

**CITY OF CARLSBAD ORDINANCE NO. 2023-31****AN ORDINANCE ESTABLISHING A HISTORIC  
PRESERVATION OVERLAY ZONE**

**WHEREAS**, the City of Carlsbad is a zoning authority and has the authority to regulate and restrict land uses and structures within its jurisdiction; and

**WHEREAS**, the archeological and historical heritage of the city is one of the city's most valued and important assets; and

**WHEREAS**, the city has an interest in the preservation of all prehistoric and historic ruins, sites, trails, primitive or historic roads and buildings; and

**WHEREAS**, overlay zones provide direction for areas that may have restricted or partial uses. Parcels in one of these zones may require specially defined actions in order to fully utilize the land; and

**WHEREAS**, overlay zones are also created to allow special uses that are either not allowed elsewhere or where the owner of the parcel must petition the Planning and Zoning Commission or City Council for special permissions; and

**WHEREAS**, the provisions in any overlay zone are in addition to those contained in the basic zone where the parcel is coded.

**NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CARLSBAD, NEW MEXICO**, that the Historic Protection Overlay Zone District is established and described in the attached Exhibit "A".

**INTRODUCED, PASSED, ADOPTED, and APPROVED** this 12th day of December, 2023

/s/Dale Janway

Dale W. Janway, Mayor

ATTESTED:

/s/Nadine Mireles

City Clerk

## EXHIBIT "A"

### Sec. 56-91      **Historic Protection Overlay Zone District (HP-O)**

- A. **Authority.** As the preservation of historic assets within the city has been determined by the city council to be a legitimate purpose of government, this section is adopted pursuant to and furthers the purposes of NMSA 1978, § 3-21-1 *et. seq.*, (Municipal and City Zoning Regulations); NMSA § 3-22-1 *et. seq.*, (Historic Districts and Landmarks Act); and NMSA § 18-6-1 *et. seq.*, (Cultural Properties Act).
- B. **Purpose.** The city council hereby declares that the archeological and historical heritage of the city is one of the city's most valued and important assets; and that the public has an interest in the preservation of all prehistoric and historic ruins, sites, trails, primitive or historic roads—excluding existing modified thoroughfares, structures, objects, and similar places and things for their scientific and cultural information and value; that the neglect, desecration and destruction of prehistoric and historic sites and objects results in an irreplaceable loss to the public. The term "prehistoric and historic sites and objects" includes, but is not limited to, real and personal property, including structures and ruins, that have historical and/or archeological significance. Therefore, the purpose of this article is to establish a cooperative approach for the protection and enhancement of the city's unique heritage and identity through the protection of historic sites, structures, and artifacts and through the designation of districts and landmarks of historical or archeological significance. This article is further intended to:
  - 1) Create a reasonable balance between private property rights and the public's interest in preserving the city's historic properties;
  - 2) Allow for the preservation, protection, and enhancement of archaeological and historical sites and objects within the city;
  - 3) Foster civic pride in the beauty and accomplishments of our past;
  - 4) Provide educational opportunities for city residents of all ages;
  - 5) Enhance and promote the city's ability to attract tourists and other visitors while respecting the privacy of individual building occupants;
  - 6) Promote the continued use, adaptive reuse, and maintenance of historic or architecturally significant properties;

- 7) Ensure that the exterior design and appearance of new structures and improvements within a historic district will be compatible with the established character of that district;
- 8) Provide owners of properties of historic significance with helpful information and other potential incentives for the preservation, maintenance, and improvement of their properties; and
- 9) Establish efficient and simple administrative systems to carry out the purposes of this article utilizing, wherever possible, approval procedures already in existence.

