

MODEL HISTORIC PRESERVATION ORDINANCE FOR CRYSTAL RIVER, FL

**Conservation Clinic
University of Florida Levin College of Law**

**Terra DuBois, J.D.
Katrina Thomas, J.D. Candidate
Leslie Utiger, J.D. Candidate**

**Thomas T. Ankersen, J.D., Conservation Clinic Director
Timothy McLendon, J.D., Advisor**

SECTION 1. Findings.¹ The city council hereby finds as follows:

- (a) Within the city there are districts, areas, sites, structures and objects that are examples of architectural styles of the past, are important reminders of people and events that are significant to local, state, and national history, or are unique and irreplaceable assets and resources to the city and local neighborhood;
- (b) In recognition of these assets and resources, the March 1998 city comprehensive plan, as amended in March 2003, contains an historic preservation element which illustrates the city's desire to encourage the preservation of important historic resources through requirements in the land development code;
- (c) The recognition, protection, enhancement and use of such resources is a public policy of the city and is essential to further the health, safety, morals, and social, educational, economic, cultural, and general welfare of the public since these efforts result in the enhancement of property values, the stabilization of neighborhoods and areas of the city, the increase of economic benefits to the city and its inhabitants, the promotion of local interest, the enrichment of human life in its educational and cultural dimensions, serving spiritual as well as material needs, and the fostering of civic pride in the beauty and noble accomplishments of the past;
- (d) There are numerous economic benefits to historic preservation activities including the creation of jobs, significant contributions to tax collections of Florida state and local governments, investments of private funds in historic projects and partnerships between private investors and local governments, maintenance of property values, and increases in money spent by tourists visiting historic sites;
- (e) The city council desires to take advantage of all available state and federal laws that may assist in the development of the city;
- (f) The city council desires for the city to become a Certified Local Government as designated by the Department of State, Office of Cultural and Historical Programs in order to provide the city the opportunity to receive state and federal funds to aid the survey, designation, and preservation of these resources;
- (g) The federal and state government have established a program of matching grants-in-aid for projects having as their purpose the preservation for public benefit of properties that are significant in American history and architecture;

- (h) There are other federal and state programs providing funds for projects involving the rehabilitation of existing districts, sites, structures, objects and areas;
- (i) Inherent in the enactment and implementation of these federal mandates is the policy of the United States government that the spirit and direction of the nation are founded upon and reflected in its historic past; that the historical and cultural foundations of the nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people; that in the face of the ever-increasing extensions of urban centers, highways, and residential, commercial and industrial developments, the present governmental and nongovernmental programs and activities are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our nation;
- (j) It is the will of the people of the State of Florida as expressed in Article II, section 7 of the 1968 Florida Constitution, that the state's natural resources and scenic beauty be conserved and protected; and
- (k) It is the will of the State of Florida legislature, as expressed in F.S. Chapter 267, that the state's historic sites and properties, buildings, artifacts, treasure troves and objects of antiquity, which have scientific or historical value, or are of interest to the public, be protected and preserved.

SECTION 2. Purpose.¹ In recognition of these findings, it is the purpose of this chapter to:

- (a) Promote the health, safety, morals, and social, educational, economic, cultural and general welfare of the public through identification, designation, enhancement and preservation of districts, areas, sites, structures and objects that are examples of architectural styles of the past, are important reminders of people and events that are significant to local, state, and national history, or are unique and irreplaceable assets and resources to the city and local neighborhood;
- (b) Preserve such districts, areas, sites, structures and objects by requiring review of any proposed alterations to these resources and issuance of certificates of appropriateness before allowing alteration these resources;
- (c) Preserve such districts, areas, sites, structures and objects by encouraging the construction of new structures and the alteration of existing non-contributing structures to preserve and be in harmony with the integrity of existing historical resources;
- (d) Stabilize and improve property values;
- (e) Increase economic benefits to the city and its residents;
- (f) Stimulate the tourist industry;
- (g) Encourage historic preservation by providing incentives to encourage the sensitive rehabilitation and use of designated historic resources;
- (h) Fulfill the requirements for designation of the city as a Certified Local Government;
- (i) Promote a living history which will foster educational programs aimed at creating a better understanding of the city of Crystal River's history, culture, and heritage.

¹ ***Policy Considerations for the Findings and Purpose Sections. The language in this section is adopted primarily from the City of Gainesville Historic Preservation Ordinance 30-112. The Purpose/Findings/Intent***

section of the ordinance must illustrate the local government's intent in enacting the ordinance. Here, the City Council must express the recognized importance of historic preservation to the local, state, and national community. In order for the ordinance to be defensible, the purpose section must clearly tie the historic preservation efforts to a legitimate governmental function. The legitimate governmental function in this instance is the exercise of the local government's police powers to further the public health, safety, morals, and welfare by preserving historic structures and districts throughout the community.

The drafters of the ordinance have a policy choice to make regarding the structure in which the City Council's intent and purpose is expressed. For instance, some municipalities choose to include two sections, "Purpose" and "Intent", separately (See Miami Beach Historic Preservation Ordinance §§118-501 and 118-502). In contrast, St. Petersburg Historic Preservation Ordinance combines those two sections, "Purpose and Intent" (See §110-2). Still another structural option is to add in a "Findings" section with either format discussed above. An example of this structure is the Gainesville Historic Preservation Ordinance, §30-112(a) and (b).

In the present Model Historic Preservation Ordinance, there is both a "Findings" and a "Purpose" section. The "Findings" section is useful because it serves to further explain the City Council's reasoning for enacting the ordinance. It provides the public with the same information the City Council had in front of it when it made the determination to enact the ordinance. The "Findings" section in conjunction with the "Purpose" section provides a full picture of the policies of the City Commission and ties the ordinance in with a legitimate governmental function. As long as the ordinance clearly articulates these aspects, the drafter can have as few as one section declaring the overall purpose. It is a matter of style, structure, and clarity.

