

HISTORIC LANDMARKS AND HERITAGE AREA COMMISSION

Article I. Creation; composition and terms.

There is hereby created a Commission to be called the Historic Landmarks and Heritage Area Commission (“HLHAC”) of the City of Kingston. This Commission shall be charged with the responsibilities previously assigned to the Historic Landmark Preservation Commission pursuant to §§ 264.3; 405-61 of the Code of the City of Kingston and the responsibilities of the Heritage Area Commission formerly known as the Urban Cultural Park Commission of the City of Kingston, pursuant to City Code §§22-19; 405-31.2,

Legislative Intent.

The purpose of this section is to provide for the promotion of the educational, economic and general welfare of the public through the protection, enhancement, perpetuation and preservation of landmarks and Landmark (L) Districts. The legislative body declares that it is in the public interest to ensure that the distinctive landmarks and Landmark (L) District shall not be injuriously affected, that the value to the community of those buildings having architectural and historical worth shall not be impaired and that said districts be maintained and preserved to promote their use of the education, pleasure and welfare of the citizens of the City of Kingston and others.

Effective date:

This article shall take effect immediately following final passage, public hearing and approval by the Mayor of the City of Kingston, New York, as provide by law.

Membership:

This Commission shall consist of seven members to be appointed by the Mayor of the City of Kingston for terms of three years, which shall be so arranged that approximately 1/3 of the terms shall expire each year.

Officers.

A Chairperson and Vice Chairperson shall be elected on an annual basis from among the membership by majority vote of the total membership of the Commission.

Present members.

Upon adoption of this article, present members of the Historic Landmarks Preservation Commission and the Heritage Area Commission shall, within 90 days of adoption, give the Mayor notice of their intent to serve on the newly constituted Board. The Mayor shall then select the membership of the new Board, giving preference, where practical and appropriate in his discretion, to the current members who have expressed interest in continuing to serve.

Membership qualifications.

One member of the Commission shall be a licensed practicing architect. One member shall be an owner of a City designated building or an owner in a City historic district. All members shall be residents of the City of Kingston at the time of their appointment and throughout their membership, with a knowledge of and interest in the historic background of the City and the trend of its future development, with demonstrated concern for the material, economic and cultural development of the City through the principles for which the Commission was created.

Appointments and Vacancies.

The Commission shall, prior to 30 days before the expiration of the terms of each class of Commissioners, submit to the Mayor a list of eligible and qualified candidates, which the Mayor may consider in making selection of successors.

Alternate Commission Members.

Alternate commission member positions are hereby established for use when a regular member cannot participate due to a conflict of interest. Alternate members shall also serve in place of a regular member who is absent. Alternate members shall be appointed by the Mayor.

The Mayor shall appoint up to three (3) alternate members. The first appointment shall be for a period of three years. The second appointment shall be for a period of two years. The third appointment shall be for a period of one year. Thereafter, all appointments shall be for a period of three years.

The Chairperson shall designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest of an application or matter before the board, or by absence. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the HLHPC. Such designation shall, when practical, be made on a rotating basis and shall be entered into the minutes of the initial meeting at which the substitution

is made. Once a substitution has been made, it shall continue to be in effect on the applicable agenda items until a final vote is taken.

Vacancies:

Members of the Commission shall continue to serve until a successor is appointed. In the event a vacancy occurs, other than by the expiration of a term, the Mayor shall appoint a new member for the remainder of the unexpired term.

Removal of Members:

The Mayor shall have the power to remove any member or alternate member of the Commission for cause. Cause for removal of a member or alternate member may include, but is not limited to one or more of the following:

Failure to attend 80% of scheduled meetings without a documented medical and/or emergency excuse approved by the Chair of the Commission.

Actions deemed to be in violation of the City of Kingston Code of Ethics (City of Kingston Code, Chapter 49).

Any person or persons jointly or severally aggrieved by any decision to remove for cause may apply to the Ulster County Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceeding shall be instituted within thirty (30) days after the filing of a decision by the Mayor to remove.

Compensation:

Commissioners shall serve without pay.

Meetings.

The Commission shall meet at least once per month or at the call of its chairperson. In the event that the Commission has no items to address at the scheduled monthly meeting, or is unable to secure a quorum, said meeting can be canceled by the Chairperson upon reasonable notice.

Rules of Procedure.

