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ORDINANCE NO. 2016 - 2

**AN ORDINANCE AMENDING CHAPTER 4 – HISTORIC PRESERVATION,
OF THE CODE OF THE CITY OF HUTCHINSON, KANSAS.**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF
HUTCHINSON, KANSAS:

Section 1. That Chapter 4 of the Hutchinson City Code be amended as follows:

CHAPTER 4

HISTORIC PRESERVATION

Article I. General

Sec. 4-101. Title.

This chapter shall be known as the "Historic Preservation Chapter" or the "Historic Preservation Ordinance" of the City, may be cited as such, and will be referred to herein as "this Chapter."

Sec. 4-102. Statement of Purposes.

- a. The purposes of this chapter are to:
 1. Preserve buildings and sites of historic and architectural importance and safeguard the heritage and culture of Hutchinson;
 2. Promote orderly, efficient and harmonious development, including harmony in the outward appearance of buildings;
 3. Stabilize and improve property values;
 4. Encourage the maintenance of historic and architecturally significant structures, property and areas;
 5. Foster pride in Hutchinson and the appearance of the community, assist in attracting visitors to Hutchinson and help improve the overall economy of Hutchinson;

6. Promote the restoration and productive use of historic and architecturally significant structures, property and areas; and

7. Promote the study of history, culture and architectural design.

b. These purposes will be achieved by, among other things:

1. Creation of a Landmarks Commission;

2. Designation of historic and architecturally important structures, properties and districts;

3. Reviewing and approving or disapproving alterations to designated landmarks and structures or properties within landmark districts;

4. Reviewing and approving or disapproving new construction within landmark districts;

5. Reviewing, approving or disapproving, and making recommendation on proposed demolitions of designated landmarks, structures or properties;

6. Establishing maintenance recommendations for designated structures, properties or districts;

7. Creating resources for the community to access for purposes of education, awareness and active engagement in historic preservation; and\

8. Establishing a procedure whereby the City may accept preservation easements.

c. The regulations and standards listed herein have been made after reasonable consideration was given to the nature and character of historic and architecturally important structures, properties and districts within the City.

Sec. 4-103. Application.

Applications for all actions specified within this chapter shall be made on forms provided by the Administrator and within the timelines provided on the application form(s).

Sec. 4-104. Definitions.

For the purposes of this chapter, certain terms and words are hereby defined. Words used in the present tense include the future, words in the singular number include the plural and words in the plural number include the singular. The word "shall" is mandatory and not discretionary.

Accessory Structure shall mean a subordinate structure or portion of the main structure, located on the same property as, and the use of which is clearly incidental to, that of the main structure or to the principal use of the property on which it is located. Customary accessory structures include but are not limited to garages, carports, garden houses, storage sheds and children's playhouses.

Accessory Use shall mean a subordinate use which serves an incidental function to that of the principal use of the property. Customary accessory uses include but are not limited to tennis courts, swimming pools, air conditioners, barbecue ovens, fireplaces and off-street parking.

Acquisition shall mean the act or process of acquiring fee title or interest other than fee title of real property, including development rights.

Adaptive Use shall mean the process of changing the use of a structure or property to a use other than that for which the structure or property was originally designed.

Adjacent shall mean a structure or parcel having a common parcel boundary or located immediately next to a structure or parcel.

Administrator shall mean the designated individual assigned by the Governing Body to administer, interpret and enforce this chapter.

Alley shall mean a dedicated public right-of-way, other than a street, which provides only a secondary means of access to abutting property, the right-of-way of which is 20 feet or less in width.

Alteration shall mean, as applied to a structure, a change or rearrangement in the parts of an existing structure. Enlargement, whether by extending a side, increasing in height, or the moving from one location or position to another shall be considered as an alteration.

Applicant shall mean the owner, or duly designated representative, of a structure(s) or property(ies) proposed for nomination as a landmark or historic district; obtaining a building or demolition permit; receiving a certificate of appropriateness or certificate of economic hardship; establishing a preservation easement; or filing an appeal.

Application shall mean one of several forms provided by the Administrator to a person(s) who wishes to initiate a particular action, including nomination of a landmark or historic district; obtaining a building or demolition permit; receiving a certificate of appropriateness or certificate of economic hardship; establishing a preservation easement; or filing an appeal.

Building shall mean a structure, such as a house, barn, church, hotel, courthouse, city hall, social hall, commercial building, library, factory, mill, train depot, theater, school, store or similar construction, created to shelter any form of human activity. The term also may refer to a small group of buildings consisting of a main building and subsidiary buildings which

constitute a historically and functionally related unit such as a courthouse and jail, house and barn, mansion and carriage house, church and rectory, and farmhouse and related out-buildings.

Certificate of Appropriateness shall mean a certificate issued by the Commission or Administrator indicating historic review approval of plans for alteration, construction, removal or demolition of a landmark or of a structure within a landmark district, based primarily on design considerations.

Certificate of Economic Hardship shall mean a certificate issued by the Commission indicating its historic review approval of plans for alteration, construction, removal, or demolition of a landmark or of a structure within a landmark district, based primarily on economic considerations.

Certified Local Government (CLG) shall mean a program of the National Park Service designed to promote the preservation of prehistoric and historic sites, structures, objects, buildings, and historic districts by establishing a partnership between the local government, a division of the Kansas State Historical Society, and the National Park Service. A certified local government carries out the purposes of the National Historic Preservation Act, as amended. Each certified local government is required to maintain a system of ongoing surveys compatible with the Kansas State Historical Society process.

Character-Defining Feature shall mean a physical characteristic(s) or element(s) that indicates the integrity of design and materials of a historic property or a building or structure within a landmark district.

City shall mean the municipal corporation named the City of Hutchinson, Kansas.

City Council shall mean the Governing Body of the City of Hutchinson, Kansas.