**Sec. 56-92      Historic Protection Overlay Zone District (HP-O); Definitions**

For the purposes of sections 56-91 through 56-100, the following words and phrases shall be defined as follows:

- a) *Historic Preservation Advisory Board (referred to as the HPAB in this article)* means the board established by city ordinance and authorized by section \_\_\_\_\_ to make recommendations to the planning and zoning commission and to the city council on proposed historic designations and projects affecting historic properties within the city.
- b) *Historic district* means an area within the city that has been so designated by ordinance pursuant to the procedures outlined in sections \_\_\_\_\_ and mapped as an overlay district on the city's official zoning map.
- c) *Historic landmark* means an individual building, structure, or site within the city that has been so designated by ordinance pursuant to sections \_\_\_\_\_ and mapped as an overlay district on the city's official zoning map.
- d) *Historic property* means a historic landmark or any property located within a historic district, including all structures or improvements thereon.
- e) *Historic property alteration certificate* means the official form issued under section 56-100 stating that proposed work on a historic property is compatible with the historic character of the property and therefore: (1) has been recommended for approval as appropriate and may be completed as specified in the certificate subject to compliance with all local, state and federal laws, as applicable; and (2) any building permits or other construction-related permits regarding work specified in the certificate may be issued by the community development department or other regulatory departments upon satisfaction of all requirements for such permits.

**Sec. 56-93      Designation of historic districts and city landmarks.**

- 1) The city council may designate and list individual historic landmarks or historic districts within the city, pursuant to this section.
- 2) Criteria for designation. The City Council may authorize the designation of a historic landmark or historic district where the landmark or district proposed for inclusion is found to possess not less than two of the following characteristics; the landmark or district.

- a. Embodies an architectural style or method of construction dating from one or more significant historic periods;
  - b. Establishes a sense of time and place unique to the City of Carlsbad
  - c. Exemplifies or reflects the cultural, social, economic, or political history of the nation, state, or city;
  - d. Is associated with the lives of significant historical persons or events;
  - e. Has the potential to preserve, display, or yield significant historical or archaeological information; or
  - f. Exists on the registry of the State or National Register of Historic Places.
- 3) Historic landmarks and districts shall be designated on the official zoning map.
- 4) Historic designation will result in the creation of a historic protection overlay zone district which will impose regulations on the designated property or district in addition to the zoning regulations already in effect in the underlying zoning district.
- 5) *Owner consent required.* Any person or group may nominate a historic landmark or district for designation; however, written consent of the property owner(s) is required before the nomination of an individual landmark will be considered. A historic district nomination application requires the written consent of the owners of at least 66 percent of the properties within the proposed district.
- 6) *Application requirements.* Nominating applications shall be submitted to the planning and regulations department director and shall contain at a minimum:
  - a. The proper application form as provided by the planning department director;
  - b. Any application fee as established by resolution of the city council;
  - c. A map showing the boundary of the proposed historic landmark or district, including all structures and property lines within the proposed landmark or district;
  - d. Written consent of the owner(s) satisfying the requirement of this section;
  - e. A statement of justification reviewing the historical or architectural significance of the proposed landmark or district and how it meets the criteria for designation in this section;
  - f. A description of the particular historic or architectural features that should be preserved. The description shall be based on a study prepared by an architectural or qualified authority on historic preservation surveying the proposed landmark or all properties within the proposed district, as applicable. The features deemed to be significant and worthy of preservation shall be specifically listed and illustrated in the study and shall form the basis for proposed preservation regulations within the district.
- 7) Procedure
  - a. Applications for adoption or amendment to a city landmark or historic district adoption may be made by any person.
  - b. Applications shall be filed with the Planning Department.