Regarding Section 1(d) discussing the various economic benefits of historic preservation activities, please see Executive Summary: Economic Impacts of Historic Preservation in Florida available at http://www.flheritage.com/preservation/economic_impact.pdf.

SECTION 3. Definitions.² The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section:

- (a) *Alteration* means any change affecting the exterior appearance of an existing improvement by additions, reconstruction, remodeling or maintenance involving change in color, form, texture or materials.
- (b) *Applicant* means the owner of record of a qualifying property or the authorized agent of the owner.
- (c) *Certificate of Appropriateness* means a certificate issued in compliance with this ordinance for any exterior alteration to a designated structure, site or property within a designated historic district for the purpose of protecting the integrity of the structure, site, or historic district.
- (d) *Certified Local Government* means a government meeting the requirements of the National Historic Preservation Act Amendments of 1980 (P.L. 96-515) and the implementing regulations of the U.S. Department of the Interior and the State of Florida.
- (e) *Commission* means the Crystal River Historic Preservation Commission.
- (f) *Contributing Structure* means a site, structure or object in a historic district which adds to the historical/architectural qualities, historic associations or archaeological values for which a historic district is significant because a) it was present during the period of significance of the district, and possesses historic integrity reflecting its character at that time, b) it is capable of yielding important information about the period, or c) it independently meets the National Register of Historic Places criteria for evaluation set forth in 36 CFR Part 60.4, and as the same may be amended.
- (g) *Demolition* means the act of razing, dismantling or removing a structure, or portion thereof to ground level.

- (h) *Designated property or structure* means a structure, site, or district that is formally recognized by the city as historically, architecturally, and/or archeologically significant.
- (i) *Economic hardship* means an onerous and excessive financial burden that destroys reasonable and beneficial use of property and that would amount to the taking of property without just compensation, or failure to achieve a reasonable economic return in the case of income-producing properties.
- (j) *Exterior Architectural Features* includes, but is not limited to, the architectural style, scale, massing, siting, general design and general arrangement of the exterior of the building or structure, including the type, style, and material of roofs, windows, doors, siding, masonry, porches, storefronts, and other architectural features.
- (k) *Historic District* means a geographically defined area possessing a significant concentration, linkage, or continuity of sites or structures united historically or aesthetically by plan or physical development.
- (l) *Landscape Features* includes, but is not limited to, trees, plants, walls, fences, courtyards, signs, and exterior lighting.
- (m) *National Register of Historic Places* means the list of historic properties significant in American history, architecture, archaeology, engineering and culture, maintained by the U.S. Secretary of the Interior, as established by the National Historic Preservation Act of 1966, as amended.
- (n) *Non-contributing Structure* means a site, structure or object in a historic district which does not reflect the historic, architectural, cultural, or aesthetic significance of the district, but must nonetheless be preserved in accordance with this chapter due to its protective nature for nearby contributing structures.
- (o) *Ordinary Repair or Maintenance* means work on a designated structure, site, or a property located in a designated historic district, that is otherwise permitted by law, and does not alter the exterior appearance of the structure, does not disturb the contents of an archaeological site, and does not alter elements significant to its architectural, historical or archaeological integrity, including, but not limited to: replacement of windows, siding, or roof, with the same material and style as exists presently.
- (p) *Relocation* includes, but is not limited to, moving a structure into or within any historic district, moving a historic structure within or out of the city of Crystal River or any historic district.
- (q) *Restoration* means the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.
- (r) *Site* means a geographically defined area possessing historical, cultural, or aesthetic significance and value, regardless of its association with a structure.
- (s) *Structure* means anything, excluding paving, constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. Structures shall include but not be limited to antennas, buildings, satellite dishes, screened panels, swimming pools, fences, walls, lampposts, garages, sheds, driveways, sidewalks, canals, bridges, roads and exterior mechanical equipment, such as air conditioning compressors and pumps.

² *Policy Considerations for the Definitions Section.* *The language in this section is adopted primarily from the Martin County Historic Preservation Ordinance, the City of St. Petersburg Historic Preservation Ordinance and*

the City of Auburndale Historic Preservation Ordinance. The definitions section must include a list of terms used in the ordinance, accompanied by their definitions. This section is important because the definitions are used as a guide by citizens and the city council in interpreting and enforcing the ordinance. It is necessary to review the entire ordinance and add any technical terms or terms that are easily misconstrued to the Definitions section.

SECTION 4. Scope.³ This chapter shall be applicable to all real property within the city and designated under this chapter.

³ ***Policy Considerations for the Scope section.*** *The Scope section delineates the property to which the Historic Preservation Ordinance shall apply. Some municipalities do not include a scope section, however, this is not recommended. The scope section in the Model Historic Preservation Ordinance simply states that the ordinance will apply to any real property that is designated under the ordinance. Some municipalities draft more expansive scope sections. For example, the Miami Beach Historic Preservation Ordinance, §118-503, contains a scope section in which the scope is defined by which permits the ordinance applies to (i.e. “Unless expressly exempted by subsection (b) of this section, no building permits shall be issued for new construction, demolition, alteration, rehabilitation, signage or any other physical modification of any building, structure, improvement, landscape feature, public interior or site individually designated in accordance with sections 118-591, 118-592 and 118-593, or located within an historic district, nor shall any construction, demolition, alteration, rehabilitation, signage or any other exterior or public interior physical modification, whether temporary or permanent, without a permit, be undertaken, without the prior issuance of a certificate of appropriateness or certificate to dig by the historic preservation board, or the planning director or his designee, in accordance with the procedures specified in this section”).*

SECTION 5. Historic Preservation Board.⁴

- (a) *Organization.* There is hereby created an Historic Preservation Board which shall consist of five (5) members appointed by the city council. Members shall be residents of the city and shall have knowledge of and a demonstrated interest in historic, architectural, and aesthetic development, enhancement, and preservation within the city. To the extent available in the community, members shall be professional members from the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation, and landscape architecture as defined in the Secretary of the Interior’s Historic Preservation Professional Qualification Standards and the Florida Certified Local Government Professional Qualification Standards.
- (b) *Terms of Office.* The members of the Board shall serve overlapping terms of three (3) years. Initially, one (1) member shall serve one (1) year, two (2) members shall serve two (2) years, and two (2) members shall serve three (3) years. Vacancies on the Board shall be filled within sixty (60) days. Terms shall be renewable by approval of the city council. Members may be removed from the Board for good cause and approval of the city council.
- (c) *Officers.* The Board shall elect from its members a chairman, a vice-chairman, and a secretary at the first meeting and annually thereafter.