City Limits shall mean the established corporate boundary of the City of Hutchinson, Kansas.

City's Legal Counsel shall mean any attorney specified by the Governing Body as responsible for assisting in the implementation of the provisions of this chapter.

Commission shall mean the Hutchinson Landmarks Commission.

Commissioners shall mean members of the Landmarks Commission, unless otherwise indicated.

Contributing shall mean a building, site, structure or object which adds to the architectural qualities, historic association or archeological values of a district for which a property is significant because:

- a. It was present during the pertinent historical time; or

- b. It possesses integrity and reflects its significant historic character or is capable of yielding important information about the pertinent historic period; or
- c. It independently meets the standards and criteria of this chapter.

County shall mean Reno County, Kansas.

Dedicate shall mean the transfer of ownership or property rights from the property owner to another individual or entity.

Demolition shall mean the partial or complete removal of a building or structure, the components of a building or structure, or the manmade components of the site where the building or structure is located, including walks, driveways, retaining walls, and fences.

Demolition by Neglect shall mean the failure to provide ordinary and necessary maintenance and repair to a landmark or a contributing structure located within a landmark district, whether such neglect is willful or not, on purpose or by design, by the owner or any party in possession of such a site, which results in the deterioration of features so as to create or permit an unsafe or dangerous condition to exist, as defined by Section 21-701 of the City Code.

Design Criteria shall mean a standard of appropriate activity that will preserve the historic and architectural character of a structure or area.

Design Review Committee shall mean a committee of no more than three voting members of the Landmarks Commission with one alternate which may be appointed by the Chairman when necessary to assist the Commission in reviewing Certificates of Appropriateness.

Designation shall mean official recognition of a historic landmark or historic district by the Commission and City Council according to the procedures and provisions in this Chapter.

Developer shall mean the legal property owner, the holder of a purchase option or contract, an entity having an interest in real property, or any agency of the legal property owner of any structure or property to be included in a development:

- a. Who causes it to be used for development;
- b. Who sells, leases or develops; offers to sell, lease or develop; or advertises for sale, lease or development any lot, plot, parcel, site, unit of interest, or structure for development; or
- c. Who engages directly or through an agent in the business or occupation of selling, leasing, developing, or offering for sale, lease or development, any lot, plot, parcel, site, unit of interest, or structure for development.

Development shall mean a subdivision; the construction or reconstruction of streets and utilities; the construction, expansion or remodeling of structures; a change in the use of a structure or parcel; or the clearing of land.

District shall mean an area that possesses a significant concentration, relationship among, or continuity of sites, buildings, structures or objects united historically or architecturally by plan or physical development. Districts include college campuses, the downtown area, residential areas, commercial areas, industrial complexes, civic centers, planned street systems and large parks. The term also may apply to individual associated or functionally related sites, buildings, structures or objects which are geographically separated. In such cases, visual continuity should not be necessary to convey the historic relationship of a group of related resources.

Easement shall mean the authorization by a property owner to allow specific uses of a designated part of a property by another individual, individuals or entity.

Emergency Demolition shall mean the demolition of a building or structure which the Building Official has determined is unfit for use or human habitation and for which conditions exist that are dangerous to the health, welfare or safety of the occupants of such structure, the occupants of neighboring structures, dwellings or other residents of the City.

Endangered Resource shall mean a resource under a known or anticipated threat of damage to the integrity or existence of the resource, such as:

- a. Immediate threat which will result in loss of or collapse of structure;
- b. Immediate threat or destruction by private action; and
- c. Condemnation for code violations.

Exterior Feature shall mean elements and components of the outer surface of a structure including, but not limited to, building materials, windows, outside doors, outdoor light fixtures, attached signs, fixtures, carvings, columns, railings, stairs and steps, retaining walls, fences and fence posts, hitching posts, decorations, dormers, chimneys, false fronts, paint colors, surfaces, surface textures or parapets.

Exterior Lighting shall mean lights installed outdoors on an outside wall, a roof, a standard pole or other device, not including lights that shine on or which are a part of a sign but including security lights, flood lights, decorative lights, parking lot lights and similar lights.

Façade shall mean the exterior face of a building which is the architectural front, sometimes distinguished by elaboration or architectural or ornamental details.

Feasible and Prudent Alternative shall mean an alternative solution that can be reasonably accomplished and that is sensible or realistic. Factors that shall be

considered when determining whether or not a feasible and prudent alternative exists include, but are not limited to, the following:

- a. Technical issues;
- b. Design issues;
- c. The project's relationship to the community-wide plan,
- d. Economic issues; and
- e. Planning issues or alternatives.

Fence shall mean an unroofed barrier or unroofed enclosing structure.

Governing Body shall mean the City Council of the City of Hutchinson, Kansas.

Historically or Architecturally Important shall mean that quality present in a structure, property or district because it:

- a. Is associated with an event or events that significantly contributed to the broad patterns of the history or architectural heritage of the City, Reno County, the State or the Nation;
- b. Is associated with the lives of a person or persons significant in the history of the City, Reno County, the State or the Nation;
- c. Embodies distinctive characteristics of a type, design, period or method of construction;
- d. Represents the work of a master or possesses high artistic value;
- e. Exemplifies the cultural, political, economic, social or historic heritage of the City;
- f. Contains elements of design, detail, materials or craftsmanship which represent a significant style of construction;
- g. Is part of or related to a square, park or other distinctive area that was or should be developed or preserved according to a plan based on a historic or architectural motif;
- h. Is an established and familiar visual feature of a neighborhood or the entire community; and
- i. Has yielded, or is likely to yield archeological artifacts and/or information.

Historic Preservation shall mean the study, identification, protection, restoration and rehabilitation of buildings, sites, structures, objects, districts and areas significant in the history, architecture, archeology or culture of the City, Reno County, the State or the Nation.

