

**STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK**

COUNCIL BILL NUMBER: CB31

ORDINANCE NUMBER: 2018-31

TITLE: AN ORDINANCE AMENDING SECTION 16-368 OF THE BLACK HAWK MUNICIPAL CODE AND AMENDING ARTICLE XIX OF CHAPTER 16 OF THE BLACK HAWK MUNICIPAL CODE TO CLARIFY THE ROLES OF THE HISTORIC PRESERVATION COMMISSION AND THE CITY COUNCIL IN PROTECTION OF THE CITY'S ARCHITECTURAL ASSETS

WHEREAS, Article XIX of Chapter 16 of the Black Hawk Municipal Code (the "Code") was adopted in 2009 to establish the City's Historic Preservation Commission, as well as the process for locally-designating historic landmarks;

WHEREAS, the City has a unique historic and community fabric that it desires to continue to preserve;

WHEREAS, the interplay between the federal historic district status and local historic designations has caused some confusion about the scope of the Historic Preservation Commission's authority and the role of City Council; and

WHEREAS, by the following amendments, the City Council wishes to clarify the intent of the Code regarding the Historic Preservation Commission, its role to designate and protect local historic landmarks, and the role of City Council to ensure the overall development of the City occurs in a manner that is compatible with the City's history and architecture.

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

Section 1. Section 16-368 within Article XVII, Chapter 16, of the Black Hawk Municipal Code is repealed and reenacted to read as follows:

Sec. 16-368. City Council design review and compatibility process.

(a) Purpose and application.

(1) This Section does not apply to any locally designated historic structures which are regulated by the Historic Preservation Commission under Article XIX, Chapter 16, of this Code.

(2) This Section applies to all structures and properties within the City that are not locally designated historic structures.

(3) Any person seeking to modify the exterior of, add to, or construct a new building shall be subject to the following procedures. Any such renovation, construction or demolition shall be subject to the City's design standards.

(4) The requirements of this Section are in addition to all other land use and zoning requirements of the City. Before the City Council may review any application under this Section, the applicant must first receive all necessary zoning approvals.

(5) The City shall not issue a building permit or site development plan for any of the following activities until a Certificate of Architectural Compatibility ("COAC") has been issued for the project.

- a. Construction of a new building, structure or improvement;
- b. Alteration or reconstruction of, or addition to, the exterior of any improvement;
- c. Demolition of any improvement;
- d. Construction or erection of or addition to any improvement upon any land located within the City; or
- e. Excavation requiring an excavation permit.

(6) For a building permit application, if a COAC for the project has been denied, the Chief Building Official shall deny the application for a building permit for the project. If a COAC for the project has been issued, the building permit shall be subject to the terms and conditions of the approved COAC in addition to any other terms and conditions imposed by the City. For the purposes of the issuance of a building permit, a COAC is valid for six (6) months after the date it is issued.

(b) Definitions. As used in this Section, the following terms have the following meanings:

(1) Certificate of Appropriateness (COA) means the certificate pursuant to Article XIX of Chapter 16 of this Code affecting a locally designated historic landmark, issued by the Historic Preservation Commission, and ratified by City Council.

(2) Certificate of Architectural Compatibility (COAC) means the certificate issued pursuant to this Section affecting property in the City that has not been locally designated as a historic landmark.

(3) Major work means proposed work involving a change in the appearance and attributes of a structure or site; alterations, additions, or

removals that are substantial; a change in the appearance and attributes of a structure or site; rehabilitation, preservation, new construction, expansion of or significant improvement to a building footprint or significant changes in landscape features; or demolition of a structure.

(4) Minor work means proposed work that is neither routine maintenance nor major work and includes, without limitation, changes in exterior paint color and roof repairs.

(5) Routine maintenance means proposed work for the repair or replacement of an existing approved structure where there is no proposed alteration in the design, materials, or general appearance of elements of the structure or grounds.

(c) When Required.

(1) A COAC is not necessary for routine maintenance.

