

## Chapter 50

### HISTORIC PRESERVATION\*

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\*Cross references—Buildings and building regulations, ch. 26; environment, ch. 38; planning and development, ch. 62; taxation, ch. 74.

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## ARTICLE I. IN GENERAL

### Sec. 50-1. Intent.

(a) The city commission finds there are buildings, landmarks, and sites within the city that have specific historic or aesthetic significance, and that the loss of these sites would cause an irreplaceable loss to the people of the city of the aesthetic, cultural and historic values represented by such sites. It is declared as a matter of public policy that protection, enhancement, perpetuation and use of such sites of special historic or aesthetic interest or value is a public necessity and is required in the interests of the health, prosperity, safety and welfare of the people.

(b) The recognition, protection, enhancement and use of such resources is a public purpose and is essential to the health, safety, morals, and economic, educational, cultural and general welfare of the public, since these efforts result in the enhancement of property values, the stabilization of neighborhoods and areas of the city, the increase of economic benefits to the city and its inhabitants, the promotion of local interests, the enrichment of human life in its educational and cultural dimensions serving spiritual as well as material needs, and the fostering of civic pride in the beauty and noble accomplishments of the past.

(c) The city commission desires to take advantage of all available state and federal laws and programs that may assist in the development or redevelopment of the city.

(d) The federal government has established a program of matching grants-in-aid for projects having as their purpose the preservation for public benefit of properties that are significant in American history, architecture, archeology and culture.

(e) There are other federal programs providing moneys for projects involving the rehabilitation of existing districts, sites, buildings, structures, objects and areas.

(f) The policy of the city is to conserve the existing housing stock and extend the economic life of each housing unit through the rehabilitation of such units under housing and neighborhood development programs in selected areas.

(g) Inherent in the enactment and implementation of these federal mandates is the policy of the United States government that the spirit and direction of the nation are founded upon and reflected in its historic past; that the historical and cultural foundations of the nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people; that in the face of the ever-increasing extensions of urban centers, highways, and residential, commercial and industrial developments, the present governmental and nongovernmental programs and activities are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our nation.

(h) It is the will of the people of the state as expressed in Fla. Const., art. II, § 7, that the state's natural resources and scenic beauty be conserved and protected.

(i) It is the will of the state legislature as expressed in F.S. ch. 267, that the state's historic sites and properties, buildings, artifacts, treasure troves and objects of antiquity that have scientific or historic value, or are of interest to the public, be protected and preserved.  
(Code 1975, § 14½-1)

### Sec. 50-2. Purpose.

The city commission declares its intention to qualify as a certified local government with the state division of archives, history and records management, and to comply with the rules and regulations of the division pursuant to that program. The purpose of this chapter is to promote the health, morals, economic, educational, aesthetic, cultural and general welfare of the public through the:

- (1) Identification, protection, enhancement, perpetuation and use of districts, sites, buildings, structures, objects and areas that are reminders of past eras, events and persons important in local, state or national history, or that provide significant examples of architectural styles of the past, or that are unique and irreplaceable assets to the city and its neighborhoods, or that provide this and future

generations examples of the physical surroundings in which past generations lived;

- (2) Enhancement of property values, the stabilization of neighborhoods and business centers of the city, the increase of economic and financial benefits to the city and its inhabitants, and the promotion of local interests;
- (3) Preservation and enhancement of varied architectural styles, reflecting the city's cultural, social, economic, political and architectural history; and
- (4) Enrichment of human life in its educational and cultural dimensions in order to serve spiritual as well as material needs by fostering knowledge of the living heritage of the past.

(Code 1975, § 14½-2)

### Sec. 50-3. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Alteration* means any act that changes the exterior features of a designated property.

*Certified local government* means a government meeting the requirements of the National Historic Preservation Act Amendments of 1980 (PL 96-515) and the implementing regulations of the U.S. Department of the Interior and the state.

*Commission* means the Historic New Smyrna Beach Preservation Commission.

*Decision or recommendation* means, when referring to the commission, the executive action taken by the commission on an application for a designation or a certificate of appropriateness regardless of whether that decision or recommendation is immediately reduced to writing.

*Demolition* means any act that destroys in whole or in part a landmark, landmark site or building or structure in an historic district or on a landmark site.

*Documentation* means photographs, slides, drawings, plans or written descriptions.

*Historic district* means a geographically definable area, urban or rural, possessing a significant concentration, linkage or continuity of sites, buildings, structures, objects or areas, that are united by past events or aesthetically or plan or physical development. A district also may be comprised of individual resources that are separated geographically but are linked by association or history.

*Landmark* means a building or structure meeting one or more of the criteria contained in section 50-7. A landmark shall include the location of significant archeological features or of an historical event.

*Landmark site* means the land on which a landmark and related buildings and structures are located and the land that provides the grounds, the premises or the setting for the landmark.

*Local register* means a way by which to identify and classify various sites, buildings and objects as historic and/or architecturally significant.

*Super majority* means, for a seven-member body, when all members are present, a requirement of five votes, when less than seven members are present, a requirement of four votes.  
(Code 1975, § 14½-3)

*Cross reference*—Definitions generally, § 1-2.

### Sec. 50-4. Penalty.

Any person violating any of the provisions of this chapter shall be punished as provided in section 1-14. The citizen code enforcement board shall review any violation of this chapter in accordance with the board's procedures.  
(Code 1975, § 14½-10)

### Sec. 50-5. Civil penalties.

In addition to the penalties provided in section 50-4, any person who violates any provision of this chapter shall forfeit and pay to the city civil penalties equal to the fair market value of any property demolished or destroyed in violation of this chapter or the cost to repair or rehabilitate any property that is altered in violation of this chapter. In lieu of a monetary penalty, any person

altering property in violation of the provisions of this chapter may be required to repair or restore any such property.  
(Code 1975, § 14<sup>1</sup>/<sub>2</sub>-11)

**Sec. 50-6. Historic preservation commission.**

(a) *Creation.* There is created the Historic New Smyrna Beach Preservation Commission.

(b) *Purpose.* The commission is established to seek the accomplishment of the following municipal purposes:

- (1) The commission shall take action necessary and appropriate to accomplish the purposes of this chapter. These actions may include but are not limited to:
  - a. Continuing the survey and inventory of historic buildings and areas and archeological sites and the plan for their preservation;
  - b. Recommending the designation of historic districts and individual landmarks and landmark sites;
  - c. Regulating alterations, demolitions, relocations and new construction to designated property;
  - d. Adopting guidelines for changes to designated property;
  - e. Coordinating the historic preservation work of the city by working with and advising the federal, state and county governments and other city departments or advisory boards;
  - f. Advising and assisting property owners and other persons and groups, including neighborhood organizations who are interested in historic preservation;
  - g. Initiating plans for the preservation and rehabilitation of individual historic buildings; and
  - h. Undertaking educational programs, including the preparations of publications and the placing of historic markers.
- (2) The commission shall review all nominations of local property to the National Register of Historic Places following the regulations of the state historic preservation office. Following a public hearing with public notice of no less than 30 days, the commission shall consider the nomination. When necessary, the commission shall seek expert advice before evaluating the nomination. The commission shall forward to the state historic preservation officer its action on the nomination and the recommendations of the local officials.  
  
