

## **CHAPTER 143**

### **Landmark Commission**

- 143.01 Establishment; Composition, Term and Vacancy.
- 143.015 Powers and Duties of the Commission.
- 143.02 Purposes.
- 143.021 Definitions.
- 143.022 Applicability.
- 143.03 Qualifications of Members.
- 143.04 Compensation of Members; Payment of Expenses.
- 143.05 Interest of Members.
- 143.06 Meetings and Quorum; Notice.
- 143.07 Organization and officers.
- 143.075 Criteria for Designation.
- 143.08 Procedures for Designation of Landmarks
- 143.09 Record of Landmarks.
- 143.10 Regulation of Property Change/Certificate of Appropriateness/ Demolition/  
Moving /Minor Changes.
- 143.105 Economic Hardship.
- 143.12 Reserved.
- 143.13 Minimum Maintenance Requirement.
- 143.14 Standards for Design Review.
- 143.15 Appeals.
- 143.16 Severability.
- 143.99 Schedule of fees and penalties.

#### CROSS REFERENCES

**Planning Commission - see ZON. Ch. 1109**

**Architectural Board of Review - see BLDG. Ch. 1313**

**Additional Regulations Governing Uses – see Ch 1165, 1165.06 Sustainability Guidelines**

#### **143.01 ESTABLISHMENT; COMPOSITION, TERM AND VACANCY.**

The Cleveland Heights Landmark Commission is hereby established and shall consist of seven (7) members appointed by the City Council for staggered terms of three (3) years each, with each member serving until the appointment of a successor. Up to three (3) alternate members of the Landmark Commission may be appointed by Council for three (3) year terms, who shall serve whenever one (1) or more members are unable to hear a particular matter or are unavailable for a particular meeting. Such alternate member shall possess all of the qualifications of a regular member, shall have the same powers and perform the same duties, and shall abide by all of the rules of a regular member.

All vacancies occurring during the term of any member shall be filled for the unexpired term in the manner authorized for an original appointment. All vacancies shall be filled within sixty (60) days. An extension of this time limit may be granted by Council. In case of temporary absence or disability of any member, a member may be appointed and confirmed in the manner provided above to serve during such temporary absence or disability. Such temporary member shall possess all of the qualifications of a regular member, shall have the same powers and perform the same duties, and shall abide by all of the rules of a regular member.

(Ord. 11-2019. Passed 3-4-19; Ord. 153-2021. Passed 12-6-21.)

### **143.015 POWERS AND DUTIES OF THE COMMISSION.**

The Landmark Commission shall have the following powers and duties in addition to those otherwise specified in this Chapter:

- (a) The Commission shall conduct, or cause to be conducted, a continuing survey of all properties in the City of Cleveland Heights which the Commission, on the basis of information available or presented to it and in accordance with the guidelines established by the Ohio Historic Preservation Office, has reason to believe are or will be eligible for designation as Landmarks. The collected information shall be recorded on the Ohio Historic Inventory or Ohio Archaeological Inventory forms. This inventory material shall be maintained securely, made available to the Ohio Historic Preservation Office, and open to the public.
- (b) The Commission shall nominate properties for local designation and for designation on the National Register of Historic Places, and shall review all such nominations for properties within the City.
- (c) The Commission shall designate Landmarks.
- (d) The Commission shall either approve, approve with modification, or disapprove an application for a Certificate of Appropriateness in accordance with the review and approval procedures.
- (e) The Commission shall work for the continuing education of residents of the City of Cleveland Heights with respect to the historic and architectural heritage of the City and the Landmarks designated under the provisions of this chapter. It shall keep current and public a register of Landmarks in accordance with Section 143.09.
- (f) The Commission shall establish and utilize written guidelines to make determinations upon requests for changes to Landmarks in accordance with the United States Secretary of the Interior's Standards for Rehabilitation (36 CFR Part 67.7 (b)) and National Park Service Preservation Briefs.
- (g) The Commission shall act in an advisory role to other officials and departments of local government regarding the protection of designated and eligible Landmarks.
- (h) The Commission shall act as a liaison on behalf of the City of Cleveland Heights to individuals and organizations concerned with historic preservation.