Historic Resource shall mean a district, site, land, area, building, structure or object, including appurtenances and environmental setting, which has historical, cultural, aesthetic, architectural and/or archeological significance, or other character-defining features with potential importance or value.

Improvement shall mean any physical change in a structure or property including the addition of exterior features, any change in landscape features, alteration of a structure, new construction, painting or repainting, reconstruction, restoration or remodeling, but excluding normal maintenance.

Interior Feature shall mean elements and components of the inside of a structure including, but not limited to, building materials, inside doors, door and window moldings, wall covering, paint colors, indoor light fixtures, lamps, furniture, draperies, fireplace hearths, stairways, appliances, heating and ventilating equipment, carvings, columns, railings, decorations and surface textures.

Kansas Register shall mean the current Kansas Register of Historic Places as prepared, approved and amended by the Kansas Historic Sites Board of Review and authorized by K.S.A. 75-2715 and following.

Key Contributing shall mean a building, site, structure or object of such an outstanding quality and state of preservation that it significantly adds to the architectural qualities, historic association, or archeological values of a landmark district because:

- a. It was present during the pertinent historic time;
- b. It possesses integrity and reflects its significant historic character or is capable of yielding important information about the pertinent historic period; and
- c. It independently meets the standards and criteria of this chapter.

Landmark shall mean a site, structure or object designated as a landmark by ordinance of the City Council, pursuant to procedures prescribed herein, that is worthy of rehabilitation, restoration, and preservation because of its historic and/or architectural significance to the City.

Landmark District shall mean a group of buildings, properties or sites that have been designated by the City Council, pursuant to procedures described herein, as worthy of rehabilitation, restoration, and preservation due to their historic and/or architectural significance to the City.

Landscape Feature shall mean any element or component of outdoor open space including, but not limited to, fences, walls, retaining walls, gates, sidewalks, walkways, driveways, parking lots, patios, terraces, decks, ground covers, trees, plants, outdoor furniture, exterior light standards, fountains, statuary, detached signs and other such elements.

List shall mean the List of Hutchinson Landmarks and Landmark Districts. The List includes buildings, sites, structures, objects and districts located within the City and designated in accordance with this article as landmarks or landmark districts.

Lot shall mean a portion of a subdivision or other parcel of land intended as a unit of ownership and occupied or intended to be occupied by one main structure and accessory structures or a complex of structures, including open spaces and parking. A lot may be more than one lot of record or may be a metes-and-bounds-described tract, having its principal frontage upon a street or officially approved place.

Lot of Record shall mean a lot which is a part of a subdivision, the plat of which has been recorded in the office of the Register of Deeds or a lot described by metes-and-bounds, the description of which has been recorded in the office of the Register of Deeds.

Maintenance and Repair shall mean any improvement or work for which a building permit is not, in most cases, required by city code, which is designed to correct deterioration, decay or damage and restore, as may be practicable, a structure or property to the condition that existed prior to the deterioration, decay or damage.

Master Fee Schedule shall mean a fee schedule maintained by the City which establishes the required fees to be collected for specific planning, zoning, subdivision and similar activities.

National Register shall mean the current National Register of Historic Places established by passage of the National Historic Preservation Act of 1966, 16 U.S.C. 470 and following, as amended.

Noncontributing shall mean a building, site, structure or object that does not add to the architectural qualities, historic association or archeological values of a landmark or landmark district because:

- a. It was not present during the pertinent historic time;
- b. Due to alterations, disturbances, additions or other changes, it no longer possesses integrity, reflects its significant historic character or is capable of yielding important information about the pertinent historic period; or
- c. It does not independently meet the standards and criteria of this chapter.

Nuisance shall mean physical conditions (affecting land, water, groundwater, the air, noise levels or other elements of the environment) that endanger human health or safety, injure persons or property or constitute a clear danger to property.

Object shall mean those constructions that are primarily artistic in nature or are relatively small in scale and simply constructed. While an object may be by nature or design movable, it should be located in a specific setting or environment appropriate to its significant historic use, role or character. Objects include sculpture, monuments, street signs, fence posts, hitching posts, mileposts, boundary markers, statuary and fountains.

Off-Street Parking shall mean an area on a property specifically set aside and constructed to provide for vehicle parking.

Open Space shall mean land outside or not underneath any structure.

Owner or Owners shall mean those individuals, partnerships, firms, corporations, public agencies or any other legal entity holding fee simple title to or sufficient proprietary interest in property, but not including legal entities holding easements or less than fee simple interests. Ownership does not include leaseholds of any nature.

Preservation shall mean the application of measures designed to retain and sustain the existing nature, form, integrity, material and extent of a historically or architecturally important structure, property or district. Preservation may include initial work to halt the process of decay as well as ongoing maintenance of the building, site, structure or object.

Preservation Easement shall mean an easement established for the purpose of preserving historic properties or structures.

Project shall mean:

- a. activities involving the issuance of a lease, permit, license, certificate or other entitlement for use to any party, by the City;
- b. activities of a person which are supported in whole or in part through grants, subsidies, loans or other forms of financial assistance from the City of Hutchinson Landmarks Commission, or instrumentality thereof; and
- c. activities directly undertaken by the City of Hutchinson Landmarks Commission.

Property shall mean an area of land, undivided by any street, alley, railroad, stream or similar physical feature, under single ownership or control, which is or will be occupied by one structure or land use, and any accessory structures and uses. A property could be made up of one or more lots of record, one or more portions of a lot or lots of record, or any combination thereof. This term shall include landscape features.

Protection shall mean the application of measures to defend, guard, cover or shield a building, site, structure or object from deterioration, loss, attack, danger or injury. In the case of buildings, structures or objects, such measures generally are of a temporary nature and usually precede preservation. In the case of archeological sites, protective measures may be temporary or permanent.

