

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: 13

ORDINANCE NUMBER: 2009- 13

**TITLE: AN ORDINANCE REPEALING SECTIONS 16-327 AND 16-368 OF THE
BLACK HAWK MUNICIPAL CODE, AMENDING SECTION 16-6 OF
THE CODE AND BY THE ADDITION OF A NEW ARTICLE XIX TO
CHAPTER 16 REGARDING HISTORIC PRESERVATION**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK,
GILPIN COUNTY:

WHEREAS, the Board of Aldermen recognize the importance of maintaining and
preserving historic landmarks within the City;

WHEREAS, the Board of Aldermen desires that the City become a certified local
government pursuant to 16 U.S.C. § 470a(c); and

WHEREAS, it is the goal of this ordinance to comply with the federal and state
requirements for establishing a historic preservation commission.

Section 1. Sections 16-327 and 16-368 of the Black Hawk Municipal Code are
hereby repealed in their entirety.

Section 2. Section 16-6 of the Black Hawk Municipal Code is hereby amended as
follows:

**Sec. 16-6. Relation to the existing zoning, historic preservation
commission and flood plain ordinances.**

To the extent that the provisions of this Chapter are the same in substance
as the previously adopted provisions that they replace in the City's zoning,
historic preservation and Flood Plain ordinances, they shall be considered as
continuations thereof and not as new enactments unless otherwise specifically
provided. Any situation that did not constitute a lawful, nonconforming situation
under a previously adopted zoning ordinance does not achieve lawful
nonconforming status under this Chapter merely by the repeal of previously
adopted ordinances.

Section 3. Chapter 16 of the Black Hawk Municipal Code is hereby amended by the addition of a new Article XIX to read as follows:

Article XIX
Historic Preservation

Sec. 16-421. Purpose and applicability.

(a) The purpose of this Article is to:

(1) Foster civic pride in the beauty and accomplishments of the past and promote the use of historic landmarks for the education and pleasure of the City's citizens.

(2) Protect the unique scenic and historic atmosphere and character of the City and protect the architectural, cultural and aesthetic heritage of the City.

(3) Strengthen the City's economy by protecting and enhancing the City's attractions for visitors.

(4) Preserve and protect the continued existence of historic landmarks.

(5) Draw a reasonable balance between the desires of property owners and the preservation of the City's heritage, while avoiding the imposition of an unreasonable economic hardship.

(6) Prevent the use of materials or design in the repair, construction, reconstruction or remodeling of structures which:

a. Adversely affect the desirability of the City's historic landmarks for business and residential purposes; or

b. Are hazardous or incompatible with the City's historic landmarks.

(b) This Article shall apply to all historic landmarks within the City.

(c) This Article shall be interpreted and administered to promote the spirit of historic preservation, to promote public health, safety and welfare and to achieve substantial justice.

Sec. 16-422. Definitions.

For the purposes of this Article, the following terms shall have the following meanings:

Building Official means the City official charged with the responsibility of administering and enforcing the City's building codes.

Certificate of Appropriateness (COA) means the official document issued by the Commission or the City Council approving an application or permit for the erection, moving, demolition, alteration or addition to, or the external construction or external restoration of a historic landmark. A COA, once issued, will expire under the same conditions as its associated building permit.

Commission means the Historic Preservation Commission, created pursuant to this Article.

Contributing building means a building that is at least fifty (50) years old or older or is associated with significant people or events. In the context of this Article, a *contributing building* is one of significance used for defining context and which retains a significant amount of its physical integrity and character-defining features.

Designated historic resource means a public or private building, home, replica, structure, object, property, park or site that has importance in the history, architecture, archeology or culture of the City, state or nation, as designated by the Commission.

Guidelines means the most recent version of any and all design guidelines approved and adopted by the City Council for application to historic landmarks.

Historic district means a significant concentration, linkage, or continuity of historic resources united historically or aesthetically by plan or physical development.

Historic landmark means an individually designated historic resource or a historic district.

Landowner means the owner in fee of any undivided interest in a historic landmark or of any proposed historic landmark. If the mineral estate has been severed, the landowner is the owner in fee of an undivided interest in the surface estate and not the owner in fee of an undivided interest in the mineral estate.

