

# OVERALL ORGANIZATION & STRUCTURE

*Chapter 405 Zoning, Article IX Historic Landmarks Preservation Commission  
Chapter 264 Historic and Architectural Design Districts, Article I Stockade Area*

**CHANGE:**

Eliminates Chapter 264 Historic and Architectural Design Districts

**REASON:**

Redundancy. This chapter applies only to the Stockade Historic District. The legislative intent and rules of procedure are identical to those outlined in Chapter 405, Article IX. A key component of Chapter 264—that no new buildings in the Stockade Historic District shall exceed the height of the Old Dutch Church’s steeple base—has been included in Section 15, paragraph c of the proposed new ordinance.

# OVERALL ORGANIZATION & STRUCTURE

*Proposed new preservation ordinance*

**CHANGE:**

Reorganizes ordinance and adds new section headings.

**REASON:**

Clarity. In the existing ordinance, the legislative intent of the Landmarks Preservation Commission is buried under designation procedures. The additional section headings makes the text easier to search, particularly as it applies to criteria for designating new landmarks and districts, the procedures for doing so, and their subsequent regulation. Most of the rules and procedures outlined in each section can be found in the existing ordinance.

# ORGANIZATION & STRUCTURE

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# 2. COMMISSION MEMBERSHIP

*Section 4 of the proposed new ordinance*

## **CHANGES:**

Allows for the appointment of up to 3 alternate members

Establishes grounds for the Mayor to remove a member for cause

Stipulates mandatory annual commissioner training.

## **REASONS:**

The appointment of alternates assures a quorum at all meetings when a regular member cannot attend or has a conflict of interest.

The existing ordinance does not have procedures for removing a member who fails to attend scheduled meetings or violates the City's code of ethics.

A requirement of Certified Local Governments (CLG)—which applies to Kingston—is that preservation commissioners receive, at a minimum, for hours of training each year.

# DECISIONS & ANNUAL REPORT

*Section 6 of the proposed new ordinance*

## **CHANGES:**

Stipulates the recording and structure of decisions by the Commission and that information used in formulating decisions shall be made matter of public record.

Mandates submission of an annual report to the Mayor and the Common Council

## **REASONS:**

Codifies best practice for recording decisions by a preservation commission.

Annual reporting is a requirement of the CLG program. It also helps the commission measure and compare its work from year to year.

## PROPOSED

### **Section 6 – Records, Decisions and Annual Reports.**

#### *b) Decisions.*

*i. The Commission may rely on the personal knowledge of its members, on testimony from the public hearing, on its inspections of the property and on any reports available to it; provided, however, that reliance on such matter shall not be allowed unless the Commission shall have made the particular knowledge, inspection or report a matter of record at the public hearing and afforded every party reasonable time to respond to it at the hearing.*

*ii. Every decision of the Commission upon an application for the designation of a historic district or a landmark and every decision of the Commission approving, conditionally approving or denying a certificate of appropriateness shall be by written resolution, including findings of fact, shall refer to all the evidence in the record and to the exhibits, plans or specifications upon which such decision is based and shall contain the findings of fact, which shall set forth the recommendation of the Commission or shall approve, approve with conditions or deny approval. Every resolution shall expressly set forth any limitations or conditions imposed on any approval or any development, work or use authorized.*

*c) Annual Reports: The Commission shall submit an annual report of its activities to the Mayor and each member of the Common Council and make such recommendations to the legislative body as the Commission deems necessary to carry out the purposes of this local law.*

# BUDGET REQUESTS

*Section 9 of the proposed new ordinance*

## **CHANGES:**

Stipulates that funds shall be made available by the Council.

## **REASONS:**

As recommended by the Corporation Counsel's office, this change codifies that the budget is made available to the commission at the Common Council's discretion.