Reconstruction/Reconstruct shall mean the reproduction of the exact form and detail of a vanished building, site, structure, object or a part thereof, as it appeared at the pertinent time, using both original and modern materials and based on precise historical documentation and physical evidence.

Rehabilitation/Rehabilitate shall mean the act of returning a building, site, structure or object to a useful state through its repair and/or alteration while retaining the characteristic features of the property which are significant to its historical and architectural value.

Remodel shall mean the modification and modernization of a structure or property without striving to return to or replicate the original historical and architectural character of the structure or property.

Resource shall mean any building, site, structure, object or area that constitutes a source of present and future usefulness.

Restoration/Restore shall mean the act of accurately recovering the form and details, based on precise historical documentation and physical evidence, of a building, site, structure or object as it appeared at a pertinent time, including the removal of improvements that are not appropriate and the replacement of missing or deteriorated features.

Right-of-Way shall mean a strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or another such use.

Sign shall mean any surface, fabric, device or display designed to visually convey information to the general public.

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

Stabilization shall mean taking measures to return an unsafe or deteriorated building, site, structure or object to a safe and secure condition while maintaining the existing form and detail of the building, site, structure or object.

State Historic Preservation Officer (SHPO) shall mean the person who has been designated by law and by the Governor of the State of Kansas to administer the state historic preservation program.

State Historic Preservation Program shall mean the program established by the State of Kansas and approved by the U.S. Secretary of the Interior for the purpose of carrying out the provisions of the National Historic Preservation Act of 1966, as amended, and related laws and regulations.

Street shall mean a right-of-way, other than an alley, dedicated to the public use, which provides principal access to adjacent properties.

Street Lights shall mean lights installed within the public right-of-way, which illuminate public streets and/or sidewalks.

Structure shall mean anything constructed or built, any edifice or building of any kind, or any piece of work artificially built up or composed of parts jointed together in some definite manner, which requires location on the ground or is attached to something having a location on the ground, including swimming and wading pools, covered patios, excepting outdoor areas such as paved areas, walks, tennis courts and similar recreation areas.

Style shall mean specific identifying characteristics of a building, both as it appears to the eye and as it is known to exist in design and structure.

Survey shall mean an architectural and historical examination of historic resources to identify historic properties within an area.

Use shall mean the specific purpose for which a structure or property is utilized.

Article II. Landmarks Commission

Sec. 4-201. Creation of the Landmarks Commission and Purpose.

The Hutchinson Landmarks Commission ("Commission") is hereby created for the purpose of identification, designation, protection, enhancement, preservation and use of historic resources, said purpose being considered a public necessity and in the interest of the culture, prosperity, education and welfare of the people.

Sec. 4-202. Members.

The Commission shall consist of seven members appointed by the Governing Body. Commission members shall either be residents of the City or own property within the City. The Commission shall be composed of both professional and lay members, all of whom have demonstrated an interest, knowledge, or training in fields closely related to historic preservation. Such fields include history, architecture, landscape architecture, architectural history, archeology, planning, real estate, law, finance, building trades, urban design and geography. At least three members of the Commission shall be preservation-related professionals who have experience in such fields as architecture, history, conservation,

curation, engineering, cultural anthropology, landscape architecture, architectural history, planning, archaeology, urban design, geography, real estate, law, finance, building trades or related areas. The Administrator shall maintain a record of the credentials of the Commission members.

Sec. 4-203. Terms.

Each Commission member shall be appointed to a term of three years; provided, that of those first appointed to the Commission, one shall serve a one year term, two shall serve two year terms, and two shall serve three year terms. Should a Commission member resign, the vacancy shall be filled by appointment for the unexpired term only. Commission members may serve consecutively for no more than one partial term plus two, three-year terms. The Mayor, with the consent of the Governing Body, may remove any member of the Commission. Commission members shall serve without compensation but may be reimbursed for necessary expenses incurred in the performance of their duties.

Sec. 4-204. Officers.

Annually, the Commission shall elect a Chairman and Vice-Chairman from its members. The Administrator shall serve as Secretary of the Commission. In the absence of the Chairman and Vice-Chairman, the Secretary may convene a meeting of the Commission. In such case, the first order of business shall be to elect a temporary Chairman who shall conduct the meeting. The Chairman and Vice-Chairman may succeed themselves. The Chairman or Vice-Chairman may resign from office. In such event, the Commission shall elect another member to serve as Chairman for the unexpired term of office.

Sec. 4-205. Meetings.

The times, dates and locations of Commission meetings may be established by the Chairman or a majority of the Commission members. Meeting agendas shall be prepared by the Administrator of these regulations. A simple majority of Commission members shall constitute a quorum of the Commission. There must be a quorum present before the Commission may take any formal action but the Commission may discuss items of business in the absence of a quorum. The minutes of each meeting shall be filed with the State Historic Preservation Office (SHPO). All meetings of the Commission shall be open to the public. The Commission shall meet at least four times per year.

Sec. 4-206. Committees.

The Commission may establish a design review committee and other such additional committees as deemed necessary or convenient to carry out the various functions and duties of the Commission. Said committees shall be comprised of no more than three voting members of the Commission and may include members not on the Landmarks Commission. Committees may meet upon such schedule and for such purposes as established by the Commission.

Sec. 4-207. Staff of the Commission.

The Director of Planning and Development or designee shall provide staff support to the Commission and serve as the Administrator for these regulations. The Administrator shall keep minutes of all meetings, handle correspondence, receive applications and perform other duties as specified herein or as directed by the Commission.

