

Butte-Silver Bow Municipal Code

Title 2, Chapter 2.64

HISTORIC PRESERVATION COMMISSION*

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* Prior ordinance history: Ords. 239, 267 and 396.

2.64.010 Purpose and intent.

The city and county of Butte-Silver Bow (city-county) hereby recognizes that the national historic landmark district is nationally known and is significant for its extensive national mining, labor history and concentrated collection of buildings and sites. The sheer number of extant contributing resources and the unique industrial character of the district are extraordinary, and represent an era and a way of life tied to the industrial growth of the nation. Butte's unique qualities have proven increasingly attractive to residents, businesses and tourists because, by their national historic landmark designation, they are important to all Americans.

As a matter of public policy, the city-county aims to preserve, enhance and perpetuate those aspects of the city-county that have cultural, architectural and/or archeological merit. Such historic preservation activities will promote and protect the health, safety, prosperity, education and general welfare of the people living in and visiting Butte-Silver Bow.

More specifically, this preservation ordinance is designed to achieve the following goals.

A. To provide for an appointed group of citizens of the city-county charged with establishing a local historic preservation program, integrating historic preservation into local, state and federal planning and decision-making processes and identifying, evaluating and protecting historic resources within the city-county's historic district;

B. To provide for a historic rehabilitation tax abatement review committee;

C. Recognize the uniqueness and visual character of the area by encouraging historic preservation activities;

D. Promote public appreciation and education by encouraging greater knowledge, awareness and understanding of the area's cultural history;

E. Promote heritage tourism as a benefit to the local economy by identifying and protecting the area's significant historical and cultural values;

F. Encourage the integration of historic preservation into private, local, state and federal decision-making processes having the potential to affect prehistoric and historic properties within the jurisdiction of the city-county;

G. Recognize the historical importance of the city-county's resources and carry that historical

importance forward into the future;

H. Recognize the cultural significance of the city-county as an area of human habitation and/or migration and the circumstances surrounding these historic and prehistoric activities;

I. Insure the harmonious, orderly, and efficient growth and development of the city-county;

J. Strengthen civic pride and cultural stability through preservation in neighborhoods and commercial areas;

K. Stabilize and enhance the economy of the city-county through the continued use, preservation and revitalization of its resources;

L. Continue the city-county's commitment to historic preservation by participating in the Certified Local Government Program, (established by Section 101(c) of the National Preservation Act, as amended, (16 USC 470 et seq.) and Montana Code Annotated 76-2-301 and 321). (Ord. 06-12 § 1, 2007)

2.64.020 Objective.

The objective of this chapter is to establish a local historic preservation commission (HPC) to promote the preservation of historic and prehistoric sites, structures, objects, buildings and districts by addressing historic preservation issues at the local level and integrating them into local planning, and thereby into state and federal decision-making processes. The historic preservation program will include the identification, evaluation and protection of historic and prehistoric resources within the city-county, as well as providing general information and education about these resources. (Ord. 06-12 § 2, 2007)

2.64.030 Scope.

The HPC shall serve in an advisory capacity to the council of commissioners, planning board, zoning board and other pertinent bodies or organizations. (Ord. 06-12 § 3, 2007)

2.64.040 Definitions.

The following definitions are provided for the sole purpose of proper interpretation and administration of this chapter:

A. "Alteration or change" means any alteration, demolition, removal, major repair or construction involving a historic property and/or local register property. Alterations and changes may include, but are not limited to, covering original materials and features, replacing windows, repointing brickwork, sandblasting and removing of paint by chemical or other means, in accordance with those guidelines to be developed pursuant to Section 2.64.110(C).

B. "Appeal" means an applicant may appeal a decision of the HPC to the council of commissioners.

C. "Applicant" means the owner of record of a historic property, the lessee thereof with the approval of the owner of record in notarized form or a person holding a "bona fide" contract to purchase a historic property and/or local register property.

D. "Butte-Silver Bow" means and includes that territory within the jurisdictional limits of the city and county of Butte-Silver Bow, Montana, excluding that area within the territorial limits of the town of Walkerville, Montana.

E. "Butte-Silver Bow local register" hereinafter referred to as the "local register," means a list of properties designated by the (HPC), based on local register criteria and procedures.

F. "Certificate of appropriateness" means a signed and dated document that shall be submitted to and approved by the HPC for proposed alteration or change by an applicant of a local register

property. Certificate of appropriateness is not required for ordinary maintenance and repairs.

G. “Certified local government” hereinafter referred to as “CLG” means a local historic preservation program that has been certified by the state historic preservation office (SHPO) and National Park Service. It is the local government, and not the HPC, that is certified. 36 CFR 61.

