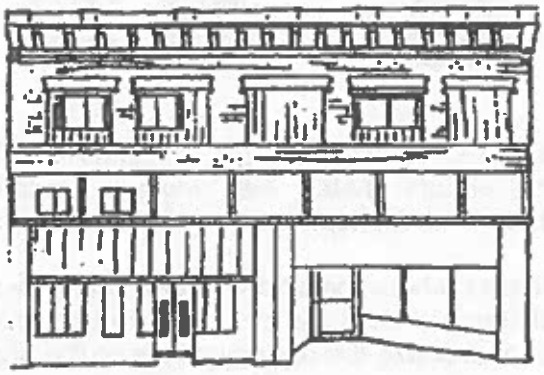


Figure 15. BLOCKING WINDOWS: Blocking should always be avoided in reconstruction work on existing structures.

If, pursuant to this title, it is found absolutely necessary to alter an interior ceiling beyond an original alley or street facing window head or sill, such alteration shall be done in a manner that retains the full exterior height of the window, preserves its original proportions and rhythm on all of the building's street facing facades, and retains or replicates the historic siding material and modeling forms on all surfaces affected by the altering of the ceiling.

G. Roofs: The principal roof form in the city's commercial historic district is the flat roof with parapet wall. Many of the city's parapets are also finished with pediments, corbelling, protruding cornices, and/or molded friezes. The predominance of this roof form contributes an important element of order to the commercial landmark district, especially when the city is viewed from higher elevations. The parapeted flat roof also serves to integrate the city's diverse facades into a coherent whole and provides a strong sense of the historic period in which the city rose to prominence.

12-8-5

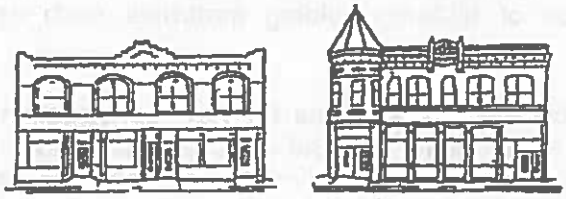


Figure 16. PARAPET ROOFS: Parapet roofs and their decorative embellishments should be retained. (Ord. 492, 7-14-1987)

1. Preapproved roofing choices are available from the city clerk at Wallace City Hall. When using any one or multiple of these preapproved items, an application for a certificate of appropriateness indicating the preapproved items, an application for a certificate of appropriateness indicating the preapproved choices will not be subject to a public hearing on the application, rather a certificate of appropriateness may be immediately issued, by the city clerk or the chair of the commission to the applicant. (Ord. 2007-01, 5-9-2007)

2. Reconstruction work on all buildings in the commercial landmark district should always seek to retain existing parapeted roofs and their respective decorative embellishments. Roof designs for new construction in the commercial landmark district should seek compatibility with adjacent buildings from the historic period through the use of roof forms and horizontal cornice lines that allude to the predominant parapeted roof pattern of the commercial district. (Ord. 492, 7-14-1987; amd. Ord. 2007-01, 5-9-2007)

H. Materials And Textures: Variety in the use of materials and textures are important for the interest and intimacy they convey, and the historic character they are capable of evoking.

1. Reconstruction: The choice of materials and textures for reconstruction designs should be limited to those that were available and typically used at the time the building in question gained historical significance. In cases where a historic building's roof or siding material has deteriorated beyond repair, or for any other necessary reason requires replacement, the choice of a new replacement material should match the original material as closely as possible in terms of composition, size, shape, color, and texture. Material choices for new and reconstruction designs in all historic districts should avoid whenever possible the use of contemporary

synthetic, metallic, and similar building materials that imitate the appearance of historic building materials such as iron, wood, or stone.

2. New Construction: Designs for new construction should incorporate only those materials and textures that either allude to or are compatible with the predominant materials and textures from the historic period.

I. Colors:

1. Historic Color Schemes: In the city, historic color schemes varied by availability of pigments, stylistic preferences of the period, the type of surface to which paint was applied, and the dictates of climate.

2. Color Choices: Whenever possible, paint choices in all historic districts should be limited to those colors, if any, that are known to have been used on the structure in the historic period. In the absence of such information, color choices should be limited to those that were available and appropriate for the building's style and historic period, and their compatibility with adjacent structures in the historic district. (Ord. 492, 7-14-1987)

Preapproved color choices are available from the city clerk at Wallace City Hall. When using any one or a multiple of these preapproved colors, an application for a certificate of appropriateness indicating the preapproved color choices, will not be subject to a public hearing on the application, rather a certificate of appropriateness may be immediately issued, by the city clerk or the chair of the commission to the applicant. (Ord. 2007-01, 5-9-2007)

3. Painted Surfaces: Care should be given to avoiding the application of paint to surfaces that were not painted in the historic period and, conversely, paint should not be entirely removed from historic surfaces that required the protection of paint or equivalent sealants to inhibit deterioration from the weather.