When a property owner objects to having property nominated to the National Register, a notarized written statement must be submitted to the commission before the nomination is considered. The commission may then either continue its review, forwarding its recommendation to the state historic preservation officer and noting the owner's objection, or it may cease any further review process and notify the state historic preservation officer of the property owner's objection to the proposed listing. The commission shall not recommend registry over objection of the owner except by a super majority vote.
- (3) In the development of the certified local government program, the city commission may ask the commission to perform other responsibilities that may be delegated to the city under the National Historic Preservation Act.
- (4) The commission shall conduct at least four public hearings a year to consider historic preservation issues. The commission shall recommend to the city commission the designation of landmarks, landmark sites and historic districts. Applicants shall be given written notification of the commission's decisions. The commission shall prepare and keep on file available for public inspection a written annual report of its historic preservation activities, cases, decisions, qualifications of members and other historic preservation work.
- (5) The commission shall receive assistance in the performance of its historic preser-

vation responsibilities from the planning department, which shall provide expertise in historic preservation or a closely related field. Other city staff members may be asked to assist the commission by providing technical advise or helping in the administration of this chapter.

- (6) The commission shall recommend to the local planning agency and the city commission an historic preservation element of the comprehensive development plan pursuant to the Local Government Comprehensive Planning Act of 1985.
- (7) The commission shall coordinate its activities with the downtown redevelopment authority, the state historic preservation officer, and the Southwest Volusia Historical Society.
- (8) The commission shall assist the city manager in preparing applications for grant awards for historic preservation and historic survey activities.
- (9) The area of geographic responsibility for the commission shall be coterminous with the boundaries of the city.
- (10) The commission is encouraged to be represented at pertinent informational or educational meetings, workshops and conferences relating to preservation activities.

(c) *Membership.* The commission shall consist of seven members who shall be residents of the city. The commission shall elect a chair, vice-chair, and other officers as they may deem necessary. In the event of a vacancy on the commission, the city commission shall appoint a new member within 60 days to serve out the remainder of the term. Members shall serve on the commission at the pleasure of the city commission.

(d) *Term.* The commission members shall be appointed for staggered terms of three years by the city commission.

(e) *Qualifications.* The commission members shall be composed of lay and professional members in accordance with the criteria set forth by the certified local government program. To the extent available, members shall be professionals

from the disciplines of architecture, history, architectural history, archaeology, or other historic-related fields such as urban planning, American studies, American civilization, cultural geography or cultural anthropology. Lay persons who have demonstrated special interest, experience or knowledge in history, architecture or related disciplines shall make up the balance of the commission membership. An up-to-date resume of commission members shall be kept as a public record. Prior to appointment, the city commission shall solicit nominations from the Southeast Volusia Historical Society.

(f) *Procedures.* The commission shall hold at least four meetings each year, which shall be public meetings. Meetings shall have a previously advertised agenda and shall be open to public participation. All records of the commission, including its rules of procedure, minutes and inventory, shall be public records open to inspection by the public. The commission shall adopt rules of procedure for use in all its meetings, and the city manager shall provide staff assistance. The commission shall have the following reporting requirements:

- (1) It shall provide the state preservation officer with 30 days' notice prior to each meeting, following its first meeting.
- (2) It shall submit minutes of each meeting to the state historic preservation officer within 30 days of holding the meeting.
- (3) It shall submit records of the attendance for the review of commission members to the state historic preservation officer within 30 days of each meeting.
- (4) It shall submit public attendance figures of each meeting to the state historic preservation officer within 30 days of each meeting.
- (5) It shall notify the state historic preservation officer of changes in commission membership within 30 days of action.
- (6) It shall notify the state historic preservation officer of all historic designations or alterations to existing designations.

- (7) It shall submit an annual report by November 1 covering the previous October 1 through September 30, which shall include:
- a. Any changes in the rules of procedure;
  - b. Number of proposals reviewed;
  - c. Designations or listings;
  - d. Changes to commission;
  - e. Revised resumes of commission members as appropriate;
  - f. Review of survey and inventory activity with the description of the system used; and
  - g. Program report on each grant-assisted activity.

(Code 1975, § 14½-4)

**Sec. 50-7. Designation of landmarks, landmark sites and historic districts.**

(a) *Authorized.* Upon recommendation of the commission, the city commission may designate by ordinance individual landmarks, landmark sites and historic districts. Each designation of a landmark shall include a designation of a landmark site. When an owner objects to an application involving designation of property, other than an historic district, approval by the commission and city commission shall require a super majority vote.

(b) *Application requirements.*

- (1) Consideration of the designation of a landmark and landmark site or an historic district shall be initiated by the filing of an application for designation by the property owner, any resident of the city or any organization in the city, and the city. The city shall charge a fee for each application that reflects processing costs for the application, except such fee shall be waived for city-initiated applications. The applicant shall complete an application form provided by the planning department, which shall include:
- a. A written description of the architectural, historical or archeological sig-

nificance of the proposed landmark and landmark site or buildings in the proposed historic district and specifically addressing and documenting those related points contained in this chapter;

- b. Date of construction of the structures on the property and the names of former owners;
  - c. Photographs of the property; and
  - d. Legal description and map of the property to be designated as a landmark, landmark site or historic district.
- (2) On applications for the designation of historic districts, the applicant shall also submit:
- a. Evidence of the approval of the district from two-thirds of the property owners; and
  - b. A written description of the boundaries of the district.
- (3) The city manager or his designee shall determine when an application is complete and may request additional information when such application is determined to be incomplete.

(c) *Public hearings for designations.* The commission shall schedule a public hearing on the proposed designation within 60 days of the submission of a completed application. Notice of the public hearing and notice to the owner shall be given in accordance with the zoning code and shall state clearly the boundaries for a proposed historic district.

(d) *Criteria for designation of property.* The commission shall recommend the designation of property as a landmark, landmark site or historic district after the public hearing based upon one or more of the following criteria:

- (1) Its value is a significant reminder of the cultural or archeological heritage of the city, state or nation;
- (2) Its location is a site of a significant local, state or national event;

- (3) It is identified with a person who significantly contributed to the development of the city, state or nation;
- (4) It is identified as the work of a master builder, designer or architect whose individual work has influenced the development of the city, state or nation;
- (5) Its value as a building is recognized for the quality of its architecture, and it retains sufficient elements showing its architectural significance;
- (6) It has distinguishing characteristics of an architectural style valuable for the study of a period, method of construction, or use of indigenous materials;
- (7) Its character is a geographically definable area possessing a significant concentration, or continuity of sites, buildings, objects or structures united in past events or aesthetically by plan or physical development; or
- (8) Its character is an established and geographically definable neighborhood, united in culture, architectural style or physical plan and development.

