

Chapter 17.15

HISTORIC PRESERVATION

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17.15.010 Title.

The City of Port Orford Historic Preservation Ordinance.

17.15.020 Purpose.

The City of Port Orford establishes a Historic Preservation Ordinance to identify, recognize, and preserve significant properties related to the community's history; encourage the rehabilitation and ongoing viability of historic buildings and

structures; strengthen public support for historic preservation efforts within the community; foster civic pride; and encourage cultural heritage tourism.

The process is a voluntary process for property owners who wish the historic value of their property to be preserved.

17.15.030 Applicability.

No provision of this Ordinance shall be construed to prevent the ordinary maintenance of a Landmark when such action does not involve a change in design, materials, or appearance. No provision in this Ordinance shall be construed to prevent the alteration, demolition, or relocation of a Landmark when the Building Official certifies that such action is required for the public safety. At his or her discretion, the Building Official may find that under state law and Section 11.D.3 that a Landmark does not meet current building code but is not dangerous.

17.15.040 Definitions.

The following definitions apply to terms used in this Ordinance. Terms not defined have their commonly construed meaning:

Alteration: An addition, removal, or reconfiguration that changes the appearance of a Landmark. Painting, when color is not specifically noted in Landmark's record of designation, and ordinary maintenance are excluded from this definition.

Building: A house, barn, church, hotel, or similar construction created principally to shelter any form of human activity.

Certificate of Appropriateness (COA): A document issued by the Historic Preservation Officer indicating that the applicant has satisfactorily met the provisions of this Ordinance for the alteration, relocation, or demolition of a Landmark.

Demolition: The complete destruction or dismantling of sixty-five (65) percent of, or greater, of the entirety of a Landmark.

Eligible/Contributing: A building, structure, object, or site originally constructed within the applicable period of significance that retains and exhibits sufficient integrity (location, design, setting, materials, workmanship, feeling, and association) to convey a sense of history. These properties strengthen the historic integrity of the City of Port Orford.

Eligible/Significant: A building, structure, object, or site originally constructed within the applicable period of significance that retains and exhibits sufficient integrity (location, design, setting, materials, workmanship, feeling, and association) to convey a sense of history. These properties strengthen the historic integrity of the city, and are likely individually eligible for listing in the Landmark Register.

Exceptional Significance: The quality of Historic Significance achieved outside the usual norms of age, association, or rarity.

Historic integrity: The quality of wholeness of historic location, design, setting materials, workmanship, feeling, and/or association of a historic resource, as opposed to its physical condition.

Historic Commission: A sub-committee of the City Planning Commission responsible for the administration of this Ordinance.

Historic Resource: A building, structure, object, site, or district that is at least fifty (50) years old or is of exceptional significance and potentially meets the integrity and significance criteria for listing in the Landmark Register, but may not necessarily be recorded in the Historic Resource Survey.

Historic Resources of Statewide Significance: Buildings, structures, sites, and objects, that are listed in the National Register.

Historic Resource Survey: The record of buildings, structures, objects, and sites recorded by the City of Port Orford used to identify Historic Resources potentially eligible for listing in the City of Port Orford Landmark Register.

Historic Significance: The physical association of a building, structure, site, object, with historic events, trends, persons, architecture, method of construction, or that have yielded or may yield information important in prehistory or history.

Landmark: A building, structure, site, or object, listed in the Landmarks Register.

Landmark Register: The list of historic resources officially recognized by the City of Port Orford as important to its history and afforded the protection under this Ordinance.

National Register of Historic Places: The nation's official list of buildings, structures, sites, and objects, important in the nation's history and maintained by the National Park Service in Washington, D.C., and hereinafter referred to as the "National Register." Historic resources listed in the National Register are referred to as "Historic Resources of Statewide Significance" in Oregon Revised Statutes.

Non-Contributing: A building, structure, object, or site originally constructed within the applicable period of significance that does not retain or exhibit sufficient integrity (location, design, setting, materials, workmanship, feeling, and association) to convey a sense of history. These properties do not strengthen the historic integrity of an existing or potential historic district in their current condition.

Not in Period: A building, structure, object, or site that was originally constructed outside the applicable period of significance.

Object: A construction that is largely artistic in nature or is relatively small in scale and simply constructed in comparison to buildings or structures, including a fountain, sculpture, monument, milepost, etc.

