

**TOWN OF LYONS
COLORADO**

ORDINANCE NO. 1100

**AN ORDINANCE OF THE TOWN OF LYONS, COLORADO REPEALING AND
REPLACING SECTION 2-8-140 AND CHAPTER 16, ARTICLE 12 OF THE LYONS
MUNICIPAL CODE CONCERNING HISTORIC PRESERVATION**

WHEREAS, pursuant to Sections 31-15-103 and the Local Government Land Use Control Enabling Act of 1974 set forth in Article 20 of Title 29, C.R.S., the Board of Trustees of the Town of Lyons (the "Board") has the power to regulate land use on the basis of the impact thereof on the community or surrounding areas and to provide for the safety, preserve the health, promote the prosperity, and improve the morals, order, comfort, and convenience of the Town; and

WHEREAS, the Town previously established a Historic Preservation Commission in Section 2-8-140 and adopted regulations regarding historic preservation in Chapter 16, Articles 12 of the Lyons Municipal Code ("LMC"); and

WHEREAS, it is necessary to amend the LMC in order to improve the clarity of the regulations therein related to historic preservation, modify the responsibilities of the Historic Preservation Commission, and fulfill the State requirements of local historic preservation ordinances for Certified Local Governments; and

WHEREAS, The Lyons Board of Trustees desires to repeal and replace LMC Section 2-8-140 and Chapter 16, Article 12, as set forth in this Ordinance, and determines that the amendments promote the health, safety, and welfare of the citizens of and visitors to the Town of Lyons.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE
TOWN OF LYONS, COLORADO:**

Section 1. Recitals Incorporated. The recitals set forth above are hereby incorporated by reference and are adopted as findings and determinations of the Board of Trustees.

Section 2. Section 2-8-140, of the Lyons Municipal Code is hereby repealed in its entirety and replaced with the following provisions:

Sec. 2-8-140 – Historic Preservation Commission

(a) Commission established. There is hereby established a Historic Preservation Commission that shall act as an advisory committee to the Board of Trustees and exercise the powers granted by this Article and as further described in LMC Sec. 16-12-20.

(b) Members. The Historic Preservation Commission shall have no less than five (5) and no more than seven (7) voting members and any number of appointed or non-voting members.

(c) Responsibilities. The powers and duties of the Historic Preservation Commission shall be as provided for in LMC Sec. 16-12-20(h).

Chapter 16, Article 12 – Historic Preservation

Section 16-12-10. General.

(a) Purpose. The purpose of this Article is to enhance our community's local resources and to promote the public health, safety, and welfare through:

- (1) The protection and preservation of the Town's architecture, culture, and heritage as embodied in Landmark Properties and Landmark Districts, by appropriate regulations and incentives;
- (2) The enhancement of property values and the stabilization of historic neighborhoods;
- (3) The establishment of the Town's Historic Register listing Landmark Properties and Landmark Districts;
- (4) The cultivation of civic pride in the art, architecture, and accomplishments of the past;
- (5) The encouragement of continued private ownership and utilization of such Landmark Properties or Landmark Districts now so owned and used;
- (6) The promotion of thoughtful community planning and design;
- (7) The maintenance and improvement of economic and financial benefits through the protection of attractions that bring tourists and visitors to the Town; and
- (8) The provision of educational opportunities to increase public appreciation of the Town's unique heritage.

(b) Intent. The intention of this Article is to create a reasonable balance between private property rights and the public interest in preserving the Town's unique historic character through the nomination of Buildings, Structures, Sites, Objects, and districts for preservation.

(c) Definitions. For purposes of this Article, the following terms are to be defined as follows:

- (1) **Alteration or Alter** – Any act or process that changes one (1) or more of the exterior architectural or landscape features of a Building, Structure, Site, Object, or district.
- (2) **Applicant** – Person or persons submitting nomination or Alteration paperwork.
- (3) **Building** – A shelter or enclosure Constructed for persons, animals, or chattels.
- (4) **Building Code** – The International Building Code most recently adopted by the Town of Lyons.
- (5) **Building Official** – The officer or other designated authority charged with the administration and enforcement of the Building

Code, or that person's authorized representative.

(6) **Certificate of Appropriateness** – Certificate issued by the Commission authorizing any proposed repair, restoration, Alteration, Construction, Relocation, or Demolition of a Landmark Property or element within a Landmark District pursuant to this Article.

(7) **Certificate of Economic Hardship** – A certificate issued by the Commission authorizing the repair, restoration, Alteration, Construction, Relocation, or Demolition of a designated Building, Structure, Object, Site, or element within a designated Landmark District in accordance with the provisions of this Article, even though a Certificate of Appropriateness has previously been denied.

(8) **Town** – Town of Lyons

(9) **Board of Trustees** – The governing board of the Town.

(10) **Town Historic Register** – The register established pursuant to Section 3 of this Article.

(11) **Code** – The Lyons Municipal Code (“LMC”)

(12) **Colorado State Register of Landmark Properties** – The official listing of State designated cultural resources.

(13) **Commission** – The Historic Preservation Commission established pursuant to Section 2 of this Article and LMC Sec. 2-8-140.