- (i) Each Commission member shall, barring extenuating circumstances, attend an educational session at least once a year.
- (j) The Commission shall confer recognition upon the owners of Landmarks by means of certificates, plaques, signs, or markers.
- (k) The Commission shall have the authority to establish rules and regulations consistent with the provisions of this Chapter and the spirit of its purpose. These rules and regulations may assist the Commission in the evaluation of applications for Landmark designations unless otherwise provided in this Chapter. It shall govern the manner in which such applications are processed, and the proper and orderly conduct of the business of the Commission. Rules and regulations adopted by the Commission shall be made available to the public.
- (l) The Commission may accept the services on a permanent or part-time basis of technical experts and such other persons as may be required to perform its duties.
- (m) The Commission may undertake additional responsibilities upon mutual written agreement between the State Historic Preservation Office and the Commission.

(Ord. 11-2019. Passed 3-4-19.)

#### **143.02 PURPOSES.**

The purpose of the Landmark Commission is to designate Landmarks in the City of Cleveland Heights pursuant to the procedures hereinafter described, in order to preserve, protect, and perpetuate districts, sites, buildings, structures, and objects having a special historical, community, or aesthetic interest or value, all for the reasons described in the remainder of this section.

- (a) To safeguard the heritage of the City of Cleveland Heights, by preserving properties which reflect elements of the City's cultural, social, economic, political, or architectural history;
- (b) To stabilize and improve property values;
- (c) To protect and enhance the City of Cleveland Heights' heritage, and attractiveness to residents, tourists, and visitors, and serve as a support and stimulus to businesses;
- (d) To enhance the visual and aesthetic character, diversity, and interest of the City of Cleveland Heights;
- (e) To foster civic pride in the beauty and notable accomplishments of the past;
- (f) To promote the use and preservation of properties for the education and general welfare of the people of the City of Cleveland Heights;
- (g) To safeguard the architectural integrity of the City's designated Landmarks;

(h) To promote environmental sustainability through historic preservation and adaptive reuse of historic properties;

(i) To seek alternatives to demolition or incompatible alterations to Landmark properties before such acts are performed; and

(j) To encourage the development of vacant Landmark properties in accordance with the neighborhood character.

(Ord. 11-2019. Passed 3-4-19.)

### **143.021 DEFINITIONS.**

For the purposes of this chapter, the following words shall have the following meanings:

(a) **Alter or Alteration:** Any material change to the exterior appearance of a Landmark which requires a building permit. Changes to the interior of a Landmark are considered alterations only to the extent the features proposed to be changed were relevant to the Landmark designation of the property.

(b) **Building:** Any structure having a roof supported by or suspended from columns or walls and which is completely enclosed to serve as a shelter or enclosure for persons, animals, or property of any kind. The term “building” shall be construed as if followed by the words “or any part thereof.”

(c) **Change:** Any alteration, demolition, moving, removal, or construction to a Landmark.

(d) **Commission:** The City of Cleveland Heights Landmark Commission.

(e) **Certificate of Appropriateness:** A certificate issued by the Landmark Commission indicating that a proposed change to a Landmark is in accordance with provisions of this ordinance.

(f) **Construction:** The erection of any improvements to any parcel located within or on a Landmark property.

(g) **Contributing Property:** A property located within the boundary of a Landmark District, which contributes to the historic significance of the District as defined by Section 143.021(l).

(h) **Demolition:** The complete or substantial removal or destruction of a property.

(i) **Economically Feasible:** The costs of the necessary repair and rehabilitation of a Landmark, when combined with the market value of the Landmark property, do not exceed the market value of the property after the necessary repair and rehabilitation of the Landmark has been completed. This is based on the reasonable expectations in the marketplace for comparably aged and constructed properties by an amount beyond what a willing and reasonably prudent buyer would agree to pay for a property in the City of Cleveland Heights.

(j) **Exterior Architectural Features:** The architectural style, design, general arrangement, and components of all of the outer surfaces of a property including, the kind and texture of the materials and the type and style of all windows, doors, lights, signs, and other fixtures.

(k) **Historic District or District:** Any area within a boundary which has been designated as a Historic District and subject to the jurisdiction of the Landmark Commission. A Historic District shall consist of contiguous properties within a determined boundary, which may be of a regular or irregular shape. A District possesses a significant concentration, linkage, or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development.