Ordinary Maintenance: Activities that do not remove materials or alter qualities that make a historic resource eligible for listing in the Landmark Register, including cleaning, painting, when color is not specifically noted in Landmark's record of designation, and limited replacement of siding, trim, and window components when such material is beyond repair and where the new piece is of the same size, dimension, material, and finish as that of the original historic material. Excluded from this definition is the replacement of an entire window sash or more than twenty (20) percent of the siding or trim on any one side of a resource at any one time within one calendar year.

Period of Significance: The time period, from one to several years or decades, during which a Landmark was associated with an important historic event(s), trend(s), person(s), architecture, method(s) of construction.

Record of Designation: The official document created by the Commission that describes how a Landmark meets the criteria for listing in the Landmark Register.

Rehabilitation: The process of returning a Landmark to a state of utility through repair or alteration, which makes possible an efficient use while preserving those portions and features of the Landmark and its site that convey its historic significance.

Relocation: The removal from or moving of a Landmark from its original location noted in the record of designation.

Site: The location of a significant event, prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of any existing building, structure, or object.

Structure: A functional construction made usually for purposes other than creating human shelter, such as an aircraft, bridge, barn, fence, dam, tunnel, etc. Streetscape: The physical parts and aesthetic qualities of a public right-of-way, including the roadway, gutter, tree lawn, sidewalk, retaining walls, landscaping and building setback.

17.15.050 The Historic Preservation Commission

The Historic Preservation Commission is a subcommittee of the Planning Commission and composed of at least 3 persons. The Planning Commission serves the purpose of conducting land use procedures when needed. The Historic Preservation Commission will now be referred to as the Commission.

17.15.060 Duties of Commission

A. Employing the procedures and criteria in Section 9, the Commission shall identify and evaluate properties in the City of Port Orford and maintain a Historic Resource Survey consistent with the standards of the Oregon State Historic Preservation Office, hereinafter referred to as "SHPO."

B. Employing the procedures and criteria in Section 11, the Commission shall designate properties to the Landmark Register.

C. Employing the procedures and criteria in Sections 12, the Commission shall review and act upon applications for the alteration, relocation, or demolition of Landmarks.

D. The Commission shall support the enforcement of all state laws relating to historic preservation.

E. The Commission shall perform any other functions that may be designated by resolution or motion of the City Council.

F. The Commission may publish and adopt written and graphic guidelines and example materials to clarify the criteria in this Ordinance and to assist applicants in developing complete and viable applications to designate, alter, rehabilitate, relocate, or demolish Landmarks. Documents intended to be used for the regulation of alterations as defined in this Ordinance must be voted on and adopted by the Commission and approved as part of the City of Port Orford Zoning and Development Code using the established procedures for amendments.

G. The Commission may undertake to inform the citizens of, and visitors to the City of Port Orford, regarding the community's history and prehistory;

promote research into its history and prehistory; collect and make available materials on the preservation of Landmarks; provide information on state and federal preservation programs; and document Landmarks prior to their alteration, demolition, or relocation and archive that documentation.

H. For purposes consistent with this Ordinance and subject to the approval the City Council, the Commission may seek, accept, and expend public appropriations; seek, accept, and expend grant and gift funds; cooperate with public and private entities; assist the owners of Landmarks in securing funding for the preservation of their properties; and report on such activities to the City Council.

J. The Commission may comment on local, state, or federal issues, laws, and requests relating to historic preservation.

K. The Commission may seek expert assistance and elect to form adhoc committees to carry out its business.

17.15.070 Severability.

If any portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance shall remain in force and effect.

17.15.080 Conflicts with Other Laws

If the provisions of this Ordinance are found to be in conflict with federal or state laws, the federal or state law shall prevail. This ordinance will take precedence over previously adopted city code 17.16.070.

17.15.090 Identification and Evaluation of Historic Resources

The Historic Resource Survey lists, describes, and determines the eligibility of historic resources for listing in the Landmark Register. Not all properties listed in the Historic Resource Survey are eligible for listing in the Landmarks Register. A property need not be first listed in the Historic Resource Survey before being nominated to the Landmark Register under Section 100.

A. The Commission shall determine and periodically revise priorities for the identification and evaluation of historic resources based on the community's needs and interests.

B. Before commencing inventory studies or updates, the **Commission/Planning Commission** shall provide public notice describing the inventory, its purposes, and invite public participation as required to news media and posted at Post Office.