- (d) *Meetings and Records.* Regular meeting of the Board shall be held monthly, or as necessary to fulfill their duties. The Board shall meet a minimum of four (4) times per year. Special meetings of the Board may be called by the chairman as necessary, including pertinent informational or educational meetings, workshops and conferences. The Board shall keep minutes and other records which shall be open to the public. Notice of each Board meeting will be posted prior to the meeting.
- (e) *Quorum.* A majority of the Board (three) shall constitute a quorum, but no application for approval of a certificate of appropriateness shall be denied except by a vote of a majority of the entire Board.
- (f) *Powers and Duties.* The powers and duties of the Board include, but are not limited to the following:
- (1) Identify structures, sites, and historic districts for designation;
 - (2) Initiate and conduct an ongoing survey of historically, culturally, or architecturally significant structures and districts within the city;
 - (3) Approve historical markers and issue certificates of designation;
 - (4) Review proposed National Register nominations within the city or districts;
 - (5) Create guidelines for the alteration, relocation, demolition, or removal of designated property;
 - (6) Approve or deny applications for certificates of appropriateness for alteration, relocation, demolition, or removal of designated property;
 - (7) Demonstrate a spirit of cooperation with and provide guidance to property owners in the preservation of historic structures, sites and districts;
 - (8) Develop programs to stimulate public interest and involvement in historic and cultural preservation;
 - (9) Seek grants from federal and state agencies or private groups or individuals to promote the preservation of historically, architecturally, or aesthetically significant structures, sites and districts;
 - (10) Advise the city council on all matters having effects on historically, architecturally, or aesthetically significant structures, sites or districts.

⁴ ***Policy considerations for the Historic Preservation Commission section.*** *The language in this section is adopted from the cities of Mt. Dora, Miami Beach, St. Petersburg, and Auburndale Historic Preservation Ordinances as well as the Martin County Historic Preservation Ordinance. This section creates the Historic Preservation Commission and identifies its duties. If the city aspires to become a Certified Local Government (CLG), the specifics of this section should be checked against the Florida Certified Local Government Guidelines available from the Florida Department of State. All the provisions in this section should ensure certification as long as other requirements are met throughout the ordinance.*

With regard to the members of the commission, an odd number helps to prevent tie votes. The CLG Guidelines require at least 5 members, unless the community's population is less than 10,000 in which case there may be 3 members. The CLG Guidelines require members to have a demonstrated interest in historic preservation and, to the extent available within the community, be a professional in one of the listed professions. If a local government is unable to fulfill the Professional Qualification requirements, it must prove to the State Historic Preservation Officer that it made a reasonable effort to fill the positions. The local government may show that it has made a reasonable effort by documenting that "(a) professionals in the required disciplines do not reside nor are property or business owners in the jurisdiction, or (b) local professional are not willing to serve on the commission, and (c) in the case of a commission with fewer than the minimum numbers of members...that no other lay persons meeting the requirements of B.2.c. are available to serve."

SECTION 6. Historic District Designation Procedure.⁵ The following procedure shall apply for the designation of structures, districts or sites as historic resources:

- (a) Requests for designation of an individual historic structure, site, or district may be made to the historic preservation board by motion of the board, the city manager, by resolution of the planning board or city commission, by any property owner in respect to his own property, by a majority of property owners of record within a proposed district, by resolution of the county historic preservation board, or by resolution of any organization whose purpose is to promote the preservation of historic sites.
- (b) Before the establishment of a historic district, the historic preservation board shall conduct studies and research and make a report on the historic significance of the exteriors of structures, features, sites, objects and areas in the city.⁶ The historic preservation board's report shall contain recommendations concerning the area(s) to be included in the proposed historic districts. The reports will contain photographs and a sketch map indicating the district boundaries.
- (c) Copies of the report shall be transmitted for review and recommendation to the planning commission and to the department of state of the State of Florida. Not less than sixty (60) days after the transmittal, the historical preservation board shall hold a public hearing thereof after due notice, which shall include a written notice to the last known address of the owners and occupants of all properties to be included in such district(s). Notice to owners shall be at least thirty (30) days, but not more than seventy-five (75) days prior to the public hearing.
- (d) A property owner may object either in person or in writing to having their property nominated as part of a historic district. If objecting in writing, a notarized statement must be submitted at least fifteen (15) days prior to the nomination being considered at the public hearing. The historic preservation board may then either continue its review, forwarding its recommendation to the city council and noting the owner's objection or, the historic preservation board may cease any further review process and notify the city council of the property owner's objection to the proposed listing.

⁵ It is recommended that the preservation board be given the power to designate districts and landmarks. This serves to detach the application of a historic ordinance from local politics, and removes the designation decision from political pressure to the extent possible. This also allows the qualified experts to designate so long as they are given definite standards and criteria for doing so.

⁶ The *St. Petersburg* historic preservation ordinance requires the property owner's consent prior to any action by the commission in designating a property as historic. There, designation may be proposed by the property owner, a majority vote of the members of the aesthetic and historic review board, or by majority vote of the city commission. If a property owner proposes designation, a petition is filed with the historic review board, who will notify the owner at least 30 days in advance of the hearing.

Note: Owner consent for historic designation is not required by the Constitution. This was determined in *Penn Central Transportation Co. v. City of New York* (438 U.S. 104 (1978)), which upheld New York's preservation ordinance, which provided for designation without owner consent. Political pressures, however, have resulted in many ordinances that allow owners to opt out of historic designation. Objective criteria are provided to determine historic status, and a property may be measured against these in finding historic status. This finding should be an objective decision that is independent of the interests of a property owner or others.

