

**Ordinance #28  
(SERIES OF 2010)**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO  
AMENDING THE FOLLOWING SECTIONS OF THE MUNICIPAL CODE: SECTION  
26.415, DEVELOPMENT INVOLVING THE ASPEN INVENTORY OF HISTORIC  
LANDMARK SITES AND STRUCTURES OR  
DEVELOPMENT IN AN "H," HISTORIC OVERLAY DISTRICT, SECTION 26.420,  
BENEFITS FOR PROPERTIES LISTED ON THE ASPEN INVENTORY OF  
HISTORIC LANDMARK SITES AND STRUCTURES AND SECTION 26.535,  
TRANSFERABLE DEVELOPMENT RIGHTS (TDR)**

**WHEREAS**, the Community Development Department, at the direction of City Council, prepared amendments to Chapters 26.415, 26.420, and 26.535 of the Aspen Municipal code, pertaining to historic preservation; and,

**WHEREAS**, the proposed amendments address the preservation of postwar era properties in Aspen, particularly regulations which have been in place since the adoption of an emergency ordinance, Ordinance #48, since December 2007. The amendments are intended to replace and supercede Ordinance #48, Series of 2007 in its entirety; and

**WHEREAS**, the proposed amendments have been brought forward after the conclusion of a Historic Preservation Task Force of citizens who worked to propose process improvements for 19 months; and

**WHEREAS**, pursuant to Section 26.310, applications to amend the text of Title 26 of the Municipal Code shall be reviewed and recommended for approval, approval with conditions, or denial by the Community Development Director and then by the Planning and Zoning Commission at a public hearing. Final action shall be by City Council after reviewing and considering these recommendations; and,

**WHEREAS**, the Director recommended approval of amendments to the above listed Sections as further described herein; and

**WHEREAS**, the proposed amendments were presented to the Aspen Historic Preservation Commission (HPC) on October 13, 2010 for referral comments to be considered by the Planning and Zoning Commission and Aspen City Council. The Historic Preservation Commission recommended that City Council adopt amendments to the Municipal Code after consideration of the following comments: 1) the AspenModern Map should include all eligible properties within the City limits, 2) some incentives should be offered to AspenModern properties even without designation, and 3) any negotiated benefits should be required to meet high standards in terms of both preservation and green building; and

**WHEREAS**, the Planning and Zoning Commission held a public hearing to consider the proposed amendments to the above noted Chapters and Sections on October 19, 2010, took and considered public testimony and the recommendations of the Community Development

Director and Historic Preservation Commission and recommended, by a 4 to 1 vote, City Council adopt amendments to the land use code after consideration of the following comments: 1) Section 26.415.025, Identification of Historic Properties should be revised to clarify the regulations that affect AspenModern properties which are proposed for landmark designation vs. AspenModern properties which are listed on the AspenModern Map but not proposed for landmark designation, 2) Council should consider establishing a separate review board that will conduct the negotiation process. As proposed, there are a lot of steps and participants involved. Council could take the role of ratifying the recommendation of this new review board, 3) Council should consider whether there is a way to ensure equity in the negotiated benefits that are awarded to comparable properties, 4) The Planning and Zoning Commission heard public comment from the properties which comprise The Aspen Meadows and understands that these owners may wish to amend their SPA to address historic preservation rather than be included in AspenModern, 5) Council should consider the proposed language of Section 26.415.025, Penalties for work done on AspenModern properties without approvals. The penalties apply to any unapproved "alteration," which may be too broad a term, and 6) Council should consider allowing the owners of properties that are not addressed in context papers to volunteer for designation review. This would allow for voluntary designation of buildings from any period, even new construction; and

**WHEREAS**, the Aspen City Council has reviewed and considered the recommended changes to the Municipal Code under the applicable provisions of the Municipal Code identified herein, has reviewed and considered the recommendations of the Community Development Director, Historic Preservation Commission and Planning and Zoning Commission, and has taken and considered public comment at a public hearing; and,

**WHEREAS**, the City Council finds that the proposed text amendments to the Municipal Code meet or exceed all applicable standards and that the approval of the proposal is consistent with the goals and elements of the Aspen Area Community Plan; and

**WHEREAS**, the City Council finds that this Ordinance furthers and is necessary for the promotion of public health, safety, and welfare; and

**WHEREAS**, by the passage of this Ordinance the City Council intend that no further amendments to the process for identifying and preserving any properties related to Aspen's 20<sup>th</sup> Century development be undertaken by any City Council before January 1, 2021. It is this Council's intent to provide a period of assurance and predictability that the community can rely on.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO as follows:**

**Section 1:**

Chapter 26.415, Development Involving the Aspen Inventory of Historic Landmark Sites and Structures or Development in an "H," Historic Overlay District, which section describes the process and criteria through which the city designates properties of historical, architectural, archaeological, engineering and cultural importance, is hereby amended to read as follows:

**Chapter 26.415**  
**HISTORIC PRESERVATION**

Sections:

26.415.010	Purpose and intent
26.415.020	Definitions
26.415.025	Identification of historic properties
26.415.030	Designation of historic properties
26.415.040	Recordation of designation
26.415.050	Rescinding designation
26.415.060	Effect of designation
26.415.070	Development involving designated historic properties
26.415.080	Demolition of designated properties
26.415.090	Relocation of designated historic properties
26.415.100	Demolition by neglect
26.415.110	Benefits
26.415.120	Appeals, Council notice and call up
26.415.130	Variances by other City review bodies
26.415.140	Penalties

**26.415.010. Purpose and intent.**

The purpose of this Chapter is to promote the public health, safety and welfare through the protection, enhancement and preservation of those properties, areas and sites, which represent the distinctive elements of Aspen's cultural, educational, social, economic, political and architectural history. Under the authority provided by the Home Rule Charter of the City and Section 29-20-104(c), C.R.S., to regulate land use and preserve areas of historical, architectural, archaeological, engineering and cultural importance, this Chapter sets forth the procedures to:

- A. Recognize, protect and promote the retention and continued utility of the historic buildings and districts in the City;
- B. Promote awareness and appreciation of Aspen's unique heritage;
- C. Ensure the preservation of Aspen's character as an historic mining town, early ski resort and cultural center;
- D. Retain the historic, architectural and cultural resource attractions that support tourism and the economic welfare of the community; and
- E. Encourage sustainable reuse of historic structures.
- F. Encourage voluntary efforts to increase public information, interaction or access to historic building interiors.

The City does not intend by the historic preservation program to preserve every old building, but

instead to draw a reasonable balance between private property rights and the public interest in preserving the City's cultural, historic, and architectural heritage. This should be accomplished by ensuring that demolition of buildings and structures important to that heritage are carefully weighed with other alternatives. Alterations to historically significant buildings and new construction in historic areas shall respect the character of each such setting, not by imitating surrounding structures, but by being compatible with them as defined in historic preservation guidelines.

#### **26.415.020. Definitions.**

The following definitions are specific to the terms as used in this Chapter and in the field of historic preservation:

***Alteration.*** A change to an existing building, structure or feature that modifies its original appearance or construction.

***Certificate of appropriateness.*** An official form issued by the City stating that the proposed work on a designated historic property is compatible with its historic and architectural character and, therefore, the work may be completed as specified in the certificate and the City may issue any permits needed to do the work specified in the certificate.

***Certificate of demolition approval.*** An official form issued by the City authorizing the issuance of a demolition permit for a designated historic property or for a building or structure located in a designated historic district.

***Certificate of economic hardship.*** An official form issued by the City, in connection with a certificate of demolition approval, that allows the demolition of a designated historic property as the owner has demonstrated that maintaining it will impose an economic hardship.

***Certificate of no negative effect.*** An official form issued by the City stating that the proposed work will have no detrimental effect on the character-defining features of a designated property and, therefore, the work may proceed as specified in the certificate without obtaining further approvals under this Chapter and the City may issue any permits needed to do the work in the specified certificate.

***Contributing resource.*** A building, site, structure or object that adds to the historic associations, historic architectural qualities or archaeological values for which a property or district is considered significant.

***Designated property.*** A property listed on the Aspen Inventory of Historic Landmark Sites and Structures.

***Historic District.*** A collection, concentration, linkage or continuity of buildings, structures, sites or objects united historically or aesthetically by plan or physical development.

***Historic context paper.*** Research papers that define Aspen's architectural and cultural patterns in the context of local and national history. Historic context papers are used to guide staff, the Historic Preservation Commission and City Council in determining the historic significance of structures and properties in the City of Aspen.

**Integrity.** The ability of a property to convey its significance relative to the aspects of location, setting, design, materials, workmanship and association.

**Monitoring committee.** A subcommittee appointed by the Historic Preservation Commission of up to two (2) Commission members and the Historic Preservation Officer to provide oversight in the implementation of rehabilitation.

**Noncontributing resource.** A building, structure, site or object that does not add to the historic architectural qualities or historic associations for which a property or district is significant because it was not present during the period of significance or does not relate to the documented significance; or due to alterations, additions, disturbances or other changes, it no longer possesses historic integrity.

**Object.** A term used to distinguish buildings and structures from those constructions that are primarily artistic in nature or small in scale and simply constructed. It may be by nature or design movable, but it is associated with a specific setting and environment.

**Rehabilitation.** Making a building or structure sound and usable without attempting to restore it to a particular period appearance, while retaining the character-defining features.

**Relocation.** Moving a building or structure from its original, historically significant or existing location to another location.

**Repair.** To restore to a sound or good state after decay, dilapidation or partial destruction.

**Restore.** The repair or recreation of the original architectural elements or features of an historic property so that it resembles an appearance it had at some previous point in time.

**Significance.** The documented importance of a property for its contribution to or representation of broad patterns of national, regional or local history, architecture, engineering, archaeology and culture.

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

**Structure.** A term used to distinguish from buildings those functional constructions made for purposes other than creating human shelter. (Ord. 1-2002, §7 [part])

#### 26.415.025 **Identification of historic properties**

**A. Surveys, Maps and Historic Context Papers.** The Community Development Director shall conduct or cause to be conducted such preliminary surveys, studies or investigations as deemed necessary or advisable to adequately inform City Council and the Historic Preservation Commission of those properties located within the City which represent Aspen's 19<sup>th</sup> and 20<sup>th</sup> century history. The Community Development Director shall memorialize the results of surveys, studies and investigations in a series of historic inventory forms, maps and historic context papers. Said inventory forms, maps, and context papers shall be maintained by the Community Development Department and shall be made available for public inspection at all reasonable

times. New inventory forms, maps and historic context papers shall not be adopted by City Council except for every tenth year, starting in January 2011.