Sec. 4-208. Authority and Responsibilities.

a. The geographic area of authority of the Commission shall be the area contained within the City of Hutchinson Zoning Jurisdiction.

b. The City shall enforce state and local legislation, as appropriate, for the designation and protection of historic properties. The City shall observe any requirements placed on it by the protective clause of the Kansas Historic Preservation Act. The City shall cooperate with the Kansas SHPO in any matters arising under that statute.

c. The Commission shall review all proposed historic nominations for properties and districts located within the Zoning Jurisdiction of the City according to the procedures and regulations contained in this chapter. When the Commission reviews a historic nomination or other actions which are normally evaluated by a professional in a specific discipline and that discipline is not represented on the Commission, the Commission may seek the advice of experts in that discipline before rendering its decision.

d. The Kansas SHPO may, at its discretion and by mutual agreement between the State and the City, delegate specified responsibilities to the Commission and the Administrator.

e. Each member of the Commission shall attend at least one information or training meeting pertaining to historic preservation each year.

f. The City shall maintain a system for the survey and inventory of historic properties. The City shall maintain a detailed inventory of the buildings, sites, structures, objects and districts that have been designated as Hutchinson landmarks or Hutchinson historic districts. All inventory materials shall be available to the public. All inventory materials shall be kept up-to-date. All new surveys and inventories of buildings, sites, structures and objects shall utilize the Kansas Historic Resources Inventory system. All survey efforts shall integrate with the Kansas historic preservation planning process.

g. The City shall provide for adequate public participation in all aspects of the implementation of this chapter, including the process of recommending properties for nomination to historic registers. All meetings of the Commission shall adhere to the provisions of the Kansas Open Meetings Act, K.S.A. 75-4317 and following. All decisions of the Commission or the Governing Body shall be made in a public forum and applicants shall be given written notification of any actions or decisions.

h. The Commission shall administer Certificates of Appropriateness and Certificates of Economic Hardship, in accordance with the provisions of this chapter.

i. In addition to other responsibilities specified in this chapter, the Commission may:

1. Develop and participate in public information programs concerning the value of the preservation of historically and architecturally important structures and properties;
2. Make recommendations to the Governing Body concerning the use of City funds to promote the preservation of historically or architecturally important structures, properties or districts;
3. Review, evaluate and comment on the Hutchinson Comprehensive Plan and other plans, policies and decisions being considered or made by public agencies and which affect historically or architecturally important structures, properties or districts; and
4. Perform any other responsibilities which may be designated by resolution or motion of the Governing Body.

j. To further the purposes of this chapter, the Commission may apply for and receive, with the approval of the Governing Body, any gift, grant, bequest, devise, lease, fee or lesser interest, development right, easement, covenant, contractual right or conveyance, whether in whole or with conditions, limitations or reversions, in any property within the Hutchinson Zoning Jurisdiction. To further the purposes of this chapter, the Commission may apply for, receive or expend, with the approval of the Governing Body, any federal, state or private grant, grant-in-aid, gift or bequest.

1. The Commission shall review this chapter at least every five years. In conjunction with the review, the Commission shall prepare a report to the Governing Body which:
 - a. Makes an assessment of progress in preserving the historical and architecturally important structures and properties within the City limits;
 - b. Analyzes the numbers, types, locations and disposition of applications for designation of landmarks and landmark districts, certificates of appropriateness, demolitions, preservation easements and appeals as provided for in this chapter;
 - c. Contains an assessment of progress and performance in educating the citizenry about the value of historic preservation;

- d. Analyzes the continued validity of any regulations imposed by this chapter; and
- e. Recommends changes in this chapter, if necessary.

Article III. Hutchinson Landmarks and District Regulations

Sec. 4-301. Establishing Hutchinson Landmarks and Historic Districts.

a. There is hereby established a List of Hutchinson Landmarks and Historic Districts (the "List"). The List shall include buildings, sites, structures, objects and districts ("landmark" or "landmarks") located within the Zoning Jurisdiction of the City and designated in accordance with this article as landmarks or historic districts. The List may include landmarks which are listed on the National Register, the Register of Historic Kansas Places or which have special historical or architectural value necessitating their preservation, restoration, reconstruction or rehabilitation. Landmarks may be listed individually or may be designated as a Hutchinson Historic District.

b. There is hereby established a Map of Historic Districts (the "Map"), upon which shall be recorded the boundaries of duly designated Hutchinson Historic Districts. In case of uncertainties regarding boundaries of such districts, they shall be presumed to follow:

1. City boundaries;
2. Centerlines of streets, alleys or public rights-of-way;
3. Lot lines, parcel boundaries or property lines;
4. Centerlines of the main tracks of railroad lines;
5. Centerlines of creeks, streams, rivers or drainage channels; or
6. Specific distances from a street line or other physical features when so indicated on the Map.

c. The List, the Map and all notations, symbols, dimensions and references shown thereon shall be as much a part of this chapter as though fully set forth herein, and they shall be maintained current by the Planning and Development Department.

1. Landmarks and historic districts may include:
 - a. The interior, or any portion thereof, of a structure; provided, that it is customarily open or accessible to the public or is an area into which the public is customarily invited;

- b. A structure or part thereof;
 - c. A property or part thereof;
 - d. An abutting property or part thereof, used as and constituting a part of the premises on which another landmark is situated;
 - e. A landscape feature or aggregate of landscape features; or
 - f. A monument or work of art.
2. Historic districts may include two or more landmarks. Individual landmarks within a historic district shall be designated on the List and may be classified as:
- a. Key Contributing;
 - b. Contributing; or
 - c. Non-contributing

Sec. 4-302. Application for Designation of Hutchinson Landmarks and Historic Districts.