- (e) After said public hearing the historic preservation board shall submit a final report with recommendations to the city council.
- (f) The city council shall hold a public hearing at a regularly scheduled city council meeting to consider establishment of a historic district.
- (g) Historic districts, sites, and structures when approved by the city council shall be established by resolution.
- (h) Upon adoption, the owners and occupants of each designated historic site, structure, or district shall be given written notification of such designation by the city council.
- (i) Nominations recommended by the historic preservation board for placement on the National Register of Historic Places will be forwarded to the state historic preservation officer for consideration.
- (j) Designated historic sites, structures, or districts shall be provided with a city approved standard sign or marker on or near the property indicating that the property has been so designated. The city manager or designee shall issue an official certificate of historic significance to the owner of properties listed individually on the local register or judged as contributing to the character of a district listed on the local register. The city manager or designee is additionally authorized to issue and place official signs denoting the geographic boundaries of each district listed on the local register.

SECTION 7. Criteria for Designation of Historic Sites, Structures, and Districts.⁷

- (a) *Qualifications.* In order to qualify as a local historic district, historic structure, or historic site, individual properties or groups of properties must have significant character, interest or value as part of the historical, cultural, archaeological, aesthetic, or architectural heritage of the city, state or nation, and shall meet one (1) or more of the following criteria:⁸ Such properties shall also possess an integrity of location, design, setting, materials, workmanship, feeling or association. Structures, sites, or districts over fifty (50) years old shall be presumed to be historic.

- (1) Its character as a geographically definable area possessing a significant concentration of structures, which are well designed, and other sites and objects, all of which are united by past events or by a plan or physical development;
- (2) Its character as an established and geographically definable neighborhood united by culture, architectural styles or physical development;

⁷ Many ordinances rely on the criteria promulgated by the National Park Service for inclusion in the National Register as the basis for historic delegation in their ordinances (*please see attached.*). These criteria are substantially the same as those included in Dade County's historic preservation ordinance, which was upheld by the Florida Third District Court of Appeals in *Metropolitan Dade County v. P.J. Birds, Inc.* (654 So.2d 170 (Fla. 3d DCA 1995))

⁸ The St. Petersburg historic preservation ordinance separates the criteria according to whether the property in question is a landmark, district, site, or building. This may prove to be more fragmented than necessary, but is also an option.

- (3) Its value as a reminder of the cultural or archaeological heritage of the city, state or nation;
- (4) Its value as a site of a significant local, state or national event;
- (5) Its identification with a person who significantly contributed to the development of the city, state or nation;
- (6) Its identification as the work of an architect, designer or builder whose work has influenced the development of the city, state or nation;
- (7) Its value as a building that is recognized for the quality of its architecture and that retains sufficient features showing its architectural significance; or
- (8) Its value as a structure with distinguishing characteristics of an architectural style that is significant for the study of a period, method of construction or use of indigenous materials.

(b) *Properties not generally considered; exceptions.*⁹ Certain properties which include cemeteries, birthplaces, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, properties commemorative in nature, and properties that have achieved significance within the last 50 years, will not normally be considered for designation. However, such properties will qualify if they are integral parts of districts that do meet the criteria, or if they fall within the following categories:

- (1) A religious property deriving primary significance from architectural or artistic distinction or historical importance; or
- (2) A structure removed from its location but which is primarily significant for architectural value, or is the surviving structure most importantly associated with a historic event or person; or
- (3) A birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or structure directly associated with his/her, productive life; or
- (4) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, distinctive design features, or from association with historic events; or
- (5) A property primarily commemorative in intent if design, age, tradition or symbolic value has invested it with its own historical significance; or
- (6) A property or district achieving significance within the past 50 years if it is of exceptional importance.

SECTION 8. Historic Preservation/Geographic Information System (GIS) Overlay.¹⁰

⁹ From the criteria promulgated by the National Park Service for inclusion in the National Register as the basis for historic delegation. Dade County uses these criteria for their historic preservation ordinance.

¹⁰ This section was included in the Martin County historic preservation ordinance, and provides for an up to date method of record keeping. This may be a viable option if the resources necessary are available. One of the main benefits of GIS is improved management of the organization and resources. A GIS can link data sets together by common locational data, such as addresses, which helps departments and agencies share their data. By creating a

- (a) A Historic Preservation/GIS Overlay shall be created to depict the extent of designated properties.
- (b) The overlay will contain the name of the individual property, district, or zone as furnished by the historic preservation board.
- (c) An inventory by address, Master Site File number, and legal description will be maintained by the Growth Management District of all properties contained within the GIS Overlay.
- (d) Amendments to or rescission of the designation of individual properties, districts, and zones will be recorded as part of the overlay.

SECTION 9. Relationship to zoning districts. Designated historic resources may be located within any zoning district classification. Whenever a designation is made by ordinance, the regulations for both the applicable zoning district and this chapter shall be applied to the designated property.

SECTION 10. Certificate of Appropriateness.

- (a) *Required.*¹¹
 - (1) *Historic site.* No structure, appurtenance, improvement, landscape feature, or archaeological site¹² within the City of Crystal River, which has been designated a historic site or structure¹³, will be erected, altered, restored, renovated, rehabilitated, excavated, relocated, or demolished until a certificate of appropriateness regarding any exterior architectural features, landscape features, or site improvements has been approved under the procedures in this section.
 - (2) *Historic district.* A certificate of appropriateness shall be required for the erection, alteration, restoration, renovation, rehabilitation, excavation, relocation, or demolition of any structure or appurtenance within any historic district established by the City of Crystal River under the procedures specified in this ordinance.
 - (3) *Other permits and approvals.* A certificate of appropriateness shall be considered prerequisite to the issuance of any other permits required by law. The issuance of a certificate of appropriateness shall not relieve the applicant from obtaining other permits or approvals required by the city. A building

shared database, one department can benefit from the work of another—data can be collected once and used many times.