These resources shall be referenced by the Historic Preservation Commission and City Council when reviewing applications for designation.

**B. Aspen Victorian Properties.** Properties associated with Aspen's 19<sup>th</sup> century history shall be called Aspen Victorian. The City of Aspen has comprehensively identified examples of Victorian era properties in Aspen since the 1970s. All such properties have been designated by ordinance to the Aspen Inventory of Historic Landmark Sites and Structures. Such properties are subject to the terms of this Chapter. Additional 19<sup>th</sup> century properties may be identified and designated in the future if they are determined to meet the criteria of Section 26.415.030.B.1.

**C. AspenModern Properties.** Properties associated with Aspen's 20<sup>th</sup> century history shall be called AspenModern. Properties identified on the AspenModern Map shall be eligible for certain preservation benefits without being designated by City Council and may be awarded preservation incentives above and beyond those identified at Section 26.415.110, as follows. Property owners are encouraged to meet proactively with the historic preservation commission before undertaking development plans to receive preliminary feedback on appropriate development and benefits.

**1. Ninety-Day Negotiation Period.** In the case that the owner of a property on the AspenModern Map submits a land use application which includes voluntary landmark designation, a negotiation period of up to 90 days shall be initiated.

A letter from the property owner indicating an understanding of this ninety-day negotiation period shall accompany the land use application. The ninety-day negotiation period may be extended an additional thirty (30) days upon a resolution adopted by the Council, or longer if mutually acceptable to both the Council and the property owner. Nothing herein shall prevent the City from reviewing any land use application or building permit affecting the subject property during the ninety-day negotiation period.

Within the ninety-day negotiation period, the following shall occur:

- a. The Community Development Director shall offer to meet with the property owner to discuss the City's Historic Preservation Program and benefits that the property may be eligible to receive upon designation as a Historic Landmark.
- b. The Community Development Director shall confer with the Historic Preservation Commission, at a public meeting, regarding the proposed land use application or building permit and the nature of the property. The property owner shall be provided notice of this meeting.

The Historic Preservation Commission, using context papers and integrity scoring sheets for the property under consideration, shall provide Council with an assessment of the property's conformance with the designation criteria of Section 26.415.030.C.1. When any benefits that are not included in Section 26.415.110 are requested by the property

owner, HPC shall also evaluate how the designation, and any development that is concurrently proposed, meets the policy objectives for the historic preservation program, as stated at Section 26.415.010, Purpose and Intent. As an additional measure of the appropriateness of designation and benefits, HPC shall determine whether the subject property is a “good, better, or best” example of Aspen’s 20<sup>th</sup> century historic resources, referencing the scoring sheets and matrix adopted by City Council.

- c. The Community Development Director shall confer with the City Council regarding the proposed land use application or building permit, the nature of the property, and the staff and Historic Preservation Commission's assessment of its historic significance and the effects of the application or building permit. The property owner shall be provided notice of this meeting.
- d. The City Council may negotiate directly with the property owner or may choose to direct the Community Development Director, or other City staff as necessary, to negotiate with the property owner to reach a mutually acceptable agreement for the designation of the property. The City Council may choose to provide this direction in Executive Session, pursuant to State Statute. As part of the mutually acceptable agreement, the City Council may, at its sole discretion, approve any land use entitlement or fee waiver permitted by the Municipal Code and may award any approval that is assigned to another Board or Commission, including variations. Council shall consider the appropriateness of benefits in light of whether the property is identified as a “good, better, or best” example of Aspen’s 20<sup>th</sup> century history and shall also seek to be equitable in the benefits awarded through the negotiation process. The monetary value of benefits being requested shall be defined, to the extent possible. Council shall seek compatibility with the neighborhood surrounding the subject property.

When benefits are awarded as part of the negotiation, Council shall require that the property be designated as a Historic Landmark, pursuant to the standards and limitations of Section 26.415.030, Designation of Historic Properties. As part of the mutually acceptable agreement, the City Council may choose to require the land use application or building permit that initiated the negotiation to be withdrawn by the property owner if said application or permit would have negatively affected the historic significance of the property.

Once a property identified on the AspenModern Map is designated to the Aspen Inventory of Historic Landmark Sites and Structures, additional negotiation under this section is not allowed.

- e. If, upon the passage of 90 days or any extension thereof, the City and the property owner have failed to reach a mutually acceptable agreement, affected land use applications shall be issued a Development Order upon compliance with all applicable provisions of the City of Aspen Land Use Code. The City Council, or the property owner, may choose to terminate negotiations at any time.

2. **Voluntary review/Processing Advantages.** Owners of properties included on the AspenModern Map who voluntarily comply with the provisions of this Chapter may proceed with approved work without making application for designation. The Community Development Director shall consider waiver or reduction of permit fees for the subject work. If this is not achievable within the City budget, the Community Development Director shall ensure that the land use application and building permit review proceed ahead of all other applications except those associated with affordable housing and Essential Public Facilities.
3. **Transferable Development Rights.** Properties which are included on the AspenModern Map shall be eligible to create and sell transferable development rights according to the provisions of Chapter 26.535 of this Code, even if they are not designated on the Aspen Inventory of Historic Landmark Sites and Structures.
4. **Removal from AspenModern Map.** Owners of properties included on the AspenModern Map may apply to the Community Development Director to be removed from the AspenModern Map. If the property owner indicates in writing that they have no interest in designation or negotiation, the property shall be removed from the AspenModern Map and the Community Development Director shall issue the owner a certificate documenting the removal from the map. Except upon the written request and consent of the owner(s) of the subject property at the time of the request, the subject property shall not be eligible for historic designation in the City of Aspen for a period of ten (10) years from the date of issuance of this certificate. The certificate shall run with the land and may be recorded in the Office of the Pitkin County Clerk and Recorder.
5. **Addition to AspenModern Map.** Owners of properties not included on the AspenModern Map may apply to the Community Development Director to be added to the map by submitting a written request. The Community Development Director shall determine if the property is eligible, based on the designation criteria.

**26.415.030. Designation of historic properties.**

The designation of properties to an official list, that is known as the Aspen Inventory of Historic Landmark Sites and Structures which is maintained by the City, is intended to provide a systematic public process to determine what buildings, areas and features of the historic built environment are of value to the community. Designation provides a means of deciding and communicating, in advance of specific issues or conflicts, what properties are in the public interest to protect.

**A. Establishment of the Aspen Inventory of Historic Landmark Site and Structures.** The Aspen Inventory of Historic Landmark Sites and Structures has been established by City Council to formally recognize those districts, buildings, structures, sites and objects located in Aspen that have special significance to the United States, Colorado or Aspen history, architecture, archaeology, engineering or culture. The location of properties listed on the inventory shall be indicated on maps on file in the Community Development Department.

**B. Aspen Victorian**

1. **Criteria.** To be eligible for designation on the Aspen Inventory of Historic Landmark Sites and Structures as an example of Aspen Victorian, an individual building, site, structure or

object or a collection of buildings, sites, structures or objects must have a demonstrated quality of significance. The quality of significance of properties shall be evaluated according to the criteria described below. When designating a historic district, the majority of the contributing resources in the district shall meet the criteria described below:

- a. The property or district is deemed significant for its antiquity, in that it contains structures which can be documented as built during the 19<sup>th</sup> century, and
- b. The property or district possesses an appropriate degree of integrity of location, setting, design, materials, workmanship and association, given its age. The City Council shall adopt and make available to the public score sheets and other devices which shall be used by the Council and Historic Preservation Commission to apply this criterion.

**2. Application.** Property owners, the Community Development Director, the Historic Preservation Commission (HPC) or the City Council may file an application for designation of an Aspen Victorian building, district, site, structure or object on the Aspen Inventory of Historic Landmark Sites and Structures. The application for the designation of a property or collection of properties shall include the following:

- a. The applicable information required in subsections 26.304.030.B.1., 2., 3. and 4.
- b. Site or historic district boundary map.
- c. Property or district description, including narrative text, photographs and/or other graphic materials that document its physical characteristics.
- d. Written description of how the property meets the criteria for designation.

### **C.AspenModern**

**1. Criteria.** To be eligible for designation on the Aspen Inventory of Historic Landmark Sites and Structures as an example of AspenModern, an individual building, site, structure or object or a collection of buildings, sites, structures or objects must have a demonstrated quality of significance. The quality of significance of properties shall be evaluated according to criteria described below. When designating a historic district, the majority of the contributing resources in the district must meet at least two of the criteria a-d, and criterion e described below:

- a. The property is related to an event, pattern, or trend that has made a contribution to local, state, regional or national history that is deemed important, and the specific event, pattern or trend is identified and documented in an adopted context paper;
- b. The property is related to people who have made a contribution to local, state, regional or national history that is deemed important, and the specific people are identified and documented in an adopted context paper;
- c. The property represents a physical design that embodies the distinctive characteristics of a type, period or method of construction, or represents the technical or aesthetic achievements of a recognized designer, craftsman, or design philosophy that is deemed important and the specific physical design, designer, or philosophy is documented in an

adopted context paper;

- d. The property possesses such singular significance to the City, as documented by the opinions of persons educated or experienced in the fields of history, architecture, landscape architecture, archaeology or a related field, that the property's potential demolition or major alteration would substantially diminish the character and sense of place in the city as perceived by members of the community, and
- e. The property or district possesses an appropriate degree of integrity of location, setting, design, materials, workmanship and association, given its age. The City Council shall adopt and make available to the public score sheets and other devices which shall be used by the Council and Historic Preservation Commission to apply this criterion.

**2. Application.** Only the property owner(s) may file an application for designation of an AspenModern building, district, site, structure or object on the Aspen Inventory of Historic Landmark Sites and Structures. The application for the designation of a property or collection of properties shall include the following:

- a. The applicable information required in subsections 26.304.030.B.1., 2., 3., and 4.
- b. Site or historic district boundary map.
- c. Property or district description, including narrative text, photographs and/or other graphic materials that document its physical characteristics.
- d. Written description of how the property meets the criteria for designation.
- e. Written description of historic preservation benefits which the property owner requests be awarded at the time of designation and relationship to Section 26.415.010, Purpose and Intent of the historic preservation program.