- c. The planning director shall provide public notice of hearings under this section.
- d. The historic preservation advisory board shall conduct a public hearing on the application and make a recommendation to the planning and zoning commission. The hearing shall be set within 30 days of receipt of a completed application. The HPAB may independently nominate or sponsor an application for the designation of an individual landmark or a historic district.
- e. The planning director, or their designee, shall set a date for a public hearing before the planning and zoning commission on the HPAB recommendation for a city landmark or historic district adoption or amendment request within 30 days of receipt of a report and recommendation from the HPAB.
- f. The planning and zoning commission shall conduct a public hearing on the application. The planning and zoning commission shall make a recommendation to the City Council as to whether the proposed historic landmark or district shall be officially designated on the official zoning map as an overlay district.
- g. Following receipt of the planning and zoning commission recommendation for the proposed city landmark or historic district adoption or amendment, the City Council shall conduct a public hearing to consider the recommendation of the planning and zoning commission and whether the proposed historic landmark or district shall be officially designated on the city zoning map as an overlay district.
- h. The City Council shall approve or deny the proposed zone map amendment.
- i. Final approval of the city landmark or historic district adoption shall be determined by the City Council.
- j. After the City Council has approved a city landmark or historic district adoption or amendment, the official zoning map shall be amended to note the change

**Sec. 56-94      HP-O Zone district standards.**

- 1) Within the boundaries of any HP-O zone, the exterior appearance of a structure shall not be altered; new structures shall not be constructed; and existing structures shall not be demolished until a historic property alteration certificate is approved pursuant to section 56-100.
- 2) A historic property alteration certificate shall not be required for:
  - a. Ordinary maintenance and repair where the purpose of the work is to preserve the integrity of the structure and/or materials, correct deterioration to the structure, and restore it to its condition prior to deterioration; or
  - b. Construction, alteration, or demolition involving only the structure's interior features, unless such work impacts the structure's exterior appearance.
  - c. Within the boundaries of any HP-O zone, no demolition permit shall be issued by the planning director until an HP-O demolition permit application has been reviewed by the HPAB pursuant to the procedures of sections 56-97 through 56-98.

- d. The owner of a designated historic property shall apply to the planning department director for a historic property alteration certificate using the forms and submitting the necessary documentation as prescribed by the director. The applicant also shall submit any fees as established by resolution of the city council.
  - e. *Standards for review.* No application for a historic property alteration certificate shall be approved unless the following conditions are satisfied:
    - 1. The proposed work will preserve, enhance, or restore and does not damage or destroy the significant features of the resource as identified in the nomination for designation under section 56-93 and any specific design guidelines adopted for the historic landmark or district; and
    - 2. The proposed work will be compatible with the relevant historic, cultural, or architectural qualities characteristic of the structure, site or district including, but not limited to, elements of size, scale, massing, proportions, orientation, materials, surface textures, and patterns, details, and embellishments and the relation of these elements to one another.
- 3) Review and Public Hearing. Review of the application and a public hearing shall follow the procedures established in sections 56-97 through 57-98.
  - 4) An applicant who has been denied a historic property alteration certificate may seek an exemption from all, or portions of, the requirements of this section based on economic hardship by requesting an HP-O economic hardship waiver per the procedures of section 56-95. If a request for economic hardship waiver is made, the applicant may not undertake any work on the historic property until and unless the planning and zoning commission makes a finding that economic hardship exists, and a certificate has been issued.
  - 5) No owner of a historic property shall permit such property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature that would produce a detrimental effect upon the character of the district as a whole or the life and character of the property itself. Examples of such deterioration include deterioration of exterior walls or other vertical supports; deterioration of roof or other horizontal members; deterioration of exterior chimneys; deterioration or crumbling of exterior stucco or mortar; ineffective waterproofing of exterior walls, roof, or foundations, including broken windows or doors; and deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.
  - 6) Nothing in this section shall be construed as to prevent any repairs, construction alterations, or demolition necessary to correct or abate the unsafe or dangerous condition of any structure or site feature or part thereof, where such condition has been declared unsafe or dangerous by the city planning director, other applicable city department directors, or federal or state agencies, and where proposed measures have been declared necessary by such departments or agencies. To the maximum practical extent such repairs, alterations, or demolitions shall be carried out in accordance with the standards required by this article.