The Commission shall establish its own rules of procedure, provided that all regular and special meetings be open to the public except in accordance with Roberts Rules of Order, the provisions of the Open Meetings Law and other applicable laws. The Commission may not adopt rules that are in contravention of the terms of the Code of the City of Kingston or other applicable laws.

Any and all applications shall be considered and decided by a majority vote of the total membership of the Commission at a duly called meeting of the Commission.

Costs of operation; budget requests.

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

Article II. Definitions

Alteration

Any act or process that changes one or more of the exterior architectural features of a structure, including but not limited to the erection, construction, restoration, renovation, reconstruction, demolition, moving or removing of any structure.

Commission

The Historic Landmarks and Heritage Area Commission of the City of Kingston, hereinafter referred to as the “Commission”.

Construction

The act of making an addition to an existing structure or the erection of a new principal or accessory structure on a lot or parcel.

Demolition

Any act or process that destroys in part or in whole a landmark on a structure within an historic district

Demolition by Neglect

Exterior Feature

The design and general arrangement of the exterior of the exterior of a structure open to view from a public way, public property or any part of a public building including kind, color and texture of building materials, number, proportion, type and spacing of windows, doors, walls, roofs, murals, projections and signs.

Exterior features shall also include all earthworks, sidewalks, driveways, fences,

trees, landscaping and other features visible from a public way, public property or any part of a public building.

Historic and Architectural Design District

The area of the City of Kingston, New York, commonly referred to as the “Stockade Area”, as specifically delineated on the Zoning Map in the Building Inspector’s office in the City of Kingston, New York.

Preservation Notice of Action

A certification issued by the Commission authorizing an alteration, construction, removal or demolition of a landmark or of a structure within an historic district.

Waterfront Consistency Review

A review undertaken by the Commission pursuant to Article VII below, according to the authority granted under the Municipal Home Rule Law and the Waterfront Revitalization of Coastal Areas and Inland Waterways Act of the State of New York (Article 42 of the Executive Law).

Article III. Districts:

Stockade (Area) District: An area consisting of eight blocks bounded by Clinton Avenue, Main Street, Green Street and North Front Street.

Rondout Landmark District: An area as shown on the map of the same annexed to this chapter as Attachment 6:2.

Fair Street Landmark District: An area as shown on the map of same annexed to this chapter as Attachment 6:3.

Chestnut Street Historic District: An area as shown on the map of same annexed to this chapter as Attachment 6:4.

Article IV. Powers and Duties.

The Commission shall have the following powers and duties:

To advise the Mayor and the Common Council on all matters related to the Kingston Heritage Area, the Landmark Districts and Landmark properties and their programs in a manner consistent with the concepts, goals and objectives set forth in relevant state and local legislation regarding New

York State Heritage Areas, Landmark Districts, Historic Preservation and the Urban Park Cultural Management Plan.

To recommend to the Common Council that it establish certain landmarks or Landmark (L) Districts. A landmark or Landmark (L) District may be or may include an exterior or publicly accessible interior and may include area comprising all or a portion of:

- One or more City blocks;
- One or both sides of a street;
- One or more plots of unimproved land;
- Any other real property.

To review all applications for building permits and all appeals and applications transmitted to the Building Safety Division of the Kingston Fire Department which relate to designated properties or properties located within a historic district and to make recommendation accordingly.

To apply or impose in accordance with the standards set forth in §405-63 herein, with respect to the construction, reconstruction, alteration or demolition of such building or the performance of work thereon, regulations, limitations determinations or conditions **which are consistent with those prescribed by or pursuant to other provisions of law applicable to such activities, including but not limited to, legislative determinations, determinations made pursuant to the State Environmental Quality Review Act (6 NYCRR Part 617), and any prior determinations made by the Planning Board in the course of site plan approval.**

At its discretion and with the property owner's consent, to cause to be prepared and placed upon or near any Landmark or Landmark District, a suitable plaque declaring that fact.

The Commission may make such investigations and studies of matters relating to the protection, enhancement, perpetuation and restoration of landmarks as the Commission may, from time to time, deem necessary or appropriate for the effectuation of the purpose of this article and may submit reports and recommendations as to such matters to the Mayor and other city

agencies, **Boards and Commissions of the City Government**. In making such investigations and studies, the Commission may, **with the approval of the Mayor**, hold such public hearings as it may deem necessary or appropriate.