**D. Review, public hearings and notice.**

1. An application for designation on the Aspen Inventory of Historic Landmark Sites and Structures shall be transmitted to the Community Development Director to determine if the application is complete. For applications filed with sufficient information, a report will be prepared by City staff for transmittal to the HPC with the relevant information on the proposed historic property or district with a recommendation to approve or disapprove and the reasons for the recommendation.
2. A date for a public hearing on a complete application will be scheduled before the HPC. Notice of the hearing shall be provided according to the provisions of Subsections 26.304.060.E.3.a., b. and c., except when the Community Development Director, HPC or City Council is the applicant. When the Community Development Director, HPC or City Council is the applicant, notice of the hearing shall be mailed to the property owner(s) within three hundred (300) feet of the property and posted on the subject property for at least thirty (30) days prior to the hearing. Notice to the property owner shall be by registered mail. In the event that there is no evidence that the property owner received actual notice, the HPC may specify that additional measures be taken.

3. The HPC shall evaluate the application to determine if the property or district meets the criteria for designation. At the public hearing, the property owner, parties of interest and citizens shall have an opportunity to provide information about the property or district's eligibility for designation. The HPC may recommend approval, disapproval or continuance of the application to request additional information necessary to make a decision to approve or deny. Their recommendation shall be forwarded to City Council.
4. Upon receipt of the decision, report and recommendations of the HPC, the City Council shall schedule a hearing on the application in accordance with the notice requirements for adopting an ordinance. The City Council shall evaluate the application to determine if the property or district meets the criteria for designation. At the public hearing, the property owner, parties of interest and citizens shall have an opportunity to provide information about the property or district's eligibility for designation. The City Council may approve, disapprove or continue the application to request additional information necessary to make a decision to approve or deny.
5. If an application is denied, the Community Development Director, HPC or City Council may not file a reapplication for designation of the same property or district on the Aspen Inventory of Historic Landmark Sites and Structures for five (5) years from the date of the City Council disapproval. (Ord. No. 1-2002, §7 [part]; Ord. No. 30, 2007, §1)

**26.415.040. Recordation of designation.**

Upon the effective date of an ordinance by City Council designating a property on the Aspen Inventory of Historic Landmark Sites and Structures, the City Clerk shall record with the real estate records of the Clerk and Recorder of the County, a certified copy of the ordinance including a legal description of the property. The location of properties designated by ordinance also shall be indicated on the official maps of the City that are maintained by the Community Development Department. (Ord. No. 1-2002, §7 [part])

**26.415.050. Rescinding designation.**

**A. Application and review.** An application for the removal of a property from the Aspen Inventory of Historic Landmark Sites and Structures shall follow the same submission requirements and review procedures as for designation described in this Chapter except that with respect to Subsection 26.415.030.C.4 an explanation shall be provided describing why the property no longer meets the criteria for designation. The HPC and City Council shall determine if sufficient evidence exists that the property no longer meets the criteria for designation and, if so, shall remove the property from the inventory. A parcel created through an historic Landmark lot split cannot be de-listed unless there is a finding that the resource which originally caused the site to be landmarked meets the criteria for removal from the historic inventory.

**B. Reapplication.** If a request for rescinding designation is denied, an application cannot be filed again for a period of two (2) years from the date of the denial by the City Council. The time limitation of this Subsection may be waived by a majority vote of the City Council when such action is deemed necessary to prevent injustice or to facilitate the proper development of the City. (Ord. No. 1-2002, §7 [part]; Ord. No. 43, 2004, §1)

## **26.415.060. Effect of designation.**

**A. Approvals required.** Any development involving properties designated on the Aspen Inventory of Historic Landmark Sites and Structures, as an individual building or located in an historic district, unless determined exempt, requires the approval of a development order and either a certificate of no negative effect or a certificate of appropriateness before a building permit or any other work authorization will be issued by the City.

### **B. Design guidelines.**

1. The HPC has adopted design guidelines, hereinafter referred to as the City of Aspen Historic Preservation Design Guidelines, in accordance with the procedures for notice and public hearings set forth in Section 26.304.06(E)(3) Paragraph (a). These guidelines set forth the standards necessary to preserve and maintain the historic and architectural character of designated properties and districts. The standards apply to the exterior features and/or notable streetscape and landscape elements of the designated historic property and/or district. These guidelines are intended to offer assistance to property owners undertaking construction, rehabilitation, alterations, changes in exterior appearance or any other development involving designated historic properties or districts. The guidelines will be periodically reviewed by the HPC and amended at a public hearing, as needed.
2. The "City of Aspen Historic Preservation Design Guidelines," as amended, which are on file with the Community Development Department, will be used in the review of requests of certificates of no negative effect or certificates of appropriateness. Conformance with the applicable guidelines and the common development review procedures set forth in Chapter 26.304 will be necessary for the approval of any proposed work.

### **C. Special consideration.**

1. To preserve and maintain the historic and architectural character of designated properties, the HPC or City Council may approve variations from the dimensional requirements set forth in the Land Use Code and may make recommendations to the Chief Building Official who has the authority to grant certain exceptions from the International Building Code (UBC) through the provisions of the International Existing Building Code (IEBC). These modifications may not change the applicable safety and permit requirements and must also follow the procedures provided for modifications set forth in the IEBC.
2. Designated historic properties are eligible for and have priority to participate in City programs related to financial, developmental or technical assistance that will serve to preserve, maintain or enhance their historic and architectural character.
3. All City authorities, including City Council, are authorized to grant economic and developmental benefits to designated historic properties or grant these benefits conditional upon the subsequent designation of the property. (Ord. No. 1-2002, § 7 [part]; Ord. No. 43, 2004, § 2)

**26.415.070. Development involving designated historic property.**

No building or structure shall be erected, constructed, enlarged, altered, repaired, relocated or improved involving a designated historic property or district until plans or sufficient information have been submitted to the Community Development Director and approved in accordance with the procedures established for their review. An application for a building permit cannot be submitted without a development order.

**A. Exempt development.**

1. Selected activities are exempted from the development review procedures including interior remodeling, paint color selection, exterior repainting or replastering similar to the existing finish or routine maintenance such as caulking, replacement of fasteners, repair of window glazing or other such minimally intrusive work.
2. If there is any question if a work activity qualifies as exempt, the Community Development Director shall make the determination as to its eligibility.

**B. Certificate of no negative effect.**

1. An application for a certificate of no negative effect may be made to the Community Development Director for approval of work that has no adverse effect on the physical appearance or character-defining features of a designated property. An application for a certificate of no effect may be approved by the Community Development Director with no further review if it meets the requirements set forth in the following Subsection 26.415.070.B.2:
2. The Community Development Director shall issue a development order based upon a certificate of no negative effect within fourteen (14) days after receipt of a complete application if:
  - a. It is determined that the activity is an eligible work item and meets the City Historic Preservation Design Guidelines and
  - b. Any modifications to the proposed work requested by the Community Development Director are agreed to by the owner/applicant and
  - c. The proposed work will not diminish, eliminate or adversely affect the significant historic and/or architectural character of the subject property or Historic District in which it is located.
3. An application for a certificate of no negative effect shall include the following:
  - a. The general application information required in Section 26.304.030.
  - b. Elevations or drawings of the proposed work.
  - c. Photographs, building material samples and other exhibits, as needed, to accurately depict location, extent and design of proposed work.

- d. Verification that the proposal complies with Chapter 26.410, Residential design standards.
4. The following work shall be considered for a Certificate of No Negative Effect:
  - a. Replacement or repair of architectural features which creates no change to the exterior physical appearance of the building or structure.
  - b. Replacement or repair of architectural features that restores the building or structure to its historic appearance.
  - c. Installation of awnings or similar attachments provided no significant feature is damaged, removed or obscured by the installation.
  - d. Fencing that has no adverse effect on the historic or architectural character of the property.
  - e. Mechanical equipment or accessory features that have no impact on the character-defining features of the building or structure.
  - f. Signs which have no effect on the character-defining features of the historic property.
  - g. Alterations to noncontributing buildings within historic districts that have no adverse effect on its historic or architectural character.
  - h. Alterations to no more than two (2) elements of nonprimary façades of a designated building.
  - i. Installation of site improvements, such as walkways, patios, pools or hot tubs, or similar significant features.
5. The development order and associated certificate of no negative effect shall expire and become null and void after three (3) years from the date of issuance by the Community Development Director unless a building permit is issued within that time.
6. In the event that the Community Development Director determines that the issuance of a certificate of no negative effect is not appropriate, the owner may apply for a certificate of appropriateness from the HPC.

**C. Certificate of appropriateness for a minor development.**

1. The review and decision on the issuance of a certificate of appropriateness for minor development shall begin with a determination by the Community Development Director that the proposed project constitutes a minor development. Minor development work includes:
  - a. Expansion or erection of a structure wherein the increase of the floor area of the structure is two hundred and fifty (250) square feet or less or

- b. Alterations to a building façade, windows, doors, roof planes or material, exterior wall materials, dormer porch, exterior staircase, balcony or ornamental trim when three (3) or fewer elements are affected and the work does not qualify for a certificate of no negative effect or
- c. Erection or installation of a combination or multiples of awning, canopies, mechanical equipment, fencing, signs, accessory features and other attachments to designated properties such that the cumulative impact does not allow for the issuance of a certificate of no negative effect or
- d. Alterations that are made to nonhistoric portions of a designated historic property that do not qualify for a certificate of no negative effect or
- e. The erection of street furniture, signs, public art and other visible improvements within designated historic districts of a magnitude or in numbers such that the cumulative impact does not allow for the issuance of a certificate of no negative effect.

The Community Development Director may determine that an application for work on a designated historic property involving multiple categories of minor development may result in the cumulative impact such that it is considered a major development. In such cases, the applicant shall apply for a major development review in accordance with Subsection 26.415.07.D.

- 2. An application for minor development shall include the following:
  - a. The general application information required in Section 26.304.030.
  - b. Scaled elevations and/or drawings of the proposed work and its relationship to the designated historic buildings, structures, sites and features within its vicinity.
  - c. An accurate representation of all building materials and finishes to be used in the development.
  - d. Photographs and other exhibits, as needed, to accurately depict location, extent and design of proposed work.
  - e. Verification that the proposal complies with Chapter 26.410, Residential design standards or a written request for a variance from any standard that is not being met.
- 3. The procedures for the review of minor development projects are as follows:
  - a. The Community Development Director will review the application materials and if they are determined to be complete, schedule a public hearing before the HPC. The subject property shall be posted pursuant to Paragraph 26.304.060.E.3.b.