(14) **Compatible or Compatibility** – Consistent or harmonious with location, design, setting, materials, workmanship, feeling, or association of an individual Building, Structure, Object, or Site or of surrounding Properties.

(15) **Construction or Construct** – Act of erecting an addition to an existing Building, Structure, or Object or the erection of a new principal or accessory Building, Structure, or Object on a lot or Property.

(16) **Contributing Property** – A Building, Structure, Site, or Object that reflects the historic or architectural character within a Landmark District.

(17) **Demolition or Demolish** – Any act or process that destroys in part or in whole a Building, Structure, Object, or Site.

(18) **Design Guidelines** – A standard of appropriate activity that will preserve the historic and architectural character of a Landmark Property, Property, or Landmark District.

(19) **Landmark District** – Meaning as set forth in Section 3 of this Article.

(20) **Landmark Property** – A Building, Structure, Site, or Object which is designated by the Board of Trustees pursuant to this Article.

(21) **Historic Significance** – The meaning or value ascribed to a Building, Structure, Object, Site, or district based on criteria for evaluation as defined by Section 3 below.

(22) **Infill** – Construction on vacant or under-used parcels within existing areas that are largely developed.

- (23) **Integrity** – The ability of a property to convey its Historic Significance through its physical features.
- (24) **Inventory** – Catalog of Buildings, Structures, Objects, and Sites within the Town, listed, eligible for listing, or non-eligible for listing in the City's Historic Register.
- (25) **Maintenance** – All activities necessary to prolong the useful life and aesthetic appearance of a Property.
- (26) **National Register of Historic Places** – The list of significant Buildings, Structures, Sites, Objects, or districts in American history, architecture, archaeology, engineering, or culture maintained by the U.S. Secretary of the Interior.
- (27) **Non-Contributing Property** – A Building, Structure, Object, or Site that does not reflect the historic or architectural character within a Landmark District because of age or lack of Integrity.
- (28) **Object** – A material item of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.
- (29) **Period of Significance** – Span of time during which significant events and activities occurred.
- (30) **Owner** – The person, corporation, government, or other legal entity who owns or who has any legal or equitable interest in Property and who is so listed as Owner on the records of the Boulder County Assessor's Office.
- (31) **Property** – A Building, Structure, Site, or Object.
- (32) **Relocation or Relocate** – Moving a Building, Structure, or Object to a different location, either temporarily or permanently.
- (33) **Secretary** – The secretary of the Commission.
- (34) **Secretary of the Interior's Standards for the Treatment of Historic Properties** – The preservation, rehabilitation, restoration, and reconstruction standards adopted by the U.S. Department of the Interior.
- (35) **Section 106 Review** – Process required of federal agencies under 54 U.S.C. 306108 to consult local governments and other parties in consideration of the effects of projects carried out, permitted, licensed, or funded by that agency on properties listed in the National Register of Historic Places.
- (36) **Site** – Location of a significant event; a prehistoric or historic occupation or activity; or a Building, Structure, or Object, whether standing or vanished, where the location itself maintains historic or archaeological value regardless of the value of any existing Building, Structure, or Object.
- (37) **Structure** – A Construction for purposes other than shelter for humans, animals, or chattel (such as a road, bridge, canal, or fence).

Section 16-12-20. Historic Preservation Commission.

- (a) Creation. Consistent with the provisions of LMC Sec. 2-8-140, there is hereby established a Historic Preservation Commission, which shall be appointed by the Board of Trustees, and hereinafter referred to as the "Commission."
- (b) Composition
 - (1) The Commission shall be composed of no less than five (5) and no more than (7) voting members, all of whom have demonstrated interest in, competence with or knowledge of preservation.
 - (2) The majority of the members shall be residents of the Town planning area.
 - (3) At least 40% of the members shall be professionals or shall have extensive expertise in a preservation-related discipline, including but not limited to history, architecture, landscape architecture, american studies, american civilization, cultural geography, cultural anthropology, planning, or archaeology, or as permitted by the State Historic Preservation Office's requirements for Certified Local Governments.
- (c) Term of Office
 - (1) Members shall serve two-year terms, as described in LMC Sec. 2-8-40(a).
 - (2) Members may continue to serve until their successors have been appointed.
- (d) Officers. The Commission shall, by majority vote, elect one of its members to serve as chairperson to preside over the Commission's meetings, one member to serve as the vice-chairperson and one member or Staff to serve as Secretary. The members so designated shall serve in these capacities for terms of one year.
- (e) Liaison to the Planning and Community Development Commission (PCDC). One member of the Commission shall serve as liaison to the PCDC to help coordinate between the two commissions as necessary.
- (f) Quorum and Voting. A quorum for the Commission shall consist of a majority or 51% of the members. A quorum is necessary for the Commission to conduct business, including holding a public hearing. A roll call vote shall be taken upon the request of any member. A tie vote shall be deemed a denial of the motion or recommended action.
- (g) Compensation. All members of the Commission shall serve without compensation except for such amounts determined appropriate, in advance, by the Board of Trustees to offset expenses incurred in the performance of their duties.
- (h) Powers and Duties. The Commission shall:
 - (1) Conduct surveys and create Inventories of Properties and areas for the purpose of defining those of Historic Significance.
 - (2) Review and determine qualifications of Buildings, Structures, Objects, Sites, and Landmark Districts nominated for designation and recommend that the Board of Trustees designate by ordinance

such Buildings, Structures, Objects, Sites, or Landmark Districts qualifying for such designation.