To obtain the designation of a Hutchinson landmark or historic district, a property owner or owners, a developer, an organization, the Commission or the Governing Body may file an application. In most instances, the property owner or owners should approve submission of an application. In cases where the property owner or owners do not submit an application for designation of a landmark, the property owner or owners shall be consulted to seek their approval of the submission of the application. Applications for historic districts shall include written approval of the submission of the application by the owners of at least 50 percent of the property located within the proposed historic district. Written approval may consist of a signature on a petition, separate letters or other form with an original signature executed by the property owner or an authorized agent. The applications shall be filed with the Administrator. The applications shall contain, at a minimum:

- a. The legal description and address of the pertinent structures and/or properties;
- b. The name and address of all owners;
- c. The approximate date of original construction and the date of any major improvement or alteration, if known;
- d. The names of the architect and builder, if known;

- e. A description of the exterior features of the property or structure that are of historical or architectural importance;
- f. Photographs of the structures, features and/or properties.

Sec. 4-303 Designation of Landmarks and Historic Districts.

a. Upon receipt of an application for designation of a Hutchinson landmark or historic district, the following procedures shall apply:

1. The Administrator shall set the date for a public hearing on the application. The hearing shall be held no sooner than 45 days nor later than 60 days following submission of a complete application, and may be held in conjunction with a regular or special meeting of the Commission.
2. The Administrator shall publish notice of such public hearing in the official City newspaper at least 10 days before the hearing date. The notice shall describe the proposed designation in general terms and state the time, date and place of the hearing.
3. The Administrator shall prepare a report which shall be completed and available to the public at least seven days before the hearing date.
4. At least five days before the hearing, the Administrator shall mail or deliver a notice thereof to all owners of buildings, sites, structures or objects proposed to be designated a landmark or included within a historic district, as well as to other interested parties, such as neighborhood associations, the Downtown Partnership and the Building Official. The Administrator shall also mail or deliver such notice to all persons and organizations which have previously requested the same. Such notice shall include the time, date and place of the hearing and shall invite interested persons to appear and be heard. The failure of any person to receive such notice shall not invalidate any action subsequently taken on an application. No building, site, structure or object shall be designated as an individual landmark under the provisions of this section if any owner thereof submits a written protest to the Administrator to such designation on or before the date of the public hearing thereon.
5. The Commission shall conduct the hearing according to its adopted procedures, if any, and consistent with Kansas law. During the hearing, the Administrator shall make such recommendations as he or she deems appropriate. The hearing may be recessed from time to time.

6. The Commission may recommend such action as it deems appropriate to the Governing Body, including a recommendation that an application be made for listing on the National Register or the Register of Historic Kansas Places.
7. The Governing Body shall consider the application at a regular or special meeting, and may, by resolution, designate buildings, sites, structures or objects as landmarks or as a historic district, and direct their addition to the List or the Map, as appropriate. The Governing Body may likewise recommend an application for listing on the National Register or the Register of Historic Kansas Places.
8. Within 10 days after adoption of a resolution designating a landmark or historic district, the Administrator shall mail notice thereof to the owners of each landmark so designated, and shall likewise notify the Building Official of such designation.

b. The Commission may recommend and the Governing Body may designate a landmark or historic district which includes a portion of the structures and/or properties under consideration and described in any notice.

c. The Commission may recommend and the Governing Body may amend or rescind designation of a Hutchinson landmark or historic district in the same manner and by the same procedure as is followed in designation of a landmark or historic district.

d. Action on building or demolition permit applications except in cases where the Building Official has ordered a permit be issued to correct a life/safety threat shall not be delayed if the building or demolition permit application was submitted prior to the submission of a pertinent landmark or historic district application. Otherwise, action on building or demolition permit applications pertaining to buildings, sites, structures or objects proposed to be designated landmarks or included within a landmark district shall be delayed until final action has been taken on such designation.

e. The Administrator shall cause to be recorded in a timely manner at the office of the Reno County Register of Deeds a record of any designation of a landmark or historic district, amendment of such a designation or rescission of such a designation.

Sec. 4-304. Criteria for Designation.

In considering an application for landmark or historic district designation, the Commission and Governing Body shall consider the following review criteria.

- a. The building, structure, site, land, area, district or object is at least fifty years old, retains a significant degree of integrity and meets one or more of the following criteria:

1. Is associated with events that have made a significant contribution to the broad pattern of history of the City, County, State or Nation;
 2. Is associated with a significant person or group of persons in the history of the City, County, State or Nation;
 3. Embodies distinctive characteristics of a type, period or method of construction; represents the work of a master builder or architect; possesses high artistic value or represents a distinguishable entity whose components may lack individual distinction;
 4. Yields or is likely to yield information important to the history or pre-history of Hutchinson.
- b. Buildings, structures, sites, areas, districts or objects less than 50 years old may be considered for nomination, provided they are of exceptional importance.

Sec. 4-305. Preservation Fund.

a. There is hereby established the Hutchinson Preservation Fund (the "Fund"). The Fund shall be administered as directed by and according to any limitations and regulations imposed by the Governing Body and according to State law. The City may apply for, receive and place in the Fund any federal, state or private fees, grants, grants-in-aid, gifts, donations or bequests. The Governing Body may budget and incorporate City revenues into the Fund. Fees and fines imposed according to this chapter shall be placed in the Fund.

b. The Commission may recommend and the Governing Body may approve, on a case by case basis, use of the resources of the Fund for:

1. The purchase of fee simple title to landmarks or properties located in a historic district;
2. The purchase of preservation easements regarding landmarks or properties located in a historic district;
3. The purchase of fee simple title to landmarks or properties located in a historic district with the eventual objective of property resale to a preservation association;
4. Payment of installments and fees according to a contract to purchase fee simple title to landmarks or properties located in a historic district or a preservation easement regarding a landmark or property located in a historic district;