(l) **Historic Significance:** The attributes of a property that possess integrity of location, design, setting, materials, workmanship, feeling, and association within a period of significance, and that:

(1) Are associated with events that have made a significant contribution to the broad patterns of the local, state, or national history; or

(2) Are associated with the lives of persons significant in the City of Cleveland Heights' past; or

(3) Embody the distinctive characteristics of a type, period, or method of construction, or represent the work of a master, or possess high artistic value, or represent a significant and distinguishable entity whose components may lack individual distinction; or

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

(m) **Landscaping:** Includes only mature landscaping, such as historic trees, excluding the planting or arrangement of flowers and plants incidental to the enhancement of a property or district. Landscaping may be a part of the Landmark designation if such landscaping is important in the history of the site or district, or was designed by a well-known landscape architect.

(n) **Landmark:** Any property which has historic significance, special character, historical, aesthetic, or architectural value as part of the heritage, development, or cultural characteristics of the City, County, State, or Country and which has been designated as a Landmark pursuant to the provisions of this Chapter. Such designation shall include contributing properties located within a Historic District.

(o) **Maintenance and/or Repair:** The process of conserving and fixing a property over time to prevent deterioration.

(p) **Noncontributing Property:** A property located within the boundary of a Landmark Historic District which does not contribute to the historic significance of the District as defined by Section 143.021(l).

(q) **Object:** The term 'object' is used to distinguish from buildings and structures those constructions which are primarily artistic in nature or are relatively small in scale and simply constructed. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment. Objects include, but are not limited to, sculptures, monuments, boundary markers, statuary, and fountains.

(r) **Period of significance:** The period when the historic events associated with a Landmark occurred.

(s) **Property(ies):** Any district, site, building, structure, or object.

(t) **Proximity:** For the purpose of determining compatibility of design, the potential for one property, by virtue of its location, to materially and adversely affect a Landmark property. Proximity shall include:

- (1) Properties on the same side of the street which abut the Landmark property;
- (2) Properties across the street immediately opposite the Landmark property; and
- (3) All other properties abutting the Landmark property.

(u) **Rehabilitation:** The renovation of a property in its present condition, for continued use, or its adaptation to a new use. To meet the United States Secretary of the Interior's Standards for Rehabilitation (36 CFR Part 67.7 (b)), the owner must retain the surviving historically significant, character-defining features of the property but is not required to restore it to its original historical appearance or configuration, which may have changed over the years.

(v) **Restoration:** The returning of a historically significant property to its original condition or to its condition at a specifically identified time in its history as it has evolved, based on supporting visual and documentary evidence and physical analysis of the property. The intent of restoration is to accurately restore the character-defining historical elements of the property to their original or selected later-date appearance when it achieved its historical importance.

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

(x) **Structure:** Anything constructed or erected, the use of which requires a fixed location on the ground or is attached to something having a fixed location on the ground, made usually for purposes other than shelter. Structures include signs, fences, backstops for sports fields or courts, pergolas, decks, pools, patios, paved areas, sidewalks, gazebos, bandstands, bridges, tunnels, walls, roads, paved paths, and railroad grades.

(Ord. 11-2019. Passed 3-4-19.)

#### **143.022 APPLICABILITY.**

No Landmark in the City of Cleveland Heights shall be changed unless such action complies with the provisions of this Chapter. Applicability of these provisions is limited to Landmark properties and those in the proximity of such properties.

### **143.03 QUALIFICATIONS OF MEMBERS.**

Each member of the Landmark Commission shall be a resident of this City at the time of appointment. Members of the Landmark Commission shall be persons who have demonstrated special interest, experience, or knowledge in one of the following areas: architecture, history, historic preservation, law, realty, archeology, art history, planning, or related disciplines. At least two (2) members of the Commission shall be professionals in a preservation-related field to the extent such professionals are available and willing to serve.

(Ord. 11-2019. Passed 3-4-19.)

### **143.04 COMPENSATION OF MEMBERS; PAYMENT OF EXPENSES.**

The Council shall fix the compensation which shall be paid to each regular or alternate member of the Landmark Commission for services performed on this Commission.

(Ord. 11-2019. Passed 3-4-19.)

### **143.05 INTEREST OF MEMBERS.**

No member of the Landmark Commission shall participate in the review of any item for discussion before the Commission if such member has any personal or financial interest in the property involved in such discussion.

(Ord. 11-2019. Passed 3-4-19.)