(e) *Commission decision.* After evaluating the testimony, survey information and other material presented at the public hearing, the commission shall, within 60 days, make its recommendation to the city commission with a written report on the property or area under consideration. Applications for designation shall be approved or denied. The commission may vote to defer its decision for an additional 30 days. If the commission recommends a designation, it shall explain the proposed landmark or historic district qualified for designation under the criteria contained in this section. This evaluation may include references to other buildings and areas in the city and shall identify the significant features of the proposed landmark or historic district. The report shall include a discussion on the relationship between the proposed designation and existing and future plans for the development of the city. The planning department shall promptly notify the applicant and the property owner of the commission decision.

(f) *Appeals to city commission.* Any person may appeal the commission's decision to the city commission within 15 days of the decision.

(g) *City commission review and designation.* The city commission shall approve, modify or disapprove the proposed designation within 60 days of the commission recommendation. If a designation is made, the comprehensive plan, including the land use map, shall be amended to contain the designation in accordance with state law. The planning department shall notify each applicant and property owner of the decision relating to the property within 30 days of the city commission action and shall arrange that the designation of a property as a landmark or as a part of an historic district be recorded in the official record books of the county.

(h) *Amendments and rescissions.* The designation of any landmark and landmark site or historic district may be amended or rescinded through the same procedure utilized for the original description.

(Code 1975, § 14½-5)

**Sec. 50-8. Approval of changes to landmarks, landmark sites and property in historic districts.**

(a) *Certificate of appropriateness.* No person may undertake the following actions affecting a designated landmark, a designated landmark site or a property in a designated historic district without first obtaining a certificate of appropriateness from the commission: alterations of an archeological site or the exterior part of a building or structure, new construction, demolition or relocation.

- (1) Review of a new construction and alterations to designated buildings and structures shall be limited to exterior changes visible to the public. Whenever any alteration, a new construction, demolition or relocation is undertaken on a designated landmark, a designated landmark site or a property in a designated historic district without a certificate of appropriateness, the chief building official is authorized to issue a stop work order.



- (2) A certificate of appropriateness shall be in addition to any other building permits required by law. The issuance of a certificate of appropriateness from the commission shall not relieve the property owner of the duty to comply with other state and local laws and regulations.
- (3) Ordinary repairs and maintenance that are otherwise permitted by law may be undertaken without a certificate of appropriateness provided this work on a designated landmark, a designated landmark site, or a property in a designated historic district does not alter the exterior appearance of the building, structure or archeological site, or alter elements significant to its architectural or historic integrity.
- (4) No certificate of appropriateness for alteration, new construction, demolition or relocation pursuant to the provisions of this chapter shall be effective for a period of 15 days subsequent to the commission's decision. If during that 15-day period an appeal is made to the city commission, the decision of the commission shall automatically be stayed pending city review.
  - (b) *Application procedures for certificates of appropriateness.*
    - (1) Each application for a certificate of appropriateness shall be accompanied by the required fee. The chief building official shall forward to the commission each application for a permit that would authorize an alteration, new construction, demolition or relocation affecting a designated landmark, a designated landmark site, or a property in a designated historic district. The applicant shall complete an application form provided by the building department containing in part the following information:
      - a. Drawings of the proposed work;
      - b. Photographs of the existing building or structure and adjacent properties; and
      - c. Information about the building materials to be used.
- (2) The city manager shall determine when an application is complete and may request additional information when such application is determined to be incomplete.
  - (c) *Public hearings for certificates of appropriateness.* The commission shall hold a public hearing on each certificate of appropriateness within 30 days after receipt of a completed application. The commission shall approve, approve with conditions, or disapprove each application, based on the criteria contained in this section. The commission shall act within 60 days after the close of the public hearing. If the commission fails to decide an application within the specified time period, the application shall be deemed approved.
  - (d) *General criteria for granting certificates of appropriateness.* In approving or denying applications for certificates of appropriateness for alterations, new construction, demolition or relocation, the commission shall use the following general guidelines:
    - (1) The effect of the proposed work on the landmark or the property upon which such work is to be done;
    - (2) The relationship between such work and other structures on the landmark site or other property in the historic district;
    - (3) The extent to which the historic, architectural or archeological significance, architectural style, design, arrangement, texture, materials and color of the landmark or the property will be affected;
    - (4) Whether the denial of a certificate of appropriateness would deprive the property owner of reasonable beneficial use of his property; and
    - (5) Whether the plans may be reasonably carried out by the applicant.
  - (e) *Additional guidelines for alterations.*
    - (1) In approving or denying applications for certificates of appropriateness for alterations, the commission shall also use the following additional guidelines, which are

based on the United States Secretary of the Interior's Standards for Historic Preservation Projects.

- (2) Every reasonable effort shall be made to provide a compatible use for a property that requires minimal alteration of the building, structure or site and its environment, or to use a property for its originally intended purpose.
- (3) The distinguishing original qualities or character of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- (4) All buildings, structures and sites shall be recognized as products of their own time. Alterations that have no historical basis and that seek to create an earlier appearance shall be discouraged.
- (5) Changes that may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- (6) Distinctive stylistic features or examples of skilled craftsmanship that characterize a building, structure or site shall be treated with sensitivity.
- (7) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. If replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historical, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.
- (8) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building material shall not be undertaken.
- (9) Every reasonable effort shall be made to protect and preserve archeological resources affected by or adjacent to any acquisition, protection, stabilization, preservation, rehabilitation, restoration or reconstruction project.
  - (f) *Additional guidelines for new construction.* In approving or denying applications for certificates of appropriateness for new construction, the commission shall also use the following additional guidelines:
    - (1) The height of proposed building shall be visually compatible with adjacent buildings;
    - (2) The relationship of the width of the building to the height of the front elevation shall be visually compatible to buildings and places to which it is visually related;
    - (3) The relationship of the width of the windows to height of windows in a building shall be visually compatible with buildings and places to which the building is visually related;
    - (4) The relationship of solids to voids in the front facade of a building shall be visually compatible with buildings and places to which it is visually related;
    - (5) The relationship of building to open space between it and adjoining buildings shall be visually compatible to the buildings and places to which it is visually related;
    - (6) The relationship of entrance and porch projections to sidewalks of a building shall be visually compatible to the buildings and places to which it is visually related;
    - (7) The relationship of the materials, texture and color of the facade of a building shall be visually compatible with the predominant materials used in the buildings to which it is visually related;

- (8) The roof shape of a building shall be visually compatible with the buildings to which it is visually related;
- (9) Appurtenances of a building such as walls, wrought iron fences, evergreens, landscape masses, building facades, etc., shall, if necessary, form cohesive walls of enclosures along a street, to ensure visual compatibility of the building to the buildings and places to which it is visually related;
- (10) The size of a building, the mass of a building in relation to open spaces, the windows, door openings, porches and balconies shall be visually compatible with the buildings and places to which it is visually related; and
- (11) A building shall be visually compatible with the buildings and places to which it is visually related in its directional character, whether this be vertical character, horizontal character or nondirectional character.