Noncontributing building means a building, regardless of age, that has lost its integrity. These buildings do retain value as residential or commercial

properties, but do not possess the significance and/or physical integrity necessary to be listed as contributing.

Secretary of the Interior Standards means the United States Secretary of the Interior's standards for Treatment of Historic Properties.

Sec. 16-423. Historic Preservation Commission.

(a) There is hereby created a Historic Preservation Commission, which shall have the principal responsibility for matters involving historic landmarks, as set forth in this Article.

(b) The Commission shall consist of five (5) regular members who are residents of the City and who provide balanced, community-wide representation. All Commission members shall have an interest in historic preservation. The Commission shall consist of at least forty percent (40%) professionals in preservation related disciplines such as: architecture, landscape architecture, architectural history, archeology, history and planning, or related disciplines such as building trades, real estate, law, cultural geography or cultural anthropology.

(c) If the required number of professional members cannot be found to serve on the Commission, this requirement may be waived until the next vacancy occurs, at which time the City shall again diligently seek professional representation. In the case of a lack of professional appointees, the Commission may, with Council approval, be allowed to retain professional consultants to advise the Commission as necessary to fulfill its duties.

(d) Commissioners shall serve for four (4) year overlapping terms, with three (3) of the initial members being appointed for a four (4) year term, and two (2) members serving for a two (2) year term. Member shall continue to serve after the expiration of their terms until a successor is duly qualified and appointed by the City Council.

(e) From its members, the Commission shall select a chair and vice-chair at the first meeting of each calendar year.

(f) The Commission shall meet at least quarterly, unless applications or other requests for action are pending, in which case the Commission shall meet more frequently, as necessary. All Commission meetings shall be open to the public with exceptions for executive sessions and as provided under state law.

(g) A majority of the number of currently appointed Commission members shall constitute a quorum. If a quorum is not present, the chair of the Commission may set a new date for a special hearing, or the matters scheduled for that hearing shall be heard on the next regularly scheduled hearing date.

(h) The Commission shall adopt bylaws and other administrative guidelines to govern the conduct of its meetings. Copies of the bylaws and administrative guidelines shall be held at the City Hall and shall be open for public inspection.

Sec. 16-424. Authority.

(a) The Commission shall have the authority to review applications for building permits and demolition permits for historic landmarks, and to issue COAs.

(b) The Commission shall have any other duties as established by the City Council and shall have all powers necessary to perform its duties.

(c) The City Council shall review applications appealed from the Commission and issue decisions on COAs and variances.

(d) The City Council shall monitor, review and supervise the Commission's performance of its responsibilities pursuant to this Article.

(e) The City Council may promulgate, amend and delete guidelines and adopt additional regulations, as necessary and appropriate, for the interpretation, administration and enforcement of this Article.

Sec. 16-425. Criteria for Designation.

The Commission shall consider the following criteria when reviewing nominations for designation:

(1) Designated Historic Resources. Resources proposed for historic resource designation shall be at least fifty (50) years old and shall possess architectural, social, or geographic/environmental importance by meeting one (1) or more of the following criteria:

- a. Exemplifies specific elements of an architectural style or period;
- b. Is an example of the work of an architect or builder who is recognized for his or her national, statewide, regional or local expertise;
- c. Demonstrates superior craftsmanship or high artistic value;
- d. Represents an innovation in construction, materials or design;

- e. Represents a style particularly associated with the Black Hawk area;
- f. Represents a built environment of a group of people in an era of history;
- g. Represents a pattern or grouping of elements representing at least one (1) of the above-mentioned criteria;
- h. Has undergone a significant historic remodel;
- i. Is the site of a historic event that had an effect upon society;
- j. Exemplifies cultural, political, economic or social heritage in the community;
- k. Represents an association with a notable person;
- l. Is identified with historical personages or groups or which represents important events in national, state or local history;
- m. Enhances a sense of identity with the community; or
- n. Is an established and familiar natural setting or visual feature in the community.