(2) A COAC is required for minor work and an application may be reviewed and issued administratively by the City Manager or the City Manager's designee. The City Manager or the City Manager's designee may administratively issue a COAC when the change is minor in nature, or, upon review, the City Manager or the City Manager's designee may determine the application is not appropriate for administrative approval because the proposed work involves alterations, additions, or removals that are substantial, or may not meet the guidelines. If so, the application shall be processed as a major work project and subject to approval by the City Council. In making the administrative determination on a COAC application for minor work, the City Manager or the City Manager's designee shall apply the criteria set forth in Subsections (e)(3) and (e)(4) herein.

(3) A COAC is required for major work and an application shall be reviewed by the City Council pursuant to Subsections (e)(3) and (e)(4) herein.

(4) Exceptions. Where the Chief Building Official, the Department of Health, the Fire Department or any other duly authorized officer or agency of the City orders or directs the immediate construction, reconstruction, alteration, repair or demolition of any improvement for the purpose of remedying conditions determined by that department, agency or officer to be imminently dangerous to life, health or property, nothing contained herein shall be construed as making it a violation of this Chapter for any person to comply with such order or directive without receipt of a COAC. Any such department, agency or officer shall give the City Council notice as early as practicable of the proposed or actual issuance of any such order or directive.

(d) In the event the dangerous condition requires demolition of a building and it is determined by the City Council, after a public hearing as provided in Section 16-369 of this Code, that the dangerous condition was caused by the affirmative act of the owner of the improvement or his or her authorized agent, or the failure of the owner of the improvement or his or her authorized agent to provide minimum improvement maintenance as required herein, the replacement building or structure shall not exceed the height and floor square footage of the demolished building, and the uses of the replacement building or structure shall only be those uses that were permitted for the demolished building or structure prior to the effective date of the constitutional amendment that authorized limited gaming in the City.

(e) COAC Review Process.

(1) Minor Work. Pursuant to Subsection (c)(2) herein, applications for a COAC involving only minor work may be administratively reviewed, approved, approved with conditions, or denied using the criteria set forth in Subsection (3) below. An applicant for a COAC for minor work may appeal an administrative decision to the City Council in writing within thirty (30) days of the administrative decision. If timely appealed, the City Council shall apply the appropriate criteria *de novo* and shall issue a final determination within sixty (60) days.

(2) Major Work. Upon the City's receipt of an application to authorize major work, including, without limitation, an application for the erection, construction, reconstruction, alteration to, demolition of, or improvement to any property described in Subsection (a)(3) herein, the City Council shall designate a time, place and date for a public hearing pursuant to Section 16-369 of this Code. Following the hearing, City Council shall approve, deny, or approve the application with conditions. City Council's decision is the final determination on the application, subject to judicial review.

(3) Except for applications seeking a COAC for demolition of a structure, which review is controlled by the criteria in subsection (4) below, in considering the issuance of a COAC, the City shall consider the following:

- a. All plans, drawings and photographs as may be submitted by the applicant;
- b. If a public hearing is required, any information presented at a public hearing held concerning the proposed work;
- c. The purpose of this Chapter;
- d. Compliance with this Code and the payment of all fees required by this Code;

e. The effects of the proposed work upon the protection, enhancement, perpetuation and use of the City which cause it to possess a special character or special historical or aesthetic interest or value; and

f. Compliance with the City's residential or commercial design standards, as appropriate, including, but not limited to, reference to the historical and architectural style, the general design, arrangement, texture, materials and color of the development, building or structure in question or its appurtenance fixtures; the relationship of such features to similar features of the other buildings within the City the position of the building, structure, park or open space in relation to public rights-of-way and to other buildings and structures in the City.