**Sec. 56-95      Historic economic hardship waivers.**

- 1) **Applicability.** This section applies to applicants who have been denied a historic property alteration certificate and seek an exemption from all, or portions of, the historic protection overlay (HP-O) requirements based on economic hardships.
- 2) **Procedures.**
  - a. Applications for an exemption to the HP-O standards based on economic hardship may be made by the owner or agent of any parcel of property to be affected.
  - b. Exemptions based on economic hardship applications shall be submitted to the planning department and shall include all information per the economic hardship exemption form including a demonstration of the following:
    1. In the case of an income-producing property, that a reasonable rate of return cannot be obtained from the property in its present condition or if improved in compliance with this article.
    2. In the case of a non-income-producing property, that the property has no beneficial use as a dwelling or for an institutional use in its present condition or if improved in compliance with this article.
    3. The consideration for economic hardship shall not include willful or negligent acts by the owner, purchase of the property for substantially more than the market value, or failure to perform normal maintenance and repairs.
    4. In addition, the applicant shall demonstrate that it has consulted with the HPAB, local preservation groups, or interested parties in an effort to seek an alternative that will result in the protection of the property.
  - c. The Planning Director, or their designee, shall set a date for a public hearing before the planning and zoning commission on the request within 30 days of receipt of a complete application.
  - d. The Planning Department shall provide public notice of the hearing.
  - e. The planning and zoning commission shall conduct a public hearing on the application. The planning and zoning commission shall employ a quasi-judicial hearing process.
  - f. The planning and zoning commission shall approve or deny the request.
  - g. The final action of the planning and zoning commission regarding any exemptions based on economic hardship may be appealed to the City Council.

**Sec. 56-96 Decision Criteria.** An application for waiver or exemption based on economic hardship shall be approved if it meets the following criteria:

- 1) The hardship does not relate to the applicant's financial status.
- 2) The impact of this ordinance is such that it denies the applicant all reasonable or beneficial use of the property.

**Sec. 56-97 Historic Demolition Permit**

- 1) Applicability. This section applies to all applications for demolition within a historic protection overlay.
- 2) Procedure
  - a. Applications for historic demolition permits may be made by the owner or agent of any parcel of property to be affected.
  - b. Historic demolition permits shall be submitted to the planning department and shall include all information per the city's demolition permit application, including:
    1. Proof of ownership.
    2. Scaled floor plan showing the scope of demolition.
    3. A written explanation demonstrating the need for the demolition.
  - c. Applications for historic demolition permits shall be filed with the planning director.
  - d. The planning director, or their designee, shall set a meeting with the planning director and two members of the historic preservation advisory board designated by the historic preservation advisory board chair to review the application within ten (10) days of receipt of a complete application.
  - e. If the committee does not issue a demolition permit (this will need to be an approval of the plan, the Planning Department will need to issue any demolition permit), then the planning and regulations director shall set a date for a public hearing before the HPAB on the demolition request within 30 days of the demolition denial by the committee.
  - f. The HPAB shall conduct a public hearing on the application. The HPAB shall make a recommendation to the planning and zoning commission.
  - g. Following receipt of the HPAB recommendation for application, the planning and zoning commission shall conduct a public hearing during their next regular or special meeting as required from the HPAB hearing date. The planning and zoning commission shall employ a quasi-judicial procedure.
  - h. The planning and zoning commission shall approve or deny the demolition request.
  - i. The final action of the planning and zoning commission regarding any demolition request may be appealed to the City Council.
  - j. If the request for a demolition permit is denied by the Planning and Zoning Commission, and upheld by the City Council, then no permit for demolition shall be issued. This request will no longer be revisited unless a new proposal is presented, thereby beginning the process as a new project.

**Sec. 56-98 Decision Criteria for Partial Demolition Permit**



- 1) Decision criteria for partial demolition. An application for a partial demolition permit in a historic protection overlay shall be approved if it meets all of the following criteria:
  - a. The partial demolition is required for renovation, restoration, or rehabilitation of the structure.
  - b. The structure is determined to have historic or architectural significance but, the structure proposed for partial demolition is not structurally sound despite evidence of the owner's efforts to maintain the structure.
  - c. The request has mitigated, to the greatest extent possible, impacts on the historic importance of the structure or structures located on the property and on the architectural integrity of the structure or structures on the property.