- (3) Recommend to the Board of Trustees the establishment of Construction and Design Guidelines, consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, for review of proposals to Alter, Relocate, or Demolish Landmark Properties.
- (4) Review and make recommendations on any application for Alteration, Relocation, or Demolition of a Landmark Property or Landmark District or planning and design project that may affect the character or Integrity of the Landmark Property or Landmark District.
- (5) Participate in review of National Register of Historic Places nominations.
- (6) Advise and assist Owners on physical and financial aspects of preservation, rehabilitation, restoration, and reconstruction, including nomination to the Town's Historic Register, the Colorado State Register of Landmark Properties, and the National Register of Historic Places.
- (7) Develop and assist in public education programs on history, archaeology, and historic preservation.
- (8) Advise the Board of Trustees on matters related to preserving the historic character and substance of the Town and recommend easements, covenants, licenses, and other methods which will implement the completion of the purposes of this Article.
- (9) Participate in Code of Federal Regulations ("CFR") Section 106 reviews as requested by the Board of Trustees or Staff.
- (10) Actively pursue financial assistance for preservation-related programs.
- (11) Draft and recommend for adoption by the Board of Trustees such by-laws, operating policies, and other rules of procedure as the Commission may deem appropriate.
- (i) Meetings
 - (1) The Commission shall establish a regular meeting schedule with no less than four scheduled meetings per fiscal year.
 - (2) Minutes shall be kept of all Commission proceedings.
 - (3) All meetings of the Commission shall be open to the public.
- (j) Vacancies. Appointments to fill vacancies on the Commission shall be made by the Board of Trustees in the same manner as regular appointments.
- (k) Removal. Members of the Commission may be removed by the Board of Trustees with just cause.

Section 16-12-30. Establishment of Town Register and Designation Criteria.

- (a) The Board of Trustees hereby establishes the Lyons Register of Historic Places (the "Town's Historic Register").

- (1) Properties or districts may be listed in the Town's Historic Register only if such Property or district has been so designated pursuant to this Article.
- (2) All Properties listed in the Colorado State Register of Landmark Properties and the National Register of Historic Places are eligible for the Town's Historic Register but are not designated until approval, pursuant to this Article, is obtained.

(b) **Eligibility Criteria**

- (1) Properties or districts shall be at least fifty years old and meet one or more of the following criteria in order to be considered for designation:
 - a. Association with patterns or events that have made a significant contribution to history;
 - b. Connection with persons or groups significant in history;
 - c. Distinctive characteristics of a type, period, method of Construction, or artisan;
 - d. Possibility to yield important information related to prehistory or history; and/or
 - e. Geographic importance.
- (2) A Property or district may be exempted from the age standard if the Commission and Board of Trustees find it to be exceptionally important in other criteria.

(c) **Integrity Criteria**

All Properties and districts shall be evaluated for their physical Integrity using the following criteria:

- (1) Location
- (2) Design
- (3) Setting
- (4) Materials
- (5) Workmanship
- (6) Feeling
- (7) Association

(d) **Landmark Districts**

- (1) A "Landmark District" is a geographically definable area including a concentration, linkage, or continuity of Properties within a specified Period of Significance and may include within its geographic boundaries one or more Contributing Properties, which has been designated by the Board of Trustees pursuant to this Article.
- (2) A Landmark District is related by a pattern of either physical elements or social activities. Historic Significance is determined by applying Eligibility and Integrity criteria to the pattern(s) and unifying element(s).
- (3) Landmark District boundaries will be defined by visual changes, historical documentation of different associations or patterns of development, or evidence of changes in Property type, density, or Integrity.

(4) Properties that do not contribute to the Historic Significance of the Landmark District may be included within its boundaries.

Section 16-12-40. Designation Procedure.

(a) Nomination and Application

(1) Applications shall be submitted to the Community Development Department for consideration on a form provided by the Commission.

(2) A nomination for listing in the Town's Historic Register may be made:

a. By the Owner or Owners of the Property or Properties to be designated;

b. By a member or members of the Commission;

c. By a member or members of Board of Trustees; and/or

d. By non-Owners of the Property or Properties to be designated, in which case the Applicant must be a resident or Owner of Property in the Town or have a place of business in the Town.

(3) Where nominated by someone other than the Property Owner or less than all of the Property Owners in a district nominated for designation, the Town or at least one member of the Commission shall contact the Owner or Owners of such Property or Properties nominated for designation in writing, outlining the reasons and effects of listing in the Town's Historic Register within 30 days of receipt of nomination.

(4) For individual Landmark Property nominations, owner consent is required for the application to be determined complete or approved.