4. Removal Of Paint: As a general rule, the removal of paint from historic exterior woodwork, masonry, and metal should be avoided unless absolutely essential. Once conditions warranting removal have been identified, however, paint should be removed to the next sound layer using the gentlest method possible.

J. Architectural Details: Architectural details and ornamentation represent unique historic elements of the City's architecture and are important components of the City's historic character. Their uniqueness, distinctiveness, and ubiquity helps set the City's historic character apart from all other historic communities in the region.

Significant architectural details should not be lost in the rehabilitation or "modernization" of existing buildings in the City's historic districts. Reconstruction efforts should respect and enhance the original architectural integrity of a historic structure and should attempt to retain such characteristic architectural detail as:

1. Modillioned cornices and pedimented parapet walls;

2. Keystones, voussoirs, and window hoods;

3. Masonry lintels, sills, and relieving arches;

4. Transom windows, fanlights, and sidelights around doors;

5. Multi-colored patterned brick;

6. Wood window frames and mullions; and

7. Friezes, entablatures, and string courses. (Ord. 492, 7-14-1987)

K. Fences: Pre-approved fence styles are available from the City Clerk at Wallace City Hall. When using one or a multiple of these pre-approved items, an application for a certificate of appropriateness indicating the pre-approved choices will not be subject to a public hearing on the application, rather a certificate of appropriateness may be immediately issued, by the City Clerk or the Chair of the commission to the applicant. (Ord. 2013-01, 5-8-2013)

12-8-6: **ADDITIONAL PRINCIPLES AND RECOMMENDATIONS:** In addition to the specific reconstruction guidelines promulgated in this title, design proposals for reconstruction work in landmark districts should also consider the principles and recommendations set forth in the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Revised 1983). (Ord. 492, 7-14-1987)

12-8-7: **PREDEMOLITION DESIGN REVIEW:** When an application for a certificate of appropriateness for a building in a historic

district is submitted for review, and when that application involves the demolition of all or a portion of the building or structures within the boundaries of the historic district, the commission shall review the post-demolition plans for the property in terms of the design guidelines and standards enumerated in this title. (Ord. 492, 7-14-1987)

12-8-8: CRITERIA AND PROCEDURES FOR EVALUATION OF ECONOMIC IMPACT:

A. Commission Consideration: Upon application for a certificate of appropriateness, the commission shall, when requested by the property owner, consider evidence of the economic impact on the owner of denial or partial denial of a certificate of appropriateness. In no case may a certificate be denied, in whole or in part, where the commission establishes that the denial or partial denial will, when available incentives are utilized, deprive the owner of a reasonable economic use of the designated property within a landmark district.

A certificate of appropriateness shall be granted, subject to conditions stipulated by the commission, if a structural evaluation by the owner and confirmed by the commission demonstrates that the significant feature or features at issue are beyond reasonable repair and a hazardous condition exists.

B. Factors Considered For Denial Or Partial Denial: In determining whether denial or partial denial of a certificate of appropriateness will permit the owner of a reasonable economic use of designated property in a historic district the commission shall consider the following factors:

1. The market value of the designated property in its existing condition taking into consideration the ability to maintain, operate or rehabilitate the designated property: a) with the alterations or changes sought by the owner, and b) without the alterations or changes sought by the owner. Available incentives shall be included in both calculations of market value.

2. The owner's yearly net return on the designated property to the extent available, during the five (5) years prior to the hearing.

3. Estimates of the owner's future net yearly return on the designated property with and without the alterations or changes sought by owner and with available incentives.

4. The net return and the rate of return necessary to attract capital for investment: a) in such designated property and in the land on which the designated property is situated without the alterations or changes sought by the owners and available incentives, if such information is available or, if such information is not available, b) in a comparable building, structure, area or site and in the land on which such comparable building, structure, area or site is situated.

5. The net return and rate of return realized on comparable buildings, structures, areas or sites not subject to this title.

Upon written request from the commission, the owner or person in charge shall provide the commission with such information as is necessary and sufficient to make the determinations required hereunder.

C. Appointment Of Expert: Upon reasonable notice to the owner, the commission may appoint an expert or experts to provide advice and/or testimony concerning the value of the property, the availability of incentives and the economic impacts of approval, denial or partial denial of a certificate of appropriateness. (Ord. 492, 7-14-1987)

12-8-9: **CHANGE IN USE OF LANDMARK PROPERTY:**

A. Notice Of Proposed Action: An individual landmark property designated pursuant to this Title and not included within the bounds of a landmark district may be demolished, materially altered, remodeled, relocated or put to a different use only after one hundred eighty (180) days' written notice of the owner's proposed action has been given to the Commission.