¹¹ This is a modified version of a provision found in the Mount Dora Historic Preservation ordinance. It was chosen for its simplicity and clarity.

¹² Are there any archaeological sites in Crystal River city limits? Do we want the ordinance to include protection of archaeological sites in addition to historic structures?

¹³ Do we want to distinguish between site and structure or define site to include structure? It seems to go both ways in the various statutes.

permit or other city permit shall be invalid if it is obtained without a certificate of appropriateness required for the proposed work.

- (b) *Plan Approval Required.* No certificate of appropriateness will be approved unless the architectural plans for said construction, reconstruction, relocation, alteration, excavation, restoration, renovation, or demolition are approved by the Board.
- (c) *Certificate Not Required.* A certificate of appropriateness will not be required for general, occasional maintenance and repair of any historic structure or site, or any structure within a historic district. General, occasional maintenance and repair will include, but is not be limited to, lawn and landscaping care, painting and minor repairs that restore or maintain the historic site or current character of the structure. General, occasional maintenance and repair will not include any of the activities described and defined in Section 3(o) of this ordinance, above, nor will it include an addition or change of awnings, signs, or alterations to porches and steps. A certificate of appropriateness will not be required for any interior alteration, construction, reconstruction, restoration, renovation or demolition. General, occasional maintenance and repair shall also include any ordinary maintenance which does not require a building permit for the city.
- (d) *Criteria.*¹⁴ The Board shall determine whether to grant a certificate of appropriateness based on the following:
 - (1) Consistency of the proposed work with the regulations of the applicable historic preservation district;
 - (2) Consistency of the proposed work with the regulations of the underlying zoning district;
 - (3) Consistency of the proposed work with the findings adopted by the city council in designating the applicable historic preservation district;
 - (4) For a historic structure, consistency of the proposed work with the findings adopted by the Board in designating it a historic structure, or comparable record of findings from a state or federal listing; and
 - (5) Other objective evidence regarding the consistency of the proposed work with the purposes of the City of Crystal River in adopting this ordinance and, more specifically, with the preservation of an identified historic structure or other resource.
- (e) *Review Guidelines.*
 - (1) The Board will utilize the most recent U.S. Secretary of Interior's Standards for Historic Rehabilitation and Guidelines for Rehabilitation (36 CFR 67 (1983), or as may be amended, renumbered or replaced) and the Crystal River Historic Preservation Design Guidelines¹⁵ as the standards by which applications for certificate of appropriateness are to be evaluated. These guidelines are intended to promote the maintenance, restoration, economic

¹⁴ **Commentary:** These provisions reinforce the concepts established above, making the findings critical elements in the regulation of the affected district or structure.

¹⁵ See "Preparing a Historic Preservation Ordinance" (Roddewig), pp. 35-37 for sample design guidelines.

viability, improvement in economic values, and adaptive and new uses of the property. It is also the intent to promote visually compatible, contemporary designs that are harmonious with the exterior architectural and landscape features of adjacent, neighboring or visually related structures, sites and streetscapes. Copies of the Secretary of the Interior's standards and Crystal River's Historic Preservation Design Guidelines¹⁶ shall be kept on file in the (*department of planning and development*).¹⁷

- (2) Application for certificates of appropriateness must be made on forms approved and provided by the Board. Applications will include required forms and appropriate architectural drawings specifically indicating the proposed changes, photographs, sketches, descriptions, renderings, site plans, surveys, documents, material samples, or other information needed for the Board to gain a clear understanding of the applicant's planned alteration, construction, reconstruction, relocation, restoration, renovation or demolition. These forms will be available at (...).¹⁸
- (3) The guidelines for certificates of appropriateness will be consistent and harmonious with the guidelines for designation defined and described in Section 7 of this ordinance.

OR

- (f) *Guidelines.*¹⁹ ²⁰ The Board shall use the Secretary of the Interior's pamphlet entitled, *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* as criteria.
 - (1) Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the structure or site and its environment, or to use a property for its originally intended purpose.
 - (2) The distinguishing original qualities or character of a structure or site and its environment should not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
 - (3) All structures and sites shall be recognized as products of their own time. Alterations that have no historic basis and which seek to create an earlier appearance shall be discouraged.

¹⁶ See "Preparing a Historic Preservation Ordinance" (Roddewig), pp. 35-37 for sample design guidelines.

¹⁷ Personalize to Crystal River.

¹⁸ Personalize to Crystal River.

¹⁹ (f) and (g) constitute an alternate provision to (e): "Review Guidelines." These provisions come from *9-53 Zoning and Land Use Controls* § 53.17, a model historic preservation ordinance. The advantage of (f) and (g) is that they clearly set forth the two sets of standards to be used in evaluating certificates of appropriateness, whereas in (e) both standards are merely named and not defined further.

²⁰ **Commentary:** This paragraph provides additional guidelines for interpretation and implementation of the ordinance.

- (4) Changes which may have taken place in the course of time are evidence of the history and development of a structure or site. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- (5) Distinctive stylistic features or examples of skilled craftsmanship which characterize a structure or site shall be treated with sensitivity.
- (6) Deteriorated architectural features which are repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other structures.
- (7) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building material shall not be undertaken without approval from the Board.
- (8) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to any project.
- (9) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historic, architectural, or cultural material and when such design is compatible with the size, scale, color, material, character of the property, neighborhood or environment. Wherever possible, new additions or alterations to a structure shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

(g) *Crystal River Historic Preservation Design Guidelines*.^{21 22} The Board shall develop such supplemental guidelines as it may find necessary to implement the regulations of a particular historic preservation district or the findings applicable to the designation of a historic structure or a particular historic preservation district. Such guidelines may include:

- (1) charts of acceptable colors;
- (2) charts or samples of acceptable materials for siding, foundations, roofs or other parts of structures;
- (3) illustrations of appropriate architectural details;
- (4) numerical specifications of appropriate rhythms or proportions;

²¹ **Commentary:** In administering regulations for a historic district, it is often extremely helpful to have charts of acceptable colors and materials, as well as the other supplemental guidelines. Such charts and illustrations can become the basis for blanket certificates of authority ("any property in the district may be painted in accordance with this color chart") or administrative approvals of proposals, thus greatly simplifying the administration of the ordinance both for property owners and for the local government.