(g) *Additional requirements for demolitions.*

- (1) No certificate of appropriateness for demolitions shall be issued by the commission until the applicant has demonstrated that no other feasible alternative to demolition can be found. The commission may ask interested individuals and organizations for assistance in seeking an alternative to demolition. On all demolition applications, the commission shall study the question of economic hardship for the applicant and shall determine whether the landmark or the property in the historic district can be put to reasonable beneficial use without the approval of the demolition application. In the case of an income-producing building, the commission shall also determine whether the applicant can obtain a reasonable return from the existing building. The commission may ask applicants for additional information to be used in making these determinations, including but not limited to evidence that the plans for a new building on the site will be implemented. If the applicant fails

to establish the lack of a reasonable beneficial use or the lack of a reasonable return, the commission shall deny the demolition application.

- (2) The commission may grant a certificate of appropriateness for demolition even though the designated landmark, designated landmark site or property within the designated historic district has reasonable beneficial use if the commission determines that the property no longer contributes to an historic district or no longer has significance as an historic, architectural or archeological landmark, that the demolition of the designated property is required by a community redevelopment plan or the comprehensive plan.

(h) *Additional guidelines for relocation.* When an applicant seeks to obtain a certificate of appropriateness for the relocation of a landmark, a building or structure on a landmark site, or a building or structure in an historic district or wishes to relocate a building or structure to a landmark site or to a property in an historic district, the commission shall also consider the following:

- (1) The contribution the building or structure makes to its present setting;
- (2) Whether there are definite plans for the site to be vacated;
- (3) Whether the building or structure can be moved without significant damage to its physical integrity; and
- (4) The compatibility of the building or structure to its proposed site and adjacent properties.

(i) *Appeals to city commission.* Within 15 days of the commission decision, any person may appeal to the city commission any decision of the commission on an application for a certificate of appropriateness. The city commission shall approve, approve with modifications, or disapprove the application within 60 days after receiving the appeal.

(j) *Emergency conditions; designated properties.* In any case where the chief building official determines that there are emergency conditions dangerous to life, health or property affecting a landmark, a landmark site, or a property in an historic district, the official may order the remedying of these conditions without the approval of the commission or issuance of a required certificate of appropriateness. The chief building official shall promptly notify the chair of the commission of the action being taken.

(Code 1975, § 14½-6)

**Sec. 50-9. Emergency actions; nondesignated properties.**

The city commission may call an emergency meeting to review a threat to a property that has not yet been designated by the city but appears to be eligible for designation. The city commission may request that a stop work order be issued by the chief building official for a 30-day period in order to provide time to negotiate with the property owner to remove the threat to the property; the commission shall seek alternatives that will remove the threat to the property. During the 30-day period the city commission may initiate steps to designate the property under the provisions of this chapter.

(Code 1975, § 14½-7)

**Sec. 50-10. Conformity with the certificate of appropriateness.**

All work performed pursuant to a certificate of appropriateness shall conform to all provisions of such certificate. It shall be the responsibility of the building department to inspect from time to time any work being performed to assure such compliance. In the event work is being performed not in accordance with such certificate, the chief building official is authorized to issue a stop work order. No additional work shall be undertaken as long as such stop work order shall continue in effect.

(Code 1975, § 14½-8)

**Sec. 50-11. Maintenance and repair of landmarks, landmark sites and property in historic districts.**

(a) Every owner of a landmark, a landmark site or a property in an historic district shall keep in good repair:

- (1) All of the exterior portions of such buildings or structures;
- (2) All interior portions that, if not so maintained, may cause such buildings or structures to deteriorate or to become damaged or otherwise to fall into a state of disrepair; and

(3) In addition, where the landmark is an archeological site, the owner shall be required to maintain his property in such a manner so as not to adversely affect the archeological integrity of the site.

(b) The commission may refer violations of this section to the building department for enforcement proceedings on any building or structure designated under this chapter so that such building or structure shall be preserved in accordance with the purposes of this chapter.

(c) The provisions of this section shall be in addition to the provisions of the building code requiring such buildings and structures to be kept in good repair.

(Code 1975, § 14½-9)

**Sec. 50-12. Historic building demolition.**

(a) *Historic Building Demolition Ordinance.* This section shall be known and cited as the City of New Smyrna Beach Historic Building Demolition Ordinance.

(b) *Finding.* It is the finding of the City Commission of the City of New Smyrna Beach, Florida, that New Smyrna Beach contains many important historical buildings. Further, in the preservation and understanding of the importance of the historic buildings within New Smyrna Beach there is a direct relationship to the economic well-being of the city and the present and future needs, public health, safety, morals and

general welfare of the citizens of the incorporated area of New Smyrna Beach, Florida, as well as visitors to and residents of New Smyrna Beach.

(c) *Purpose.* This section is adopted for the purpose of preserving and protecting significant buildings within the city, which constitute or reflect distinctive features of the architectural, cultural, political, economic, or social history of the city; to encourage owners of such buildings to seek out persons who might be willing to purchase, preserve, rehabilitate, relocate or restore such buildings rather than demolish them.

(d) *Definitions.* For the purpose of this section, certain words and terms used herein shall be interpreted to have the meanings as defined below. Where words or terms are not defined in this section, they shall assume the meaning as indicated in Webster's Ninth New Collegiate Dictionary. Words used in the present tense include the future; the singular number includes the plural and the plural includes the singular. The word "shall" is mandatory and the word "may" is permissive. The word "used" or "occupied" includes the words "intended, designated or arranged to be used or occupied." The word "land" includes the word "marsh," "water" or "swamp."

*Building.* Any combination of materials capable and intended of being used as a shelter for persons for residential or non-residential purposes.

*Commission.* The Historic New Smyrna Beach Preservation Commission.

*Contributing building.* A building recognized as a contributing building within one of the city's National Register of Historic Places historic districts as noted on attached maps labeled as exhibits A and B.

*Demolition.* The act of pulling down, destroying, removing or razing a building or commencing the work of total or substantial destruction. Removing portions of a building that destroy the original character of the building also constitutes demolition.