## EXISTING

### **§ 405-60 Costs of operation; budget requests.**

*The cost of operation of the Commission shall be funded by the City of Kingston. The Commission shall submit its budget and all requests for appropriations to the Mayor of the City of Kingston, annually on or before a date specified by the Mayor.*

## PROPOSED

### **Section 9. Costs of operation; budget requests.**

*The cost of operation of the Commission shall be funded by the City of Kingston with such funds to be made available to it by the Common Council in its sole judgment and discretion. The Commission shall submit its budget and all requests for appropriations to the Mayor annually or on or before a date specified by the*

# POWERS & DUTIES OF THE COMMISSION

*Section 10 of the proposed new ordinance – Administrative Reviews*

## **CHANGE:**

Replaces “preservation notice of action” with “certificate of appropriateness.” (In the existing Chapter 264: Historic and Architectural Design Districts, this approval is called a “certificate of recommendation.”)

## **REASON:**

The term, “certificate of appropriateness,” is widely used by municipalities and more accurately describes the approval granted by the commission for work on a designated property.

## EXISTING

### **§ 405-64 Review procedure.**

*A. No person shall carry out any exterior or historically designated publicly visible alteration...without first obtaining a **preservation notice of action** from the Landmarks Commission and a notification to the applicant to obtain a building permit, if necessary.*

## PROPOSED

### **Section 10. b) Administrative reviews**

*Evaluate an application for a **certificate of appropriateness**; approve, approve with modifications, or deny any proposal for exterior changes to a designated individual landmark or property within a designated historic district resulting from any such application;...*

# POWERS & DUTIES OF THE COMMISSION

*Section 10 of the proposed new ordinance – Administrative Reviews*

## **CHANGE:**

Adds stipulation that a historic district is not to be construed as a zoning district and that the commission is not authorized to adopt zoning regulations or laws.

## **REASON:**

Recommended in the 2014 NYS Model Preservation Law, this paragraph provides clarification about the powers and limitations of the commission with regards to the creation of historic districts and zoning provisions. The work of the historic preservation commission is focused on aesthetics, not land use. To be clear, this stipulation does not limit the commission's power to impose conditions on an application that are more restrictive than other applicable regulations as stated in the existing ordinance § 405-61.3 and included in the new ordinance in Section 10, part d.

## PROPOSED

### **Section 10. c) Historic districts vs. zoning districts**

*The Commission may designate or advise designation of a historic district under this historic preservation ordinance and that historic district is not to be construed as a zoning district under the Code of the City of Kingston. Nothing contained in this historic preservation ordinance shall be construed as authorizing the Commission to adopt a law, by-law or regulation that regulates or limits the height and bulk of buildings, regulates and determines the area of yards, courts and other open spaces, regulates density of population or regulates or restricts the locations of trades and industries or creates zoning districts for any such purpose.*

# COOPERATION OF CITY AGENCIES

*Section 11 of the proposed new ordinance – City Agencies*

**CHANGE:**

Adds stipulation that city agencies will assist and furnish the commission with permits, plans, reports, maps and statistical and other information which the commission may require for its work.

**REASON:**

Codifies cooperation by city agencies so that the commission can carry out its duties.

PROPOSED

**Section 11 Cooperation of city agencies**

*All City of Kingston agencies shall, upon request of the Commission, assist and furnish available permits, plans, reports, maps and statistical and other information which the Commission may require for its work.*

# CRITERIA & DESIGNATION OF LANDMARKS OR HISTORIC DISTRICTS

*Section 12 of the proposed new ordinance – Designation of Landmarks & Historic Districts*

## **CHANGES:**

Adds criterion for designating an individual landmark — that it has yielded or may yield information important to prehistory or history.

Outlines separate designation criteria for individual landmarks and historic districts.

Adds criteria for designating interior landmarks, scenic landmarks, and properties that have achieved significance within the last 50 years.

## **REASONS:**

The changes in this section expand the criteria for designating landmarks and historic districts. It also expands the types of resources that can be protected. Scenic resources—such as the summit at Hasbrouck Park and Company Hill Path—have been identified in the city’s Natural Resources Inventory.