- b. Staff shall review the submittal material and prepare a report that analyzes the project's conformance with the design guidelines and other applicable Land Use Code sections. This report will be transmitted to the HPC with relevant information on the proposed project and a recommendation to approve, disapprove or approve with conditions and the reasons for the recommendation. The HPC will review the application, the report and the evidence presented at the hearing to determine the project's conformance with the City Historic Preservation Design Guidelines.
- c. The HPC shall approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny. If the application is approved, the HPC shall issue a certificate of appropriateness and the Community Development Director shall issue a development order.
- d. The HPC decision shall be final unless appealed by the applicant or a landowner within three hundred (300) feet of the subject property in accordance with the procedures set forth in Chapter 26.316.

**D. Certificate of appropriateness for major development.**

- 1. The review and decision on the issuance of a certificate of appropriateness for major development shall begin with a determination by the Community Development Director that the proposed project constitutes a major development. A major development includes one or more of the following activities:
  - a. The construction of a new structure within a historic district; and/or
  - b. Alterations to more than three (3) elements of a building façade including its windows, doors, roof planes or materials, exterior wall material, dormers, porches, exterior staircase, balcony or ornamental trim; and/or
  - c. The expansion of a building increasing the floor area by more than two hundred and fifty (250) square feet; and/or
  - d. Any new development that has not been determined to be minor development.
- 2. The procedures for the review of major development projects include a two-step process requiring approval by the HPC of a conceptual development plan and then a final development plan. If a major development project involves additional City Land Use approvals, the Community Development Director may consolidate or modify the review process accordingly, pursuant to Subsection 26.304.060.B.
- 3. Conceptual development plan review.
  - a. An application for a conceptual development plan shall include the following:
    - (1) The general application information required in Section 26.304.030.

- (2) A site plan and survey showing property boundaries, the location and orientation of existing and proposed improvements and predominant site characteristics.
  - (3) Scaled drawings of all proposed structure(s) or addition(s) depicting their form, including their height, massing, scale, proportions and roof plan; and the primary features of all elevations.
  - (4) Preliminary selection of primary building materials to be used in construction represented by samples and/or photographs.
  - (5) Supplemental materials to provide a visual description of the context surrounding the designated historic property or historic district including at least one (1) of the following: diagrams, maps, photographs, models or streetscape elevations.
  - (6) Verification that the proposal complies with Chapter 26.410, Residential design standards or a written request for a variance from any standard that is not being met.
- b. The procedures for the review of conceptual development plans for major development projects are as follows:
- (1) The Community Development Director shall review the application materials submitted for conceptual or final development plan approval. If they are determined to be complete, the applicant will be notified in writing of this and a public hearing before the HPC shall be scheduled. Notice of the hearing shall be provided pursuant to Section 26.304.060.E.3 Paragraphs a, b and c.
  - (2) Staff shall review the submittal material and prepare a report that analyzes the project's conformance with the design guidelines and other applicable Land Use Code sections. This report will be transmitted to the HPC with relevant information on the proposed project and a recommendation to continue, approve, disapprove or approve with conditions and the reasons for the recommendation. The HPC will review the application, the staff analysis report and the evidence presented at the hearing to determine the project's conformance with the City Historic Preservation Design Guidelines.
  - (3) The HPC may approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny.
- c. The effect of approval of a conceptual development plan is as follows:
- (1) Approval of a conceptual development plan shall not constitute final approval of a major development project or permission to proceed with the development. Such authorization shall only constitute authorization to proceed with the preparation of an application for a final development plan.
  - (2) Approval of a conceptual development plan shall be binding upon HPC in regards to the location and form of the envelope of the structure(s) and/or addition(s) as

depicted in the conceptual plan application including its height, scale, massing and proportions. No changes will be made to this aspect of the proposed development by the HPC as part of their review of the final development plan unless agreed to by the applicant. If the applicant chooses to make substantial amendments to the conceptual design after it has been approved, a new conceptual development plan hearing shall be required.

- (3) Unless otherwise specified in the resolution granting conceptual development plan approval, a development application for a final development plan shall be submitted within one (1) year of the date of approval of a conceptual development plan. Failure to file such an application within this time period shall render null and void the approval of the conceptual development plan. The Historic Preservation Commission may, at its sole discretion and for good cause shown, grant a one-time extension of the expiration date for a conceptual development plan approval for up to six (6) months provided a written request for extension is received no less than thirty (30) days prior to the expiration date.

#### 4. Final development plan review.

- a. An application for a final development plan shall include:

- (1) The general application information required in Section 26.304.030.
- (2) Final drawings of all proposed structures(s) and/or addition(s) included as part of the development at 1/4" = 1.0' scale.
- (3) An accurate representation of all major building materials to be used in the development, depicted through samples or photographs.
- (4) A statement, including narrative text or graphics, indicating how the final development plan conforms to representations made or stipulations placed as a condition of the approval of the conceptual development plan.

- b. The procedures for the review of final development plans for major development projects are as follows:

- (1) The Community Development Director shall review the application materials submitted for final development plan approval. If they are determined to be complete, the applicant will be notified in writing of this and a public hearing before the HPC shall be scheduled. Notice of the hearing shall be provided pursuant to Paragraphs 26.304.060.E.3.a, b and c.
- (2) Staff shall review the submittal material and prepare a report that analyzes the project's conformance with the design guidelines and other applicable Land Use Code sections. This report will be transmitted to the HPC with relevant information on the proposed project and a recommendation to continue, approve, disapprove or approve with conditions and the reasons for the recommendation. The HPC will review the application, the staff analysis report and the evidence

presented at the hearing to determine the project's conformance with the City Historic Preservation Design Guidelines.

- (3) The HPC may approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny. If the application is approved, the HPC shall issue a certificate of appropriateness and the Community Development Director shall issue a development order.
- (4) A resolution of the HPC action will be forwarded to the City Council in accordance with Section 26.415.130 and no permit will be issued for construction of the project until the thirty (30) day "call up" period by City Council has expired.
- (5) Before an application for a building permit can be submitted, a final set of plans reflecting any or all required changes by the HPC or City Council must be on file with the City. Any conditions of approval or outstanding issues which must be addressed in the field or at a later time shall be noted on the plans.

**E. Amendments, insubstantial and substantial.** There are two processes for amending plans approved pursuant to a development order and an associated certificate of appropriateness. All requests for amendments, insubstantial or substantial, must be in writing and accompanied by drawing(s) and elevations as specified below.

1. Insubstantial amendments.

a. Insubstantial amendments are minor modifications to HPC approved plans that:

- (1) Address circumstances discovered in the course of construction that could not have been reasonably anticipated during the approval process or
- (2) Are necessary for conformance with building safety or accessibility codes and do not materially change the approved plans or
- (3) Approve specific building materials, finishes, design of ornamental trim and other such detail not provided in the HPC approved plans or
- (4) Change the shape, location or material of a building element or feature but maintains the same quality and approximate appearance of that found in the approved plans.

b. The Community Development Director may authorize insubstantial amendments to approved plans.

c. Monitoring committees established by the HPC, composed of up to two (2) members of the Commission and the Historic Preservation Officer or assign, may also authorize insubstantial amendments.

- d. Decisions of the Community Development Director or monitoring committee are binding. The Community Development Director or monitoring committee may determine that the proposed changes qualify as a substantial amendment and remand the matter to the HPC.
  - e. Disapproval of a request for an insubstantial amendment may be appealed to the HPC to be considered in accordance with the procedures for substantial amendments.
  - f. Approval of insubstantial amendments of plans will be reported to the HPC at their regularly scheduled meetings.
2. Substantial amendments.
- a. All changes to approved plans that materially modify the location, size, shape, materials, design, detailing or appearance of the building elements as originally depicted must be approved by the HPC as a substantial amendment.
  - b. An application for a substantial amendment shall include the following materials, as determined appropriate by the Community Development Director:
    - (1) A revised site plan.
    - (2) Revised scaled elevations and drawings.
    - (3) Representations of building materials and finishes.
    - (4) Photographs and other exhibits to illustrate the proposed changes.
  - c. The Community Development Director shall review the application materials submitted for approval of a substantial amendment and waive any submittals not considered necessary for consideration. If they are determined to be complete, the applicant will be notified in writing of this and a public hearing before the HPC shall be scheduled.
  - d. Notice for the review of an application for a substantial amendment will include publication, posting and mailing pursuant to Section 26.304.060.E.3 Paragraphs a, b and c.
  - e. Staff shall review the submittal material and prepare a report that analyzes the extent of the changes relative to the approved plans and how the proposed revisions affect the project's conformance with the design guidelines and other applicable Land Use Codes. This report will be transmitted to the HPC with relevant information on the proposed revisions and a recommendation to continue, approve, disapprove or approve with conditions and the reasons for the recommendation.
  - f. The HPC will review the application, the staff analysis report and the evidence presented at the hearing to determine the project's conformance with the City Historic Preservation Design Guidelines. The HPC may approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny. (Ord. No. 1-2002, § 7 [part]; Ord. 43, 2004, § 3)

**26.415.080. Demolition of designated historic properties.**

It is the intent of this Chapter to preserve the historic and architectural resources that have demonstrated significance to the community. Consequently no demolition of properties designated on the Aspen Inventory of Historic Landmark Site and Structures will be allowed unless approved by the HPC in accordance with the standards set forth in this Section.