### **143.06 MEETINGS AND QUORUM; NOTICE.**

(a) **Schedule and Quorum.** The Landmark Commission shall hold at least four (4) meetings in each calendar year, approximately on a quarterly basis. The meetings shall be at the regularly scheduled times established by the Landmark Commission at the beginning of each calendar year, or at any time determined by the Chairperson. The Chairperson may establish the agenda and may cancel a meeting in the event that there are no agenda items. The presence of four (4) or more members shall constitute a quorum for the transaction of all business and action by the Commission on any matter shall be effected by the concurring votes of at least four (4) members.

(b) **Meeting Notice and Owner Notification.** Before conducting a meeting of the Landmark Commission, notice shall be given pursuant to the notice regulations in Chapter 107.02 of the Codified Ordinances of the City of Cleveland Heights.

(1) Additionally, in requests for designation or removal of designation of a single Landmark property or any properties within a Landmark Historic District, a public hearing shall be required and, at least ten (10) days prior to the meeting, written notice of the meeting shall be mailed by the Commission Secretary to interested parties requesting notifications and all property owners included in the designation or removal of Landmark designation and to adjacent property owners as follows:

(i) Properties on the same side of the street which abut the subject property or properties;

(ii) Properties on the same side of the street next contiguous to the subject property or properties so abutting;

(iii) Properties across the street immediately opposite the subject property or properties; and the premises opposite the abutting and contiguous property or properties referred to in subsections (1) and (2) hereof; and

(iv) All other premises abutting the subject property or properties.

(2) Additionally, in requests for a Certificate of Appropriateness, a public hearing shall be required and, at least ten (10) days prior to the meeting, written notice of the meeting shall be mailed by the Commission Secretary to interested parties requesting notifications and the applicant and to all owners of all properties any part of which abuts the parcel of land upon which the subject property or properties is situated.

The failure of any such person to receive such notice shall not affect the right and power of the Commission to hear such request or to take action in accordance with such public notice.

(c) **Minutes.** The Landmark Commission shall keep minutes of its proceedings and these records shall be of public record and kept by the City. All written reports, cases, decisions, and special project descriptions shall be kept and shall be public records.

(Ord. 11-2019. Passed 3-4-19.)

#### **143.07 ORGANIZATION AND OFFICERS.**

The members of the Landmark Commission annually shall choose one (1) of its members to serve as Chairperson for a period of one (1) year or until a successor has been chosen. The Chairperson shall preside over meetings. In the absence of the Chairperson, a temporary Chairperson shall be elected by those present. A Secretary to the Landmark Commission (the "Commission Secretary") shall be provided by the Director of Planning & Development. The Commission Secretary shall:

(a) Keep, or cause to be kept, a complete record of all meetings of the Commission and a detailed record of all Commission transactions;

(b) Publish and distribute copies of the minutes, reports, and decisions of the Landmark Commission to Commission members, affected property owners, and other interested parties requesting notifications;

(c) Give notice as provided herein or by law for all public hearings conducted by the Landmark Commission;

(d) Advise the Council of vacancies on the Commission and expiring terms;

(e) At regular meetings, present a staff report updating the Commission on relevant City activities.

In addition, the Secretary shall perform such other functions as the Commission may direct.



(Ord. 11-2019. Passed 3-4-19; Ord. 153-2021. Passed 12-6-21.)

#### **143.075 CRITERIA FOR DESIGNATION.**

In determining whether or not to recommend designation of a property as a Landmark, the Commission shall consider the following criteria with respect to historic significance:

- (a) Its character, interest, or value as part of the development, heritage, or cultural characteristics of the City of Cleveland Heights, Cuyahoga County, the State of Ohio, or the United States.
- (b) Its location as a site of a significant local, county, state, or national historic event.
- (c) Its identification with a person or persons who significantly contributed to the culture and development of the City of Cleveland Heights, the county, state, or nation.
- (d) Its exemplification of the cultural, economic, social, or historic heritage of the City of Cleveland Heights.
- (e) Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style or building type.
- (f) Its embodiment of distinguishing characteristics of an architectural style or type valuable for the study of a period, building type, method of construction, or use of indigenous materials.
- (g) Its identification as the work of an architect, landscape architect, or master builder whose individual work has influenced the development of the City of Cleveland Heights.
- (h) Its embodiment of elements of architectural design, detail, materials, or craftsmanship which represent a significant architectural or structural innovation.
- (i) Its unique location or singular physical characteristic representing an established and familiar visual feature of a neighborhood, community, or the City of Cleveland Heights.
- (j) It has yielded or may be likely to yield, information important in the prehistory or history of the City of Cleveland Heights.
- (k) It has other individual characteristics as shall be relevant to its designation as a Landmark.