²² See "Preparing a Historic Preservation Ordinance" (Roddewig), pp. 35-37 for sample design guidelines.

- (5) numerical specifications of appropriate relationships to streets, sidewalks, and other structures;
- (6) illustrations of appropriate porch treatments or entrances;
- (7) illustrations of appropriate signage or street furniture.

(h) *Review Procedures.*

- (1) The following departments and agencies of the City of Crystal River will require the completion of an application for a certificate of appropriateness if any of the following activities affect any designated historic structure or site, or any structure within a designated historic district:
 - (A) *Planning and development department*²³. Any request or application for approval of a site plan; any request for a rezoning, conditional use, or a variance; or any other request or application that requires an exercise of the (*planning and zoning commission's*)²⁴ powers and duties that affect any designated historic site or structure, or any site or structure or archaeological site within a designated historic district.
 - (B) *Building department*²⁵. Any application for any required building permit that affects the exterior of a structure, or for demolition, that affects any designated historic site, or any structure or archaeological site within a designated historic district.
- (2) An application for certificate of appropriateness must be filed at least three weeks prior to the meeting at which the application is to be considered. The Board will consider the application at their next regular meeting (*on the last Wednesday of each month*),²⁶ which falls more than three weeks after the application filing. The applicant shall pay a filing fee, the amount of which will be determined by the Board and approved by the city council, and no application will be accepted by the Board unless it contains all required and pertinent information and is accompanied by the required fee.
- (3) An applicant may request a pre-application conference with the Board or appropriate city staff members to obtain information and guidance. The Board may designate subcommittees of at least one member to hold pre-application conferences with potential applicants. The purpose of each conference will be to discuss and clarify preservation objectives and Board regulations and guidelines. Such conferences shall be public meetings. However, in no case will any statement or representation made prior to official Board review of an application bind the Board, the city council, or any city department.
- (4) The Board will act upon the application, provided it is submitted on or prior to the submittal deadline, at the first meeting following the submittal deadline.

²³ Personalize to Crystal River.

²⁴ Personalize to Crystal River.

²⁵ Personalize to Crystal River.

²⁶ Personalize for Crystal River's Board meeting date.

If a quorum is not present, the Board will conduct a special meeting to be held within 14 calendar days after the initial meeting, provided that the application meets the filing requirements as defined in this section. Nothing herein will prohibit a continuation of a hearing on an application which the applicant requests or to which the applicant consents.

- (5) The Board may advise the applicant and make recommendations in regard to appropriateness of the application. The Board may delay final action until its next regularly scheduled meeting to be held within 14 days of the meeting at which the application was first considered. In no case will the Board delay final action on any application more than 60 calendar days after such application is formally brought before the Board. If the Board fails to take final action on any application within 60 days after such application is formally brought before the Board, the application shall be deemed approved and the (*building official*)²⁷ shall issue a certificate of appropriateness noting the "deemed approval" on it.
- (6) The Board may approve, modify or deny an application for a certificate of appropriateness. If the Board approves the application, a certificate of appropriateness will be issued. Construction for which a certificate of appropriateness is issued shall commence within six months from the date of issuance, and said certificate shall expire if construction is not continuing in a timely manner as outlined in the Southern Standard Building Code. The Board may not approve extensions for certificates of appropriateness. If the Board disapproves the application, a certificate of appropriateness shall not be issued. The Board will state its reasons for disapproval in writing and present these written reasons to the applicant. (*within --- days?*)²⁸
- (7) Decisions of the Board regarding applications for certificates of appropriateness may be appealed by applying to the city council on or before five calendar days following the Board's notification. The city council will then consider the Board's decision and its written explanation of the Board's action and hold a hearing within a reasonable time following the filing of an appeal. At this hearing, the applicant may address the application and any supporting material presented to the Board; however, no new material or evidence shall be presented or considered. The city council will vote upon the appeal and any approval or disapproval of the appeal must be approved by a majority vote of the city council.

SECTION 11. Demolition Guidelines and Procedures.²⁹

- (a) Whenever a property owner clearly demonstrates that a structure or appurtenance designated as a historic site, or a contributing structure or appurtenance³⁰ within a

²⁷ Personalize for the name of Crystal River's building official.

²⁸ Include a deadline for issuance of disapproval reasoning, if desired.

²⁹ **Commentary:** Demolition is the ultimate threat to a historic resource, but, in the case of a severely dilapidated building with limited economic potential, the denial of the right to demolish can be an enormous regulatory burden. This section attempts to balance those interests. See, generally, the discussion of demolition in Chapter 7.

designated historic district, has been condemned by the chief building official of the city such structure may be demolished if a report from a licensed engineer or architect with experience in rehabilitation states that the structure is structurally unsound and unsuitable for rehabilitation.