Select municipalities that designate interior landmarks:

New York City

Syracuse

Greenburgh

Peekskill

## PROPOSED

### **Section 12 Criteria and Designation**

*a) Individual Landmark: The Commission may designate an individual property as an individual landmark if it:*

*... v. Has yielded or may be likely to yield information important in prehistory or history.*

*b) Historic District: The Commission may designate a group of properties within Kingston as an historic district if a majority of properties therein:*

- i. Contain properties which meet one or more of the criteria for designation as a landmark and which may have within its boundaries other properties or structures that, while not of such historic and/or architectural significance to be designated as landmarks, nevertheless contribute to the overall visual characteristics of the landmark or landmarks located within the historic district; and*
- ii. Constitute a unique section of Kingston by reason of possessing those qualities that would satisfy such criteria.*

*c) Interior Landmark: The commission may designate the interior of a property as an interior landmark if such interior has special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation and:*

- i. it is customarily open or accessible to the public; or*
- ii. it is an interior into which the public is customarily invited.*

*d) Scenic Landmark: The commission may designate a landscape feature or group of features. ...*

# CRITERIA FOR ISSUING A CERTIFICATE OF APPROPRIATENESS

*Section 15 of the proposed new ordinance – Certificate of Appropriateness*

## **CHANGE:**

Adopts clearer language to describe criteria by which the Commission makes decisions regarding appropriateness.

## **REASON:**

The existing ordinance uses language that is confusing and redundant. Clarity of words and their organization are essential for the formulation of sound decisions that can be understood by the applicant, agencies, and, if necessary, appeal bodies.

*Examples of redundancy and poor phrasing in the existing criteria:*

*“(3) The special character and aesthetic interest that any structure involved adds to the area; (4) The factors of aesthetic, historical and architectural values and significance, architectural style, design, arrangement, texture, material and color;...”*

*“The relationship between the width to height of the front elevation;...”*

## PROPOSED

### **Section 15 Criteria for Issuing a Cert. of Appropriateness**

*c) In applying the principle of compatibility set forth in paragraph (b) of this section, the Commission shall consider the following factors:*

- i. the general design and character of the proposed alteration or new construction relative to existing features of the property or improvement;*
- ii. the scale and visual compatibility of the proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;*
- iii. texture, color, and materials, and their relation to similar features of the property and other properties in the neighborhood;*
- iv. visual compatibility with surrounding properties, including proportion of the property’s facade, proportion and arrangement of windows and other openings within the facade, roof shape, and the rhythm of spacing of properties on streets, including setback; and the importance of historic physical and visual features to the significance of the property; and*
- v. within the Stockade Historic District, the overall height of the proposed alteration or new construction which shall not exceed that of the base of the visually important Old Dutch Church steeple, which rises 62 feet above the curb level.*

# CRITERIA FOR ISSUING A CERTIFICATE OF APPROPRIATENESS

*Section 15 of the proposed new ordinance – Certificate of Appropriateness*

## **CHANGES:**

Notes that the commission's review is guided by the Secretary of the Interior's Standards for the Treatment of Historic Properties.

Adds measure for protecting potential archaeological resources on building sites.

## **REASONS:**

Codifies a federal criteria already used by the commission as a guide.

As for archaeological resources, Kingston's long history of settlement increases the possibility that valuable archaeological evidence may be uncovered on building sites. This new measure is a means for protecting them or at least made accessible to qualified persons for study.

## PROPOSED

### **Section 15 Criteria for Issuing a Cert. of Appropriateness**

*b) In making this determination, the Commission's decision to approve, approve with modification(s), or deny an application for a certificate of appropriateness for an individual landmark or property within a designated historic district will be guided by the Secretary of the Interior's Standards for Rehabilitation, and when proposed work is within a historic district, by the following principles...*

*e) Where the Commission grants a certificate of appropriateness under circumstances where the permitted activity is likely to uncover or affect archaeological resources, the Commission shall require reasonable efforts to protect and preserve such resources. Where such protection and preservation is not feasible, the Commission shall nonetheless impose appropriate and reasonable conditions to insure that the archaeological resource is made accessible for a reasonable period to qualified persons.*

# CERTIFICATE OF APPROPRIATENESS APPLICATION PROCEDURE

*Section 16 of the proposed new ordinance – Certificate of Appropriateness*

## **CHANGES:**

Adds types of information required for reviewing applications.