(Ord. 11-2019. Passed 3-4-19.)

#### **143.08 PROCEDURES FOR DESIGNATION OF LANDMARKS.**

The Landmark Commission may adopt a resolution designating a property in the City of Cleveland Heights as a Landmark by following the procedures set forth in this section. The Landmark Commission may act on its own initiative or pursuant to a request by an individual, group of individuals, or organization.

**(a) Owner Notification.**

(1) For designation of a property as a Landmark, the Landmark Commission shall mail written notice of the proposed designation to the owner of record. Whenever possible, the Commission shall secure the written consent of the owner for submittal of the proposed designation. The failure of any such person to receive such notice shall not affect the right and power of the Commission to take action.

(2) The Commission shall schedule a public hearing on the question of the proposed designation pursuant to Section 143.08 (d), setting forth a date, time, and place and mailing written notice to the owner of such property being proposed for designation. Notice shall be given by the Commission by posting on the City's website. Such notice shall be published prior to the date of the required hearing, per the notice regulations in Chapter 107 of the Codified Ordinances and in accordance with Section 143.06(b). The published notice shall set forth the time and place of the public hearing and a summary of the proposed designation.

(3) The Commission shall conduct the public hearing as provided by subsection (a)(2) herein and shall provide a reasonable opportunity for all interested parties to express their opinions.

(b) (EDITOR'S NOTE: Former subsection 143.08(b) was repealed by Ordinance 129- 2020, passed November 16, 2020.)

(c) **Landmark Commission Report and Recommendation.** The Landmark Commission shall prepare or cause to be prepared a report and recommendation as to the property proposed for Landmark designation. The report shall include photographic documentation, a map or site plan showing boundaries, a physical description, history, and statement of historic significance and integrity in relation to the criteria for designation as described in Section 143.075 and period of significance. A proposed Landmark Historic District shall additionally include a list of contributing and non-contributing properties. If the Landmark Commission recommendation is to decline designation of the Landmark, no further action shall be taken.

(d) **Landmark Commission Public Hearing.** Within sixty (60) days after the Landmark Commission recommendation for designation of a Landmark, the Landmark Commission shall schedule a public hearing on the proposed designation, providing notice in accordance with Section 143.06(b)(1). The public hearing shall include a map or site plan showing boundaries of the proposed Landmark, a physical description, history, and statement of historic significance and integrity in relation to the criteria for designation as described in Section 143.075 and period of significance. A proposed Landmark Historic District shall additionally include a list of contributing and non-contributing properties. The Commission shall provide its rationale for designation and an explanation of the effect of designation. The Landmark Commission shall conduct the public hearing and provide the opportunity for all interested parties to express their opinions.

(e) **Landmark Commission Determination and Landmark Designation.** Within sixty (60) days of the required public hearing, the Landmark Commission shall make a final determination as to the designation of the proposed Landmark. The designation of a Landmark becomes effective as of the date of adoption of a corresponding resolution by the Landmark Commission.

(f) **Notification of designation.** Within ten (10) days after the adoption of a resolution by the Landmark Commission designating a Landmark, the Commission Secretary shall communicate notice of the designation in writing to the owner(s) of such property, other interested parties requesting information, Council, and other City departments. A certified copy of the designating resolution together with a notice briefly stating the fact of such designation and a summary of the effects of such designation shall be filed with the Recorder of Deeds of Cuyahoga County.

(g) **Removal of Landmark Designation.** The owner(s) of a Landmark may petition the Landmark Commission to remove Landmark status from a property that has ceased to meet the criteria for designation and the qualities for which it was originally designated have been lost or destroyed by submitting a written letter stating as such sent by certified mail to the Director of Planning, City of Cleveland Heights. In the case of a Landmark Historic District, at least a two-thirds majority of property owners, with each individual parcel having a single owner vote, must each submit such letter sent by certified mail to the Director of Planning, City of Cleveland Heights to petition the Landmark Commission for designation removal. The Landmark Commission shall hold a public hearing to determine whether the property shall remain a Landmark and shall provide notice of such hearing in accordance with Section 143.06(b). The Commission shall take into account the reasons for initially designating the property or properties as a Landmark, shall review the written certified letter(s) to rescind, and shall render a decision within ninety (90) days of the public hearing. After a final decision is rendered, the Commission Secretary shall communicate notice in writing to the owner(s) of such property, and other interested parties requesting information, Council, and other City departments. A resolution for removal of Landmark designation shall be filed with the Recorder of Deeds of Cuyahoga County and shall be sent to property owners.