**A. Procedures for considering requests for demolition of designated properties.**

1. An application for a demolition permit for designated properties will be filed with or referred to the Community Development Director by the Chief Building Official. The applicant will be provided a written response within fourteen (14) days of the request for a demolition permit describing the submittal materials needed for consideration.
2. An application for demolition approval shall include:
  - a. The general application information requested in Section 26.304.030 and written documentation that the Chief Building Official has determined the building an imminent hazard or
  - b. Narrative text, graphic illustrations or other exhibits that provide evidence that the building, structure or object is of no historic or architectural value or importance.
3. When complete application materials are on file, a public hearing before the HPC shall be scheduled. Notice for the hearing will include publication, mailing and posting pursuant to Section 26.304.060.E.3 Paragraphs a, b and c. The staff shall review the submittal material and prepare a staff report that analyzes the request relative to the criteria for approval.
4. The HPC shall review the application, the staff report and hear evidence presented by the property owners, parties of interest and members of the general public to determine if the standards for demolition approval have been met. Demolition shall be approved if it is demonstrated that the application meets any one of the following criteria:
  - a. The property has been determined by the City to be an imminent hazard to public safety and the owner/applicant is unable to make the needed repairs in a timely manner,
  - b. The structure is not structurally sound despite evidence of the owner's efforts to properly maintain the structure,
  - c. The structure cannot practically be moved to another appropriate location in Aspen or
  - d. No documentation exists to support or demonstrate that the property has historic, architectural, archaeological, engineering or cultural significance and

Additionally, for approval to demolish, all of the following criteria must be met:

- a. The structure does not contribute to the significance of the parcel or historic district in which it is located and

- b. The loss of the building, structure or object would not adversely affect the integrity of the historic district or its historic, architectural or aesthetic relationship to adjacent designated properties and
  - c. Demolition of the structure will be inconsequential to the historic preservation needs of the area.
5. The HPC shall approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to consider the demolition request.
6. If the HPC approves the demolition request then a resolution of the HPC action will be forwarded to the City Council in accordance with Section 26.415.120 and no demolition permit will be issued until the thirty (30) day "call up" period by City Council has expired.
7. If the demolition request is denied because it does not meet the aforementioned standards, the applicant may request demolition approval based upon a finding of "economic hardship," as set forth below.
8. Before a demolition permit will be issued, a certificate of appropriateness for the redevelopment or reuse plan, as provided for in Subsection 26.415.070.D, must be approved. When a demolition permit must be issued because the building, structure or object is an imminent hazard or because of the issuance of a certificate of economic hardship, the permit may be received prior to the approval of an acceptable reuse plan.

**B. Procedures for obtaining a certificate of economic hardship.**

1. Purpose: It is the policy of the City to respect private property rights. The City recognizes, therefore, that there may be some circumstances in which the operation of this Chapter could create an undue economic hardship. This provision is created to provide property owners with a means of demonstrating that such a hardship may exist and that they should be allowed to demolish a designated historic property because of that hardship. It is the intent of this provision to insure that no private property is taken without just compensation.
2. Standard of review: The standard of review for a determination of economic hardship will be whether refusing to allow the property owner to demolish the property would result in a violation of the prohibitions of the U.S. and Colorado Constitutions against taking of private property for public use without just compensation as those prohibitions are interpreted by the courts of Colorado and the United States. In applying the standards, the economic benefits of financial, developmental and technical assistance from the City and the utilization of any federal and state rehabilitation tax credit programs may be considered.
3. Application:
  - a. Upon receiving a request for a certificate of economic hardship, the Community Development Director shall provide a written response within fourteen (14) days as to the submittal materials required.

- b. Within five (5) days after receipt of an application for a certificate of economic hardship, the Community Development Director shall determine whether the application is complete. If he or she determines that the application is not complete, the Director shall notify the applicant in writing of the deficiencies. The Director shall take no further steps to process the application until the deficiencies have been remedied.
  - c. The application fee shall be set to defray all costs of the review process, including the fees of an independent hearing officer.
4. Administrative process:
- a. When the application is complete, the Community Development Director will refer the application to the Historic Preservation Officer and the City Attorney for review. The Historic Preservation Officer and City Attorney shall jointly prepare a report setting forth the City's response.
  - b. In the event the City response concludes that the application does not demonstrate a case of economic hardship, the application will be set for a public hearing before a hearing officer.
  - c. The hearing officer will be contracted by the City to conduct an impartial quasi-judicial hearing on the question of economic hardship. The Officer shall have sufficient legal and technical experience to conduct a fair hearing in accordance with appropriate standards of due process. The application, all support materials and the City's report shall be provided to the hearing officer in advance of the hearing. At the hearing, the applicant will be provided with an opportunity to present his application and may be represented by counsel. The City position will be presented by the City Attorney.
5. Appeal: An applicant may appeal the decision of the hearing officer to District Court pursuant to Rule 106 of the Colorado Rules of Civil Procedure. (Ord. No. 1-2002, §7 [part]; Ord. No. 30, 2007, §4)

**26.415.090. Relocation of designated properties.**

The intent of this Chapter is to preserve designated historic properties in their original locations as much of their significance is embodied in their setting and physical relationship to their surroundings as well as their association with events and people with ties to particular site. However, it is recognized that occasionally the relocation of a property may be appropriate as it provides an alternative to demolition or because it only has a limited impact on the attributes that make it significant.

**A. Application.** An application for relocation shall include:

- 1. The general application information required in Section 26.304.030.
- 2. A written description and/or graphic illustrations of the building, structure or object proposed for relocation.

3. A written explanation of the type of relocation requested (temporary, on-site or off-site) and justification for the need for relocation.
4. A written report from a licensed engineer or architect regarding the soundness of the building, structure or object, its ability to withstand the physical move and its rehabilitation needs, once relocated.
5. A conceptual plan for the receiving site providing preliminary information on the property boundaries, existing improvements and site characteristics and the associated planned improvements.
6. If the applicant does not own the receiving site, proof from the site's property owner of the willingness to accept the relocated building, structure or object.
7. Evidence that the applicant has or is seeking the necessary approvals to place the building on the identified receiving site. If the site is outside of the city limits, verification that the building will be preserved on its new site through a formal action of the other jurisdiction or a preservation easement.
8. Evidence of the financial ability to undertake the safe relocation, preservation and repair of the building, structure or object; site preparation and construction of necessary infrastructure through the posting of bonds or other financial measures deemed appropriate.
9. Supplementary materials to provide an understanding of the larger context for the relocated property and its impact on adjacent properties, the neighborhood or streetscape.

**B. Procedures for the review of relocation request.**

1. The Community Development Director shall review the application materials submitted for relocation approval. If they are determined to be complete, the applicant will be notified in writing of this and a public hearing before the HPC shall be scheduled.
2. Notice for the review of the relocation request shall include publication, posting and mailing pursuant to Section 26.304.060.E.3 Paragraphs a, b and c.
3. If the relocation request is part of a major development project, the Community Development Director may consolidate or modify the review process accordingly pursuant to Section 26.304.060.B.
4. Staff shall review the submittal material and prepare a report that analyzes the project's conformance with the standards for relocation approval set forth below, the City Historic Preservation Design Guidelines and other applicable Land Use Code sections. This report will be transmitted to the HPC with relevant information on the proposed project and a recommendation to continue, approve, disapprove or approve with conditions and the reasons for the recommendation. The HPC will review the application, the report and the evidence presented at the hearing to determine if the standards for relocation have been met.
5. The HPC shall approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny.

6. A resolution of the HPC action will be forwarded to the City Council in accordance with Section 26.415.120 and no relocation will occur until after the thirty (30) day "call up" period of the City Council has expired.

**C. Standards for the relocation of designated properties.** Relocation for a building, structure or object will be approved if it is determined that it meets any one of the following standards:

1. It is considered a noncontributing element of a historic district and its relocation will not affect the character of the historic district; or
2. It does not contribute to the overall character of the historic district or parcel on which it is located and its relocation will not have an adverse impact on the Historic District or property; or
3. The owner has obtained a certificate of economic hardship; or
4. The relocation activity is demonstrated to be an acceptable preservation method given the character and integrity of the building, structure or object and its move will not adversely affect the integrity of the Historic District in which it was originally located or diminish the historic, architectural or aesthetic relationships of adjacent designated properties; and

Additionally, for approval to relocate all of the following criteria must be met:

1. It has been determined that the building, structure or object is capable of withstanding the physical impacts of relocation;
2. An appropriate receiving site has been identified; and
3. An acceptable plan has been submitted providing for the safe relocation, repair and preservation of the building, structure or object including the provision of the necessary financial security.

**D. Procedures for considering request for relocation of properties under consideration for designation.** While it is the intent of this Chapter to preserve properties of demonstrated significance, it is also recognized that all buildings and areas of importance to the general welfare, prosperity and civic pride of its citizenry cannot be identified, evaluated, documented and designated at one time. However, it is important to protect properties which potentially qualify for designation against needless loss until review and hearings can be completed.

1. No relocation will be permitted for properties under consideration for designation to the Aspen Inventory of Historic Landmark Site and Structures unless relocation approval is issued by the Historic Preservation Commission or City Council.
2. All properties under consideration for designation and, therefore, subject to the temporary stay of relocation will be identified on a list maintained by the Chief Building Official. Property owners will be notified by registered mail that their property is under consideration for designation and have an opportunity to review all materials compiled at that time to verify accuracy.

3. These procedures shall apply to any building located within an area under preliminary application for designation from the time the application is filed until the time action is taken on the application by the City Council.
4. If a public hearing to consider the application for designation is not held by the City Council within six (6) months of the initiation of the stay, the stay will expire. An additional six-month stay period may be approved by City Council in the form of a resolution, at a public hearing, with a showing of good cause. (Ord. No. 1-2002, § 7 [part])

**26.415.100. Demolition by neglect.**

It is the intent of this Chapter to address the range of circumstances that affect the preservation of the community's significant historic and architectural resources. It is further recognized that many historic buildings and structures are lost because of deterioration from lack of maintenance. Whether this occurs unintentionally or through deliberate decisions, the result is the same: the loss of community assets. Consequently, it is declared that the exterior features of any designated building or structure shall be preserved against decay and deterioration and kept free from structural defects. The designated structures shall receive reasonable care, maintenance and upkeep appropriate for their preservation, protection, perpetuation and use.

**A. Standards for reasonable care and upkeep.**

1. The owner or such other person who may have legal possession, custody and control thereof of a designated property shall, upon written request by the City, repair the following exterior features if they are found to be deteriorating or if their condition is contributing to deterioration such that it is likely to compromise the building's structural integrity or as to create or permit the creation of any hazardous or unsafe condition to life, health or other property. These features include, but are not limited to:
  - a. Deterioration of exterior walls, foundations or other vertical supports that causes leaning, sagging, splitting, listing or buckling.
  - b. Deterioration of flooring or floor supports or other horizontal members that causes leaning, sagging, splitting, listing or buckling.
  - c. Deterioration of external chimneys that cause leaning, sagging, splitting, listing or buckling.
  - d. Deterioration or crumbling of exterior plasters or mortars.
  - e. Ineffective waterproofing of exterior walls, roofs and foundations, including broken windows or doors.
  - f. Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint or weathering due to lack of paint or other protective covering.
  - g. Rotting, holes and other forms of decay.

- h. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings ornamental trim and other architectural details that cause delamination, instability, loss of shape and form or crumbling.