Stipulates authority to approve ordinary maintenance and in-kind replacement without a public hearing

## **REASONS:**

The existing ordinance does not adequately stipulate the types of information needed by the Commission to evaluate applications. Photographs and samples of building materials should always be required. For new construction in a historic district, a visibility study may be necessary for understanding its impact on, and relationship to, its context.

The Commission regularly receives applications that can be construed as maintenance. It should have the power to approve such work without a public hearing.

## PROPOSED

### **Section 16 Cert. of Appropriateness Application Procedure**

*b) The application for certificate of appropriateness shall contain:*

- i. name, address, and telephone number of applicant;*
- ii. name, address, and telephone number of the property owner;*
- iii. application number as assigned by the Building Safety Division;*
- iv. location and photographs of property;*
- v. elevation drawings of proposed changes;*
- vi. perspective drawings or a visibility study to illustrate relationship of work to, and impact on, adjacent properties, may be required;*
- vii. samples of building materials to be used including specifications about material composition, maintenance, and placement on property;*

*e) Upon submission of a complete application, the Commission shall have the authority to, without public hearing and notice:*

- i. determine whether the proposed work constitutes ordinary maintenance and repair for which a certificate of appropriateness is not required;*
- ii. approve work which is considered replacement-in-kind;*
- iii. approve work that is of any other type that has been previously determined by the Commission to be appropriate for delegation to staff.*

# CERTIFICATE OF APPROPRIATENESS PUBLIC NOTICE REQUIREMENTS

*Section 17 of the proposed new ordinance – Certificate of Appropriateness*

## **CHANGE:**

Stipulates that upon submission of a complete application for a certificate of appropriateness, public notice of the proposal shall be posted on the property for a minimum of ten days before the public hearing.

## **REASON:**

Improves public notice with regards to hearings and conforms with requirements already in place for others pending actions, such as zoning variance applications.

## PROPOSED

### **Section 17 Cert. of Appropriateness Public Notice Requirements**

*a) Upon submission of a complete application for a certificate of appropriateness, public notice of the proposal shall be posted by the owner or owner's representative on the property for a minimum of ten days. This notice must remain in place until a decision to approve or deny the certificate of appropriateness has been made. The notice shall specify the proposed work, the time and place of the public hearing, and to whom and by when any public comments are to be communicated. The notice must be placed at or near the property line in the front yard so that it will be plainly visible from the street, and, in cases where a property has frontage on more than one street, an additional sign must be placed at or near the property line on any additional street frontage so that the sign will be plainly visible from the street on which it has such additional frontage.*

# EXPIRATION OF APPROVAL; EXTENSION OF APPROVAL

*Section 19 of the proposed new ordinance – Certificate of Appropriateness Expiration*

## **CHANGES:**

Extends the period of approval from 12 months to 24 months and allows for up to two six-month extensions provided that they are applied for by the applicant at least two months prior to the expiration.

## **REASONS:**

Many building projects take more than a year to reach completion. The extensions allow the applicant a way to avoid submitting a new application if the scope of work has not changed and work is still not complete after 24 months.

## PROPOSED

### **Section 19 Expiration of Approval; Extension of Approval**

*Certificates of appropriateness shall be valid for 24 months, after which time the owner shall apply for a new certificate if they still wish to undertake work on the property. At least two months prior to expiration of the 24-month period the owner may apply, in writing, for an extension and shall explain the reasons for the extension request. The Commission may grant up to two extensions of six (6) months each. A written application for an extension of a certificate of appropriateness approval shall not be considered an application for a new certificate of appropriateness.*

# HARDSHIP PROCESS AND CRITERIA FOR ALTERATION AND DEMOLITION DECISIONS

*Sections 20, 21 and 22 of the proposed new ordinance – Hardship Process and Criteria for Alterations and Demolitions*

**CHANGE:**

Greatly expands the process and criteria for applying for hardship in relation to a commission decision on an alteration or demolition application.

**REASON:**

Outlines clearer procedures than those in the existing ordinance.

# AFFIRMATIVE MAINTENANCE & REPAIR REQUIREMENT

*Section 23 of the proposed new ordinance – Affirmative Maintenance*

## **CHANGES:**

Renames the “Deterioration by neglect” section.