C. Surveyed properties shall be identified as Eligible/Contributing (EC), Eligible/Significant (ES), Non-Contributing (NC), or Not in Period (NP). Evaluation and documentation of properties in the Historic Resource Survey shall meet the requirements of the document "Guidelines for Historic Resource Surveys in Oregon, 2010" or most recent guidance for such efforts published by the SHPO and be supplied to the agency within six (6) months of the completion of the study.

D. The Historic Resource Survey shall be maintained as a public record with the exception of archaeological sites, which is prohibited by State law.

E. Citizens shall have the opportunity to review and correct information included in the Historic Resource Survey.

F. The Commission may collect further information including, but not limited to, current photographs, architectural descriptions based on on-site observations, or archival documentation for properties already listed in the Landmark Register or National Register for the purposes of administering this Ordinance pursuant to the provisions of this Section.

17.15.100 Landmark Register

The Commission may designate historic resources to the Landmark Register as a means of providing recognition of their significance and providing incentives and guidelines for their preservation. The Landmark Register is maintained by the **City of Port Orford** and shall be available to the public.

A. Historic resources within the corporate boundaries of the City of Port Orford and listed in the National Register before and after the adoption of this Ordinance are automatically listed in the Landmark Register and need not be documented and adopted as outlined in Section B.2 through B.4 of Section 10. In such cases, the National Register nomination shall serve as the record of designation. As Historic Resources of Statewide Significance, all National Register-listed properties are subject to the regulations in Section 11, pursuant to Oregon State Law. Notice of this action shall be provided in writing to each property owner and to the Commission at its next regularly scheduled meeting.

B. Criteria for Designating Historic Resources to the Landmark Register. Any building, structure, object, or site may be

designated to the Landmark Register if it meets all the Criteria of Section 10A or all of the criteria listed below:

1. The property is located within the boundaries of the City of Port Orford.
2. The property is over fifty (50) years of age or of exceptional importance.
3. The property possesses sufficient historic integrity, in that there are no major alterations or additions that have obscured or destroyed the significant historic features. Major alterations that may destroy the historic integrity include, but are not limited to, changes in pitch of the main roof, enlargement or enclosure of windows on principal facades, addition of upper stories or the removal of original upper stories, covering the exterior walls with non-historic materials, moving the resource from its original location to one that is dissimilar to the original, additions which significantly detract from or obscure the form and appearance of the historic resource when viewed from the public right-of-way.
4. The property has historic significance as demonstrated by meeting at least one of the following criteria:
 - (a) Association with events that have made a significant contribution to the broad patterns of our history; and/or
 - (b) Association with the lives or persons significant in our past; and/or
 - (c) 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 entity whose components may lack individual distinction; and/or

(d) Have yielded, or may be likely to yield, information important in prehistory or history.

C. Nomination Procedure. The nomination procedures are as follows:

1. The nomination for a historic resource to the Landmark Register must include a statement discussing how the property meets the criteria under B of this Section and be documented at a minimum to the standards established by the Oregon Historic Preservation Office for Intensive Level Surveys in the document “Guidelines for Historic Resource Surveys in Oregon, 2010” or most recent guidance for such efforts published by the SHPO. They may establish additional standards for a complete application.
2. Prior to setting the proposed nomination on the agenda for the next relevant Commission meeting, property owners shall be informed in writing of the nomination process pursuant to local and state law. To be listed in the Landmark Register, the property owner(s) shall provide to the City a written statement acknowledging that the owner understands the nomination process and the results of such a designation, and wishes to have their property listed in the Landmark Register.
3. Upon acceptance of a complete application and receipt of written owner consent, the **Commission/Planning Commission** shall schedule a public hearing before the Commission pursuant to applicable state and local laws.
4. The **Commission/Planning Commission** shall review the documentation for completeness, accuracy, and compliance with the “Criteria for Designating Historic Resources to the Landmark Register” of this

Section. The **Commission/Planning Commission** may make a recommendation to approve, deny, or table the application pending further testimony, or to allow for the petitioner to provide additional information as requested by the Commission. The Commission shall develop written findings to support its decisions.

5. Applications will be approved or denied by the **Commission/Planning Commission**.

6. Upon final approval by the **Commission/Planning Commission**, a record of designation shall be prepared that includes the original nomination materials, and any testimony or additional materials considered during the nomination process that establishes the eligibility of the historic resource for listing in the Landmark Register.

7. A record of designation may be amended through the process described in Section 100C at the next regular Commission meeting.