(5) Applications determined incomplete shall be returned to the Applicant within 30 days with a request for additional information.

(6) Applications for a district nomination shall not be complete if more than 25% of the Property Owners within the proposed district oppose the nomination in writing or though ballot prepared and administered by the Town.

(b) Designation Hearing

(1) Within 45 days after an application is determined complete, or within a time frame agreed upon by the Applicant and the Town, a public hearing shall be held by the Commission.

a. The Secretary shall provide notice of the date, time, and location of the public hearing to the Applicant, the Owner or Owners of record, the Owners of adjacent properties and, if known, to other persons having a legal or equitable interest in the Properties or district nominated for designation at least 10 days prior to the hearing.

b. A legal notice indicating the nature of the hearing, the Property involved, and the time, date, and place of the scheduled public hearing, shall be published in the Town's

publication of record at least 10 days prior to the hearing.

c. The notice shall be posted at the Property's physical location at least 10 days prior to the hearing.

(2) A hearing may be continued. If the hearing is continued, the time, date, and place of the continuation shall be established and announced to those present when the current session is to be adjourned. In no case shall a hearing be continued more than 30 days without the express consent of the Applicant.

(3) Reasonable opportunity shall be provided for all interested parties to express their opinions regarding the proposed designation. However, nothing contained in this Article shall be construed to prevent the Commission from establishing reasonable rules to govern the proceedings of the hearings, or from establishing reasonable limits on the length of individual presentations.

(4) Transcripts of the hearings are not required; however, the Commission's records shall include the name and address of each speaker; the organization or person the speaker represents, if any; whether or not the speaker is an Owner or holder of some interest in the Property or district nominated for designation, or represents such Owner or holder; and a summary of the relevant portions of each statement. Written reports and presentations shall be incorporated into the record of the hearing.

(c) **Commission Review**

(1) The Commission shall review the application for conformance with the established criteria for designation and with the purposes of this Article.

(2) The Commission shall recommend:

- Approval;
- Approval with conditions; or
- Denial of the application.

The Commission shall set forth in writing its findings of fact which constitute the basis of its recommendation.

(1) If the Commission approves an application or approves an application with conditions, the Commission shall forward the application with a copy of its report and findings of approval to the Board of Trustees.

(2) If the Commission denies the application, the Commission must notify, in writing, the Board of Trustees and the Applicant within 30 days of such denial. Such denial shall state the reasons for the denial and the procedures for appeal to the City Council.

(3) The Commission may issue an order continuing the nomination process if the Commission finds that additional information is necessary to make a decision. If the hearing is continued, the time, date, and place of the continuation shall be established and announced to those present when the current session is to be adjourned. In no case can a hearing be continued more than 30

days without the express consent of the Applicant.

(d) **Board of Trustees Proceedings**

- (1) Within 30 days after receipt of the Commission's approval of an application, the Board of Trustees shall hold a public hearing to consider adopting by ordinance those properties qualifying for designation. Such notice and hearing shall be conducted in conformance with the procedures set forth in Section 16-12-40(b)(1)–(4), except the Town Clerk shall perform the responsibilities assigned therein to the Secretary.
- (2) The Board of Trustees shall review the application for conformance with this Article.
- (3) The Board of Trustees shall, by ordinance, approve, approve with conditions, or deny the proposed application and shall issue written findings based on the Commission's recommendations.
- (4) The Town shall provide a copy of the results of the Board of Trustees' final action to the Applicant/Applicants, all Owners of record, the Community Development Director, the Building Official, and any other person who has requested in writing to receive the same.

(e) **Recording of Designation.** Within 30 days of the effective date of an ordinance designating a Landmark Property or Landmark District for preservation, the Town shall record the ordinance with the clerk and recorder of Boulder County.

(f) **Records.** The Town shall maintain a current record of all Landmark Properties and Landmark Districts and pending designations.

(g) **Limitation on Resubmission and Reconsideration of Proposed Designation.** Whenever the Commission or the Board of Trustees denies a proposed designation, no person shall submit an application that is the same or substantially the same for at least one year from the effective date of the final action on the denied application unless the Commission or Board of Trustees has denied based on a request for additional information.

(h) **Appeal of Commission's Denial of Application**

- (1) Applicant(s) and/or Owner(s) shall have the right to appeal such decision to the Board of Trustees by filing a written notice within 15 days after the date of receipt of the Commission's denial. Such written notice shall specify the factual and legal basis for the appeal.
- (2) Within 45 days after an appeal is received by the Town Clerk, or within a time frame agreed upon by the Applicant(s) and/or Owner(s) and the Town, a public hearing shall be held by the Board of Trustees.
- (3) Notice of the Board of Trustees' consideration of the appeal and hearing shall be provided in accordance with Section 16-12-40(b)(1)–(4), except the Town Clerk shall perform the responsibilities of the Secretary.