5. Grants and/or loans to owners, developers and organizations for preservation and/or rehabilitation of landmarks and properties in a historic district;
6. Grants and/or loans to organizations for programs and projects designed to achieve one or more of the purposes of this chapter;
7. The maintenance of landmarks and properties in historic districts or the maintenance of preservation easements;
8. The costs of conducting and preparing surveys of historically and architecturally important buildings, sites, structures and objects;
9. The costs of preparing nominations of buildings, sites, structures or objects to the National Register or the Register of Historic Kansas Places;
10. The costs of the preparation and presentation of reports, instructions, brochures, meetings, maps, press releases, conferences and other measures designed to acquaint citizens, owners and developers with the purposes of this chapter; and
11. Reasonable administrative, planning, architectural, engineering, financial, real estate, appraisal and/or legal costs associated with the purchase of property, the purchase and enforcement of preservation easements, the sale of property, the negotiation of contracts and the preparation of grant applications and legal actions.

c. The Commission may recommend and the Governing Body may approve criteria, standards, rules, limitations and regulations for projects and programs established pursuant to the requirements of this section.

Sec. 4-306. Maintenance of Landmarks and Properties in Historic Districts.

a. In order to preserve, protect and enhance landmarks and historic districts, such properties should receive reasonable care, maintenance and upkeep. In general, the City encourages, and by other references may require, owners, tenants or lessees to correct deterioration, decay, damage, structural defects and nuisances including:

1. Structural or property features which may fall and injure members of the public or may fall and cause damage to property;
2. Deteriorated or inadequate foundations, flooring or floor supports;

3. Members of walls, partitions or other vertical supports that are split, leaning, listing or buckled due to defective material or deterioration or which are of insufficient size or strength to carry imposed loads with safety;
4. Members of ceilings, roofs, ceiling and roof supports or other horizontal members which are sagging, split or buckled due to defective material or deterioration or which are of insufficient size or strength to carry imposed loads with safety;
5. Fireplaces or chimneys which list, bulge or have settled due to defective material or deterioration or which are of insufficient size or strength to carry imposed loads with safety;
6. Deteriorated, crumbling or loose plaster, mortar, cement or similar material;
7. Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken windows and doors or weathering due to the lack of paint or other protective covering; and
8. Deteriorated or ineffective sanitary sewer lines, septic tanks, septic systems or other sanitary sewage systems.

b. The Commission may recommend and the Governing Body may approve programs to encourage and assist owners to care for and maintain landmarks and properties in historic districts. Resources for such programs may come from the preservation fund. Such programs may include grants and loans to owners or organizations for:

1. Maintenance and cleanup projects;
2. Establishment of libraries of how-to materials;
3. Establishment of a tool lending program; and
4. The joint purchase, in bulk and at a discount, of maintenance equipment and supplies.

Sec. 4-307. Preservation Easements.

Preservation easements on the facades of buildings designated as landmarks or located within historic districts may be acquired by the City or other appropriate group through purchase, donation or condemnation pursuant to the laws of the State of Kansas. A preservation easement includes any easement, restriction, covenant or condition running with the land designed to preserve or maintain the significant features of a landmark.

Article IV. Certificate of Appropriateness

Sec. 4-401. When Certificate Required.

a. Nothing in this Chapter shall be construed to prevent the ordinary maintenance or repair of a structure or building.

b. A Certificate of Appropriateness shall be required before the following actions affecting the exterior or interior architectural appearance of any landmark or property within a historic district, as specified below:

1. Any exterior construction, alteration, or removal requiring a building permit from the City.
2. Any demolition in whole or in part requiring a demolition permit from the City.
3. Any construction, alteration, demolition, or removal affecting a significant exterior architectural or historical feature, as specified in the ordinance designating the landmark or historic district. However, such requirement shall not apply to such repairs and preventive measures as are minimally required to prevent additional loss or harm to the structure resulting from damage to the structure by accident or natural causes.
4. Any construction, alteration, demolition or removal affecting a significant interior historical feature, as specified in the ordinance designating the landmark or historic district.

Sec. 4-402. Applications for Certificate of Appropriateness.

a. Applications for review of construction, alteration, demolition or removal for which a Certificate of Appropriateness is required shall be initiated on a form provided by the Administrator. A complete Certificate of Appropriateness application and accompanying materials shall be submitted to the Planning and Development Department. The Administrator will review the application and determine if the proposed work can be reviewed administratively (minor project) or if review is required by the Landmarks Commission (major project). Said determination shall be made based upon the City of Hutchinson Project Review List for Historic Resources. In cases where Landmarks Commission review is required, said application shall be submitted no less than 15 days prior to the scheduled meeting of the Landmarks Commission.

b. In cases of Demolition by Neglect, a Certificate of Appropriateness shall be considered by the Commission in accordance with the provisions of this Chapter.

Sec. 4-403. Review Process.

a. Landmarks Commission Review (Major Project)

1. A Certificate of Appropriateness for a project requiring Landmarks Commission review shall be submitted to the Administrator, who shall prepare a report and make a recommendation to the Commission. The Commission shall review the application and recommend approval, approval with conditions, or denial within 45 days of the receipt of the complete application. The Administrator shall notify the applicant of the Commission's decision along with the Certificate of Appropriateness in the case of approval, and provide a copy to the applicant and the Building Official. If no action has been taken by the Commission within 45 days following receipt of a complete application, a building permit may be issued by the City for the project.
2. The Chair of the Landmarks Commission may appoint a Design Review Committee to assist applicants with project design. The Design Review Committee may be comprised of present and former members of the Landmarks Commission, as well as other members of the public with a specific area of expertise related to Historic Preservation. Said committee shall be authorized to make recommendations for modifications to projects that would make them compatible with the *Secretary of the Interior's Standards for Rehabilitation* in advance of the Landmarks Commission meeting.

b. Administrative Review Project (Minor Project) – A Certificate of Appropriateness for a Minor Project shall be reviewed and approved or denied by the Administrator. The Administrator shall notify, in writing, the applicant and the Building Official of the decision regarding the project. If no action has been taken by the Administrator within 15 days of receipt of a complete application, a building permit may be issued by the City for the project.