H. “City-county” means the local government of the city and county of Butte-Silver Bow, state of Montana, and where applicable, includes its officers, employees, agencies, boards and commissions.

I. “Conditional approval” means the HPC may offer measures to owners or applicants, that, if accepted, would allow the HPC to approve a permit or certificate of appropriateness.

J. “Council of commissioners” hereinafter referred to as “council” means the governing body of the local government of the city and county of Butte-Silver Bow, state of Montana.

K. “Demolition” means the complete or partial removal of an historic property. This includes the removal of major architectural features, landscape and historic signage.

L. “Demolition by neglect” means the improper maintenance or lack of maintenance of any historic property which results in substantial deterioration of the historic property and threatens its continued preservation.

M. “Design review protection” means a procedure designed to affect the physical condition of a property by avoiding deterioration, loss, danger or damage that shall be developed and used by the HPC to evaluate alteration and changes to local register properties, and shall apply in the case of demolition or demolition by neglect to historic properties.

N. “Historic preservation” means identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation and education and training regarding these activities or any combination.

O. “Historic preservation commission” means the commission created by this chapter and appointed by the chief executive and confirmed by the council, and that is responsible for creating and administering an historic preservation program for Butte-Silver Bow County.

P. “Historic property” means any prehistoric or historic district, site, landscape, building, structure, object or traditional cultural property included in, or eligible for, inclusion in the national register, including artifacts, records and material remains related to such a property or resource. Properties listed as contributing in a national historic landmark district are automatically listed in the National Register of Historic Places.

Q. “Historic rehabilitation tax abatement review committee” means the HPC created by this chapter which is responsible for hearing local tax abatement application requests for local register properties, and new construction within the historic district, and reporting its findings to the council.

R. “Integrity” means the ability of a property to convey its significance via its location, design, setting, materials, workmanship, feeling and association.

S. “Jurisdiction” means, solely for this chapter, that the jurisdiction of the HPC is identical to those of Butte-Silver Bow County.

T. “Local historic preservation officer” hereinafter referred to as “HPO” or “Preservation Advisor,” means the official appointed by the local government who shall serve as the secretary to the historic preservation commission under the supervision of the chief executive.

U. “Local register property” means an historic property that has been designated to the local register by the HPC and are subject to the design review protection. Properties are listed with the consent of the owner. By consenting to have their property listed the owner(s) agree to maintain

the property in a manner consistent with its original design and construction.

V. “Local register” means a special designation which shall apply to historic properties within the city-county where the owners of said properties have consented to design review requirements in order to protect the historical significance of said existing structures by prohibiting alterations to the historic property that may have a deleterious effect on the integrity of the historic property. These deleterious effects may include remodeling, moving, removal and demolition of said structures.

W. “National historic landmark district” means those properties within the city and county of Butte-Silver Bow which have been officially recognized by the Secretary of the United States Department of the Interior as nationally significant by contributing to the understanding of national, state and local history.

X. “Ordinary maintenance and repairs” means work to prevent deterioration of historic property and/or local register property or any part thereof by returning the property as nearly as practical to its condition prior to such deterioration, decay or damage, and by using, where possible, original materials. The HPC shall determine what work constitutes ordinary maintenance and repairs and publish it in the historic preservation guidelines.

Y. “Significance” means a property is important for historic, architectural, archeological, engineering or cultural values.

Z. “State historic preservation office,” hereinafter referred to as “SHPO,” means the Montana State Historic Preservation Office, a department of the Montana Historical Society.

AA. “Unreasonable economic hardship” means the inability of an owner to obtain a reasonable return on a reasonable beneficial use from a historic property as required by the United States Supreme Court in Penn Central Transportation Company vs. New York City, 438 US 104 (1978) and subsequent decisions. (Ord. 06-12 § 4, 2007)

2.64.050 Historic preservation commission (HPC) established.

In order to carry out the purpose of this chapter, an HPC is created. This HPC shall consist of seven residents of the city and county of Butte-Silver Bow and, inasmuch as possible, shall consist of the following mix:

A. Three members with professional expertise in the disciplines of history, planning, archaeology, architecture, architectural history, historic archaeology or other historic preservation related disciplines such as cultural geography or cultural anthropology to the extent that such professional expertise is available in the community.

B. Four members, among whom may include a local owner of property within the national historic landmark district and a realtor licensed in the state of Montana. (Ord. 06-12 § 5, 2007)

2.64.060 Appointment—Terms—Vacancy.

A. Terms of office for the HPC members shall be staggered and shall be three years in duration. For the initial term, upon enactment of this chapter, two members shall be appointed for one year, three members shall be appointed for two years and two members shall be appointed for three years. The number of consecutive terms served by any one member will not be limited.