(4) In considering the issuance of a COAC to authorize a proposed demolition of a structure, the City shall refer the question of demolition to the City's Historic Preservation Commission for a recommendation only on structures that are over fifty (50) years old, and the City Council and the Historic Preservation Commission, as applicable, shall consider the following:

a. All plans, drawings and photographs as may be submitted by the applicant;

b. Any information presented at the public hearing held concerning the proposed work;

c. The purpose of this Chapter;

d. Compliance with this Code and the payment of all fees required by this Code;

e. The effects of the proposed work upon the protection, enhancement, perpetuation and use of the City which cause it to possess a special character or special historical or aesthetic interest or value;

f. Compliance with the City's residential or commercial design standards, as appropriate, including, but not limited to, reference to the historical and architectural style, the general design, arrangement, texture, materials and color of the development, building or structure in question or its appurtenance fixtures; the relationship of such features to similar features of the other buildings within the City, the position of the building, structure, park or open space in relation to public rights-of-way and to other buildings and structures in the City;

g. Whether the improvement has been maintained as provided in this Chapter; and

h. Whether the preservation of the improvement is technologically and economically feasible.

(5) Any applicant for a COAC may appeal a final determination of the City Council related to the COAC to the District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

(f) Extension of time limits. Any time limits set forth in this Chapter may be extended by mutual consent of the City Council and the applicant.

(g) Minimum improvement maintenance.

(1) It shall be unlawful and a public nuisance for any person to own, occupy or to lease, rent or otherwise allow occupancy by others, of any building or structure which, by negligent act or omission, does not comply with the provisions of this Section.

(2) Every building or structure shall be kept and maintained in good condition and repair, so that:

a. All foundations, exterior walls, roofs and all appurtenances thereto shall be substantially weathertight and rodent-proof;

b. All exterior wood surfaces shall be adequately protected from water seepage and decay;

c. All windows, exterior doors and basement entryways shall be reasonably weathertight, watertight and rodent-proof;

d. All exterior stairways shall be safe for normal use; and

e. All runoffs from rain, snow or ice shall drain from all roofs and away from all foundations so to avoid dampness in basements, walls, ceilings and floors and erosion of any exterior walls.

(h) For the purpose of determining and ensuring compliance with this Section, the Chief Building Official may make inspections to determine compliance with this Section. Any municipal judge of the Municipal Court shall have power and authority to issue search warrants upon a showing of reasonable cause to believe that a building or structure is in violation of the provisions of this Section. It shall be unlawful for any owner or occupant of a building or structure to refuse entry to the premises by an authorized City representative acting pursuant to a duly issued search warrant.

(i) Whenever the Chief Building Official has discovered conditions of a building or structure which violate the provisions of this Section, such inspector shall notify the owner or occupant of such violation in writing and of the need to correct or abate such violation within a reasonable time. The reasonable time to correct or abate the violation shall be at least sixty (60) days, unless the violation poses an imminent danger for the health, safety or welfare of the occupants or the public, then a shorter time shall be required.

(j) The written notice of violation shall be served by an authorized City representative by delivering a copy thereof to the owner or occupant of the building or structure described in the notice, and if the building or structure is unoccupied or the owner is a nonresident, then also by mailing a notice to the last known address of the owner as reflected in the County real estate records.

(k) Any notice issued pursuant to the provisions of this Section to the owner, agent or occupant of a dwelling where a violation has been discovered shall describe the condition or conditions which violate this Section; shall provide reasonable time to correct or abate the noncomplying condition; and shall state that the owner, agent or occupant may protest the findings of the authorized Chief Building Official as stated in the notice by filing a written notice with the City Council within sixty (60) days after the date of the notice.

(l) Any person affected by a notice issued under this Section who is aggrieved thereby, and who believes the same to be factually or legally contrary to this Section, may protest the notice in writing to the City Council within sixty (60) days after the date of the notice. Upon receipt of a timely written protest, the City Council shall designate a time, place and date for public hearing according to the public hearing procedures provided herein.

(m) The Chief Building Official may cause a copy of the notice of violations under this Section to be recorded with the County Clerk and Recorder's office. When the owner or occupant has corrected or abated the condition or conditions that were the basis of such notice, the Chief Building Official shall cause a release of such notice to be recorded with the County Clerk and Recorder's office.

(n) Enforcement.