*Demolition by neglect.* The absence of work in maintaining, repairing, or securing a contributing building or structure in a historic district that results in deterioration of an exte-

rior feature of the building or structure or the loss of the structural integrity of the building or structure.

*Demolition permit.* The permit issued by the city building department as required by the state building code for the demolition or removal of a building or structure.

*Significant building.* Any building within the city which the commission determines, as provided in section 50-12(g), to be in the public interest to be preserved or rehabilitated, and whose demolition would be detrimental to the historical and/or architectural heritage and resources of the city.

(e) *Regulated buildings.* This section applies to all contributing buildings within the city's two National Register of Historic Places historic districts as shown on exhibits A\* and B\*.

(f) *Notice.* Notice of a public hearing to consider any proposal to demolish a contributing building as indicated in section 50-12(e) shall be made by the commission staff in a New Smyrna Beach newspaper of general circulation in the city at least 30 days prior to the hearing. The owner or authorized representative of the owner of the building proposed for demolition shall notify all property owners within 150 feet of the subject property of the proposed public hearing. The notice shall be sent by United States Postal Service certified mail "return receipt requested" to each property owner no less than 15 days prior to the advertised public hearing and shall indicate the property address of the building proposed for demolition and location, date and time of the public hearing.

(g) *Commission review.* The commission shall review any application for demolition of a contributing building within the city's National Register of Historic Places Historic District at its next public hearing with notice given as provided in section 50-12(f) to determine whether the building is historically significant as defined in this section. The commission shall also consider information submitted by the applicant, as provided in sections 50-12(g) and (h). The commission shall not consider the request until the applicant has provided the information as outlined in sections 50-12(h) and (i) to explain why the building is not

considered significant or if significant, why it should be demolished. The commission shall issue no demolition approval until the applicant has demonstrated that no other feasible alternative to demolition can be found. The commission may ask interested individuals and organizations for assistance in seeking an alternative to demolition.

The building shall be considered historically significant if one or more of the following criteria are declared to be met by the commission:

- (1) The building is historically or architecturally significant in terms of its period, style, method of building construction or use of indigenous materials; or
- (2) The building is a significant reminder of the cultural, or architectural history of the city, state or nation; or
- (3) The building is associated with a significant local, state or national event; or
- (4) The building is associated with one or more significant historic persons or events, or with the broad architectural, cultural, political, economic, or social history of the city, state or nation; or
- (5) The building is one of a the few remaining examples of its period, style, or method of construction; or
- (6) The building is identified with a person who significantly contributed to the development of the city, state or nation; or
- (7) The building is identified as the work of a master builder, designer or architect whose individual work has influenced the development of the city, state or nation; or
- (8) The building value is recognized for the quality of its architecture, and it retains sufficient elements showing its architectural significance; or
- (9) The building character is in a geographically definable area possessing a significant concentration or continuity of buildings united in past events or aesthetically by plan or physical development; or

- (10) The building character is in an established and geographically definable neighborhood united in culture, architectural style or physical plan and development.

(h) *Demolition of significant buildings.* If the commission finds that the building is historically significant the commission may, nevertheless, grant a demolition approval if it finds that one of the following circumstances is met:

- (1) *Undue economic hardship.* In any instance where there is a claim of undue economic hardship, the property owner shall submit to the commission prior to the public hearing a report indicating the economic hardship and why the demolition should be allowed. The report shall include the following:
  - a. The amount paid for the property, the date of purchase and the party from whom purchased;
  - b. The assessed value of the land and improvements thereon, according to the two most recent assessments;
  - c. Real estate taxes for the previous two years;
  - d. Annual debt service, or mortgage payments, if any, for the previous two years;
  - e. All appraisals (if any) obtained within the previous two years by the owner(s) or applicant(s) in connection with the purchase, financing or ownership of the property;
  - f. Any listing of the property for sale or rent, price asked and offers received, if any; and
  - g. Any consideration by the owner as to profitable adaptive uses for the property, including but not limited to possible fair market rents for the property if it were rented or leased in its current condition.

The commission may require that an applicant furnish such additional information as the commission believes is relevant to the commission's determination of

any alleged undue economic hardship. The commission may also require, in appropriate circumstances, that information be furnished under oath.

In the event that any of the required information is not reasonable available to the property owner and cannot be obtained by the property owner, the property owner shall file with his/her/their affidavit a statement of the information which cannot be obtained and the reasons why such information cannot be reasonable obtained. Where such unobtainable information concerns required financial information, the property owner will submit a statement describing estimates which be as accurate as feasible.

- (2) *Building condition.* In any instance where there is a claim the building is not structurally sound and/or suitable for restoration, the applicant shall provide a written report signed by a licensed engineer or architect with experience in historic building restoration stating that the building is structurally unsound and unsuitable for restoration. The commission shall review the credentials of the licensed engineer or architect signing the report and shall find them experienced in historic restorations before the report is accepted. The applicant shall allow members of the commission and commission staff to inspect the interior and exterior of the building.

*Lack of alternative to demolition.* In any instance where there is a claim of no other alternative to demolition, the applicant shall provide written documentation of attempts to sell the building at a reasonable and comparable amount or to offer it without charge to purchasers willing to move the building to another location and preserve, rehabilitate, relocate or restore the building. A reasonable and comparable sales price shall be indicated by providing evidence such as recent appraisals, comparable values of properties similar to

the building proposed to be demolished or other evidence the commission deems acceptable.

(i) *Conditions of demolition approval.* If the commission grants demolition approval for a historical building as provided in section 50-12(g), the commission shall condition approval on one or more of the following requirements:

- (1) The commission shall require the applicant to provide a written and pictorial record of the building's history and architectural features for archival purposes, approved by the city. The record should include a narrative accompanied by relevant photographs, drawings, maps, and copies of original documents; or
- (2) The commission shall require the applicant to design the replacement building(s) to meet the requirements of the Historic Preservation Design Guidelines for New Smyrna Beach and submit drawings of the proposed work, photographs of existing buildings or structures on adjacent properties and information about the building materials to be used for commission approval; or
- (3) The commission may require that the owner allow archaeological study of the property before and/or during demolition if the property falls within the area demonstrated to have a medium or high probability to contain archaeological resources; or
- (4) The commission may require that the owner allow salvage activities of the historic building provided the commission finds that there are salvageable materials within the building. Commission staff shall provide evidence to demonstrate that salvageable materials are within or on the building to be demolished; or
- (5) The commission may require that the owner of a historically significant building meet any other condition that is reasonable to mitigate the demolition of the historic building.