(h) All Landmarks designated prior to the effective date of this Chapter shall maintain Landmark status and abide by the regulations of this Chapter.

(Ord. 11-2019. Passed 3-4-19.)

#### **143.09 RECORD OF LANDMARKS.**

The City shall maintain complete records of all properties and districts designated as Landmarks.

(Ord. 11-2019. Passed 3-4-19.)

#### **143.10 REGULATION OF PROPERTY CHANGE/CERTIFICATE OF APPROPRIATENESS/ DEMOLITION /MOVING /MINOR CHANGES.**

No owner, tenant, or occupant (hereafter, for purposes of this Section 143.10, "owner" of any Landmark shall undertake any change to any Landmark or part of a Landmark without the consent of the Landmark Commission. Nothing herein contained shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of a Landmark that does not involve a change in design, material, or exterior appearance, nor prohibit immediate repairs necessary to remedy a condition dangerous to life, health, or property.

(a) Application for Certificate of Appropriateness.

(1) When the owner of a Landmark wishes to undertake any change to a Landmark property, the owner shall apply to the Landmark Commission for a Certificate of Appropriateness. Application for review of a change, requiring a Certificate of Appropriateness, shall be made on a form prepared by the Commission Secretary. This application will state in detail the change which the owner wishes to make to such property, together with appropriate drawings, plans, elevations, and other necessary information to explain and evaluate the proposed change.

(2) Within seven (7) days following receipt of a demolition permit application or a building permit application that affects the exterior architectural features or appearance of a Landmark, the Building Department shall forward the application, plans, elevations, and other documentation to the Landmark Commission. The Building Department shall not issue the building or demolition permit for a Landmark until the Certificate of Appropriateness has been issued by the Landmark Commission and the Architectural Board of Review has rendered final approval as required in Section 143.10 (e).

(b) **Public Hearing by the Landmark Commission.** The Landmark Commission shall hold a public hearing to review any proposed change to any Landmark property within sixty (60) days from the date the application is accepted as complete by the Commission Secretary. Notice shall be provided in accordance with Section 143.06(b). When an application for a property change requires review by both the Landmark Commission and the Architectural Board of Review, the boards may choose to meet jointly.

(c) **Action by the Landmark Commission.** Utilizing the Standards for Design Review set forth in Section 143.14, the Landmark Commission may approve the request for change submitted by the owner, modify the change requested by the owner, or reject the proposed change, all in accordance with its original criteria for designation of the subject Landmark. The owner shall bear the burden of proving, by a preponderance of the evidence, that the proposed change or new construction is consistent with preservation of the character defining features of the Landmark property or Landmark properties in Proximity. The Landmark Commission shall then determine whether to issue a Certificate of Appropriateness. The applicant shall be given a written notice of the determination and, if approved, be issued a Certificate of Appropriateness. If the Landmark Commission does not act on the request within ninety (90) days of application, the request will be deemed approved.

(d) **Notice of Landmark Commission decision.** Within ten (10) days after the action by the Landmark Commission, the Commission Secretary shall communicate notice of the action in writing to the owner(s) of such property, other interested parties requesting information, and other City departments.

(e) **Demolition and Moving.**

(1) **Demolition Prohibited; Exceptions.** The demolition of a Landmark shall not be permitted unless one (1) of the following conditions exist:

(i) Demolition has been ordered by the Building Commissioner for public safety because of an unsafe or dangerous condition that constitutes an emergency.

(ii) The owner demonstrates that the Landmark is either not habitable or otherwise not safe; or the repair or rehabilitation of the property is not economically feasible and the property's condition did not result from damage which has been purposefully caused to the property, or allowed to occur due to the neglect of the owner or previous owners with the likely intention of making the repair or rehabilitation of the property not economically feasible. The owner bears the burden of proving, by a preponderance of the evidence, that the demolition is permissible pursuant to this paragraph. No permit to demolish will be permitted under this paragraph unless the owner obtains a Certificate of Appropriateness from the Landmark Commission and a final motion of approval from the Architectural Board of Review for the building or structure which will replace the property to be demolished.