- (b) However, when an applicant seeks a certificate for the purpose of demolition of a noncondemned, contributing structure or appurtenance, the applicant must satisfactorily demonstrate to the Board that no reasonable alternative, such as relocation, to demolition can be found. The applicant must submit a conceptual building design and/or redevelopment plan for the property if a demolition is approved. A demolition approval may only be granted in conjunction with the approval of such submittal.
- (c) No decision of the Board shall result in undue economic hardship for the property owner. The Board shall have authority to determine the existence of such hardship in accordance with the definition of economic hardship found in Section 3 (i) of this ordinance.
- (d) The Board's refusal to grant a certificate of appropriateness for the purpose of demolition will be supported within 15 calendar days by a written statement describing the public interest that the Board seeks to preserve.
- (e) The Board may grant a certificate of appropriateness for demolition which may provide for a delayed effective date of up to six months from the date of the Board's action. The effective date of the certificate will be determined by the Board based on the relative significance of the structure and the probable time required to arrange a possible alternative to demolition. In general, the Board may delay the demolition of designated historic sites and contributing structures within historic districts for up to six months.
- (f) During the demolition delay period, the Board may take such steps, as it deems necessary to preserve the structure concerned. Such steps may include, but not be limited to, consultation with community groups, public agencies, and interested citizens, recommendations for acquisition of property by public or private bodies or agencies, and exploration of the possibility of moving one or more structures or other features.
- (g) In connection with any certificate of appropriateness for demolition of structures or appurtenances as defined in this chapter, the Board will encourage the owner, to salvage and preserve specified classes of building materials, architectural details and ornaments, fixtures, and the like for reuse in the restoration of other historic properties. The Board will request a qualified historic preservation consultant to record the architectural details for archival purposes prior to demolition. The recording may include, but will not be limited to, photographs, documents and scaled architectural drawings.³¹
- (h) The Board will consider these guidelines in evaluating applications for a certificate of appropriateness for demolition of designated historic sites, or structures or appurtenances within designated historic districts:
 - (1) Is the structure of such interest or quality that it would reasonably fulfill criteria for designation for listing on the national register?
 - (2) Is the structure of such design, craftsmanship or material that it could be reproduced only with great difficulty and/or economically unviable expense?
 - (3) Is the structure one of the last remaining examples of its kind in the neighborhood, city or designated historic district?

³⁰ Should we define these terms in definition section?

³¹ Do we want this provision?

- (4) Would retaining the structure promote the general welfare of the City of Crystal River by providing an opportunity to study local history, architecture and design, or by developing an understanding of the importance and value of a particular culture and heritage?
 - (5) Are there definite plans for immediate reuse of the property if the proposed demolition is carried out, and what effect will those plans have on the character of the surrounding area?
 - (6) Does the structure contribute significantly to the historic character of the historic area or district and to the overall ensemble of structures in the neighborhood?
 - (7) Has the structure been determined to be structurally unsound and unsuitable for rehabilitation by a qualified engineer or architect?
- (i) Notice of application for demolition shall be posted on the premises of the structure or appurtenance proposed for demolition in a location and manner clearly visible from the street. Such notice will be posted within three working days of receipt of the application for demolition by the Board.

SECTION 12. Maintenance.³²

- (a) Every person in charge of an improvement³³ on a historic site or structure, or in an historic district shall keep in good repair (1) all of the exterior portions of such improvement and (2) all interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portions of such improvement to deteriorate, decay or become damaged or otherwise to fall into a state of disrepair.
- (b) The provisions of this section shall be in addition to all other provisions of law requiring any such improvement to be kept in good repair.
- (c) The Board, or its designee, may enforce the provisions of this section at law or at equity.

SECTION 13. Unsafe Structures. Nothing in this ordinance shall prevent the emergency stabilization and weatherization of a designated structure on an emergency basis when the director of planning and development certifies in writing that such work is necessary for the purpose of correcting conditions determined to be dangerous to life, health or property.

SECTION 14. Relocation.

- (a) When an applicant seeks to obtain a certificate of appropriateness for the relocation of a historic structure, a contributing structure in a historic district, the Board shall consider

³² **Commentary:** The risk of deterioration from deferred maintenance is a greater risk to many historic sites and structures than is the risk of proposed demolition; further, owners have been known to use poor condition, resulting from deferred maintenance, as a supposed justification for a proposed demolition. Thus, a provision like this is critical to the success of such an ordinance. This is a simpler maintenance provision than the detailed one included in the New York City ordinance (§ 53.16[12]).

³³ Is this the correct word?

the following guidelines in addition to any other applicable guidelines found in this chapter:

- (1) What contribution does the structure make to its present setting?
 - (2) Can the structure be moved without significant damage to its physical integrity, or change in or significant loss of historic characteristics?
 - (3) Is the structure compatible with its proposed site and adjacent properties?
 - (4) What is the proximity of the proposed site to the present site?
- (b) The Board must approve a conceptual building design and/or redevelopment plan for the property if relocation is approved.
- (c) In reviewing applications for relocations, the Board shall follow the requirements of Section 11 (c) – (i), inclusive. In those instances, the word relocation shall be substituted for demolition as applicable.

SECTION 15. Certificate of Economic Hardship. Where, by reason of particular site conditions and restraints, or because of unusual circumstances applicable solely to the particular applicant, strict enforcement of the provisions of this ordinance would result in economic hardship to the applicant, the Board may grant a certificate of economic hardship exempting the applicant from some or all of the requirements.

- (a) In any instance where there is a claim of economic hardship, the owner shall submit, by affidavit, to the Board at least 15 days prior to a regularly scheduled meeting of the Board, the following information:
- (1) For all property:
 - i. The amount paid for the property, the date of purchase and the party from whom purchased;
 - ii. The assessed value of the land and improvements thereon according to the two most recent assessments;
 - iii. Real estate taxes for the previous two years;
 - iv. Annual debt service, if any, for the previous two years;
 - v. All appraisals obtained within the previous two years by the owner or applicant in connection with his purchase, financing, or ownership of the property;
 - vi. Any listing of the property for sale or rent, price asked and offers received, if any;
 - vii. Any consideration by the owner as to profitable adaptive uses for the property; and
 - viii. Recent sales of similar properties in the immediate area.
 - (2) For income producing property:
 - i. Annual gross income from the property for the previous two years;
 - ii. Itemized operating and maintenance expenses for the previous two years; and
 - iii. Annual cash flow, if any, for the previous two years.
- (b) The Board may require an applicant to furnish additional information by affidavit relevant to a determination of undue economic hardship. In the event that any of the required information cannot be obtained by the applicant, the applicant shall file with

his affidavit a statement of the information which cannot be obtained and shall describe the reasons why such information cannot be obtained.

(c) The Board shall not grant a variance unless it determines that:

- (1) The certificate of economic hardship is the minimum variance required to make reasonable use of the land or structure.
- (2) The grant of the certificate of economic hardship will be in harmony with the general purpose and intent of this ordinance.