(j) *Demolition delay.* Should the commission determine that a building is historically significant and does not meet at least one of the circumstances allowing demolition of a historically significant structure, the commission shall provide for a demolition delay effective date of up to 120 days from the date of the application. The purpose for the delay is for the commission staff to invite the owner of record of the building to participate in an investigation of alternatives to demolition including, but not limited to, incorporation of the building into the future development of the site; adaptive reuse of the building; utilization of financial incentives to rehabilitate the building; seeking a new owner willing to purchase and preserve, restore or rehabilitate the building; or moving the building. The city will provide the applicant resource assistance including but not limited to potential grant sources, tax relief measures, possible lenders, and available insurers. Once the delay period has ended and if the owner is still seeking demolition of the historically significant structure, the owner shall appear before the commission at a meeting adhering to the notice requirements of section 50-12(f) and present a case as to why the demolition should be granted. The commission shall again consider the reasons for demolition of a historically significant building as indicated in section 50-12(h). The commission shall approve the demolition provided the conditions of section 50-12(i) subsections (1) through (4) are complied with.

(k) *Demolition by neglect.* The owner of a contributing building or structure within an historic district shall comply with all applicable codes, laws and regulations governing the maintenance of property. It is the intent of this section to preserve from deliberate or inadvertent neglect the exterior features of buildings and structures designated as contributing or significant and the interior portions thereof when such maintenance is necessary to prevent deterioration and decay of the exterior. All such buildings or structures shall be preserved against such decay and deterioration and free from structural defects through prompt corrections of any of the following defects:

- (1) Facades that may fall and injure persons or property;

- (2) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports;
- (3) Members of ceilings, roofs, ceiling and roof supports or other horizontal members that sag, split or buckle due to defective material or deterioration;
- (4) Deteriorated or ineffective waterproofing of exterior walls, roof, foundations or floors, including broken windows or doors;
- (5) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering; or
- (6) Any fault or defect in the building that renders it not properly watertight or structurally unsafe.

(1) *Non-compliance.*

- (1) The commission, building official and code enforcement officer are each authorized to institute any and all proceedings in law or equity, as they deem necessary and appropriate to obtain compliance with the requirements of this section, or to prevent a violation thereof.
- (2) No building permit shall be issued with respect to any premises upon which a significant building has been voluntarily demolished in violation of this section for a period of 22 months after the date of the completion of such demolition. As used herein "premises" includes the parcel of land upon which the demolished significant building was located and all abutting parcels of land under common ownership or control on or subsequent to the date this section was approved.
- (3) Upon a determination of the commission that a building is a preferably preserved significant building, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the building official and/or code enforcement officer.



- (4) Anyone who demolishes a building or structure identified in section 50-12(e) without first obtaining, and complying fully with the provisions of, a demolition permit shall be subject to a fine of up to \$5,000.00.

(m) *Appeals to the city commission.* Within 15 days of the commission decision, any affected person may appeal to the city commission any decision of the commission on an application for a demolition. The city commission shall approve, approve with conditions, or disapprove the application within 60 days after receiving the appeal. The city commission shall only approve the demolition of a contributing building if they determine that the request complies with subsections (g)—(j) of this section.

(n) *Withholding of demolition permit.* The demolition permit shall be withheld until the procedural requirements of subsections (f) through (j) inclusive have been satisfied.

(Code 1975, § 14½-12; Ord. No. 86-05, §§ 1—14, 1-24-2006)

\*Note—Exhibits A and B, referenced above, are not set out herein, but are on file and available for inspection in the city offices.

**Sec. 50-13. Archaeological preservation.**

(a) *Findings.* It is the finding of the city commission that the city contains many historical and archaeological areas of international, national, and local importance, from all period of history, including pre-Columbian Indian villages, and British settlements. Further, in the preservation and understanding of historical importance of New Smyrna Beach there is a direct relationship to the economic well-being of the City of New Smyrna Beach and the present and future needs, public health, safety, morals and general welfare of the citizens of the incorporated area of New Smyrna Beach, Florida, as well as visitors to and residents of New Smyrna Beach.

(b) *Definitions.* For the purpose of this chapter, certain words and terms used herein shall be interpreted to have the meanings as defined below. Where words or terms are not defined, they shall have their ordinarily accepted meaning or such as the context may imply. Words used in the present tense include the future; the singular

number includes the plural and the plural includes the singular. The word "shall" is mandatory and the word "may" is permissive. The words "used" or "occupied" include the words "intended, designed or arranged to be used or occupied." The word "land" includes the word "marsh," "water" or "swamp." The word "map" shall mean the archaeological base map of the City of New Smyrna Beach, Florida, and the word "city" shall mean the City of New Smyrna Beach, Florida.

- (1) *Archaeological site* means a location which has yielded or may yield information on history or pre-history. Archaeological sites may be found within archaeological zones, historic sites, historic districts and other areas of the city. Archaeological sites are evidenced by the presence of artifacts and features above or below the ground surface indicating the past use of a location by people.
- (2) *Archaeological zone* means a geographical area which has or may reasonably be expected to yield information on local history or pre-history based upon broad pre-historic or historic settlement patterns.
- (3) *Artifact* means objects which are the product of human modification or objects which have been transported to a site by people.
- (4) *City archaeologist* means the individual or group in charge of assessing the archaeological resources of New Smyrna Beach and directing or coordinating, monitoring, testing and salvage excavations of these resources. The individual may either be a city employee, or may be an individual or corporation employed on a contract basis to perform the duties of the city archaeologist.
- (5) *City-owned property* shall mean property owned in fee or maintained by the City of New Smyrna Beach, and any property dedicated to the public use.
- (6) *Archaeological resource* means any prehistoric or historic district, site building, object, or other real or personal property of historical, architectural or archaeological value. The properties may include,

but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, treasure troves, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof relating to the history, government, and culture of the city, the State of Florida, or the United States of America.

- (7) *Disturbance* means the digging, excavating, or other such ground altering activities on or below the ground surface, which impact more than 25 square feet either separately or cumulatively.
- (8) *Monitoring* means observation of disturbances to determine if archaeological resources exist in an area, or when such resources are known to exist, the observation, recording and incidental recovery of site features and materials to preserve a record of the affected portion of the site. When monitoring indicates that a site has little archaeological significance, no further archaeological excavation shall occur. However, if monitoring indicates that a site is archaeologically significant, further excavation shall occur.
- (9) *Salvage archaeology* means the archaeological excavation of a site prior to its destruction by construction, erosion, vandalism, or any other form of site disturbance. Archaeological salvage excavations will be concentrated only within the areas to be disturbed in order to save site data which would be lost due to the disturbance, and the extent of the excavations may vary, depending on the significance of the site, time constraints, and the degree of evidence of archaeological resources, at the direction of the city archaeologist.
- (10) *Testing* means surface or subsurface excavation, or the use of remote sensing techniques, to determine the type and extent of the archaeological site. Testing may include auguring and establishing archaeological excavation units and requires the

screening of excavated material for artifact recovery. When necessary, archaeological salvage excavations may take place following, or in conjunction with, the testing procedures.