B. Vacancies on the HPC shall be filed within sixty days by appointment by the chief executive and are subject to the confirmation of the council for the unexpired portion of the term. (Ord. 06-12 § 6, 2007)

2.64.070 Powers and duties.

The HPC shall:

A. Maintain and update a system for the survey and inventory of historic and prehistoric properties. The HPC shall conduct or cause to be conducted a continuing study and survey of historic resources within the city-county. The HPC will study and review individual properties and neighborhoods for their potential designation in the local register.

B. Use the Secretary of the Interior's standards for the treatment of historic properties as the basis for the historic preservation guidelines.

C. Review and participate in all proposed national register nominations within the city-county according to Montana Certified Local Government Manual.

D. Nominate properties via the SHPO, to the National Register of Historic Places.

E. Encourage public participation, undertake public educational programs and cooperate with local, state and national preservation organizations and agencies regarding historic preservation, awareness and potential affects to prehistoric and historic properties within the jurisdiction of the HPC.

F. Submit reports to the state historic preservation office meeting the requirements established by the Montana Certified Local Government Manual.

G. At least one member shall attend at least one training session each year, and provide to all HPC members for review any orientation materials provided by the state historic preservation office.

H. Review and comment on land use proposals and planning programs related to historic and prehistoric resources. The HPC will participate in the development of the Butte-Silver Bow comprehensive growth plans.

I. Consult with the local, state and federal agencies on all applications, environmental assessments, environmental impact statements and other similar documents pertaining to historic districts, landmark sites and landmark or neighboring properties within the city-county. Comments by the HPC will be sent by the HPO to the council.

J. Review the local zoning regulations for their applicability to the characteristics of current or proposed historic districts and make appropriate recommendations to the appropriate Butte-Silver Bow zoning board concerning any changes or modifications to the zoning regulations or zoning district boundaries.

K. Develop local preservation incentives, in cooperation with the local Montana Department of Revenue, Appraisal/Assessment Office or other pertinent local agencies, and the approval of the council. The HPC shall serve as the review body with the authority to review, approve and deny local preservation incentives on historic properties and/or local register properties.

L. Provide technical information and guidance on historic preservation, restoration, rehabilitation, landscaping and maintenance of local register properties, historic properties and potentially historic districts, buildings, sites, objects and structures. When federal and/or state mandates apply such as federal funding, permits, licenses or historic rehabilitation tax credits or state compliance programs, the HPC will refer the applicant to SHPO.

M. Participate in, promote and conduct public information, educational and interpretive programs pertaining to historic preservation, including, but not limited to, local, state, national incentives, awards, regulations and grants, when available.

N. The HPO shall provide an annual report to the council. The HPC may in addition provide quarterly reports to the council to discuss their activity. Minutes of HPC meetings and any other information deemed necessary may be appended to the quarterly reports.

O. Undertake any actions necessary to assure compliance with federal and state guidelines

regarding the CLG.

P. Develop and administer a design review protection program, including historic preservation guidelines and a certificate of appropriateness process, that shall apply to local register properties. The design review protection program will include, but is not limited to, alterations or changes, new construction, signage, relocation, demolition and demolition by neglect. The design review protection program's guidelines will be published and distributed to the public on a regular basis.

Q. Develop and administer a demolition by neglect program that shall apply to historic properties. The demolition by neglect program's criteria and guidelines will be published and distributed to the public on a regular basis.

R. Develop and administer a demolition permit review program that shall apply to historic properties. The program's criteria and guidelines will be published and distributed to the public on a regular basis.

S. Establish, develop designation criteria and process for, and administer local register.

T. Develop and administer requirements for claiming unreasonable economic hardship.

U. Acquisition and development of historic properties if approved by the HPC and the council. All property acquired by funds appropriated by the city-county shall be acquired in the name of the city-county unless otherwise directed by the city-county. (Ord. 06-12 § 7, 2007)

2.64.080 Local historic preservation officer.

A. The HPO shall act as secretary to the HPC. The HPO must have a demonstrated interest, competence or knowledge in historic preservation with professional expertise in history, planning, archaeology, architecture, architectural history, historic archaeology or a closely related field to the extent that such professional expertise is available to the community.