To make all appropriate arrangements for the general transaction of its business, including the receipt and disbursement of funds, **and to request that the City on its behalf**, retain or employ professional consultants, secretaries, clerks, or other personnel as may be necessary to assist the Commission in carrying out its duties with such funds as may be made available to it by the Common Council in its sole judgment and discretion.

To conduct Waterfront Consistency Reviews as set forth in Article VII below.

Article V: Landmark or Landmark District Designation Procedure

The Commission shall consider for landmark designation or Landmark District designation real property proposed by motion of any Commission member or by owner of such property or by written request signed by 10 residents of the City of Kingston.

The criteria for the designation of landmarks shall particularly favor such designation where the proposed landmark or Landmark District:

Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state or community;

Is identified with historic personages or with important events in national, state or local history;

Embodies distinguishing characteristics of an architectural-type specimen, inherently valuable for a study of a period, style, method of construction or of indigenous materials or craftsmanship; or

Is representative of the notable work of a master builder, designer, or architect whose individual ability has been recognized.

Notice of proposed designation, including the amendment of a prior designation or proposed designation, shall be sent by the Commission by certified mail or personal delivery to the last owner of record, as the names and addresses shall

appear on the records of the Assessor of the City of Kingston, briefly describing the proposal for designation and the date, time and location of the public hearing by the Commission to consider the proposed designation. The notice required hereunder shall be sent at least 14 days prior to the public hearing.

The Commission shall also cause notice of the proposed designation to be published at least once, at least 14 days prior to the public hearing, in a newspaper having general circulation in the City of Kingston.

The Commission shall hold a public hearing to consider all proposals for the designation of any property as a landmark. Any interested parties may solicit expert testimony and offer other evidence relevant to the designation of the proposed landmark. The Commission may solicit expert testimony with such funds as are made available by the Common Council in its sole judgment and creation.

The Commission shall ensure that a transcribed record of any public hearing regarding a proposed landmark designation shall be prepared and retained for consideration by the Common Council and the Mayor.

Following the public hearing, the Commission shall forward to the Common Council of the City of Kingston and to the proper owners, its recommendations concerning designation of a landmark or a Landmark District. The designation shall be effective upon ratification through ordinance by the Common Council.

All costs of the required notice and any costs associated with the designation application, including, but not limited to the cost of producing a record of the public hearing, shall be borne by the individual or group of individuals seeking the designation.

In the event of the designation being considered by motion of the Commission, all costs must be borne by the Commission with such funds as have been made available to it by the Common Council in its sole judgment and creation. The Commission shall not undertake any designation procedure absent the availability of funds from its annual allocation, or specific authorization of the attendant expenditures by the Counsel in its sole discretion.

Landmarks and Landmark (L) Districts

Applicability and guidelines. This section shall apply to all buildings, structures, outbuildings, walls, fences, steps, topographical fixtures, earthworks, landscaping,

paving and signs of a landmark or Landmark District. No changes in any exterior architectural feature, including but not limited to, construction, reconstruction, alteration, restoration, removal, demolition or painting, shall be made except as hereinafter provided. To assist in the conservation action, several specific guidelines are included:

Because of the visual importance of the Old Dutch Church steeple, no new structure may rise within the Stockade District above the base of the steeple, which is 62 feet above the curb level.

Many of the most important buildings in Landmark Districts are stone, wood, or brick, with only two or three surface materials used on any building. There are almost no large areas of glass or polished metal. For this reason, design criteria references in § 405-64 and as specified by the Historic Landmarks Preservation Commission to match this condition are placed on all restoration and construction.

Site design. In determining building setbacks for new construction, the Commission may require new buildings to be set behind existing building lines to give emphasis to existing structures of historic or aesthetic merit or to allow for suitable landscaping. New construction shall be compatible with the district in which it is located.

Bluestone, slate or brick may be prescribed for sidewalks.

Parking. Parking areas shall be partially screened from public view, with appropriate walls, structures, fences or landscaping.

Maintenance. Preventive maintenance is required in order to assure that these buildings, spaces, elements and details are preserved. Failure to provide this preventive maintenance shall be a violation of this article.

Relation to underlying zoning districts. The underlying zoning districts shall apply within the landmark or Landmark District as follows:

The zone regulations shall apply within the landmark or Landmark District with respect to: limitations on height, except as noted above, building spacing, yard and parking requirements.