- (4) The Board of Trustees may consider only the notice of appeal, the Commission's reasons for denial of the application, and the comments related thereto made during the Commission hearing.
- (5) If the Board of Trustees finds the Commission's denial of the application was based on incorrect information, or there is shown to be newly discovered information not available at the time the application was submitted to the Commission, and if the correct or newly discovered information could, in the opinion of the Board of Trustees, change the Commission's denial of said application, then the entire matter shall be remanded by the Board of Trustees to the Commission for its consideration.
- (6) The decision of the Board of Trustees shall be final.
- (i) Amendment of Designation
 - (1) Designation of a Landmark Property or Landmark District may be amended to add features or Properties to such Landmark Property or Landmark District under the procedures prescribed hereinabove.
 - (2) Upon the Commission's decision to amend a designation, the Commission shall promptly notify the Owners of the Landmark Property and the Town shall cause to be prepared a resolution including the legal description of the affected Landmark Property or Landmark District stating notice of the amendment, and schedule the resolution for the Board of Trustees to review. Upon adoption by the Board of Trustees, the resolution shall be recorded.
- (j) Revocation of Designation
 - (1) If a Landmark Property or Landmark District has been Altered to a degree that it no longer retains its historic Integrity, the Owner may apply to the Commission for a revocation of the designation or the Commission shall recommend revocation of the designation to the Board of Trustees in the absence of the Owner's application to do so. The revocation application shall be reviewed under the same procedures described hereinabove.
 - (2) Upon the Commission's decision to revoke a designation, the Commission shall promptly notify the Owners of the Landmark Property or Landmark District and the Town shall cause to be prepared a resolution including the legal description of the affected Landmark Property or Landmark District stating notice of the revocation, and schedule the resolution for the Board of Trustees to review. Upon adoption by the Board of Trustees, the resolution shall be recorded.

Section 16-12-50. Alterations to Listed Properties and Historic Districts.

- (a) Requirements
 - (1) Before carrying out any new Construction, Alteration, Relocation, or Demolition involving the exterior of any Landmark Property or Property within a Landmark District (including Non-contributing Properties) such Owner(s) must first submit the proposed work to

the Commission under this Section, as well as apply for any other permits required by Code.

(2) The Town shall review any building permit application received to determine whether the Property is a listed Landmark Property or located in a Landmark District and if so, if the Applicant has completed review by the Commission as required by this Section. If a Certificate of Appropriateness has been issued on the permit application and the proposed work conforms thereto, the Town shall process it without further action. If no Certificate of Appropriateness has been issued or if the Town determines that the permit application does not conform to such, the Town shall not approve the permit application and shall not issue a permit until a Certificate of Appropriateness has been issued and the permit application conforms thereto.

(3) No person shall receive a building permit to Construct, Alter, remove, or Demolish any Building, Structure, Object, or other feature on a Site or element of a district nominated for designation after an application has been filed to initiate the designation of such Property or district. No such building permit shall be approved while proceedings are pending on such designation.

(b) Application

(1) A request for Alteration shall be initiated by the Owner(s). Such application shall be submitted to the Town for consideration on a form provided by the Commission. The application shall include anything the Town deems necessary, including, without limitation and as applicable, a description of the type of work proposed and its effect or impact upon the Landmark Property or Landmark District and plans and specifications showing the proposed exterior appearance, with finishes, materials, samples of materials, and architectural design and detail.

(2) If the Town determines the application is complete, the Town shall promptly refer the application to the Commission. If the Town determines the application is incomplete, the Applicant shall be advised of the reasons in writing within 30 days of submittal.

(c) Alteration Hearing. Within 45 days after an application is determined complete by the Town, or within a time frame agreed upon by the Applicant and the Town, a public hearing shall be held by the Commission. Such notice and hearing shall be conducted in conformance with the procedures set forth in Section 16-12-40(b)(1)–(4).

(d) Review Criteria

(1) Compliance with any Design Guidelines adopted by the Town and the Secretary of the Interior's Standards for the Treatment of Historic Properties.

(2) For Non-contributing Properties within a Landmark District:

a. Compatibility with the Property's current design, materials, features, size, scale and proportion, and massing; or

- b. Compatibility with the Landmark District's design, materials, features, size, scale and proportion, and massing.
- (3) Infill Construction within Landmark Districts shall be differentiated from the Landmark Properties but be Compatible with the historic materials, features, size, scale and proportion, and massing to protect the Integrity of the Landmark District and its environment.

(e) Commission Review

- (1) The Commission shall:
 - a. Approve;
 - b. Approve with conditions; or
 - c. Deny the application.

The Commission shall set forth in writing its findings of fact which constitute the basis of its recommendation.
- (2) If the Commission approves or approves the application with conditions, the Commission shall issue and send a Certificate of Appropriateness to the Applicant, the Community Development Director, the Building Official, and any other person who has requested in writing to receive the same within 30 days. If approved with conditions, such conditions shall be stated in writing in the Certificate of Appropriateness.
- (3) If the Commission denies the application, the Commission shall deny a Certificate of Appropriateness and notify, in writing, the Applicant, the Community Development Director, the Building Official, and any other person who has requested in writing to receive the same within 30 days of such denial. Such denial shall state the reasons for the denial and the procedures for appeal to the Board of Trustees.
- (4) The Commission may issue an order continuing the Alteration application process if the Commission finds that additional information is necessary to make a decision. If the hearing is continued, the time, date, and place of the continuation shall be established and announced to those present when the current session is to be adjourned. In no case can a hearing be continued more than 30 days without the express consent of the Applicant.
- (5) The Applicant may resubmit an amended application or reapply for a building permit that takes into consideration the recommendations of the Commission or appeal the denial to the Board of Trustees.
- (6) If an application for a Certificate of Appropriateness is denied, no person may submit a subsequent application for the same Alteration or Construction within one year from the date of the final action upon the earlier application.