D. Results of listing in Landmark Register. Historic resources listed in the Landmark Register receive the following benefits;

1. Landmarks are protected under the provisions of Section 11 through 15.

2. The **Commission/Planning Commission** shall consider granting zoning variances and/or conditional use permits in order to encourage the productive use and preservation of Landmarks.

3. The local Building Official shall consider waiving certain code requirements in accordance with the existing state building code.

4. Property owners of Landmarks may seek

technical or financial assistance from the Planning Commission in applying for grants or tax incentives for rehabilitating their properties as resources and funds are available.

5. Property Owners of Landmarks are eligible to receive City pass through grants and loans to assist with the preservation of their buildings as resources and funds are available.

17.15.110 Treatment of Historic Resources listed in the Landmark Register.

The Landmarks Commission shall use the provisions of this Section to preserve the exterior character-defining features of individual Landmarks; the exterior of individual buildings in Landmark historic districts; and exteriors and interiors of city-owned Landmarks.

A. Activities not subject to the provisions of this Section.

1. Alterations to building interiors.

2. Application of exterior paint color when color is not specifically noted in record of designation.

3. Alterations to landscape features not specifically identified as historically significant in record of designation.

B. No Landmark or exterior landscape or archaeological element noted as significant in the record of designation shall be altered, relocated, or demolished, or a new building or structure constructed on the same lot as a Landmark without a Certificate of Appropriateness signed and issued by the Planning Commission. Certificates must be presented to the Building Official before a building or demolition permit is issued.

1. An application for a Certificate of Appropriateness must include a description of the proposed activity, accompanying maps, photographs, drawings, and other documentation. The Planning Commission may establish additional standards for a complete application, including defining different criteria for a complete application under provisions C, D, and E of this Section.

2. Upon acceptance of a complete application, the Commission shall decide at the next scheduled Commission Meeting if the proposed work is subject to provisions C, D, or E of this Section.

3. The Commission minutes will summarize the proposed project, noting the criteria specified in this Ordinance under which the application shall be considered. At the next scheduled meeting, the Commission will make a recommendation to approve, approve with conditions, or deny the application for a Certificate of Appropriateness. Materials that may be used in the preparation of the report include the record of designation; and/or National Register nomination; and/or other archival photos, maps; and/or other documentary evidence specific to the subject property; and/or observations from on-site inspections from the public-right-of way to document its historic appearance or alteration over time; and/or documents and publications of the National Park Service or Oregon State Historic Preservation Office. Documents not available from the City at the time of application for a Certificate of Appropriateness shall be made available to the applicant at least ten 10 calendar days before a public hearing is held or administrative decision is made.

4. The Commission shall review and act upon applications for the alteration, relocation, and demolition of a Landmark.

Applications for the alteration of a Landmark may be approved, approved with conditions, or denied. Applications for the relocation or demolition of a Landmark may be approved, approved with conditions, or the action delayed for up to one year. The Commission minutes will reflect findings to support its decisions.

5. Approval for the alteration of a Landmark shall be effective for a period of two (2) years and one (1) year for the relocation or demolition of a historic resource.

C. The Commission may approve the alteration of a Landmark without a public hearing when the proposed alteration will not significantly change the qualities that merited the listing of the Landmark in the Landmark Register.

Activities eligible for this provision include the following:

1. Construction of a fence that meets code requirements of the City of Port Orford.

2. Demolition of an outbuilding noted as sharing a lot with a Landmark and specifically noted as not historically significant in its designation.

3. New addition to a Landmark or new construction not visible from the public right-of-way.

D. A public hearing before the Commission/Planning Commission shall be required for activities not exempted in A.1 through A.3. and C.1 through C.3 of this Section.

1. Prior to submitting an application for a permit pursuant to this Section, proponents are encouraged to request a pre-application conference to review concepts and proposals. The Commission may assign a

staff member or other appropriate person(s) to complete the consultation. The Commission may also form ad-hoc committees for this purpose. Commission members participating in pre-application conferences shall disclose their ex-parte contact at the time of a public hearing on the proposal.

2. Upon acceptance of a complete application the Planning Commission **as the parent to the The Historic Preservation Commission** shall schedule a public hearing pursuant to applicable local and state laws.