B. Duties of the HPO include coordinating local historic preservation programs, helping in the development and the performance of local surveys, projects and historic preservation planning documents, advising and providing assistance to the HPC, government agencies and the public, and ensuring to the extent practicable that the duties and responsibilities delegated by this ordinance are carried out. (Ord. 0612 § 8, 2007)

2.64.090 Meetings.

A. The HPC shall conduct a minimum of one regularly scheduled meeting each month, with submissions for review received ten days prior to the meeting for inclusion on the agenda with issuance one week prior to meeting in compliance with the Montana open meeting law, except that the chairperson may cancel any meeting if there are no matters to be considered or schedule special meetings when such meetings are necessary to carry out the provisions of this ordinance.

B. Special meetings of the HPC may be called by the chairperson or by three members. All meetings shall be held in public and in accordance with the Montana open meeting law. Notice of the meetings shall be given at least forty-eight hours in advance and should be calculated to reach all interested and affected members of the community in sufficient time to enable them to participate meaningfully, through circulation, radio public service announcements, news releases to local news media or any other method deemed necessary and appropriate. All written or taped minutes, reports and case decisions shall be available to the public.

C. The HPC shall establish guidelines conforming to the guidelines set forth in the Montana Certified Local Government Manual. (Ord. 06-12 § 9, 2007)

2.64.100 Local register property.

A. Designation Criteria:

1. A designated property shall have documented evidence of significance for its history or historical patterns, association with a person(s) who is significant at the local, state or national level, architectural, landscaping or engineering merits, masterwork of an architect, landscape architect or engineer, has yielded or is likely to yield information about history or pre-history;
2. A designated property shall have documented evidence of its integrity;
3. A designated property shall have documented evidence that it is at least forty years old. A property that is less than forty years old may be designated only if there is documented evidence of exceptional significance;
4. The designated property must have written consent of the property owner or the owner is accepting local government tax relief, funds or other incentives.

B. The HPC shall serve as a review body with the authority to approve and deny designation.

C. Owner(s) of local register property must maintain the property in a manner consistent with its original design and construction.

D. Owner(s) of local register properties must apply for and receive an approved certificate of appropriateness from the HPC prior to undertaking any work to the property, except for ordinary maintenance and repairs.

E. The HPC shall serve as the review body with the power to approve and deny applications for certificates of appropriateness.

F. In approving and denying certificates of appropriateness, the HPC shall seek to accomplish the purposes of this chapter.

G. A public hearing shall be conducted as part of the HPC's designation process.

H. All decisions of the HPC shall be in writing and shall state the findings of the HPC.

I. The local register designation will be attached to the property deed by the Butte-Silver Bow clerk and recorder.

J. The designation will remain on the property until such time that the property has lost its significance and integrity, and the HPC has approved removing the designation. (Ord. 06-12 § 10, 2007)

2.64.110 Design review protection, historic preservation guidelines, and certificates of appropriateness.

A. No local register property shall be altered, relocated or demolished without a certificate of appropriateness approved by the HPC.

B. No building permit which affects a local register property shall be issued by a city-county official prior to the approval of the certificate of appropriateness by the HPC.

C. The HPC shall develop and administer design review protection program which will include procedures, requirements, deadlines, recommendations, expirations and provisions for approval, conditional approval, denial, deferment, request for additional information, resubmission, appeal, enforcement and unreasonable economic hardship.

D. The HPC shall serve as the review body with the authority to approve and deny applications for certificate of appropriateness.

E. Failure by the HPC to render a decision within sixty days of the date of filing a certificate of appropriateness shall be taken to constitute approval of the certificate of appropriateness, unless an applicant has requested that the HPC delay its decision beyond the sixty day period.

F. The approval of a certificate of appropriateness shall not relieve an applicant of applying for or complying with a building permit, special use permit, variance or other authorizations.

G. The HPC shall develop, publish, and distribute historic preservation guidelines that shall supplement the provisions of the historic preservation ordinance.

H. The historic preservation guidelines will include provisions for new construction, preservation, rehabilitation, restoration, stabilization and maintenance. The HPC shall apply the historic preservation guidelines to all certificate of appropriateness applications.

I. The HPC shall develop an application form entitled the certificate of appropriateness.

J. The HPC will develop criteria for approval, conditional approval, denial, deferral, expiration and resubmission of, and procedures for issuance of the certificate of appropriateness. (Ord. 06-12 § 11, 2007)

2.64.120 Demolition permit review and demolition by neglect program.

A. No local register property or historic property may be demolished without the approval of the HPC.

B. The HPC shall serve as the review body with the authority to approve, conditionally approve and deny demolition permits.

C. The HPC shall develop criteria for approval, conditional approval and denial of demolition permits for local register properties and historic properties in its jurisdiction.