(2) Historic Districts. Districts proposed for historic designation shall contain properties that comply with subsection (1) hereof that are related by a pattern of physical elements or social activities. Significance is determined by applying the criteria of this Article to patterns and unifying elements.

a. Historic district designation will not be considered unless the application contains written approval of all property owners within the proposed historic district boundaries.

b. Properties that do not contribute to the significance of the proposed historic district may be included within the boundaries if the noncontributing buildings do not noticeably detract from the proposed historic district's sense of time, place and historic development. Noncontributing elements will be evaluated for their magnitude of impact by considering their size, scale, design, location or information potential.

(3) Any historic landmark listed on the state or national register of historic places shall be deemed to qualify for local designation under this Article,

however, such landmarks shall not be locally designated until an application for designation is filed and processed pursuant to this Article.

Sec. 16-426. Designation Procedures.

(a) Application for designation. Landowners of any landmark proposed for designation may submit an application requesting designation to the City Manager or the City Manager's designee. Such application shall be made in writing and set forth why the applicant believes the proposed historic landmark is qualified for designation pursuant to Section 16-425.

(b) Commission review. If, in the opinion of the City Manager or the City Manager's designee, the application requirements have been met and the proposed historic landmark meets the criteria for designation, the application shall be referred to the Commission. The Commission shall consider the designation at its next regular meeting and submit its opinion or recommendation to the City Council.

(c) City Council review. Upon receipt of the Commission's recommendation, the City Council shall hold a hearing to consider the application for designation not more than sixty (60) days after the application's filing.

(1) Notice.

a. Written notice of the designation hearing shall be sent to all property owners of record who own or have significant legal or equitable interests in the real property being proposed for designation. Notice shall include the time, date, place and subject matter of the hearing and shall be sent via certified mail, not less than seven (7) days prior to the hearing.

b. Signs indicating the proposed action and the time, date and place of the hearing shall be posted by the City for a period of not less than seven (7) days prior to the hearing on all historic landmarks proposed for designation. Such signs will be prominently displayed and easily readable from abutting public ways.

c. A legal notice indicating the nature of the hearing, the property involved and the time, date and place of the scheduled public hearing shall be published once in the official newspaper of the City not less than seven (7) days prior to the hearing.

d. Written notice of the proposed designation, including the identification of the historic landmark, the basis for the designation, procedure and the time, date and place of the

hearing, shall be given to the Building Official not less than seven (7) days prior to the public hearing.

(2) Hearing process.

a. A quorum of the City Council shall conduct the hearing. If a quorum is not present, the hearing shall be rescheduled for the next scheduled City Council meeting.

b. A reasonable opportunity shall be provided to all interested parties to express their opinions regarding the proposed designation.

c. Hearings shall include records of the name and address of each speaker and the organization or person he or she represents, if any. A summary of the relevant portions of each statement and all written presentations shall be incorporated into the record of the hearing.

d. The City Council shall review the proposed designation with respect to:

1. Its relationship to the City's zoning regulations and other adopted planning documents;

2. The effect of the designation upon the surrounding neighborhood; and

3. Such other planning considerations as may be relevant to the proposed designation.

(3) Findings of fact and actions of City Council.

a. The City Council shall act officially on each proposed designation within thirty (30) days of the hearing thereon. The City Council may approve, reject or modify any proposal, but no proposal may be extended beyond the boundaries of the land described in the original designation application unless the initiation and hearing procedure are repeated for the enlarged boundaries. The City Council shall set forth in its records the findings of fact which constitute the basis for its decisions, and due consideration shall be given to the written or oral views of owners of affected property. If the City Council fails to act within the thirty (30) day period, the designation shall be deemed to have been denied.

(2) If more than one (1) property is involved in the designation procedure, the City Council may approve the application in part. In no event may any property be added to the area described in the application without instituting a new designation procedure.

(3) Any approved designation of a historic landmark shall be made by ordinance of the City Council.

(4) No historic landmark shall be designated without the express written consent of the proposed historic landmark's landowners.

(d) Recording of designation. Within fifteen (15) days of the effective date of an ordinance designating a historic landmark, a copy of the ordinance shall be recorded in the real estate records of the Gilpin County Clerk and Recorder.