(f) Appeal of Denial of Certificate of Appropriateness

- (1) If a Certificate of Appropriateness is denied by the Commission, the Applicant may appeal the denial to the Board of Trustees by filing a written notice with the Town Clerk within 15 days after receipt of the Commission's denial.

- (2) Within 45 days after an appeal is received by the Town Clerk, or within a time frame agreed upon by the Applicant and the Town, a public hearing shall be held by the Board of Trustees.
- (3) Notice of the Board of Trustees' consideration of the appeal and hearing shall be provided in accordance with Section 16-12-40(b)(1)–(4), except the Town Clerk shall perform the responsibilities of the Secretary.
- (4) The Board of Trustees shall consider the notice of appeal, the Commission's reasons for denial of the application, the comments related thereto made during the Commission hearing, and any evidence (including new evidence) it deems relevant to the application.
- (5) The Board of Trustees shall apply the criteria in Section 16-12-50(d) in making its decision.
- (6) The decision of the Board of Trustees shall be final.

Section 16-12-60. Relocation of Listed Properties.

- (a) General
 - (1) In addition to the criteria and procedures in Section 16-12-50 the Commission will use the criteria of this Section in considering applications for Relocating a Landmark Property or Contributing Property in a Landmark District within or outside of a designated Site or Landmark District or Relocating a Property onto a designated Site or Landmark District.
 - (2) Applicants for Relocation shall provide:
 - a. A professionally prepared estimate of costs of continued Maintenance of the Property in its current condition, of rehabilitation on site, and of Relocation and rehabilitation;
 - b. An engineer's or architect's report as to structural soundness;
 - c. A professionally prepared estimate of the Property's market value in its current location and current condition, of the market value of the Property rehabbed on its current site, and of the site after Relocation of the Property; and
 - d. Professionally prepared site plan and construction documents for the current site.
- (b) Review Criteria
 - (1) For consideration of the original Property and site, the Commission will review for the following criteria have been satisfied:
 - a. The Property cannot be preserved, restored, rehabbed or reused on its current site to provide for any reasonable, beneficial use of the Property regardless of any proposed development plan for the Property's site or adjacent Properties;
 - b. Additionally, the Commission will consider:
 - 1. Whether a structural report submitted by a licensed

- structural engineer adequately demonstrates the soundness of the Building, Structure, or Object proposed for Relocation;
2. If the Property can be Relocated without significant damage to its physical Integrity; and
3. Whether plans are specifically defined for the site to be vacated and have been determined to meet all other City codes and ordinances.

(2) For consideration of the new location, the Commission will review for compliance with all of the following criteria:

- a. Whether the Building, Structure, or Object is Compatible with its proposed site and adjacent Properties; and if the receiving site is Compatible in nature with the Building, Structure, or Object proposed to be moved;
- b. The Building, Structure, or Object's architectural Integrity and its consistency with the character of the neighborhood of the receiving site;
- c. Whether the Relocation of the Building, Structure, or Object will diminish the Integrity or character of the neighborhood of the receiving site; and
- d. If a Relocation plan has been submitted and approved by the Town, including posting a bond, to ensure the safe Relocation, preservation, and repair (if required) of the Property and site preparation and infrastructure connections as described in the Code.

Section 16-12-70. Demolition of Listed Properties.

(a) General

(1) In addition to the criteria and procedures in Section 16-12-50 the Commission will use the criteria of this Section in considering applications for Demolition of Landmark Properties and Contributing Properties in a Landmark District.

(2) Applicants for Demolition shall provide:

- a. A professionally prepared estimate of costs of continued Maintenance of the Property in its current condition, of rehabilitation, and of Demolition;
- b. An engineer's or architect's report as to structural soundness; and
- c. Professionally prepared estimates of the Property's market value in its current condition, as rehabbed and after Demolition.

(3) If a Demolition approval is granted on any basis other than that of an imminent hazard or economic hardship (See Section 16-12-90 *below*), a Certificate of Appropriateness will not be issued until a replacement/reuse plan for the Property has been approved by the Town.

(b) Review Criteria for Total Demolition. Applicants requesting a Certificate of Appropriateness for total Demolition must provide data to clearly demonstrate all of the following criteria:

- (1) The Property proposed for Demolition is not structurally sound, despite evidence of the Owner's efforts to properly maintain said Building, Structure, or Object;
- (2) The Property cannot be preserved, restored, rehabbed, or reused on site to provide for any reasonable, beneficial use of the Property regardless of any proposed development plan for the Property's site or adjacent Properties;
- (3) The Property cannot be practically moved to another site in the Town; and
- (4) The Applicant demonstrates that the proposal mitigates, to the greatest extent practical, all the following:
 - a. Any impacts that occur to the visual character of the neighborhood where Demolition is proposed to occur;
 - b. Any impact on the Historic Significance of the Buildings, Structures, or Objects located on the Property and adjacent Properties;
 - c. Any impact to the Integrity of Buildings, Structures, or Objects located on the Property and adjacent Properties; and
 - d. Any impact to archaeological deposits or ruins or the potential to access such resources and whether information can be recovered as part of the Demolition process.