Adds clause that nothing in ordinance shall be construed to prevent ordinary maintenance.

Identifies interior conditions that may negatively impact a building’s exterior.

Stipulates Property Maintenance Code of New York State Uniform Fire Prevention and Building Code

## **REASONS:**

More accurately describes purpose of provision.

Acknowledges that interior conditions can negatively impact the exterior.

Stipulates a specific state standard to be used by the building inspector, which can be referenced by the public.

## PROPOSED

### **Section 23 Affirmative Maintenance and Repair Requirement**

*a) Ordinary maintenance; repair.*

*i. Nothing in this ordinance shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a historic landmark or property within a historic district that does not involve a change in design, building materials, color or outward appearance. ...*

*b) No owner or person with an interest in real property designated as an individual landmark or included within a historic district shall permit the property to fall into a serious state of disrepair. Maintenance shall be required, consistent with the Property Maintenance Code of New York State Uniform Fire Prevention and Building Code and all other applicable local regulations.*

*c) Every owner or person in charge of an improvement on an individual landmark or a property within a historic district shall keep in good repair ...*

# ENFORCEMENT AND VIOLATIONS; PENALTIES

*Section 24 of the proposed new ordinance – Enforcement*

## **CHANGES:**

Outlines clear process for enforcement and penalties.

Stipulates a specific state standard to be used by the building inspector.

## PROPOSED

### **Section 24 Enforcement and Violations; Penalties**

*a) All work performed pursuant to a certificate of appropriateness issued under this ordinance shall conform to the requirements expressly stated in the certificate or reasonably implied therefrom. It shall be the duty of the building inspector to periodically inspect any such work to assure compliance with the certificate and all applicable laws. In the event any requirement included in the certificate of appropriateness has not been met, or upon notification of that fact by the Commission, the building inspector shall issue a stop work order upon notifying the owner, or person in charge, of the violation and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect.*

*b) Any owner or person in charge of a property who demolishes, alters, constructs, or permits a designated property to fall into a serious state of disrepair in violation of this ordinance in the absence of a certificate of appropriateness, a finding of economic hardship, or other approval by the Commission, may be required by the Kingston Common Council to restore the property and its site to its appearance prior to the violation.*

*c) If, in the judgment of the Commission, a violation of this ordinance exists that will result in a detrimental effect upon the life and character of a designated historic resource, landmark, property or on the character of a historic district as a whole, the Commission shall notify the building inspector. If, upon investigation, the building inspector finds non-compliance with... requirements of the Property Maintenance Code of the New York State Fire Prevention and Building Code, or any other applicable law or regulation,...*

# APPEALS

*Section 25 of the proposed new ordinance – Appeals*

## **CHANGES:**

Appoints the Zoning Board of Appeals as the appeal body for decisions rendered by the Commission.

Stipulates that the appeal review shall be based on the same record and criteria used by the Commission for its decision.

## **REASONS:**

Recommended in the 2014 NYS Model Law.

Promotes a uniformed review of an application.

## EXISTING

### **§ 405-69 Appeals**

*Any person aggrieved by an action of the Commission in disapproving or limiting a preservation notice of action application and the Zoning Board's support of such Commission action may bring a proceeding to review in a manner provided by Article 78 of the Civil Practice Law and Rules in a court of record on the ground that such decisions are illegal, in whole or in part.*

## PROPOSED

### **Section 25 Appeals**

*Any person aggrieved by a decision of the Commission relating to a certificate of economic hardship or a certificate of appropriateness may, within 15 days of the decision, file a written appeal to the City of Kingston Zoning Board of Appeals for review of the decision. Appellate review shall be based on the same record that was before the Commission and using the same criteria in this ordinance.*

# DEFINITIONS

*Section 26 of the proposed new ordinance – Definitions*

## **CHANGES:**

Expands the glossary of terms used in the ordinance.

Moves glossary to end of ordinance.

## **REASONS:**

It is critical for comprehension that all special terms be defined.

Glossary is lengthy and its purpose is for reference.