**B. Enforcement procedures.**

1. The HPC may file a petition listing specific defects, in accordance with Subsection 26.415.110.A, with the Chief Building Official, requesting that the official act under the following procedures to require the correction of the defects or repairs to designated properties.
2. Whenever a petition is filed, the Chief Building Official shall attempt to make direct personal contact with the owner or other such persons having legal possession or custody and/or his representative. If personal contact cannot reasonably be accomplished, then written notification of the specific defects purported by the HPC and a request to inspect the property within ten (10) days will be mailed to the owner and other such persons having legal possession, custody and control and will be posted at a conspicuous location appropriate to the identified defects. In the written notification the Chief Building Official shall document the nature of the specific defects and the corrective action ordered.
3. After receiving agreement from the owner, his representatives or other such persons having legal possession, custody and control of the property for an inspection, the Chief Building Official and the HPC Officer shall within ten (10) working days conduct an investigation and prepare a written report determining whether the property requires work to address conditions set, forth in Subsection 26.415.100.A.1.
4. If the property is found to contain conditions needing correction, the owner, his representative or other such persons having legal possession, custody and control of the property will be served within fourteen (14) days with a complaint identifying the property deficiencies and providing notice that a hearing will be held before a Hearing Officer of the City within forty-five (45) days. The purpose of the hearing is to:
  - a. Receive evidence concerning the charge of deterioration and
  - b. Develop a plan and schedule for making the needed repairs in a timely fashion, such that the building is stabilized and the deterioration is arrested and
  - c. Ascertain whether the owner or other parties intend to make application for financial assistance from the City to correct the building defects.
5. Following such notice and hearing, the Hearing Officer will make a determination if there are any corrections required pursuant to Subsection 26.415.110.A.1 and shall state in writing the findings of fact in support of that determination. If it is determined that the building or structure is undergoing deterioration or if its condition is contributing to deterioration, the owner or other parties of interest will be served an order to repair those defective elements of the structure within a reasonable specified time frame.
6. If the owner fails to make the necessary repairs within the identified time frame, the City may undertake the work to correct the deficiencies that create any hazardous and unsafe

conditions to life, health and property. The expense of this work will be recorded as a lien on the property.

**C. Appeal.** Within thirty (30) days, the owner may appeal the decision of the Hearing Officer to the Board of Appeals and Examiners pursuant to the process established in Chapter 8.08 of this Municipal Code. (Ord. No. 1-2002 § 7 [part])

**26.415.110. Benefits.**

The City is committed to providing support to property owners to assist their efforts to maintain, preserve and enhance their historic properties. Recognizing that these properties are valuable community assets is the basic premise underlying the provision of special procedures and programs for designated historic properties and districts.

Benefits to encourage good historic preservation practices by the owners of historic properties are an important aspect of Aspen's historic preservation program. Historic resources are a valuable community asset and their continued protection is the basic premise supporting the creation of an innovative package of preservation tools that are unlike any other in the country.

Aspen's preservation benefits are in response to tight historic preservation controls that have been legislated by the City since 1972. The Community Development Department and Historic Preservation Commission (HPC) are dedicated to assisting property owners in renovating and maintaining their property.

Aspen is unique. Its historic resources and spirit of community have not been duplicated anywhere else in the world. It is this basic character that has helped make the City both economically vital and cherished by many.

All properties listed on the Aspen Inventory of Historic Landmark Site and Structures may be eligible for the following benefits.

**A. Historic landmark lot split.** Properties listed on the Aspen Inventory of Historic Landmark Sites and Structures may receive an exemption from the subdivision and growth management quota system, pursuant to Sections 26.480 and 26.470, allowing owners of designated historic properties to create a second unit in addition to the historic building on their lot through the subdivision of the property. Refer to specific zone district information in Chapter 26.710 for further information. All parcels created through a Historic Landmark lot split shall retain designation on the Aspen Inventory of Historic Sites and Structures.

**B. Increased density.** Two detached single-family dwelling units or a duplex may be allowed on a smaller sized lot than is required for a non-designated property. Refer to specific zone district information in Chapter 26.710 for further information.

**C. Variances.** Dimensional variations are allowed for projects involving designated properties to create development that is more consistent with the character of the historic property or district than what would be required by the underlying zoning's dimensional standards.

1. The HPC may grant variances of the Land Use Code for designated properties to allow:
  - a. Development in the side, rear and front setbacks;

- b. Development that does not meet the minimum distance requirements between buildings;
  - c. Up to five percent (5%) additional site coverage;
  - d. Less public amenity than required for the on-site relocation of commercial historic properties.
2. In granting a variance, the HPC must make a finding that such a variance:
- a. Is similar to the pattern, features and character of the historic property or district; and/or
  - b. Enhances or mitigates an adverse impact to the historic significance or architectural character of the historic property, an adjoining designated historic property or historic district.

**D. Parking.** Parking reductions are permitted for designated historic properties on sites unable to contain the number of on-site parking spaces required by the underlying zoning. Commercial designated historic properties may receive waivers of payment-in-lieu fees for parking reductions.

The parking reduction and waiver of payment-in-lieu fees may be approved upon a finding by the HPC that it will enhance or mitigate an adverse impact on the historic significance or architectural character of a designated historic property, an adjoining designated property or a historic district. Refer to Chapter 26.515 for further information.

**E. Conditional uses.** A variety of conditional uses are allowed for designated historic properties. These uses are identified in Chapter 26.710.

**F. Floor area bonus.**

1. In selected circumstances, the HPC may grant up to five hundred (500) additional square feet of allowable floor area for projects involving designated historic properties. To be considered for the bonus, it must be demonstrated that:
  - a. The design of the project meets all applicable design guidelines;
  - b. The historic building is the key element of the property and the addition is incorporated in a manner that maintains the visual integrity of the historic building;
  - c. The work restores the existing portion of the building to its historic appearance;
  - d. The new construction is reflective of the proportional patterns found in the historic building's form, materials or openings;
  - e. The construction materials are of the highest quality;
  - f. An appropriate transition defines the old and new portions of the building;
  - g. The project retains a historic outbuilding; and/or
  - h. Notable historic site and landscape features are retained.

2. Granting of additional allowable floor area is not a matter of right but is contingent upon the sole discretion of the HPC and the Commission's assessments of the merits of the proposed project and its ability to demonstrate exemplary historic preservation practices. Projects that demonstrate multiple elements described above will have a greater likelihood of being awarded additional floor area.
3. The decision to grant a floor area bonus for major development projects will occur as part of the approval of a Conceptual Development Plan, pursuant to Subsection 26.415.070.D. The floor area bonus may also be approved as part of a Historic Landmark Lot Split Review. No development application that includes a request for a floor area bonus may be submitted until after the applicant has met with the HPC in a work session to discuss how the proposal might meet the bonus considerations.
4. Floor area bonuses are cumulative. A property shall receive no more than 500 square feet total.

**G. Exemption from growth management quota system requirements.** Certain types of development on designated historic properties are exempt from the growth management quota system and have reduced impact mitigation requirements. Refer to Chapter 26.470 for further information.

**H. Waiver of impact fees.** Designated historic properties may be eligible for waiver of Impact Fees. Refer to Chapter 26.610 for further information.

**I. Rehabilitation loan fund.** City Council may approve a zero interest loan in an amount up to twenty-five thousand dollars (\$25,000.00) for any property that is in violation of Section 26.415.100 of the Land Use Code, Demolition by Neglect, or to fund other rehabilitation work which is considered necessary for the preservation or restoration of a designated structure. To be eligible for this benefit, a property owner shall show evidence of financial need. These one-time loans shall be repaid at the time of transfer-of-title or by the end of ten (10) years, whichever comes first.

**J. Conservation easement program.** The City may accept a "Conservation Easement" from a property owner who wishes to forgo any of the allowed square footage on their property in exchange for a federal tax deduction. A deed restriction shall be filed on the site to show that future development is limited. The five hundred (500) square foot floor area bonus provided in Subsection 26.415.110 of the Land Use Code cannot be donated as a conservation easement.

**K. City-owned building rehabilitation fund.** The City shall give priority in the asset management plan to budgeting the funds necessary to adequately maintain, rehabilitate or restore City-owned designated properties.

**L. Transferable Development Right (TDR).** Pursuant to Chapter 26.535 of this Code, owners of properties listed on the Aspen Inventory of Historic Landmark Sites and Structures may sever and convey, as a separate development right, undeveloped floor area to be developed on a different property within the City. Refer to Section 26.710, Zone Districts for further information on landing sites for TDRs.

**M. Tax credit applications.** Community Development staff shall assist property owners in participating in State and Federal Rehabilitation Tax Credit programs by helping with the

preparation of application materials, undertaking the necessary reviews to assist in obtaining certification. A twenty percent (20%) state rehabilitation income tax credit may be available for locally designated properties and may be combined with a twenty percent (20%) Federal Income Tax Credit which may be available for income producing properties listed on the National Register of Historic Places.

**N. Community-initiated development.** The City shall consider opportunities to be involved in public-privately funded rehabilitation efforts, building expansion, or infill projects that demonstrate good historic preservation practices.

**O. Building codes.** The International Building Code (IBC) provides for flexibility in its application to historic structures. In addition to the IBC, the City has adopted the International Existing Building Code (IEBC) to assist owners in making repairs in a manner that minimizes intrusion into the historic structure.

**P. Contractor training.** The Community Development Department shall provide periodic workshops for contractors on proper preservation techniques, using grants or other sources of funding.

**Q. Cultural heritage tourism.** Through grants or other sources of funding, the City may facilitate collaborative partnerships among tourist industry sectors, historic property owners and cultural heritage attractions to create a marketing strategy and marketing products to attract visitors interested in the distinctive historic character of Aspen.

**R. Preservation honor awards.** The Aspen Historic Preservation Commission shall present annual awards to recognize exemplary historic preservation efforts in the City.

**S. Historic markers.** Through grants or other sources of funding, the City may provide a historic marker of a standard design for any owner of a designated historic property who desires a marker to install on their building. The City may also develop a marker or signage program to recognize designated historic districts.

#### **26.415.120. Appeals, notice to City Council and call up.**

**A. Appeal.** Any action by the HPC in approving, approving with conditions or disapproving a development order and an associated certificate of appropriateness for major development, demolition approval or relocation approval may be appealed to the City Council by the applicant or a property owner within three hundred (300) feet of the subject property in accordance with the procedures set forth in Chapter 26.316.

**B. Notice to City Council.** Following the adoption of a resolution approving, approving with conditions or disapproving a development application for a certificate of appropriateness for major development, demolition approval or relocation approval of a designated property, the HPC shall promptly notify the City Council of its action to allow the City Council an opportunity to avail itself of the call-up procedure set forth in Subsection 26.415.120.C and D.