(c) Review Criteria for Partial Demolition. Applicants requesting a Certificate of Appropriateness for partial Demolition must provide data to clearly demonstrate all of the following criteria:

- (1) The partial Demolition is required for the preservation, restoration, or rehabilitation of the Property; and
- (2) The Applicant demonstrates that the proposal mitigates to the greatest extent practical, all the following:
 - a. Any impact on the Historic Significance of the Buildings, Structures, or Objects located on the Property and adjacent Properties; and
 - b. Any impact on the Integrity of the Buildings, Structures, or Objects located on the Property and adjacent Properties.

Section 16-12-80. Properties Listed on the Colorado State Register of Landmark Properties or the National Register of Historic Places.

(a) Before carrying out any new Construction, Alteration, Relocation, or Demolition involving the exterior of any property listed on the Colorado State Register of Landmark Properties or National Register of Historic Places individually or within a designated historic district such Owner(s) must first submit the proposed work to the Commission for them to review and to advise the Owner(s) of any affect the proposed work would have on their property's designation. If work is carried out that, in the opinion of the

Commission, results in the ineligibility of the property for designation, or that would result in its no longer being a Contributing resource in a designated Historic District, the Commission shall send a report summarizing that opinion to the State Historic Preservation Office, which may result in the revocation of the property's designation.

Section 16-12-90. Alteration Exemptions.

- (a) General
 - (1) If an application for a Certificate of Appropriateness is denied, the Applicant may request an exemption from such certificate requirement pursuant to this Section.
 - (2) A request for exemption shall be initiated by the Owner(s). Such application shall be submitted to the Town for consideration on a form provided by the Commission. The Applicant shall have the burden of proof to establish hardship.
 - (3) The Commission may request additional information from the Applicant as necessary to make informed decisions according to the applicable criteria for decision-making.
 - (4) If the Town determines the application is complete, the Town shall promptly refer the application to the Commission. If the Town determines the application is incomplete, the Applicant shall be advised of the reasons in writing within 30 days of submittal.
 - (5) Certificate of Appropriateness exemptions are granted only to the specific Owner and are not transferable.
- (b) Criteria for Exemption
 - (1) Economic Hardship. The following factors, evidence, and testimony are to be considered:
 - a. The structural soundness of any Buildings or Structures on the Property and their potential for rehabilitation.
 - b. The economic feasibility of rehabilitation or reuse of the existing Property in the case of a proposed Demolition.
 - c. The economic feasibility of rehabilitation or reuse of the existing Property if the Property has been impacted by a disaster.
 - d. For investment or income producing Properties, the ability to obtain a reasonable rate of return on the Property in its present condition, or in a rehabbed condition pursuant to the requirements of this Article.
 - e. For non-income producing Properties consisting of owner-occupied single-family dwellings and/or non-income producing institutional Properties not solely operating for profit, the ability to maintain or to convert the Property to a reasonable residential or institutional use in its present condition or in a rehabbed condition pursuant to the requirements of this Article or the ability to transfer the Property for a reasonable rate of return.

f. The consideration for economic hardship shall not include any of the following:

1. Willful or negligent acts by the Owner;
2. Purchase of the Property for substantially more than its market value;
3. Failure to perform normal Maintenance and repairs;
4. Failure to diligently solicit and retain tenants;
5. Failure to prescribe a rental amount which is reasonable; or
6. Failure to provide normal tenant improvements.

(2) Undue Hardship. An Applicant requesting an exemption based on undue hardship must show that the application of the criteria creates a situation that is substantially inadequate to meet the Applicant's needs because of specific health and/or safety issues.

(c) Decision

- (1) If the Commission deems the criteria of this Section are met, the Commission shall issue an order of exemption and send a Certificate of Economic Hardship to the Town within 30 days.
- (2) If the Commission deems the criteria of this Section are not met, the Commission shall deny the exemption request and notify, in writing, the Town and the Applicant within 30 days of such denial. Such denial shall state the reasons for the denial and the procedures for appeal to the Board of Trustees.
- (3) The Commission may issue an order continuing the exemption process for a period of not to exceed 90 days from the date of the application if the Commission would like additional information necessary to make a decision.
- (4) The Applicant may resubmit an amended application, reapply for an exemption that takes into consideration the recommendations of the Commission, or appeal the denial to the Board of Trustees.
- (5) If an application for an exemption is denied, no person may submit a subsequent application within one year for the same from the date of the final action upon the earlier application.