Other provisions of these regulations related to land use shall remain in force; all other controls shall remain in force to the extent they do not conflict with the intent and purpose of this section.

Article VI. Preservation Notice of Action

Review procedure.

No person shall carry out any exterior or historically designated publicly visible interior alteration, restoration, reconstruction, demolition, new construction or moving of a landmark or property within a Landmark District nor shall any person make any material change in the appearance of such a property, its light fixtures, signs, sidewalks, fences, steps, paving or other exterior elements visible from a public street or alley which affect the appearance and cohesiveness of the historic district without first applying for a preservation notice of action from the HLHAC and a notification to the applicant to obtain a building permit, if necessary. A preservation notice of action does not obviate the need for a building permit.

Criteria. In making such determinations, the Commission shall consider:

The effect of the proposed work in changing, destroying or affecting the exterior features of the landmark or Landmark (L) District upon which such work is to be done;

The relationship between the results of such work and the exterior architectural features of other neighboring improvements;

The factors of aesthetic, historical and architectural values and significance, architectural style, design, arrangement, texture, material and color;

The special character and aesthetic interest that any structure involved adds to the area; and

The difficulty or impossibility of reproducing any structure involved because of its design, texture, material, position or detail.

All applications shall be considered by the Commission on at least the following points, these points to be used as a basis, where relevant, for establishing relationships to the external features of buildings in the immediate neighborhood: The building height in relation to surrounding buildings; the relationship to nearby

roof shapes; the relationship between the width to height of the front elevation; the size, proportion and spacing of openings within the facade and elevations exposed to view; the rhythm of spacing of buildings and building elements on the street; the design and placement of entrances and projections; the relationships of materials, textures and colors; the relationship of architectural details; the continuity of walls; the relationship of landscape elements; the appropriateness of paving; and the effect on existing or historically significant spaces.

It shall be the further duty of the Commission to exercise judgement in accord with the basis of decisions stated herein and maintain the desirable character of the landmark or Landmark District and prevent construction, reconstruction, alteration or demolition out of harmony with existing buildings, and thus to prevent degeneration of property, and preserve the beauty of the character of the landmark or Landmark District.

Preservation permit for change in exterior architectural features.

The preservation notice of action required by this section shall be in addition to, and not in lieu of, any building permit that may be required by any other ordinance of the City of Kingston, New York. In the event of overlapping reviews, the most restrictive review shall apply.

Prior to the commencement of any work requiring a preservation notice of action, the owner shall file an application for a preservation notice of action, which shall be made, in writing, in duplicate, to the Commission and shall contain the following:

The name, address, telephone number and signature of the owner.

The name address, telephone number and signature of the applicant.

The location of the building, structure or land; the exterior architectural features which are proposed to be changed.

The elevations of the proposed change.

A perspective drawing.

Whatever additional information the Commission deems necessary to evaluate the application, including but not limited to photographs of existing conditions;

samples of colors or materials to be used in the proposed change, and a description of materials to be used and the methods of illumination of any proposed changes in signs and/or lettering of signs.

Prior to submitting a formal application, the applicant or his representative may meet with the Commission and/or its staff to informally discuss plans for alterations of exterior features. In order to avoid unnecessary expense and delay, a sketch or schematic design for the construction, alteration or repair of any regulated activity may be presented to the Commission. A preliminary design should show the relation to adjacent structures and spaces. The Commission may advise or recommend alteration and changes in the application.

Procedure to be followed for a preservation notice of action.

Within sixty days after a completed formal application is filed with the Commission, or within such further time as the applicant may, in writing, allow, the HLHAC shall conduct a public meeting to consider the application. At said public meeting, opportunity shall be provided to proponents and opponents to present their views.

All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by mail and a copy filed with the Building Safety Division of the Fire Department for public inspection. The Commission's decision shall state the reasons for denying or modifying any application. Approval to proceed will be documented by the issuance of a preservation notice of action.

The conditions upon which the preservation notice of action is issued will be stated, in writing, on the preservation notice of action. During work upon any preservation notice of action, if a modification is sought, such must be approved by an amended preservation notice of action issued by the Commission. The preservation notice of action shall be valid for one year. At all times during this term, the preservation notice of action shall be prominently posted in public view pursuant to local law governing building permit posting.