SECTION 16. Fees.^{34 35} Fees for processing applications under this ordinance shall be established annually by resolution of the city council.

SECTION 17. Taxes.^{36 37} Nothing in this ordinance shall be construed as reason for an increased evaluation of property for purposes of ad valorem taxation because of historic designation.

SECTION 18. Property Owned by Public Agencies.^{38 39} The requirements, provisions, and purposes of this ordinance apply to all property owned by the City of Crystal River or any other public agency; provided, however, designation pursuant to this ordinance shall not affect the validity of prior actions of the Crystal River city council approving plans, programs, or authorizations for public trust, agencies or authorities of the City of Crystal River without an express amendment of such plan, program or authority.

SECTION 19. Appeals. A determination by the Board that an application for a certificate of appropriateness or for a certificate of economic hardship be denied shall be a final administrative decision reviewable under the Florida Administrative Procedure Act, and any appeal from a denial shall be to the circuit court as provided therein.⁴⁰

SECTION 20. Incentives.⁴¹ Possibilities for this section include:

³⁴ **Commentary:** Although some local governments include specific fees in ordinances, this approach is more common today, allowing easy annual adjustments.

³⁵ This section comes from *9-53 Zoning and Land Use Controls § 53.17* (model historic preservation ordinance).

³⁶ **Commentary:** This section is probably unnecessary most places, but it can do no harm.

³⁷ This section comes from *9-53 Zoning and Land Use Controls § 53.17* (model historic preservation ordinance).

³⁸ **Commentary:** A preservation ordinance is more credible and more defensible, politically and legally, if the local government is willing to live by it, too.

³⁹ This section comes from *9-53 Zoning and Land Use Controls § 53.17* (model historic preservation ordinance).

⁴⁰ There is also the option to have all appeals go to the City Council first, which was suggested at the first presentation of this ordinance to Crystal River's historic preservation subcommittee.

⁴¹ Note: none of the preservation ordinances considered in preparation of this ordinance contained a specific incentive provision.

- fast track permitting
- reduced fees
- tax incentives⁴²
- variances from zoning

SECTION 21. Penalties.⁴³

[i] Any Person, firm or corporation who violates any provision of this ordinance shall, upon conviction, be guilty of a misdemeanor against the City of Crystal River and shall be punishable by a fine of no less than Fifty Dollars (\$50) and no more than Five Hundred Dollars (\$500). A violation exists whenever there is a performance of an act which is prohibited by the provisions of this ordinance, or a failure to perform an act which is required by this ordinance. Each day such violation shall continue to exist shall be considered a separate offense.

[ii] In case any structure is erected, constructed, externally reconstructed, externally altered, added to or demolished in violation of this ordinance, the City of Crystal River or any person may institute an appropriate action or proceeding in a court with competent jurisdiction to prevent such unlawful erection, construction, reconstruction, exterior alteration, addition or demolition, and the violating party shall pay all court costs and expenses, including reasonable attorneys' fees, if the court should find in favor of the City of Crystal River or persons suing on behalf of the City of Crystal River to enforce this ordinance.

OR

SECTION 22. Penalties.

[i] Any person who files with the Board any application or request for a certificate of appropriateness and who refuses to furnish, upon demand by the Board, any information relating to such application or request, or who willfully makes any false statement in such application or request, or who, upon such demand, willfully furnishes false information to the Board, shall be punished as provided by _____⁴⁴, of the Code of the City of Crystal River.

⁴² The Federal Historic Preservation Tax Incentives Program provides an investment tax credit (a dollar-for-dollar reduction of tax liability) equal to 20% of planning and construction –related costs for substantial rehabilitation of properties listed in the National Register of Historic Places, if after rehabilitation they are used for income-producing purposes. I.R.C., 26 U.S.C. §47 (2002) In addition, the state of Florida provides \$10-\$15 million annually in matching grant funds to assist in historic preservation projects.

⁴³ This section comes from *9-53 Zoning and Land Use Controls § 53.17* (model historic preservation ordinance). It is the simpler of the two alternate penalty provisions and provides for a simple per day fine structure. It provides court costs and attorney’s fees for the city if it has to sue to enforce the terms of this ordinance (if the city prevails). It also provides a cause of action for citizens to sue to enforce this ordinance.

⁴⁴ Personalize to Crystal River

[ii] In any case where work has commenced which requires a certificate of approval under the terms of this ordinance, and where no such certificate has been obtained, a stop work order shall be issued by the building official. The stop work order shall be issued to the property owner, the occupant, or any person, company or corporation commencing work or preparation for work in violation of this ordinance. The stop work order shall remain in full force and effect until a certificate of appropriateness has been obtained.

[iii] The Board may revoke or suspend a certificate of appropriateness upon a determination that a project for which a certificate has been previously granted has violated one (1) or more conditions of its approval. Such determination shall be made at a regular or special meeting of the Board upon at least five (5) days' advance written notice of such meeting to the property owner. The property owner or his/her authorized agent shall have the right to be heard by the Board but a public hearing shall not be required. In the event the project has been completed, the Board may recommend to the city council that the historic designation of the structure should be revoked by ordinance⁴⁵.

[iv] For the purpose of this ordinance, each day during which there exists any violation of any provision herein shall constitute a separate violation of such provision.

[v] The provisions of this ordinance may be enforced by the City of Crystal River through mandatory injunctive relief or by any other appropriate legal remedy including referral to the code enforcement Board. All costs of such enforcement, including a reasonable attorney's fee may be awarded to the City of Crystal River if it prevails.

[vi] In addition to the penalties provided in this section, any person who violates any provision of this ordinance shall forfeit and pay to the city civil penalties equal to the fair market value of any property demolished or destroyed in violation of this ordinance or the cost to repair or rehabilitate any property that is altered in violation of this ordinance. In lieu of a monetary penalty, any person altering property in violation of the provisions of this ordinance may be required to repair or restore any such property.

⁴⁵ Are historic structures going to be designated by ordinance or resolution? Designations should be revoked in the same manner in which they are granted.