**C. Call-up.** The City Council may order call up of any action taken by the HPC as described in Section 26.415.070 within thirty (30) days of the decision, action or determination. Consequently no associated permits can be issued during the thirty (30) day call-up period.

**D. City Council action on appeal or call-up.** The City Council shall consider the application on the record established before the HPC. The City Council shall affirm the decision of the HPC unless there is a finding that there was a denial of due process or the HPC has exceeded its jurisdiction or abused its discretion. The City Council shall take such action as is deemed necessary to remedy said situation, including, but not limited to:

1. Reversing the decision.
2. Altering the conditions of approval.
3. Remanding the application to the HPC for rehearing. (Ord. No. 1-2002, § 7 [part]; Ord. No. 52-2003, § 10)

**26.415.130. Variances by other City review bodies.**

If an application for a variance involving a designated property is before the Board of Adjustment or the Planning and Zoning Commission, the HPC will be given the opportunity to make a written recommendation as to its approval. The Board of Adjustment or the Planning and Zoning Commission will not take action on said development application for a variance pursuant to Chapter 26.314, without receiving the written recommendation from the HPC. (Ord. No. 1-2002 § 7 [part])

**26.415.140. Penalties.**

Any person violating the provisions of Sections 26.415.070 through 26.415.100 will be subject to the general penalty provisions of this Title.

**A. Additional penalties.** Additional penalties for the violation of Sections 26.415.070 through 26.415.100 include:

1. Any person who constructs, alters, relocates, changes the appearance or demolishes a designated property in violation of any section may be required to restore the building, structure or setting to its appearance prior to the violation.
2. Following notice and public hearing, the HPC shall prohibit the owner, successor or assigns from obtaining a building permit for the subject property for a period of up to ten (10) years from the date of the violation. The City shall initiate proceedings to place a deed restriction on the property to ensure enforcement of this penalty. The property owner shall be required to maintain the property during that period of time in conformance with the Standards for reasonable care and upkeep set forth in Subsection 26.415.100A.
3. Any variances or historic preservation benefits previously granted to the property may be subject to revocation. (Ord. No. 1-2002, § 7 [part])

**Section 2:**

Chapter 26.420, Benefits is hereby deleted in its entirety. The content of the Chapter has been imported into Chapter 26.415, Historic Preservation

**Section 3:**

Chapter 26.535, Transferable Development Rights (TDR) is hereby amended to allow properties on the AspenModern Map to be sending sites for TDRs, even if they are not designated to the Aspen Inventory of Historic Landmark Sites and Structures. The Chapter is hereby amended to read as follows:

**Chapter 26.535**  
**TRANSFERABLE DEVELOPMENT RIGHTS (TDR)**

Sections:

Sec. 26.535.010	Purpose
Sec. 26.535.020	Terminology
Sec. 26.535.030	Applicability and prohibitions
Sec. 26.535.040	Authority
Sec. 26.535.050	Procedure for establishing an historic transferable development right certificate
Sec. 26.535.060	Procedure for extinguishing an historic transferable development right certificate
Sec. 26.535.070	Review criteria for establishment of an historic transferable development right
Sec. 26.535.080	Review criteria for extinguishment of an historic transferable development right
Sec. 26.535.090	Application materials
Sec. 26.535.100	Appeals

**26.535.010. Purpose.**

The purpose of this Chapter is to encourage the preservation of historic landmarks, those properties listed on the Aspen Inventory of Historic Landmark Sites and Structures and those properties identified on the AspenModern Map, within the City by permitting those property owners to sever and convey, as a separate development right, undeveloped floor area to be developed on a different property within the City. The program enables standard market forces and the demand for residential floor area, to accomplish a community goal of preserving Aspen's heritage as reflected in its built environment.

(Ord. No. 54-2003, §§4, 5; Ord. No. 16-2008)

**26.535.020. Terminology.**

**Establishment of a TDR.** The process of creating an historic TDR certificate in exchange for a property owner lessening the allowable development on an historic property (the sending site) through a permanent deed restriction.

**Extinguishment of a TDR.** The process of increasing the allowable development on a property (the receiver site), as permitted in the Zone District, through the redemption of an historic TDR certificate.

**Historic transferable development right certificate (historic TDR certificate).** An irrevocable assignable property right which allows a certain amount of development, which may be conveyed separate from the property in which it has historically been associated (the sending site) and which may be used to increase development rights on another property (the receiver

site). TDR certificates shall require execution by the Mayor, pursuant to a validly adopted ordinance.

**Receiver site.** A property on which developments rights are increased in exchange for the City extinguishing an historic TDR certificate held by the developer of the property. Receiver sites are also referred to as *landing sites*.

**Sending site.** The designated historic landmark property, or property identified on the AspenModern Map, being preserved by reducing its allowable floor area in exchange for the City establishing and issuing an historic TDR certificate. (Ord. 54-2003, §§4, 5)

**26.535.030. Applicability and prohibitions.**

This chapter shall apply to properties eligible for issuance of a Historic TDR Certificate, known as Sending Sites, and properties eligible for the extinguishment of a Historic TDR Certificate, known as Receiving Sites. City of Aspen Historic TDR Certificates may only be used within the city limits of the City of Aspen, as hereinafter indicated, or in unincorporated Pitkin County, if and as may be permitted by the Pitkin County land Use Code. Pitkin County TDRs are not eligible for extinguishment within the City of Aspen.

Sending Sites shall include all properties within the City of Aspen designated as a Historic Landmark, those properties listed on the Aspen Inventory of Historic Landmark Sites and Structures, and those properties identified on the AspenModern Map, in which the development of a single-family or duplex home is a permitted use, according to Chapter 26.710, Zone Districts. Properties on which such development is a conditional use shall not be eligible. Sending Sites may also be established through adoption of a Final PUD Development Plan, pursuant to Chapter 26.445.

Sending sites shall remain eligible for all benefits, bonuses, etc. allowed properties designated a Historic Landmark after establishment of transferable development rights, pursuant to Chapter 26.415.

Receiving Sites shall include all properties in the City of Aspen permitted additional development rights for extinguishment of a Historic TDR is Chapter 26.710, Zone Districts. A property may also be designated as a Receiving Site through adoption of a Final PUD Development Plan, pursuant to Chapter 26.445.

The allowable development extinguishment of a Historic TDR Certificate varies depending upon the zone district of the Receiving Site and the use of the land. Chapter 26.710, Zone Districts, describes the development allowance for each Historic TDR Certificate extinguished.

A Historic TDR Certificate may be sold, assigned, transferred, or conveyed. Transfer of Title shall be evidenced by an assignment of ownership on the actual certificate document and by recordation in the real estate records of the Pitkin County Clerk and Recorder. Upon transfer, the new owner may request the City re-issue the certificate acknowledging the new owner. Re-issuance shall not require re-adoption of an ordinance.

The market for Historic TDR Certificates is unrestricted and the City shall not prescribe or guarantee the monetary value of a Historic TDR Certificate.

The Community Development Director shall establish policies and procedures not inconsistent with this Chapter for the printing of certificates, their safe-keeping, distribution, recordation, control, and extinguishments.

(Ord. No. 54-2003, §§ 4, 5; Ord. No. 16-2008)

**26.535.040. Authority.**

The City Council, in accordance with the procedures, standards and limitations of this Chapter and of Chapter 26.304, Common development review procedures, shall approve or disapprove, pursuant to adoption of an ordinance, a land use application for the establishment of historic transferable development rights. The Mayor, in accordance with the procedures, standards and limitations of this Chapter and of Section 26.304, Common development review procedures, shall validate and issue historic TDR certificates, pursuant to a validly adopted ordinance.

The Community Development Director, in accordance with the procedures, standards and limitations of this Chapter and of Section 26.304, Common development review procedures, shall approve or disapprove a land use application for the extinguishment of historic transferable development rights. (Ord. No. 54-2003, §§ 4, 5)

**26.535.050. Procedure for establishing a historic transferable development right certificate.**

The following steps are necessary for the issuance of a City historic transferable development right certificate:

**Preapplication conference.** Property owners interested in the City's historic TDR program are encouraged to meet with a member of the Community Development Department to clarify the process, benefits and limitations of the program.

**Owner confirmation.** An application for the issuance of a historic TDR certificate shall only be accepted by the City upon submission of a notarized affidavit from the sending site property owner signifying understanding of the following concepts:

A deed restriction will permanently encumber the sending site and restrict that property's development rights to below that allowed by right by zoning according to the number of historic TDR certificates established from that sending site.

For each certificate of development right issued by the City for the particular sending site, that property shall be allowed two hundred and fifty (250) square feet less of floor area, as permitted according to the property's zoning, as amended.

The sending site property owner shall have no authority over the manner in which the certificate of development right is used by subsequent owners of the historic TDR certificate.

**Application for issuance of historic TDR certificate.** An applicant shall supply the necessary application materials, identified in Section 26.535.090, Application materials, along with applicable review fees.

**City review and approval of application.** The Community Development Department shall review the application according to the review standards identified in Section 26.535.070, Review criteria for establishment of a historic TDR and shall forward a recommendation to the City Council. The City Council shall approve or disapprove the establishment of a historic TDR certificate by adoption of an ordinance, according to the review standards identified in Section 26.535.070, Review criteria for establishment of a historic TDR. The manner of public notice shall be publication, pursuant to Paragraph 26.304.060.E.3.a.

**Scheduling of closing date.** Upon satisfaction of all relevant requirements, the City and the applicant shall establish a date on which the respective historic TDR certificates shall be validated and issued by the City, and a deed restriction on the property shall be accepted by the City and filed with the County Clerk and Recorder.

**Closing.** On the mutually agreed upon closing date, the Mayor shall execute and deliver the applicable number of historic TDR certificates to the property owner, and the property owner shall execute and deliver a deed restriction lessening the available development right of the sending site together with the appropriate fee for recording the deed restriction with the County Clerk and Recorder's Office. (Ord. 54-2003, §§ 4, 5)

**26.535.060. Procedure for extinguishing a historic transferable development right certificate.**

The following steps are necessary for the extinguishment of a City historic transferable development right certificate:

**Preapplication conference.** Property owners interested in the City's historic TDR program are encouraged to meet with a member of the Community Development Department to clarify the process, benefits and limitations of the program. Applicants are encouraged to meet with the City Zoning Officer and review potential development plans to ensure the additional development right can be properly incorporated on the receiver site.