D. In approving or denying demolition permits, the HPC shall seek to accomplish the purposes of this chapter.

E. The HPC shall review all demolition permits for local register properties and historic properties in its jurisdiction.

F. The HPC is authorized to invoke a ninety-day demolition delay to find demolition alternative and make recommendations. The HPC must notify the owner in writing of a demolition delay and hold a public hearing.

G. Failure by the HPC to render a decision within ninety days of the date of filing a demolition permit shall be taken to constitute approval of the demolition permit, unless an applicant has requested that the HPC delay its decision beyond the sixty-day period.

H. The HPC shall develop demolition by neglect guidelines that shall supplement the provisions of the historic preservation ordinance.

I. The demolition by neglect procedures shall include owner notification, requirements, deadlines, recommendations, expiration and provisions for requesting additional information, conditional approval, deferment to a specific date, public hearing(s), appeal, enforcement and unreasonable economic hardship.

J. The HPC is authorized to initiate demolition by neglect procedures.

K. The HPC shall identify, cause to identify, and be made aware by the local government and the public of properties that may be subjects of demolition by neglect guidelines.

L. The HPC shall cooperate with the Butte-Silver Bow health department, the enrichment committee and other local agencies to halt the deterioration of a local register property or historic property. (Ord. 06-12 § 12, 2007)

2.64.130 Local preservation incentives.

The HPC shall develop eligibility requirements, guidelines and procedures concerning the review of local historic preservation tax abatement applications and other incentives that shall supplement the provisions of the historic preservation ordinance.

A. The HPC shall cooperate with the Butte-Silver Bow tax assessment office or other pertinent local agencies in the development of the tax abatement and other local incentives and seek approval from the council.

B. Failure by the HPC to render a decision within sixty days of the date of filing a local preservation incentive shall be taken to constitute approval of the local preservation incentive, unless an applicant has requested that the HPC delay its decision beyond the sixty-day period. (Ord. 06-12 § 13, 2007)

2.64.140 Appeals.

A. An applicant who desires to appeal a decision of the HPC shall file an appeal with the council within thirty days after the decision of the HPC in a manner provided by Butte-Silver Bow Ordinance.

B. The council shall consider the purposes of this section in rendering its decision. (Ord. 06-12 § 14, 2007)

2.64.150 Appropriations.

The council is authorized to make appropriations to the HPC necessary for the expenses of the operation of the HPC and may make additional amounts available as necessary for the acquisition, restoration, preservation, operation and management of historic properties. (Ord. 06-12 § 15, 2007)

2.64.160 Public safety exclusion.

None of the provisions of this chapter shall be construed to prevent any action of construction, alteration or demolition necessary to correct or abate the unsafe or dangerous condition(s) of any historic property, or part thereof, where such condition has been declared unsafe or dangerous by the council, building department, health department or the fire department and where the proposed actions have been declared necessary by such authorities to correct the said condition; provided, however, that only such work as is necessary to correct the unsafe or dangerous condition may be performed pursuant to this section. In the event any historic property shall be damaged by fire or other calamity to such an extent that it cannot be reasonably repaired and restored, as determined by the building department or fire department, it may be removed in conformity with normal permit procedures and applicable laws. (Ord. 06-12 § 16, 2007)

2.64.170 Enforcement and penalties.

The following civil and criminal penalties may be imposed upon those persons, firms or corporations found to have violated requirements or prohibitions contained within this chapter.

A. Civil Penalty:

1. Any person who constructs, alters, relocates or demolishes any locally registered property in violation of this chapter or who causes any locally registered property to be constructed, altered, relocated or demolished in violation of this chapter shall be required to return the locally registered property to its appearance or setting prior to the violation. Any action to enforce this provision shall be brought by the city-county. This civil remedy shall be in addition to, and not in lieu of, any criminal prosecution and penalty.

2. If demolition of a historic property occurs without a certificate of appropriateness, then any permits on subject property, with the exception of a permit to restore the historic property as set forth above, will be denied for a period of three years.

B. Criminal Penalty:

1. Any person or entity who constructs, alters, relocates or demolishes any locally registered property in violation of this chapter or who causes any locally registered property to be constructed, altered, relocated or demolished in violation of this chapter shall be guilty of a misdemeanor, and each shall be deemed guilty of a separate violation for each day during which any violation hereof is committed. Upon conviction, each violation shall be punishable by a fine not to exceed one thousand dollars. (Ord. 06-12 § 17, 2007)

2.64.180 Severability clause.

If any section, subsection, sentence, clause, phrase or word of this chapter is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter and the remainder of this chapter will remain in force and effect. (Ord. 06-12 § 18, 2007)