Inspection. If, upon inspection, the HLHAC determines that the work is not in conformity with the preservation notice of action, the HLHAC shall notify the Building Safety Division of the Fire Department, in writing.

Preservation Notice of Action.

In order to facilitate a coordinated review process, where site plan, special permit or other planning board action is required, the preservation of notice procedure set forth herein shall be conducted simultaneously and with cooperation with such review by the planning board.

The Commission shall approve, deny or approve the permit with modifications within 45 days from receipt of the completed application. The Commission may hold a public hearing on the application at which an opportunity will be provided for proponents and opponents of the application to present their views. Failure by the Commission to take action within the prescribed time period, absent consent of the applicant to an extension of time, shall constitute approval.

Article VII. Waterfront Consistency Review

Title.

This article will be known as the “City of Kingston Waterfront Consistency Review Law.”

Authority and purpose.

The purpose of this article is to provide a framework for agencies of the City of Kingston to consider the policies and purposes contained in the local Waterfront Revitalization Program when reviewing applications for actions or direct agency actions located in the coastal area; and to assure that such actions and direct actions are consistent with said policies and purposes.

The substantive provisions of this article shall only apply while there is in existence a City Local Waterfront Revitalization Program which has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

Definitions.

As used in this Article, the following terms shall have the meanings indicated:

ACTIONS

Either Type 1 or unlisted actions as defined in SEQRA regulations (6 NYCRR 617.2) which are undertaken by an agency and which include:

Projects or physical activities, such as construction or other activities that may affect the environment by changing the use, appearance or condition of any natural resource or structure, that:

Are directly undertaken by an agency;

Involve funding by an agency; or

Require one or more new or modified approvals from an agency or agencies.

Agency planning and policy making activities that may affect the environment and commit the agency to a definite course of future decisions;

Adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect the environment; and

Any combinations of the above.

This article does not apply to Type II, excluded or exempt actions as defined in the SEQRA regulations 6 NYCRR Part 617.

AGENCY

Any board, agency, department, office, other body, or officer of the City of Kingston.

COASTAL AREA

That portion of New York State coastal waters and adjacent shorelands as defined in Article 42 of the Executive Law which is located within the boundaries of the City of Kingston, as shown on the coastal area map on file in the office of the Secretary of State and as delineated in the City of Kingston Local Waterfront Revitalization Program.

COASTAL ASSESSMENT FORM (CAF)

The form used by an agency to assist it in determining the consistency of an action with the Local Waterfront Revitalization Program.

CONSISTENT

The action will fully comply, to the extent practicable, with the LWRP policy standards and conditions and, whenever practicable, will advance one or more of them.

DIRECT ACTIONS

Actions planned and proposed for implementation by an agency, such as, but not limited to a capital project, rule making, procedure making and policy making.

LOCAL WATERFRONT REVITALIZATION PROGRAM (LWRP)

The Local Waterfront Revitalization Program of the City of Kingston, approved by the Secretary of State pursuant to the Waterfront Revitalization and Coastal Resources Act (Executive Law, Article 42), a copy of which is on file in the office of the Clerk of the City of Kingston.

WATERFRONT ADVISORY COMMITTEE (COMMITTEE)

The Urban Cultural Park Commission of the City of Kingston, as created by Chapter 22 of the Code of the City of Kingston.

Waterfront Advisory Committee.

The Committee is authorized to review and make recommendations, in accordance with § 398-11, herein, to appropriate agencies regarding the consistency of proposed actions with the Kingston Local Waterfront Revitalization Program policy standards and conditions.

Review of actions.

Whenever a proposed action is located in the city's coastal area, an agency shall, prior to approving, funding or undertaking the action, make a determination that is consistent with the LWRP policy standards and conditions set forth in Subsection G herein.

Whenever an agency receives an application for approval or funding of an action or as early as possible in the agency's formulation of a direct action to be located in the coastal area, the applicant, or in the case of a direct action, the agency, shall prepare a coastal assessment form (CAF) to assist with the consistency review of the proposed action.

The agency shall refer a copy of the completed CAF to the Committee within 20 days of its submission and prior to making its determination, shall consider the recommendation of the Committee with reference to the consistency of the proposed action.