(e) Notification. Within ten (10) days after the recording of the ordinance designating a historic landmark, the City Clerk shall send a letter, via certified mail, to all property owners whose property is subjected to the designation.

Sec. 16-427. Revocation of designation.

(a) If a building or physical feature on a historic landmark is lawfully removed or demolished, the owner may apply to the Commission for revocation of designation. The Commission shall recommend revocation of a historic designation if it determines that, without the demolished building or physical feature, the historic landmark as a whole no longer meets the purposes and standards of this Article and the Commission's review standards for historic landmark designation.

(b) Upon the Commission's recommendation to revoke a historic landmark designation, the City Manager shall cause to be prepared a resolution including the legal description of the affected property, stating notice of the revocation, and schedule the item for City Council review. Upon adoption by the City Council, the revocation resolution shall be recorded within the real estate records of the county in which the property is located.

(c) The City Council may revoke designation of a historic landmark if the public benefits of alteration, removal, or demolition of the landmark outweigh the public benefits of maintaining the designation.

(d) Any owner of a historic landmark may request revocation of such designation by submitting an application to the Commission. The request for revocation shall be considered at the Commission's next regular meeting and the

Commission shall submit its recommendation to the City Council. The City Council will consider the application for revocation in accordance with the procedures of Section 16-426(c).

Sec. 16-428. Review procedures for building permits.

(a) Every application for a building permit for a historic landmark shall first be submitted to the Commission. Such application shall be accompanied by the following:

(1) A drawing, picture or scale model which shows the exterior surfaces of the building as proposed to be constructed, repaired, reconstructed or remodeled, in sufficient detail to depict the finished appearance of the building;

(2) A site plan showing the building's relation to and location on its building site;

(3) A detailed list of the type of exterior materials and finishes proposed to be used; and

(4) A review fee as set forth in the City's fee schedule.

(b) No building permit application may be considered by the Commission unless it is complete in accordance with Subsection (a) hereof.

(c) The Commission shall either approve or deny the application, based on the criteria set forth in Section 16-429. The Commission may also conditionally approve the application, with the agreement of the applicant to comply with such conditions. Such conditions shall become conditions of the COA and the building permit.

(d) If the Commission determines that the criteria in Section 16-429 are met and that no additional conditions need to be required, the Commission shall issue the COA and forward a copy of the COA to the Building Official. The building permit may then be processed as usual by the Building Official.

(e) Appeal. An application for a building permit denied a COA by the Commission may be appealed to the City Council for review for compliance with the criteria of Section 16-429.

(1) The burden shall be upon the applicant in all cases to prove that the applicable criteria have been met for approval.

(2) If appealed by the applicant, the application shall be referred for review by the City Council at its next regular meeting. The

City Council may continue its consideration of the appeal, as it deems appropriate; however, if the City Council fails to render a decision on the application within forty-five (45) days of the first regular meeting at which the matter is presented, the COA shall be deemed denied, unless the applicant consents to a further extension of time.

(3) The City Council shall either approve or deny the application, based upon the criteria of Section 16-429. It may also conditionally approve the application, with the agreement of the applicant to comply with such conditions, at which time the conditions shall attach to both the COA and the building permit.

(4) The City Council shall issue written findings in support of its decision.

(f) Following approval of the application and issuance of a COA, the Building Official may issue the building permit, provided that all other applicable requirements of the Code are met. If the application is appealed to the City Council, no building permit shall be issued unless and until the City Council has approved the application and issued a COA.

Sec. 16-429. Criteria for approval.

(a) In order for the Commission or the City Council to grant a COA for any application for a building permit, the Commission or the City Council shall determine that the application meets the following criteria:

(1) The proposed work is consistent with and promotes the purposes of this Article;

(2) With respect to an existing building, the proposed work will not adversely materially affect the property's historic quality;

(3) The proposed work will have no adverse material effect on the historic atmosphere and character of the historic landmark, including state and national designations; and

(4) The proposed work is in compliance with all current, applicable design guidelines.