(iii) The owner demonstrates to the satisfaction of the Landmark Commission that denial of the demolition is inconsistent with a legitimate interest in the health, safety, and welfare of the City.

(iv) The demolition request is for an incompatible addition or a portion of a Landmark property that is not historically significant, and, the demolition will not adversely affect the historic significance of the Landmark. (v)

(2) **Pending Landmark Application.** No property may be demolished during the pendency of a Landmark designation application, which commences upon the filing of a complete application.

(3) **Mandatory Stay of Demolition.** No permit to demolish shall be issued by the Building Commissioner for thirty (30) days following the final administrative adjudication by the City. In the event the appellate court(s) reviewing the matter issue a stay, no demolition permit shall be issued pending the final outcome of the appeal, as set forth in Section 143.15.

(4) **Moving.** No Landmark may be moved from its current location unless the Landmark Commission determines by issuance of a Certificate of Appropriateness that the moving of the property will not materially and adversely impact the historic significance of the Landmark.

(f) **Approval of Minor Changes.** The Landmark Commission may delegate to its staff the authority to administratively issue a Certificate of Appropriateness for specified minor changes. The Landmark Commission shall provide to staff written guidelines for issuing Certificates of Appropriateness under this subsection.

(g) Nothing herein shall prevent the City from ordering and/or approving the immediate demolition of such a property if, in the judgment of the Chief Building Official, it may cause a danger to the public health, safety, and/or welfare.

(Ord. 11-2019. Passed 3-4-19.)

#### **143.105 ECONOMIC HARDSHIP.**

(a) An applicant who has been denied a Certificate of Appropriateness may, within thirty (30) days of the denial, apply for consideration of economic hardship. Applications shall be made

on a form prepared by the Landmark Commission. The Landmark Commission shall hold a public hearing on the hardship application. All of the following criteria shall be considered to determine the existence of economic hardship, provided that the applicant shall have the burden of persuasion by a preponderance of the evidence:

- (1) Denial of a certificate will result in a substantial reduction in the economic value of the property;
- (2) Denial of a certificate will result in a substantial economic burden on the applicant because the applicant cannot reasonably maintain the property in its current form;
- (3) No reasonable alternative exists consistent with the architectural standards and guidelines for the property;
- (4) The owner has been unable to sell the property after demonstrating that a good faith effort has been made;
- (5) Previous alterations have interfered with the architectural character of the property and the character-defining features to illustrate the style or type are lost, and to return the property to its original character is not reasonable; or
- (6) Denial will result in a substantial burden as outlined in the applicant's sworn statement or affidavit in support.

(b) **Certificate Process.** The Landmark Commission may solicit expert testimony or request that the applicant submit evidence concerning property value, cost estimates, income, expenses, and/or any other information that the Landmark Commission deems necessary to determine whether denial of the application constitutes an economic hardship. The level of documentation required may vary as is appropriate to each case.

(c) **Landmark Commission Action on an Application.** The Landmark Commission shall act upon the application within ninety (90) days after receipt of such an application. If no action has been taken by the Landmark Commission within ninety (90) days, the application shall be deemed granted, unless the time is extended by mutual agreement. Upon the denial of an application, the applicant shall be notified by mail.

(d) **Investigation of Measures to Relieve Hardship.** Upon a finding by the Landmark Commission that a denial of the application for a change results in economic hardship, then the application for a Certificate of Appropriateness shall be delayed for a period not to exceed sixty (60) days. During this period the Landmark Commission shall investigate measures to relieve the hardship or otherwise preserve the property. Such plans and recommendations may include financial assistance, Building Code modifications, and/or changes to the Zoning Code, to the extent such actions may be lawful.

(e) **Issuance of Certificate.** If by the end of this ninety (90) day period, the Landmark Commission has found that without approval of the change the hardship cannot be relieved, then the Landmark Commission shall issue a Certificate of Appropriateness permitting the proposed change.

Nothing herein contained shall obviate compliance by the owner of such property with all other applicable ordinances, rules, and regulations of the City.

(Ord. 11-2019. Passed 3-4-19.)

#### **143.12 RESERVED.**

(EDITOR'S NOTE: This section is reserved for future legislation.)

#### **143.13 MINIMUM MAINTENANCE REQUIREMENT.**

No person, being the owner of a Landmark property in the City of Cleveland Heights, shall fail to provide sufficient and reasonable care, maintenance, and upkeep to ensure perpetuation of such property as a Landmark and to prevent its destruction by deterioration.