After referral from an agency, the Committee shall consider whether the proposed action is consistent with the LWRP policy standards and conditions set forth in Subsection G herein. The Committee shall require the applicant to submit all completed applications, CAF's and any other information deemed to be necessary to its consistency recommendation.

The Committee shall render its written recommendation to the agency within 30 days following referral of the CAF from the agency, unless extended by mutual agreement of the Committee and the applicant, or in the case of direct action, the agency, or extended if additional information is requested by the Committee to render a written recommendation. The recommendation shall indicate whether, in the opinion of the Committee, the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards or conditions and shall elaborate in writing the basis for its opinion. The Committee shall, along with its consistency recommendation, make any suggestions to the agency concerning modification, of the proposed action to make it consistent with the LWRP policy standards and conditions or to greater advance them. In the event that the Committee's recommendation is not forthcoming within the specified time, the referring agency may make its decision without the benefit of the Committee's recommendation.

The agency shall make the determination of consistency based on the CAF, the Committee recommendation and such other information as is deemed to be necessary in its determination. The agency shall issue its determination within 45 days following receipt of the Committee's recommendation and submission by the applicant of any additional required information. The agency shall have the authority, in its finding of consistency, to impose practicable and reasonable conditions on an action to ensure that it is carried out in accordance with this article.

Actions to be undertaken within the Kingston coastal area shall be evaluated for consistency in accordance with the following LWRP policy standards and conditions, which are derived from and further explained and described in Section III of the City of Kingston LWRP, a copy of which is on file in the City Clerk's office and available for inspection during normal business hours. Agencies which undertake direct actions shall also consult with Section IV of the LWRP in making their consistency determination. The action shall be consistent with the policy to:

Revitalize the deteriorated and underutilized waterfront areas of Kingston.

Retain and promote commercial and recreational water-dependent uses.

Strengthen the economic base of Kingston's smaller harbor areas by encouraging traditional uses and activities.

Ensure the development occurs where adequate public infrastructure is available to reduce health and pollution hazards.

Expedite local permit procedures and use performance standards for development within the waterfront area.

Protect significant and locally important fish and wildlife habitats from human disruption and chemical contamination.

Encourage and expand commercial fishing facilities to promote commercial and recreational fishing opportunities.

Minimize flooding and erosion hazards through nonstructural means, carefully selected, long-term structural measures and appropriate siting of structures.

Safeguard economic, social and environmental interest in the coastal area when major actions are undertaken.

Maintain and improve public access to the shoreline and the water-related recreational facilities while protecting the environment.

Protect and restore historic and archaeological resources.

Protect and upgrade scenic resources.

Site and construct energy facilities in a manner in which will be compatible with the environmental and contingent upon the need for a waterfront or water location.

Protect surface and groundwaters from direct and indirect discharge of pollutants and from overuse.

Perform dredging and dredge spoil in a manner protective of natural resources.

Handle and dispose of solid and hazardous wastes and effluents in a manner which will not adversely affect the environment nor expand existing landfills.

Protect air quality.

Protect freshwater wetlands.

Actions inconsistent with policy standards.

If the agency determines that the action would not be consistent with one or more of the LWRP policy standards and conditions, such action shall not be undertaken unless the agency makes a written finding with respect to the proposed action that no reasonable alternatives exist which would permit the action to be undertaken in a manner which will not substantially hinder the achievement of such LWRP policy standards and conditions, and that:

The action would be undertaken in a manner which will minimize all adverse effects on such LWRP policy standards and conditions;

The action will advance one or more of the other LWRP policy standards and conditions; or

The action will result in an overriding city, regional or statewide public benefit.

Such a finding shall constitute a determination that the action is consistent with the LWRP policy standards and conditions.

Article IX. Hardship.

An applicant whose preservation notice of action for a proposed demolition or alteration has been denied may apply for relief on the grounds of hardship. The hardship shall not be self-inflicted. In order to prove the existence of hardship, the applicant shall establish that:

The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;

The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and

Efforts to find a purchaser interested in acquiring the property and preserving it have failed.

Hardship application procedure.

After receiving written notification from the Commission of the denial or approval with modifications of a preservation notice of action, an applicant may commence the hardship process. No building permit or demolition permit shall be issued unless the Commission makes a finding that a hardship exists. The Commission may hold a public hearing on the hardship application, at which an opportunity will be provided for the proponents and opponents of the application to present their views.