(d) Appeal for Denial of Exemption

- (1) If an exemption is denied by the Commission, the Applicant may appeal the denial to the Board of Trustees by filing a written notice with the Town within 15 days of the date of the receipt of the Commission's denial.
- (2) Notice of the Board of Trustees' consideration of the appeal and hearing shall be provided in accordance with Section 16-12-40(b)(1)-(4), except the Town Clerk shall perform the responsibilities of the Secretary.
- (3) The Board of Trustees shall hold a public hearing to consider the appeal and consider any evidence (including new evidence) it deems relevant to the application.
- (4) The Board of Trustees shall apply the criteria in this Section in

making its decision.

(5) The decision of the Board of Trustees shall be final.

Section 16-12-100. Maintenance.

(a) The Board of Trustees intends to preserve from deliberate or inadvertent neglect the exterior portions of Landmark Properties or Landmark Districts and all interior portions thereof whose Maintenance is necessary to prevent deterioration of any exterior portion. No Owner, lessee, or occupant of any Landmark Property or Contributing Property within a Landmark District shall fail to prevent significant deterioration of the exterior of the Building, Structure, Object, or special feature beyond the condition of such Landmark Property or Contributing Property within a Landmark District on the effective date of the designating Article.

(b) No Owner, lessee, or occupant of any Landmark Property or Contributing Property within a Landmark District shall fail to comply with all applicable provisions of this Article and other ordinances of the Town regulating Maintenance.

(c) Before the Town's attorney files a complaint in municipal court for failure to maintain the Landmark Property or Contributing Property within a Landmark District, the Town shall notify the Owner, lessee or occupant of the need to repair, maintain, or restore such Property; shall assist the Owner, lessee, or occupant in determining how to preserve such Property; and shall give the Owner, lessee, or occupant a reasonable time to perform such work.

Section 16-12-110. Unsafe or Dangerous Conditions Exempted.

(a) Nothing in this Article shall be construed to prevent any measures of Construction, Alteration, removal, or Demolition necessary to correct the unsafe or dangerous condition of any Property, other feature, or parts thereof where such condition is declared unsafe or dangerous by the Town and where the proposed measures have been declared necessary by the Town to correct the condition, as long as only such work that is absolutely necessary to correct the condition is performed. Any temporary measures may be taken without first obtaining a Certificate of Appropriateness under this Article, but a certificate is required for permanent Construction, Alteration, removal, or Demolition.

Section 16-12-120. Enforcement and Penalties.

(a) No person shall violate or permit to be violated any of the requirements of this Article or the terms of a certificate issued pursuant to this Article.

(b) Violations of this Article are punishable as provided in LMC Sec. Sec. 1-4-10 *et seq.* and may be subject to the following additional penalties:

(1) If any Landmark Property or Property within a Landmark District is externally reconstructed, externally Altered, added to, Relocated, or Demolished in violation of this Article the Commission may order any such Property to be returned to its condition prior to such

unlawful Construction, reconstruction, exterior Alteration, addition, Relocation, or Demolition. This may specifically include ordering the reconstruction of a Property that was Demolished to replicate as closely as possible the original Property.

- (2) If any Building, Structure, or Object is erected or Constructed on a Landmark Property or Property within a Landmark District, the Commission may order any such Building, Structure, or Object to be removed or deconstructed.
- (3) Alterations to a Landmark Property or Landmark District without an approved Certificate of Appropriateness will result in a one-year moratorium on all building permits for the subject Property.
- (4) Relocating or Demolishing a Landmark Property or Property within a Landmark District without an approved Certificate of Appropriateness will result in a five-year moratorium on all relocation, Demolition, or building permits for such Property and/or its original location.

Section 16-12-130. Incentives.

- (a) Any Owner of a Landmark Property or Contributing Property within a Landmark District under this Article may be eligible for economic incentives for the restoration or rehabilitation of that Property as provided by the State of Colorado and such additional incentives as may be developed by the Commission or the Board of Trustees.
- (b) The Commission shall identify and advise the Board of Trustees regarding the implementation of economic incentives for Landmark Properties. The Commission shall notify the Owners of Landmark Properties of economic incentive opportunities available.
- (c) The Commission shall make the determination for each request regarding any local economic incentives for historic preservation.

Section 3. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 4. Repeal. All other ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this Ordinance are hereby repealed, provided that such repeal shall not repeal any repealer clauses in such ordinances nor revive any ordinance thereby.

Section 5. Effective Date. This Ordinance shall become effective thirty (30) days after publication following final passage in accordance with Section 2-2-160 of the Lyons Municipal Code.

Section 6. Codification Amendments. The codifier of the Town's Municipal Code, Municipal Code Corporation, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of Section 2 of this Ordinance within the Lyons Municipal Code.

**INTRODUCED AND PASSED ON FIRST READING THIS _____ DAY OF
_____, 2021.**

**INTRODUCED, PASSED, ADOPTED AND ORDERED PUBLISHED THIS _____ DAY
OF _____, 2021.**

TOWN OF LYONS, COLORADO

Nicholas Angelo, Mayor

ATTEST:

Dolores Vasquez, CMC, Town Clerk

Attachments

1. 2-8-140 Redline
2. 16-12 Redline