3. In order to approve an application for the alteration of a Landmark, the **Commission/Planning Commission** must find that the proposal meets the following guidelines as applicable:

(a) A property shall be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships; and/or

(b) The historic integrity of a property shall be retained and preserved. The relocation of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property shall be avoided; and/or

(c) A property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, shall not be undertaken; and/or

(d) Changes to a property that have acquired historic significance in their own right shall be retained and preserved; and/or

(e) Distinctive materials, features, finishes,

and construction techniques or examples of craftsmanship that characterize a property shall be preserved; and/or

(f) Deteriorated historic features should be repaired rather than replaced. The severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and, where possible, materials. Replacement of missing features shall be substantiated by documentary and physical evidence; and/or

(g) Chemical and physical treatments, if appropriate, shall be undertaken using the gentlest means possible. Treatments that cause damage to historic materials shall not be used; and/or

(h) Archeological resources shall be protected and preserved in place. If such resources must be disturbed, mitigation measures shall be undertaken; and/or

(i) New additions, exterior alterations, or related new construction shall not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and shall be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment; and/or

(j) New additions and adjacent or related new construction shall be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

4. In addition to meeting the applicable guidelines in 3(a) through 3(j) of this Section, in order to approve an application for the alteration of a Landmark the **Commission/Planning Commission** must

find that the proposal meets the following design standards as applicable:

(a) Vacant buildings shall be weather- and vandal-proofed in order to minimize further deterioration and the threat to public safety; and/or

(b) Rehabilitation work, especially on the exterior and the principal facades shall preserve the existing historic features or replace them if absolutely necessary with features and materials known to have existed on the building through verifiable evidence such as photographs. Alterations to Landmarks shall not be based on speculation, but instead on documentary evidence; and/or

(c) New additions shall be subordinate to the original building, meaning lower in height, attached to the rear or set back along the side, smaller in scale, and have less architectural detail; and/or

(d) Height, width, setback, roof shape, and the overall scale and massing of new buildings within historic districts and on lots with existing Landmarks, or additions to Landmarks shall be compatible with the existing historic building(s).

(e) Architectural details on new construction (including wood or metal trim, porches, cornices, arches, and window and door features, etc.) shall be complimentary, but shall not replicate historic features on surrounding historic buildings; and/or

(f) Window and door opening should be similar in size and orientation (vertical to horizontal) to openings on historic buildings and shall take up about the same percentage of the overall façade as those on surrounding historic buildings; and/or

(g) Moving Landmarks shall be avoided, especially to create artificial groupings;

and/or

(h) The demolition of Landmarks shall be avoided whenever possible; and/or

(i) Any applicable design guidelines adopted by the Commission in Section 6.

E. A public hearing before the Commission/Planning Commission shall be required to relocate or demolish a Landmark.

1. In order to approve an application for the relocation of a Landmark, the Commission shall find that:

(a) The applicant has completed a replacement plan for the site, including drawings approved by the Building Official. Plans must be submitted for review by the Commission pursuant to Section 12.D as it relates to new construction; and

(b) The Building Official determines and states in writing that the building may not be safely removed from the site; and

(c) The value to the community of the proposed use of the property outweighs the value of retaining Landmark at the original location. Public testimony shall be considered when making this determination.

2. In order to approve an application for the demolition of a Landmark, the Commission must find the conditions in Section 12.E.1(a) through (c) have been met as applicable; and

(a) The property owner can demonstrate an economic hardship as described in Section 130.

3. At the hearing of an application to relocate or demolish a Landmark the

Commission/Planning Commission may, in the interest of exploring reasonable alternatives, delay approval for up to one hundred eighty (180) calendar days from the date of the hearing. Not more than sixty (60) and not less than thirty (30) calendar days prior to the expiration of the delay period, the Planning Commission shall schedule a public hearing pursuant to local and state laws to consider if there are still reasonable alternatives to explore, and if the group will request in writing to continue the delay for an additional period of up to one hundred eighty (180) calendar days.

4. The **Commission/Planning Commission** may not delay the relocation or demolition of a Landmark for more than three-hundred sixty (360) calendar days subject to the provisions of this Section.

5. In approving or denying an application for the relocation or demolition of a Landmark, the **Commission/Planning Commission** may impose the following conditions:

(a) Photographic, video, or drawn recordation of the Landmark in its original location; and/or

(b) In the case of demolition, the Landmark be transported to a new site, and that, to the extent possible, the new location is similar to the original site and that the original setback and orientation of the building is replicated on the new lot; and/or

(c) In the cases of properties listed in the National Register, that the applicant attempt to obtain permission to move the Landmark from the National Park Service in order to retain the property's listing in the National Register and/or assume all responsibility and cost of removing the if permission cannot be obtained; and/or

(d) Other reasonable mitigation measures.