The applicant shall consult in good faith with the Commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property.

All decisions of the Commission regarding a hardship application shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the City Clerk's office for public inspection. The Commission's decision shall state the reasons for granting or denying the hardship application.

In the event of the Commission's denial based on hardship application, the applicant may apply to the City of Kingston Zoning Board for review of said application, applying Landmark Ordinance criteria.

Article X. Demolition by neglect.

No owner or person with an interest in real property designated as a landmark or included within a historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgement of the HLHAC, produce a detrimental effect upon the character of the property itself.

Examples of such deterioration include:

Deterioration of exterior walls or other vertical supports.

Deterioration of roofs or other horizontal members.

Deterioration of exterior chimneys.

Deterioration or crumbling of exterior stucco or mortar.

Ineffective waterproofing of exterior walls, roofs or foundations, including broken windows or doors.

Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.

Interior structural members shall be protected and maintained to resist and prevent deterioration.

Unheated attics, spaces below flat roofs and crawl spaces shall be ventilated to minimize deterioration.

Interior and exterior chimneys and flues shall be maintained safe, sound and smoketight.

Interior ceilings, walls, floors and stairways shall be maintained in a safe and sound condition.

In its review to determine that demolition by neglect is occurring and upon consultation with the Building Safety Division of the Fire Department, the Commission shall consider all of the foregoing criteria and shall also attempt to confer with the owner or person in charge of the real property concerned.

It shall also review any communication it shall receive which indicates that demolition by neglect is or may be occurring in any landmark or Landmark District. In the event that the Commission finds that such demolition is or may be taking place, it shall direct a letter to the Building Safety Division of the Fire Department to notify the owner or person in charge of this finding, stating the reasons therefor and requesting that the owner or person in charge immediately take appropriate steps to cause such demolition to cease, and to confer with the Commission in connection therewith.

Should the owner or person in charge fail to satisfy the Commission that all necessary steps are or will be promptly taken, the Commission shall request the Building Safety Division of the Fire Department to notify the Corporation Counsel of the City of Kingston and request the consideration of the proceedings pursuant to § **405-52D** hereof.

Article VIII. Enforcement

The City Fire Officer shall be responsible for enforcing the provisions related to Article VII above. No work or activity on a project in the coastal area which is subject to review under this article shall be commenced or undertaken until the Fire Officer has been presented with a written determination from an agency that the action is consistent with the city's LWRP policy standards and conditions. In the event that an activity is not being performed in accordance with this article or any conditions imposed thereunder, the Fire Officer shall issue a stop-work order and all work shall immediately cease. No further work or activity shall be undertaken on the project so long as a stop-work order is in effect.

All work performed pursuant to a preservation notice of action and/or building permit issued under this article shall conform to any requirements included therein, in the event that the Commission finds that work is not being performed pursuant to said preservation notice of action or building permit, it shall notify the owner or person in charge of this building, stating the reasons therefor and requesting that the owner or person in charge immediately take appropriate steps to conform to said notice of action or building permit and to confer with the Commission in connection therewith. Should the owner or person in charge fail to satisfy the Commission that all steps are or will be immediately taken, the Commission shall request the Building Safety Division of the Fire Department to take appropriate action.

Should both a preservation notice of action and a building permit be issued, the Fire Officer shall have all the powers conferred upon him pursuant to the Zoning Ordinance to enforce the preservation notice of action, including, but not limited to, stop work orders.

Penalties for Offenses:

Failure to comply with any of the provisions of this article shall be deemed a violation, and the violator shall be liable to a fine of not more than \$500.00 for a conviction of a first offense and punishable by a fine of \$1,000.00 for a conviction of a second or subsequent offenses. For the purpose of conferring jurisdiction upon courts, each week of a continuing violation shall constitute a separate offense.

The City Corporation Counsel is authorized to institute and prosecute any and all actions and proceedings necessary to enforce this article. Any civil penalty shall

be in addition to and not in lieu of any criminal prosecution and penalty. The city may also enforce this article by injunction or other civil proceeding.

Article IX. Appeals.

Any person aggrieved by any action of the Commission, including but not limited to disapproving or limiting a Preservation Notice of Action, may file an appeal of said action with the Zoning Board of Appeals, or, after review and determination by the Zoning Board of Appeals, 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 arbitrary and capricious or otherwise illegal, in whole or in part.