**Sec. 56-99      Decision Criteria for Total Demolition Permit**

- 1) Decision criteria for total demolition. An application for a demolition permit in a historic protection overlay shall be approved if it meets all of the following criteria:
  - a. The structure is of minimal historic significance because of its location, condition, modifications, or other factors, and its demolition will be inconsequential to the historic preservation needs of the area; or
  - b. The structure is determined to have historic or architectural significance but:
    1. The structure proposed for demolition is not structurally sound despite evidence of the owner's efforts to maintain the structure; and
    2. The structure cannot be rehabilitated or reused on site to provide for any reasonable beneficial use of the property; and
    3. The structure cannot be practically moved to another site in the city; and
    4. The request demonstrates that the proposal mitigates to the greatest extent practical the following:
      - i. Any impacts that occur to the visual character of the neighborhood where demolition is proposed to occur.
      - ii. Any impact on the historical importance of the structure or structures located on the property and adjacent properties.
      - iii. Any impact on the architectural integrity of the structure or structures located on the property and adjacent properties.

**56-100 Major historic property alteration certificate.**

- 1) *Applicability.* New construction over 200 square feet in gross floor area, or the relocation or demolition of a historic property within a designated historic protection overlay shall require a major historic property alteration certificate per this section.
- 2) *Procedures.*
  - a. applications for a historic property alteration certificate may be made by the owner or agent of any parcel of property.
  - b. Historic property alteration certificate applications shall include the application, site plan, architectural drawings, and other documentation that show compliance with the applicable provisions of this Code and other adopted city plans or policies as required by the city's site plan application to the planning and regulations department, including:
    1. Proof of property ownership or owner's affidavit if the property is rented or leased.
    2. Architectural drawings (by NM licensed architect) showing proposed alterations, as applicable.
    3. A written explanation of how the request conforms to the decision criteria within subsection (3) below.
    4. Any applicable requirements as required by the planning and regulations director.
  - c. The application shall be filed with the planning department.
  - d. The planning department shall provide public notice of the hearing.
  - e. The planning department shall set a date for a public hearing before the HPAB on the request within 30 days of receipt of a complete application.
  - f. The historic preservation advisory board shall conduct a public hearing on the application and forward a recommendation to the planning and zoning commission. The HPAB recommendation on the application shall take one of three forms: (i) approval as presented; (ii) approval with conditions; or (iii) denial. If the Historic Preservation Advisory Board fails to make a recommendation within the 30-day period, the request will be forwarded to the planning and zoning commission without a recommendation.
  - g. The planning and zoning commission shall hold a public hearing at the next regularly scheduled meeting or as soon as is practicable after receiving the historic preservation advisory board recommendation or, in the event that the historic preservation advisory board isn't able to reach a recommendation after the 30-day review period has passed. The planning and zoning commission shall employ a quasi-judicial procedure.
  - h. The historic property alteration certificate application shall be reviewed based on its conformity with the decision criteria of section 56-100.

- i. The final action of the planning and zoning commission regarding any historic property alteration certificate may be appealed to the City Council.
- 3) Decision criteria. An application for a major historic property alteration certificate shall be approved if it meets all of the following criteria:
  - a. The proposed work will preserve, enhance, or restore significant features of the resources as identified in the criteria for designation of the nomination or any specific design guidelines adopted for the historic landmark or district.
  - b. The proposed work is compatible with the relevant historic, cultural, or architectural qualities characteristic of the structure, site, or district including, but not limited to, elements of size, scale, massing, proportions, orientation, materials, surface textures, and patterns, details, and embellishments and the relation of these elements to one another.
  - c. The proposed work will not significantly destroy, damage, or diminish significant features of the resources as identified in the criteria for designation of the nomination or within any specific design guidelines adopted for the historic landmark or district.