- (11) *Emergency situation* means any case where the city building official determines that there are emergency situations or conditions dangerous to life, health, or property. In such situations, he or she may order the remedying of the situation or condition. The city building official shall promptly notify the city archaeologist and the city manager if such a situation or conditions occur.

(c) *Archaeological zones*. In order to regulate and restrict disturbances as hereinafter provided in this chapter, and to determine the extent of archaeological investigation and excavations that may be required in a given area, the incorporated area of New Smyrna Beach, Florida, is hereby divided into zones as shown on the archaeological base map entitled, "Archaeological Base Map for New Smyrna Beach, Florida," more particularly described as:

\*See Exhibit "A" attached hereto and by reference made a part hereof.

Archaeological zones shall be updated on the base map as additional sites are documented. Zones as delineated on the base map are as follows with titles and abbreviations as indicated:

- (1) *Archaeological zone I* is comprised of those areas within the city where there are known significant archaeological sites.
- (2) *Archaeological zone II* is comprised of those areas that have a medium or high probability of containing archaeological resources as determined by The Search for Turnbull's Colony, an Archaeological Survey, a report by Southeast Archaeological Research, Inc., dated June 1999.

(d) *Interpretation of zone boundaries*. Where uncertainty exists as to the boundaries of zones as shown on the archaeological base map for New Smyrna Beach, Florida, the following rules shall apply:

- (1) Boundaries indicated as approximating center lines of streets, highways or alleys shall be construed to follow such centerlines;

- (2) Boundaries indicated as approximately following platted lot lines shall be construed to follow such lot lines;
- (3) Boundaries indicated as approximately following city limits shall be construed to follow such city limits;
- (4) Boundaries indicated as following railway lines shall be construed to be midway between the main tracks;
- (5) Boundaries indicated as following shorelines shall be construed to follow the mean high water line. In the event of a change in shorelines, the boundaries shall be construed to move with the change except where such moving would change the archaeological status of a lot or parcel. In such case the boundary shall be interpreted in such a manner as to avoid changing the archaeological status of such lot or parcel;
- (6) Boundaries indicated as parallel to or extensions of beaches indicated in subsections (1) through (5) above shall be so construed. The distance not specifically indicated on the archaeological base map shall be determined by the scale of the map.
- (7) Where physical or cultural features existing on the ground are not in agreement with those shown on the archaeological base map or in other circumstances not covered by subsections (1) through (6) above, the city archaeologist shall interpret the zoning boundaries.

(e) *Zone regulations.* On city-owned or maintained property, within archaeological zones I and II, the conduct of any ground disturbances on, or activities taking place at or below the present surface of the ground, shall be in compliance with the following regulations:

- (1) All proposed disturbances on city-owned or maintained property, including but not limited to those by the utilities commission, telephone, cable, and gas companies, the department of transportation, city contractors, and city subcontractors shall be reported to the city archaeologist before

those disturbances take place. Furthermore, this chapter will apply only to city-owned or maintained properties within the boundaries of the proposed disturbances. Any additional archaeological testing or excavation by the city archaeologist, within areas outside the proposed disturbances, may be conducted only with written permission of the property owner.

- (2) Within archaeological zones I and II, disturbances on city-owned or maintained properties shall be subject to intensive archaeological salvage excavations, to be conducted by the city archaeologist prior to any underground disturbance, building construction, or utility excavation. The extent of the archaeological salvage excavations by the city archaeologist will be dependent on the extent of the proposed area of construction disturbance and the significance of the archaeological resource.
- (3) Within archaeological zones i and ii, the city archaeologist will be authorized to delay the proposed construction work or major disturbance for up to four weeks. The city manager, or his or her designee may grant additional time, if needed. Early notification of the city archaeologist, prior to any disturbances occurring, may minimize or eliminate the need for work delays. The applicant will be informed of any delays.
- (4) Any disturbances on city-owned or maintained property, which are required to deal with an emergency situation, shall not be subject to the regulations of this chapter.

(f) *Excavations on public property.* No individual shall be allowed to disturb or remove artifacts from public property without the written permission of the city archaeologist, the city manager, or his or her designee.

(g) *Ownership of artifacts.* Artifacts uncovered or discovered during testing, excavation, or monitoring of property belonging to the city shall remain the property of the city and shall be curated by the New Smyrna Beach Museum of

History. The treatment of human skeletal remains shall be in accordance with Florida Statutes.

(h) *City archaeologist.* The city manager or his or her designee shall appoint a city archaeologist who shall meet the city's requirements and the standards for membership by the register of professional archaeologists and shall have a demonstrated background in historic and prehistoric archaeology. The city archaeologist shall review all applicable ground disturbances on city-owned or maintained property in archaeological zones I and II; shall conduct such testing, excavations, or monitoring as shall be required by this chapter; shall prepare or oversee preparation of a final report on all projects, which report shall meet the guidelines established for archaeological reports by the department of state, division of historical resources; shall record archaeological sites and develop strategies for preservation of the archaeological resources of New Smyrna Beach; and shall participate in the planning state of applicable projects, to minimize the potential impacts on archaeological sites by any activities proposed for such sites; and shall maintain and update the archaeological base map; and shall advise the city manager concerning archaeological issues. (Ord. No. 133-05, §§ 1—8, 1-24-2006)

**Editor's note**—Ord. No. 133-05, §§ 1—8, adopted Jan. 24, 2006, set out provisions that were not specifically amendatory. At the editor's discretion, said provisions have been included as § 50-13.

\*Exhibit A, referenced above, is not set out herein, but is on file and available for inspection in the city offices.

**Secs. 50-14—50-30. Reserved.**

**ARTICLE II. PROPERTY TAX EXEMPTION\***

**Sec. 50-31. Intent.**

(a) Certain historic resources located within the City of New Smyrna Beach, are both publicly and privately owned; are individual properties

\***Editor's note**—Ord. No. 62-01, § 1, adopted Jan. 8, 2001, set out provisions designated as Ch. 51, §§ 51-1—51-11. For purposes of classification and with the concurrence of the city these provisions have been included in Ch. 50, §§ 50-31—50-41.

**Cross reference**—Taxation, ch. 74.

and districts associated with past events and persons important in local, state and national history; are significant examples of an architectural style or building type; and have yielded or are likely to yield important information which cannot be retrieved from the written record on the lifestyles of past inhabitants.

(b) The preservation of these historic sites enhances the lives of citizens, promotes community understanding, educates school children, and attracts visitors who contribute to the economy of the City of New Smyrna Beach, and it is in the interest of public health, safety and welfare.

(c) The State of Florida has enacted legislation implementing the provisions of the State Constitution to specifically provide for ad valorem tax exemptions for historic properties.

