

REGULATIONS DESIGNED TO PREVENT DEMOLITIONS
WHILE AVOIDING A TAKING

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Demol by Neg.

1.1 Procedure. An owner seeking demolition of a structure in the district shall submit a complete application to the building official. The building official shall immediately forward the application to the commission.

1.2 Applications. An application to demolish a structure must be signed by the owner of the property and be accompanied by the following documentation before it is considered to be complete:

(1) An affidavit in which the owner swears or affirms that all information submitted in the application is true and correct.

(2) An indication that the demolition is sought for one or more of the following reasons:

(A) The proposed replacement structure is more appropriate and compatible with the historic character of the district than the structure proposed for demolition.

(B) No economically viable use of the property will exist unless the application is approved.

(C) The structure poses an imminent threat to public health or safety.

(3) For an application to replace the demolished structure with a new structure:

(A) Records depicting the original construction of the structure, including drawings, pictures, or written descriptions.

(B) Records depicting the current condition of the structure, including drawings, pictures, or written descriptions.

(C) Any conditions proposed to be placed voluntarily on new development that would mitigate the loss of the contributing structure.

(D) Architectural drawings for the new structure that is proposed to replace the structure to be demolished.

(E) A guarantee agreement between the owner and the city that demonstrates the owner's intent and financial ability to construct the proposed structure. The agreement must:

(i) contain a covenant to construct the proposed structure by a specific date in accordance with architectural drawings approved by the city through the certificate of appropriateness process in accordance with Section _____;

(ii) require the construction contractor to post a performance and payment bond for 100 percent of the estimated construction cost amount;

(iii) be secured by an adequate performance bond, a letter of credit, an escrow agreement, a cash deposit, or other arrangement, acceptable in each instance to the director; and

(iv) be approved as to form by the city attorney.

(4) For an application of no economically viable use:

(A) The past and current uses of the structure and property.

(B) The name and federal income tax bracket of the owner.

(C) If the owner is a legal entity, the type of entity and states in which it is registered.

(D) The date and price of purchase or other acquisition of the structure and property, and the party from whom acquired.

(E) The relationship, if any, between the owner and the party from whom the structure and property were acquired. If one or both parties to the transaction were legal entities, any relationships between the officers and the board of directors of the entities must be specified.

(F) The assessed value of the structure and property according to the two most recent tax assessments.

(G) The current fair market value of the structure and property as determined by a licensed appraiser.

(H) All appraisals obtained by the owner or prospective purchasers within the previous two years in connection with the potential or actual purchase, financing, or ownership of the structure and property.

(I) All listings of the structure and property for sale or rent within the previous two years, prices asked, and offers received.

(J) A profit and loss statement for the property and structure containing:

(i) The annual gross income for the previous two years.

(ii) Itemized expenses (including operating and maintenance costs) for the previous two years, including proof that adequate and competent management procedures were followed.

(iii) The annual cash flow for the previous two years.

(iv) Proof that the owner has made reasonable efforts to obtain a reasonable rate of return on the owner's investment and labor.

(K) A mortgage history of the property during the previous five years, including the principal balances and interest rates on the mortgages and the annual debt services on the structure and property.

(L) All capital expenditures during the current ownership.

(M) Records depicting the current condition of the structure and property, including drawings, pictures, or written descriptions.

(N) A study regarding both the cost of restoration of the structure or property and the feasibility (including architectural and engineering analyses) of adaptive use or restoration of the structure and property, as performed by a licensed architect or engineer.

(O) Any consideration given by the owner to profitable adaptive uses for the structure and property.

(P) Plans, if any, for proposed improvements on the site.

(Q) Any conditions proposed to be placed voluntarily on new development that would mitigate the loss of the landmark.

(R) Any other evidence that shows that the affirmative obligation to maintain the structure or property makes it impossible to realize a reasonable rate of return.

(5) For an application to demolish a structure that poses an imminent threat to public health or safety:

(A) Records depicting the current condition of the structure, including drawings, pictures, or written descriptions.

(B) A study regarding the nature, imminence, and severity of the threat, as performed by a licensed architect or engineer.

(C) A study regarding both the cost of restoration of the structure and the feasibility (including architectural and engineering analyses) of restoration of the structure, as performed by a licensed architect or engineer.

(6) Cumulative. If the owner seeks to demolish a structure for more than one reason, he shall provide all documentation required for each reason.

(7) Other evidence.

(A) The owner may submit other evidence to support his application.

(B) City departments and private persons and organizations may submit evidence.

1.3 Decision of the commission.

(1) Form of decision. Upon the filing of a complete application, the commission shall approve or deny the application within 45 days of the filing date. If the commission does not make a final decision within that time, the building official shall issue a demolition permit to the owner.

(2) Incomplete applications. The time periods in this section do not begin to run until the owner provides all the information required in Section 1.2.

(3) Burden of proof. The owner has the burden of proof to establish by clear and convincing evidence the necessary facts to warrant favorable action by the commission.

(4) If the application is one to replace a demolished structure with a new structure, the commission must first approve the certificate of appropriateness for the proposed new structure and the guarantee agreement to construct the new structure before it may consider the demolition application.

(5) Demolition standards.

(A) Replacement structures. The commission shall deny an application to replace a demolished structure with a new structure unless it finds:

(i) the proposed replacement structure is more appropriate and compatible with the district than the structure proposed for demolition;

(ii) the owner intends to build the replacement structure; and

(iii) the owner has the financial ability to build the replacement structure.

(B) Viable use. The commission shall deny an application of no economically viable use unless it finds:

(i) the owner cannot realize a reasonable rate of return on the property unless the demolition is allowed, regardless of whether the return realized is the most profitable return;

(ii) the structure cannot be adapted for any other use, whether by the owner or by a purchaser, which would result in a reasonable rate of return on the property; and

(iii) the owner has failed during the last two years to find one or more purchasers or tenants for the property that would enable the owner to realize a reasonable rate of return on the property, despite having made substantial ongoing efforts to do so.

(C) Public health or safety. The commission shall deny an application to demolish a structure that poses an imminent threat to public health or safety unless it finds:

(i) the structure constitutes an imminent threat to public health or safety; and

(ii) there is no reasonable way, other than demolition, to eliminate the threat in a timely manner.

(6) Independent bases for demolition. The commission shall approve the application if the owner meets the burden of proof for any of the subparagraphs of Paragraph (5).

1.4 Appeals.

(1) Any aggrieved person may appeal the decision of the commission to the city council by filing a written notice with the director within 10 days of the decision. If no appeal is made of a decision to approve the demolition within the 10-day period, the building official shall issue the demolition permit.

(2) If an appeal is filed, the city council shall hear and decide the appeal within 45 days of its filing. In considering an appeal, the sole issue before the city council shall be whether the commission erred in its decision. The council shall consider the same standards and evidence that the commission was required to consider in making the decision.

1.5 _____ Historic District Fund. Monies forfeited to the city because of an owner's failure to construct a replacement structure in accordance with a guarantee agreement and a certificate of appropriateness shall be placed in a special city account, to be known as the "_____ Historic District Fund." The monies in the fund may be used only for the purpose of enhancing the historic nature and character of this district.