(b) In determining compliance with the criteria of this Section with regard to contributing buildings in a historic district, the Commission or the City Council shall consider the following:

(1) The effect upon the general historic and architectural character of the building;

(2) The architectural style, arrangement, texture and material used on the existing and proposed buildings and their relation and compatibility with other historic landmarks, including state and national designations;

(3) The effects of the proposed work in creating, changing, destroying or otherwise affecting the exterior architectural features of the building upon which such work is done;

(4) The effects of the proposed work upon the protection, enhancement and perpetuation of the building;

(5) The condition of existing improvements and whether they are a hazard to public health and safety;

(6) The compatibility of accessory buildings, structures and fences with the main building and with other historic landmarks; and

(7) Substantial compliance with the Secretary of the Interior's Standards as they apply to building exteriors only, except those relating to paint color, which shall not apply.

(c) With regard to determining compliance of noncontributing buildings, the Commission or the City Council shall consider the following:

(1) Noncontributing buildings should be compatible with contributing buildings;

(2) Noncontributing buildings should not attempt to mimic or duplicate the historic features of contributing buildings; and

(3) Contemporary designs that creatively draw upon the important characteristics of a historic district are favored.

Sec. 16-430. Exceptions.

(a) The Commission may authorize, upon request in specific cases, exceptions from the requirements of this Article and its implementing guidelines. When the Commission finds that the strict application of any requirement enacted herein will result in unreasonable economic hardship to a landowner or that such exception is necessary in the public interest, an exception from the requirements of this Article and its implementing guidelines may be authorized.

(b) Burden. The burden of proof shall be upon the person claiming hardship to show that the existing use is economically unfeasible, and that sale, rental or rehabilitation of the property is not possible.

(c) Procedure. The Commission shall hold a public hearing on all applications for exceptions with the following conditions required:

(1) Notice of said hearing shall be mailed by the City, at least seven (7) days prior to the hearing date, to the applicant and to owners of property within one hundred feet (100') of the property in question. The applicant shall provide stamped, addressed envelopes to the City for that purpose. Failure to mail such notice to every property owner due to clerical omissions shall not affect the validity of any hearing or determination of the Commission. The applicant is, however, obligated to make a good faith effort to provide all required names and addresses.

(2) The City shall notify the applicant and the Building Official of the Commission's decision. The decision of the Commission may be appealed to the City Council.

Sec. 16-431. Demolition.

(a) No historic landmark may be demolished, in whole or in part, except in conformity with the requirements of this Article.

(b) No person shall demolish a historic landmark without first obtaining a COA from the Commission and the appropriate permit from the Building Official. Any requests for such demolition permits must be submitted to the Commission and shall be considered by the Commission at its next regularly scheduled meeting, but in any event, within thirty (30) days of submittal. Any application not considered by the Commission within thirty (30) days of submittal shall be deemed approved.

(c) Nothing contained herein shall prevent the demolition of any building or structure which the Building Official shall certify, in writing, to the Commission is required for the public health, safety or welfare because of an unsafe or dangerous condition.

Sec. 16-432. Enforcement.

(a) It is unlawful for any person to violate any of the provisions of this Article or any of the conditions included upon a building permit or COA issued pursuant to this Article.

(b) The City may maintain an action in a court of competent jurisdiction for an injunction, or otherwise to enforce compliance with this Article or any conditions issued hereunder.

(c) No building permit shall be granted or issued by the City in violation of any provision of this Article.

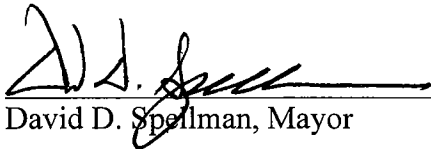
(d) The City shall have recourse to any other remedies provided by law.

Section 4. Safety Clause. The Board of Aldermen hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Aldermen further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

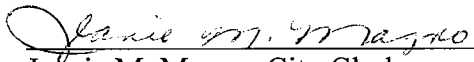
Section 5. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 6. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon the City appointing the members of the Commission, and receiving designation as a Certified Local Government as allowed by applicable law.

READ, PASSED AND ORDERED POSTED this 22 day of April, 2009.


David D. Spellman, Mayor

ATTEST:


Jeanie M. Magno, City Clerk