6. Upon issuing approval for the demolition of a Landmark, the Commission shall post a legal notice in a local newspaper of record announcing the demolition, the criteria under which the demolition was approved, the historic significance of the property, and invite the public to provide alternatives to the demolition for consideration by the Commission.

7. Relocated Landmarks shall remain listed in the Landmark Register unless removed under Section 12.

8. Demolished Landmarks shall be removed from the Landmark Register using the procedures described in Section 12.

17.15.120 Removal of Landmarks from the Landmark Register

A public hearing before the Commission and a signed Certificate of Appropriateness shall be required to remove a Landmark from the Landmark Register.

A. An application to remove a Landmark from the Landmark Register shall not be considered for one (1) year after the denial of an application for the relocation or demolition of the same Landmark under Section 120.E.

B. Landmarks concurrently listed in the Landmark Register and National Register will be considered for removal from the Landmark Register only after the Landmark is removed from the National Register and the SHPO has provided written evidence of the removal the Planning Commission.

C. The Commission shall establish standards for a complete application for the removal of a Landmark from the Landmark Register. Upon acceptance of a complete application, the Commission shall schedule a public

hearing pursuant to applicable local and state laws.

D. In order to approve an application for the removal of a Landmark from the Landmark Register the Commission must find the following:

1. The Landmark has ceased to meet the criteria for listing in the Landmark Register because the qualities which caused it to be originally listed have been lost or destroyed; and/or
2. The property owner at the time the property was added to the Landmark Register did not provide written permission for such action as required under Section 10. This provision does not apply to Landmarks listed in the National Register.

E. Landmarks accidentally destroyed by flood, fire, or other natural or accidental act or demolished under the provisions of Section 12 and meeting the definition of “demolished” as defined in this Ordinance may be removed administratively from the Landmark Register by the Assistant Planner. Notice of this action and written evidence documenting the demolition of the Landmark shall be provided to the Commission at their next regular meeting. This same documentation shall be provided to the SHPO. If a Landmark is also listed in the National Register, the Commission shall request that the SHPO remove the property from the National Register if not requiring the owner to do so under Section 12.E.

F. Upon removing a Landmark from the Landmark Register, the **Commission/Planning Commission** shall post a legal notice in a local newspaper of record announcing the removal, the criteria under which the removal was approved, and the historic significance of the property.

17.15.130 Economic Hardship.

The **Commission/Planning Commission** shall approve a relocation, demolition, or modify or exempt a property from the requirements of Section 11 if the applicant can demonstrate that complying with the provisions of this Ordinance creates an economic hardship that prevents the profitable use of the subject property.

A. Economic Hardship may only be considered in a separate hearing after an application for approval for the alteration, relocation, or demolition of a Landmark has been issued or denied and all pending appeals to the Land Use Board of Appeals, the Land Conservation and Development Commission, and local, state, and federal courts are resolved.

B. Separate standards for demonstrating an economic hardship are established for investment or income-producing and non-income-producing properties:

1. Economic hardship for an income-producing property shall be found when the property owner demonstrates that a reasonable rate of return cannot be obtained from the Landmark if it retains its historic features, buildings, or structures in either its present condition or if it is rehabilitated.

2. Economic hardship for a non-income-producing property shall be found when the property owner demonstrates that the Landmark has no beneficial use as a single-family dwelling or for an institutional use in its present condition or if rehabilitated.

C. Owners seeking approval for economic hardship must provide sufficient information, as determined by the **Commission/Planning Commission**. Demonstration of an economic hardship

shall not be based on or include any of the following circumstances:

- 1 Willful or negligent acts by the owner; and/or
2. Purchase of the property for substantially more than market value; and/or
3. Failure to perform normal maintenance and repairs; and/or
4. Failure to diligently solicit and retain tenants; and/or
5. Failure to provide normal tenant improvements.

17.15.140 Appeals.

Decisions of the **Commission/Planning Commission** are appealable to the City Council. Decisions of City Council are appealable to the Oregon State Land Use Board of Appeals.

17.15.150 Re-submittal of a Previously Denied Application

An application for a approval which was denied and which on appeal has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission or the courts, may not be resubmitted for the same or a substantially similar proposal or for the same or substantially similar action for a period of at least two (2) years from the date the final city action is made denying the application unless there is a substantial change in the facts or a change in city policy which would change the outcome.

17.15.160 Enforcement of the Provisions of this Ordinance

Penalties for violations of the provisions of this Ordinance shall be the same as for violation of the City of Port Orford Planning Code.