**Associated planning reviews.** An applicant must gain all other necessary approvals for the proposed development, as established by this Title.

**Application for building permit.** An applicant shall submit the necessary materials for a building permit, pursuant to Section 26.304.075, Building permit.

**Confirmation of historic TDR certificate.** The applicant shall submit the requisite historic TDR certificates, and the City shall confirm its or their, authenticity.

**City review of application.** The Community Development Department shall review the application according to the review standards identified in Section 26.535.070, Review standards for extinguishment of a historic TDR.

**Extinguishment of historic TDR certificate.** Prior to and as a condition of, issuance of a building permit for a development on a receiver site requiring the extinguishment of a historic TDR certificate, the applicant shall assign the requisite historic TDR certificates to the City whereupon the certificates shall be marked "extinguished." The property shall permanently maintain the additional development benefit of the extinguished TDR according to the development allowance for a TDR pursuant to Section 26.710, Zone Districts. The property owner may, at their discretion, record a confirmation letter from the Community Development Director acknowledging the extinguishment of the TDR(s) for the receiver site. (Ord. No. 54-2003, §§ 4, 5)

**26.535.070. Review criteria for establishment of a historic transferable development right.**

A historic TDR certificate may be established by the Mayor if the City Council, pursuant to adoption of an ordinance, finds all the following standards met:

- A. The sending site is a historic landmark or property identified on the AspenModern Map, on which the development of a single-family or duplex residence is a permitted use, pursuant to Chapter 26.710, Zone Districts. Properties on which such development is a conditional use shall not be eligible.
- B. It is demonstrated that the sending site has permitted unbuilt development rights, for either a single-family or duplex home, equaling or exceeding two hundred and fifty (250) square feet of floor area multiplied by the number of historic TDR certificates requested.
- C. It is demonstrated that the establishment of TDR certificates will not create a nonconformity. In cases where a nonconformity already exists, the action shall not increase the specific nonconformity.
- D. The analysis of unbuilt development right shall only include the actual built development, any approved development order, the allowable development right prescribed by zoning for a single-family or duplex residence, and shall not include the potential of the sending site to gain floor area bonuses, exemptions or similar potential development incentives.
- E. Any development order to develop floor area, beyond that remaining legally connected to the property after establishment of TDR Certificates, shall be considered null and void.
- F. The proposed deed restriction permanently restricts the maximum development of the property (the sending site) to an allowable floor area not exceeding the allowance for a single-family or duplex residence minus two hundred and fifty (250) square feet of floor area multiplied by the number of historic TDR certificates established.

For properties with multiple or unlimited floor areas for certain types of allowed uses, the maximum development of the property, independent of the established property use, shall be the floor area of a single-family or duplex residence (whichever is permitted) minus two hundred fifty (250) square feet of floor area multiplies by the number of historic TDR certificates established.

The deed restriction shall not stipulate an absolute floor area, but shall stipulate a square footage reduction from the allowable floor area for a single-family or duplex residence, as may be amended from time to time. The sending site shall remain eligible for certain floor area incentives and/or exemptions as may be authorized by the City Land Use Code, as may be amended from time to time. The form of the deed restriction shall be acceptable to the City Attorney.

G. A real estate closing has been scheduled at which, upon satisfaction of all relevant requirements, the City shall execute and deliver the applicable number of historic TDR certificates to the sending site property owner and that property owner shall execute and deliver a deed restriction lessening the available development right of the subject property together with the appropriate fee for recording the deed restriction with the County Clerk and Recorder's office.

H. It shall be the responsibility of the sending site property owner to provide building plans and a zoning analysis of the sending site to the satisfaction of the Community Development Director. Certain review fees may be required for the confirmation of built floor area.

I. The sale, assignment, conveyance or other transfer or change in ownership of transferable development rights certificates shall be recorded in the real estate records of the Pitkin County Clerk and Recorder and must be reported by the grantor to the City of Aspen Community Development Department within five (5) days of such transfer. The report of such transfer shall disclose the certificate number, the grantor, the grantee and the total value of the consideration paid for the certificate. Failure to timely or accurately report such transfer shall not render the transferable development right certificate void.

(Ord. 54-2003, §§ 4, 5)

**26.535.080. Review criteria for extinguishment of a historic transferable development right.**

Historic TDR certificates may be extinguished to accommodate additional development if the Community Development Director finds the following standards have been met:

A. The receiving site is not restricted by a prescribed floor area limitation or the restricting document permits the extinguishment of historic TDR certificates for additional development rights.

B. The receiving site and is eligible to receive an increase in development rights as specified in Chapter 26.710, Zoning Districts, according to the Zone District and the land use or as otherwise specified in a final PUD plan for the property.

C. All other necessary approvals for the proposed development on the receiver site, as established by this Title, have been obtained.

D. The applicant has submitted the requisite authentic historic TDR certificates for redemption.

E. The applicant has submitted the necessary materials for a building permit on the receiver site, pursuant to Section 26.304.075, Building permit and the additional development can be accommodated on the receiver site in conformance with all other relevant requirements.

F. Prior to and as a condition of, issuance of a building permit for a development requiring the extinguishment of a historic TDR certificates, the applicant shall assign and deliver the authentic certificates to the City whereupon the certificates shall be marked "extinguished."

G. The Community Development Director shall issue a letter confirming the extinguishment of the TDR certificates and increasing the available development rights of the receiver site. The applicant may wish to record this document with the County Clerk and Recorder. The confirmation letter shall not stipulate an absolute total floor area, but shall stipulate a square footage increase from the allowable floor area, according to the Zone District and land use of the receiver site at the time of building permit submission. The receiver site shall remain subject to amendments to the allowable floor area and eligible for certain floor area incentives and/or exemptions as may be authorized by the City Land Use Code, as may be amended from time to time. The form of the confirmation letter shall be acceptable to the City Attorney.

H. The development allowed on the receiver site by extinguishment of historic TDR certificates shall be that allowed in Chapter 26.710, Zone Districts, according to the Zone District and the land use or as otherwise specified in a final PUD plan for the receiver site and shall not permit the creation of a nonconforming use or structure. (Ord. No. 54-2003, §§4, 5; Ord. No. 16-2008)

**26.535.090. Application materials.**

A. The contents of a development application to establish an historic TDR certificate shall be as follows:

1. The general application information required in Common development review procedures, Chapter 26.304.
2. A notarized affidavit from the sending site property owner signifying acknowledgment of the following:
  - a. A deed restriction will permanently encumber the sending site and restrict that property's development rights to below that allowed by right by zoning according to the number of historic TDR certificates established from that sending site.

- b. For each certificate of development right issued by the City for the particular sending site, that property shall be allowed two hundred and fifty (250) square feet less of floor area, as permitted according to the property's zoning, as amended.
  - c. The sending site property owner shall have no authority over the manner in which the certificate of development right is used by subsequent owners of the historic TDR certificate.
3. A site improvement survey of the sending site depicting:
    - a. Existing natural and man-made site features.
    - b. All legal easements and restrictions.
  4. Dimensioned, scaled drawings of the existing development on the sending site and a floor area analysis of all structures thereon.
  5. A proposed deed restriction for the sending site.
  6. Written response to each of the review criteria.

B. The contents of a development application to extinguish an historic TDR certificate shall be as follows:

1. The necessary application materials for a complete building permit submission, pursuant to Section 26.304.075, Building permit.
2. Written response to each of the review criteria. (Ord. No. 54-2003, §§4, 5)

**26.535.100. Appeals**

An applicant aggrieved by a determination made by the Community Development Director, pursuant to this Section, may appeal the decision to the City Council, pursuant to the procedures and standards of Chapter 26.316, Appeals.

An applicant aggrieved by a determination made by the City Council, pursuant to this Section, may appeal the decision to a court of competent jurisdiction. (Ord. No. 54-2003, §5)

**Section 4: Historic Context Papers**

City Council hereby adopts the following research papers, which shall be dated December 2010, for use in the application of designation criteria.

- Aspen’s Twentieth-Century Architecture: Modernism 1945-1975
- Aspen’s 20<sup>th</sup> Century Architecture: Chalet Style Buildings
- Aspen’s 20<sup>th</sup> Century Architecture: Rustic Style Buildings
- Pan Abode Buildings in Aspen: A Historic Context

**Section 5: AspenModern Map**

By the effective date of this ordinance, the Community Development Department shall prepare the AspenModern map, depicting the properties identified on Ordinance #48, Series of 2007 (except those that have been removed through the negotiation process.) Upon the effective date of this ordinance, property owners will have the opportunity at any time to ask to be removed from the map, or to be placed back on it. Owners of properties that represent the architectural styles addressed in the adopted historic context papers, but which were not included on Ordinance #48 because of location, property type, or other reason, may also request to be added or removed from the AspenModern map at any time.

**Section 6: City Owned Properties**

As a demonstration of commitment to preserving worthy examples of Aspen's 20<sup>th</sup> architectural history, the City Manager shall initiate designation review of the following City owned properties in 2011: 215 North Garmisch (The Yellow Brick), 110 E. Hallam (The Red Brick, 630 W. Main (Mountain Rescue) and 1101 E. Cooper (the Hildur Anderson property). The applications shall include the input and recommendation of tenants, stakeholders or City Departments responsible for the affected properties.

**Section 7: Existing Litigation**

This ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances amended as herein provided, and the same shall be construed and concluded under such prior ordinances.

**Section 8: Severability**

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

**Section 9: Recordation**

That the City Clerk is directed, upon the adoption of this Ordinance, to record a copy of this Ordinance in the office of the Pitkin County Clerk and Recorder.

**Section 10: Effective Date**

The effective date of this ordinance shall be February 9, 2011. However, no applications for voluntary landmark designation shall be accepted until March 1, 2011 so that scoring sheets can be finalized for use in the designation process.

**Section 11: Public Hearing**

A public hearing on the ordinance shall be held on the 22nd day of November, 2010, in the City Council Chambers, Aspen City Hall, Aspen, Colorado, fifteen (15) days prior to which hearing a public notice of the same was published in a newspaper of general circulation within the City of Aspen.

**INTRODUCED, READ AND ORDERED PUBLISHED** as provided by law, by the City Council of the City of Aspen on the \_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Michael C. Ireland, Mayor

**ATTEST:**

\_\_\_\_\_  
Kathryn Koch, City Clerk

**FINALLY**, adopted, passed and approved this \_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Michael C. Ireland, Mayor

**ATTEST:**

\_\_\_\_\_  
Kathryn Koch, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
John Worcester, City Attorney