This provision shall be in addition to all other applicable code provisions and shall be subject to the penalties outlined in Section 143.99 of this ordinance.

(Ord. 11-2019. Passed 3-4-19.)

#### **143.14 STANDARDS FOR DESIGN REVIEW.**

Designs shall be reviewed in accordance with the United States Secretary of the Interior's Standards for Rehabilitation (36 CFR Part 67.7 (b)) and National Park Service Preservation Briefs, on a case-by-case basis, as further described in the Historic Preservation Design Guidelines for the City of Cleveland Heights, as may be amended from time-to-time.

The following United States Secretary of the Interior's Standards for Rehabilitation (36 CFR Part 67.7 (b)) shall be applied in a reasonable manner, taking into consideration economic and technical feasibility:

- (a) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- (b) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
- (c) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
- (d) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- (e) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
- (f) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials.

Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

(g) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

(h) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

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

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

(Ord. 11-2019. Passed 3-4-19.)

### **143.15 APPEALS**

Any person adversely affected by a decision of the Landmarks Commission may appeal the determination of the Landmark Commission to Council. An appeal shall be considered by Council only after formal action has been taken at a public meeting by the Landmark Commission with regard to an application for a Certificate of Appropriateness.

(a) **Initiation of Appeal.** Within ten (10) calendar days of such action, a written notice of appeal including reference to the decision from which the appeal is sought shall be filed with the Clerk of Council.

(b) **Transmittal to Council.** The Clerk of Council shall forthwith transmit to Council all of the papers constituting the record upon which the action appealed from was taken.

(c) **Public Hearing by Council.** Council shall select a reasonable time and place for the public hearing of the appeal within seventy-five (75) days of the date the appeal was filed with the Clerk of Council. Any person affected may appear and testify at the hearing, either in person or by duly authorized agent or attorney.

(d) **Notice of Public Hearing.** Before conducting the public hearing required in subsection (c) hereof, notice of such hearing shall be given by the City by posting on the City's website at least ten (10) days before the date of such hearing. Also, a written notice of the hearing shall be mailed by the Clerk of Council, at least ten (10) days before the day of the public hearing to the appellant, and to owners of any other property deemed by the Clerk of Council to be affected.

(e) **Decision by Council.** Council shall render a decision to affirm, modify, or reverse the decision of the Landmark Commission on appeal without unreasonable delay. The Council decision shall be final and appealable only to Common Pleas Court under Ohio RC Chapter 2506. The Clerk of Council shall notify the appellant in writing of the decision of Council and



shall maintain a detailed report of the proceedings and decisions of Council on each appeal heard by Council.

(f) **Time Frame for Council Action.** A person initiating an appeal to Council may request that Council decide such appeal within fifteen (15) days after the start of the public hearing. An appellant may by subsequent written communication or by oral representation under oath agree to an extension of such prescribed time for Council action. Failure of Council to act within the prescribed time (or as so extended) shall, at the election of the appellant, be deemed a denial of the appeal.

#### **143.16 SEVERABILITY.**

If any particular section of this Chapter is declared to be unconstitutional or void, only that particular section is affected, and all other sections of this chapter shall remain in full force and effect.

(Ord. 11-2019. Passed 3-4-19.)

#### **143.99 SCHEDULE OF FEES AND PENALTIES.**

(a) Council shall by ordinance establish a schedule of fees for application for designation, Certificates of Appropriateness, removal of designation, and other procedures after considering the recommendations of the Commission Secretary with respect to actual administrative costs, both direct and indirect. The schedule of fees shall be available on the City's website and may be altered or amended only by Council. Until all such appropriate fees, charges, and expenses have been paid in full, no action shall be taken on any application or administrative procedure.

(b) Any person who undertakes or causes an alteration, construction, demolition, or removal of any designated Landmark without a Certificate of Appropriateness or otherwise complying with Section 143.10 shall be guilty of a minor misdemeanor and upon conviction thereof shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00) per infraction. Each day such violation shall continue to exist shall constitute a separate violation. The City of Cleveland Heights may institute any appropriate action to enjoin, correct, or abate any violation of this chapter. The property owner shall also pay any Building Department fines as a result of construction or demolition without a building permit.

(Ord. 11-2019. Passed 3-4-19.)