(1) Any person violating any provision of this Chapter shall be subject to a fine of the amount set forth in Section 1-73 of this Code or by imprisonment not exceeding one (1) year, or by both such fine and imprisonment. Each and every day during which violation continues shall be deemed a separate offense and shall be prosecutable and punishable as a separate offense.

(2) If any building or structure is erected, constructed, externally reconstructed, externally altered, added to or demolished in violation of this Chapter, the City or any proper person may institute an appropriate

action or proceedings to prevent such unlawful erection, construction, reconstruction, exterior alteration, addition or demolition.

(3) If any building or structure is demolished in violation of this Chapter, no replacement building or structure shall exceed the height and the floor square footage of the demolished building. In the event such demolition has been accomplished without previous review by the City Council, the City Council is authorized to conduct a hearing, after notice as provided in Section 16-369 of this Code, at which hearing the Board shall consider whether the uses to be made within any replacement building or structure shall be limited to some or all of those uses permitted prior to the effective date of the constitutional amendment that authorized gambling in the City.

(4) The imposition of any penalty hereunder shall not preclude the City or any proper person from instituting any proper action or proceeding to require compliance with the provisions of this Chapter and with administrative orders and determinations made hereunder.

(5) Any person aggrieved by a decision or action of the City Council may appeal the decision or action, directly to the District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure. For purposes of this Section, an aggrieved person shall mean the owners of the subject property and the owners of all real property directly adjacent to the subject property.

Section 2. The identified sections of Article XIX, Chapter 16, of the Black Hawk Municipal Code are amended 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 that are not otherwise protected by federal designation.

(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 locally-designated historic landmarks within the City. All other properties in the City are regulated by the City Council for compatibility pursuant to Section 16-368 of this Code.

(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:

Certificate of Appropriateness (COA) means the official document issued by the Commission and ratified by 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 locally-designated historic landmark. A COA, once issued, will expire under the same conditions as its associated building permit.

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 locally designated by the Commission.

Historic landmark means a designated historic resource or a historic district designated locally by the City's Historic Preservation Commission.

* * *

Sec. 16-424. Authority.

- (a) The Commission shall recommend to the City Council the designation of historic landmarks and the revocation of such designations.
- (b) The Commission shall review applications and issue COAs, for building permits and demolition permits affecting locally-designated historic landmarks for ratification by the City Council.
- (c) The Commission shall have any other duties as may be established by the City Council and shall have all powers necessary to perform its duties.
- (d) The City Council shall consider the Commission's recommendations for the approval or revocation of historic landmark designations, ratify COAs issued by the Commission, and review COA application denials appealed from the Commission.
- (e) The City Council shall generally monitor and review the Commission's performance of its responsibilities pursuant to this Article.
- (f) 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. 16-428. Review procedures for building permits.

- (a) Every application for a building permit for a locally-designated 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 for a locally-designated historic landmark 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 City Council for ratification of the COA. Upon ratification by the City Council, the Building Official may then process the building permit as usual.

(e) Ratification by the City Council. Upon approval or conditional approval thereof, the Commission shall refer each COA to the City Council. The City Council may approve, reject or modify the conditions of a COA by de novo review and application of the criteria in Section 16-429 of this Code. If the City Council fails to act within the thirty (30) days of the Commission's issuance of a COA, the Commission's action shall be deemed final and shall be deemed ratified by City Council.

(f) Appeal. An application for a COA for a locally-designated historic landmark denied by the Commission may be appealed to the City Council, and City Council shall consider *de novo* within sixty (60) days whether the application complies with the criteria set forth in Section 16-429.

Sec. 16-429. Criteria for approval.

(a) In order for the Commission to grant a COA for ratification by City Council for any application for a COA for a building permit for a locally-designated historic landmark or for demolition of a locally-designated historic landmark, the Commission shall determine that the application meets the following criteria:

...

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

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

* * *

Sec. 16-431. Demolition.

(a) No locally-designated 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 locally-designated 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.

Section 3. Safety Clause. The City Council 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 City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 4. 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 5. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 14th day of November, 2018.


David D. Spellman, Mayor

ATTEST:


Melissa A. Greiner, CMC, City Clerk