(d) The city commission desires to take advantage of all available state and federal programs that may assist in the preservation of historic properties.

(Ord. No. 62-01, § 1, 1-8-2002)

**Sec. 50-32. Purpose.**

(a) Provide a positive financial incentive for the designation of landmarks, landmark sites and historic districts within the City of New Smyrna Beach as provided in [the] New Smyrna Beach Code of Ordinances, § 50-7, Designation of landmarks, landmark sites and historic districts;

(b) Encourage more restoration, rehabilitation and renovation of designated historic buildings and structures in New Smyrna Beach;

(c) Stabilize and improve property values, and enhance the property tax base of the City of New Smyrna Beach, by encouraging improvement of designated historic buildings and structures; and

(d) Improve the appearance of designated historic districts and landmarks in the City of New Smyrna Beach, thereby enhancing their appeal as places to live, work and visit.

(Ord. No. 62-01, § 1, 1-8-2002)

**Sec. 50-33. Definitions.**

The following words and phrases when used in this chapter shall have the following meanings:

*Assessed value.* The total value of a tax parcel, excluding the value of land, as determined by the Property Appraiser for the County of Volusia, and shown on the property tax bill sent to the owner of record by the County of Volusia.

*Contributing property.* A building, site, structure, or object which adds to the historical architectural qualities, historic associations, or archaeological values for which a district is significant because (1) it was present during the period of significance and possesses historic integrity reflecting its character at that time, (2) is capable of yielding important information about the period, or (3) it independently meets the National Register of Historic Places criteria for evaluation set forth in 36 CFR Part 60.4, incorporated herein by reference.

*Preservation exemption covenant.* The historic preservation property tax exemption covenant form identified as Florida DOS Form No. HR3E111292, which provides that those benefiting from the tax exemption agree to maintain the architectural historical integrity of the building or structure for the duration of the tax exemption period.

*Qualifying improvement.* Any change in the condition of an eligible property brought about by the expenditure of labor and purchase that results in restoration, renovation or rehabilitation of said property in keeping with the design criteria established for the purposes of this exemption. This shall include, specifically, interior or exterior work, and the construction of additions or accessory buildings or structures.  
(Ord. No. 62-01, § 1, 1-8-2002)

*Cross reference*—Definitions generally, § 1-2.

**Sec. 50-34. Historic preservation property tax exemption.**

The owners of qualifying properties who have met all requirements outlined in this chapter shall receive an exemption of 100 percent of the increase in assessed value of ad valorem taxes levied by the City of New Smyrna Beach which

result from the restoration, renovation or rehabilitation of such buildings or structure for the duration of the exemption period. The amount of exemption shall be determined by the property appraiser for the County of Volusia based on the typical post-construction inspection and appraisal. The historic preservation property tax exemption for a specific property shall be granted, upon review and consideration, by resolution of the city commission.

The tax exemptions allowed herein apply only to the ad valorem taxes assessed by the City of New Smyrna Beach. The exemption does not apply to taxes levied for the payment of bonds, to taxes authorized by a vote of the electors pursuant to Fla. Const., art. VII, § 9(b) or § 12, or to improvements made prior to November 27, 2001. (Ord. No. 62-01, § 1, 1-8-2002)

**Sec. 50-35. Eligible property for tax exemption.**

The following real property in the City of New Smyrna Beach is eligible for the historic preservation property tax exemption as defined herein, provided it meets such criteria on the date the historic preservation property tax exemption is granted by the city commission.

Property is qualified for an exemption under this section if,

- (1) At the time the exemption is granted, the property:
  - a. Is individually listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended; or
  - b. Is a contributing property to a national-register-listed district; or
  - c. Is designated as a historic property, or as a contributing property to a historic district, under the terms of the city's preservation ordinance; and,
- (2) The division of historical resources has certified to the local governing authority that the property for which an exemption is requested satisfies paragraph (1) above.

*State law reference*—F.S. § 196.1997(11).  
Ord. No. 62-01, § 1, 1-8-2002)

**Sec. 50-36. Exemption period for tax exemption.**

The exemption granted shall remain in effect for ten years with respect to any particular property, regardless of any change in the authority of the city to grant such exemptions or any change in ownership of the property. In order to retain the exemption, however, the historic character of the property, and improvements which qualified the property for an exemption, must be maintained over the period for which the exemption is granted.

The exemption period shall begin on January 1 after all three of the following events have occurred: (1) issuance of a certificate of occupancy by the City of New Smyrna Beach; (2) final approval of the restoration, renovation or rehabilitation work has been granted by the City Commission of the City of New Smyrna Beach; and (3) written notice stating the exemption is in effect has been forwarded by the City of New Smyrna Beach and received by the property appraiser for the County of Volusia.

(Ord. No. 62-01, § 1, 1-8-2002)

**Sec. 50-37. Application for tax exemption.**

Applications for ad valorem tax exemptions for historic properties shall be made in accordance with F.S. § 196.1997(8) and Fla. Admin. Code R. 1A-38.003.

(Ord. No. 62-01, § 1, 1-8-2002)

**Sec. 50-38. Review of applications for tax exemption.**

The New Smyrna Beach Historic Preservation Commission is designated pursuant to F.S. § 196.1997(6) to review applications for exemptions. Said review shall be in accordance with the rules adopted by the department of state.

(Ord. No. 62-01, § 1, 1-8-2002)

**Sec. 50-39. Approval of tax exemption for historic preservation.**

Approval of an applications for ad valorem tax exemptions for historic property shall be by reso-

lution of the city commission. Said resolution shall contain the items required by F.S. § 196.1997(10).

(Ord. No. 62-01, § 1, 1-8-2002)

**Sec. 50-40. Historic preservation exemption covenant.**

To qualify for an exemption, the property owner must enter into a covenant or agreement with the city for the term for which the exemption is granted. The form of the covenant or agreement must be established by the department of state and must require that the character of the property, and the qualifying improvements to the property, be maintained during the period that the exemption is granted. The covenant or agreement shall be binding on the current property owner, transferees, and their heirs, successors, or assigns. Violation of the covenant or agreement results in the property owner being subject to the payment of the differences between the total amount of taxes which would have been due in March in each of the previous years in which the covenant or agreement was in effect had the property not received the exemption and the total amount of taxes actually paid in those years, plus interest on the difference calculated as provided in F.S. § 212.12(3).

(Ord. No. 62-01, § 1, 1-8-2002)

**Sec. 50-41. Notice to property appraiser.**

Within three working days following adoption of a resolution by the city commission granting the historic preservation property tax exemption, the development services director shall cause the transmittal of a copy of the resolution, the preservation exemption covenant, and the final application to the property appraiser for Volusia County, with instructions that the property appraiser provide the historic preservation property tax exemption to the applicant.

(Ord. No. 62-01, § 1, 1-8-2002)