B. Acquisition By Commission: During this period, the Commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the designated landmark. During this period, or at any time prior thereto following notice of designation to the owner, and where such action is reasonably necessary or appropriate for the continued preservation of the designated landmark, the Commission may enter into negotiations with the owner for the acquisition by gift, purchase, or exchange of the designated landmark or any interest therein.

C. Reduction Of Waiting Period: The Commission may reduce the waiting period required by this Section in any case where the owner would suffer extreme hardship, unless a reduction in the required period were allowed.

D. Waiver Of Waiting Period: The Commission shall have the discretionary authority to waive all or any portion of the required waiting period, provided that the alteration, remodeling, relocation or change of use is undertaken subject to conditions agreed to by the Commission ensuring the continued maintenance of the historical, architectural, archaeological or cultural integrity and character of the property.

E. Forfeiture Of Designation Status: Any historic property that is demolished, materially altered, remodeled, relocated or put to different use pursuant to the provisions of this Section may, at the discretion of the Commission, forfeit its right to designation status and all the rights, incentives and entitlement conditioned by that designation status. (Ord. 492, 7-14-1987)

12-8-10: **SPECIAL RESTRICTIONS:** In addition to any power or authority of the City to regulate by planning or zoning laws and regulations or by any other laws and regulations the City Council shall be empowered, pursuant to section 67-4612, Idaho Code, to provide by ordinances, special conditions or restrictions for the protection,

enhancement and preservation of a landmark, landmark site, or landmark district properties. (Ord. 492, 7-14-1987)

12-8-11: **EXEMPTION FROM HEALTH AND BUILDING CODES:** The City Council in order to promote the preservation and restoration of a landmark, landmark site or landmark district properties within its jurisdiction, may exempt a landmark, landmark site or landmark district from the application of such standards contained in the County health or City building codes, or both, as the City Council, upon recommendation of the Commission, shall determine would otherwise prevent or seriously hinder the preservation or restoration of said landmark, landmark site, or landmark district. (Ord. 492, 7-14-1987)

12-8-12: **TRANSFER OF DEVELOPMENT RIGHTS:** The Commission may establish procedures authorizing owners of a designated landmark, landmark site or landmark district properties to transfer development rights in such amounts and subject to such conditions as the City Council shall determine. For the purposes of this Section "development rights" are the rights granted under this Section respecting the permissible bulk and size of improvements erected thereon. (Ord. 492, 7-14-1987)

12-8-13: **DUTY TO KEEP IN GOOD REPAIR:** The owner, occupant or other person in actual charge of a landmark, or an improvement, building or structure in a landmark district shall keep in good repair all of the exterior portions of such improvement, building or structure, all of the interior portions thereof when subject to control as specified in the designating ordinance or permit, and all interior portions thereof whose maintenance is necessary to prevent deterioration and decay of any exterior architectural feature. (Ord. 492, 7-14-1987)

12-8-14: **APPEALS:**

A. Appealable Actions: The following actions by the Commission may be appealed by an interested party:

1. The Commission's decision not to hold a public hearing on an application for designation of a landmark property:

2. A determination made after a public hearing to designate or not to designate a landmark, landmark site, landmark district.

3. The Commission's decision to grant or not to grant a certificate of appropriateness.

B. Petition For Reconsideration:

1. Time Limitation; Grounds: Any interested person aggrieved by a preliminary determination of the Commission finding that a cultural resource is ineligible for designation may, within thirty five (35) calendar days of the date of notice of the determination, petition the Commission for reconsideration of that determination on the grounds that the determination was based on errors or omissions of fact or that new information bearing on the determination and not discoverable by the petitioner at the time of the determination is available. The petition for reconsideration shall be filed with the Commission and shall be accompanied by a statement of the grounds for the petition and supporting documents.

2. Commission Action: Within sixty (60) calendar days of receiving the petition for reconsideration, the Commission shall make review of the record, affirm, modify or reverse its prior determination and may render a revised determination. The Commission may, in its discretion, hold a hearing on the petition for reconsideration.

3. Writ Of Certiorari: The action of the Commission denying reconsideration and affirming its determination that a cultural resource is ineligible for designation shall be final unless, within twenty (20) calendar days from the date of the action, an interested person of record obtains a writ of certiorari from the District Court of Shoshone County, State of Idaho, for the purpose of review of the action taken.

C. Notice Of Appeal: Any interested person of record aggrieved by a decision of the Commission designating or rejecting a nomination for designation as landmark property, or issuing or denying a certificate of appropriateness may, within thirty five (35) calendar days of mailing of notice of such designation or rejection of nomination, or of such issuance or denial of a certificate of appropriateness appeal such decision in writing to the City Council. The written notice of appeal shall be filed with the Commission and the City Clerk and shall be accompanied by a statement setting forth the grounds for the appeal, supporting documents, and argument.

1. Remand Back To Commission; Modify Or Reverse Decision: If, after examination of the written appeal and the record, the City Council determines that: a) an error in fact may exist in the record, it

shall remand the proceeding to the Commission for reconsideration or, if the City Council determines that; b) the decision of the Commission is based on an error in judgment or conclusion, it may modify or reverse the decision of the Commission.

2. Request Additional Information: The City Council's consideration shall be based upon the record only; however, the City Council may at its discretion publicly request additional information of the appellant, the Commission, or other knowledgeable persons.

3. Final Action Of Council: The City Council shall take final action on any appeal from a decision of the Commission by adoption of an ordinance, and when so doing, it shall make of the Commission by adoption of an ordinance, and when so doing, it shall make and enter findings of fact from the record and reasons therefrom which support its action. Said findings and reasons shall set forth and demonstrate the manner in which the action carries out and helps to implement the goals, objectives and criteria set forth in the ordinance. The City Council may adopt all or portions of the Commission's findings and reasons.

4. Writ Of Certiorari: The action of the City Council approving or rejecting a decision or recommendation of the Commission shall be final unless within twenty (20) days from the date of the action an interested person of record obtains a writ of certiorari from the District Court of Shoshone County, State of Idaho, for the purpose of review of the action taken. (Ord. 492, 7-14-1987)

12-8-15: ENFORCEMENT; PENALTIES:

A. Methods Of Enforcement: In addition to the regulations of this Chapter, other Chapters of this Title and other provisions of law which govern the approval or disapproval of applications for permits or licenses covered by this Chapter, the Commission or its designee shall have the authority to implement the enforcement thereof by any of the following means:

1. Serving notice requiring the removal of any violation of this Chapter upon the owner, agent, occupant or tenant of the improvement, building, structure or land;

2. Calling upon the City Attorney to institute any necessary legal proceedings to enforce the provisions of this Chapter, and the City Attorney is hereby authorized to institute any actions to that end;

3. Calling upon the Chief of Police and authorized agents to assist in the enforcement of this Chapter.

In addition to any of the foregoing remedies, the City Attorney may maintain an action for injunctive relief to restrain or enjoin or to cause the correction or removal of any violation of this Chapter, or for an injunction in appropriate cases.

B. Penalties: Any person violating any provision of this Chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to penalty as provided in Section 1-4-1 of this Code. (Ord. 492, 7-14-1987; amd. 2000 Code)

CHAPTER 9

MISCELLANEOUS PROVISIONS

SECTION:

12-9-1: Duty To Keep In Good Repair

12-9-1: **DUTY TO KEEP IN GOOD REPAIR:** The owner, occupant or other person in actual charge, possession, or control of a building or structure in an historic district shall keep in good repair all of the exterior portions of such improvement, building or structure, all of the interior portions thereof when subject to control as specified in the designating ordinance or permit, and all interior portions thereof whose maintenance is necessary to prevent deterioration and decay of any exterior architectural feature. (Ord. 492, 7-14-1987)

CHAPTER 10

PENALTIES AND ENFORCEMENT

SECTION:

12-10-1: Violation
12-10-2: Civil Action

12-10-1: VIOLATION:

A. Misdemeanor: It is a misdemeanor for any person, as property owner, vendee, tenant, agent, employee, independent contractor, or otherwise, to engage in any activity prohibited by Section 12-5-1, 12-5-3, 12-8-13 or 12-9-1 of this Title.

B. Separate Offense: Each day of activity shall constitute a separate offense.

C. Principals In Crime: All persons concerned in the commission of the foregoing crime, whether they directly commit the act constituting the offense or aid and abet in its commission, or, not being present, have advised and encouraged its commission, are principals in any crime so committed. (Ord. 492, 7-14-1987; amd. 2000 Code)

12-10-2: **CIVIL ACTION:** In addition to the criminal penalties set forth in Section 12-10-1 of this Chapter, whenever it appears to the City Council that any person has engaged or is about to engage in any act or practice violating any provision of this Title, the City Council may institute a civil action in the District Court to enforce compliance with this Title. Upon a showing that a person has engaged or is about to engage in any act or practice constituting a violation of this Title, a permanent or temporary injunction, restraining order, or such other relief as the Court deems appropriate shall be granted. The City shall not be required to furnish a bond in such a proceeding. (Ord. 492, 7-14-1987)