Sec. 4-404. Denial of Certificate of Appropriateness.

a. A denial of a Certificate of Appropriateness shall be accompanied by a statement of the reasons for the denial. The Commission or Administrator shall make recommendations to the applicant concerning changes, if any, in the proposed action that would cause the Commission/Administrator to reconsider its denial and shall confer with the applicant and attempt to resolve any differences as quickly as possible. The applicant may submit an amended application that takes into consideration the recommendations of the Commission or the Administrator.

b. Any person dissatisfied with a determination by the Administrator or Commission concerning a Certificate of Appropriateness may file an appeal to the next

higher authority within 15 days of the date of notification of that determination. The order of authority for appeals shall be: 1) Administrator, 2) Landmarks Commission, and 3) City Council. Appeals shall require a public hearing and be acted upon within 30 days of receipt of the appeal. Should the appeal fail to be considered within 30 days, the appeal shall be deemed granted.

Sec. 405. Standards for Review.

a. In considering an application for a Certificate of Appropriateness, the Commission and the Administrator shall use the *Secretary of the Interior's Standards for Rehabilitation*, in addition to any design criteria in this chapter, or other criteria adopted by the City or in the ordinance designating the landmark or historic district. The *Secretary of the Interior's Standards for Rehabilitation* are as follows:

1. A property shall be used for its historic purpose or placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment;
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided;
3. Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historic development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken;
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved;
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved;
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence;
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible;

8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken;
9. New additions, exterior alterations, or related new construction shall not destroy historical materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the historic integrity of the property and its environment;
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Sec. 4-406. Design Criteria.

a. The following are specific design criteria used to promote the standards set forth in Sec. 4-405 of this Chapter. The purpose of these design criteria is to encourage preservation of intact significant properties; restoration of significant properties that have already undergone insensitive alterations; and new construction, as long as such complements the existing buildings and streetscapes. It is not the intention of these criteria to discourage new architectural styles.

b. The Commission shall prepare and adopt specific design criteria as it deems necessary to supplement the provisions of this ordinance for the review of Certificates of Appropriateness. The Commission shall prepare and adopt design criteria in accordance with the review standards set forth in Sec. 4-405 of this Chapter. Within each of the designated categories, the design criteria will be applied more stringently to properties of greater significance than those with lesser significance as determined by their respective designation. The Commission may recommend amendments and supplements to the criteria used for review of applications for Certificates of Appropriateness to the City Council. The City Council must first approve additional design criteria not listed in this chapter, and any changes thereto, before the criteria or changes shall become effective.

c. **Demolition, Relocation, and Land Surface Change.**

1. Demolition in whole or in part of an individual landmark or any contributing or key contributing structure within a historic district shall not be permitted. Exceptions are allowed only if a structure has been substantially damaged through fire or deterioration, and if there is reasonable proof that it would not be economically or physically feasible to rehabilitate. Other exceptions may be allowed if a structure does not possess the integrity, originality, craftsmanship, age or historical significance to merit preservation. However,

demolition of past additions which have not gained historical significance and which obscure original elements or facades are encouraged, as long as the intention is to restore such elements or facades. Demolition under this chapter shall be subject to Sec. 21-701, et seq. of the Hutchinson City Code, as amended.

2. Structures should not be removed from their original site. Exceptions will be allowed only if there is substantial evidence that it would not be practical or economical to utilize the building on its present site. If a structure lies in the path of a public improvement project involving the city and if the building is worthy of preservation by virtue of its integrity, originality, craftsmanship, age or historical significance, relocation may be considered as an alternative.
3. Major and substantial change of land surface within the boundaries of a landmark or landmark district should not be permitted. Exceptions will be allowed only if there is substantial evidence that the change would not be detrimental to the historical and architectural character of surrounding structures, discovered archeological resources or significant landscaping.

d. Signage. All signage requiring a sign permit shall be reviewed in accordance with these regulations. The following criteria shall be used for evaluation:

1. Historic Signs.
 - a. Signs that are individually designated as a landmark or specifically described in the landmark designation narrative for a landmark feature or district shall be reviewed in accordance with the provisions of this Chapter.
 - b. Signs should be maintained if they are determined to be an original part of the building or if they have acquired significance by virtue of their age, design, materials, craftsmanship, or historical significance.
2. New Signs.
 - a. New signs should be designed and placed so as to appear to be an integral part of the building design, in proportion to the structure and environment, and to respect neighboring properties within historic districts and shall be reviewed in accordance with the provisions of this Chapter.

- b. Obscuring or disrupting important design elements is discouraged. Signs should be designed with appropriateness relative to the services of the establishment served.
 - c. Illumination of signs should be properly shielded or diffused so as to eliminate glare and be of a low enough wattage to not detract from or set apart the structure.
 - d. Descriptive signs as an integral part of the structure are encouraged. Such signs could include building dates, historic descriptions, commemorations, etc.
 - e. Free-standing signs may be permitted, if appropriate and necessary to preserve the character of the landmark or landmark district.
- e. Accessory Structures and Landscaping-
- 1. Accessory structures to a designated landmark or within a historic district shall be appropriate to and compatible with the architectural features of the landmark or historic district. Structures accessory to noncontributory buildings within a designated historic district shall be so designed as to not detract from the historical or architectural character of the district.
 - 2. Landscaping for a designated landmark property or for property located within a historic district should be in scale with the landmark or district and should not obstruct historically significant features.

Article V. Certificate of Economic Hardship

Sec. 4-501. Purpose.

A Certificate of Economic Hardship serves as an alternative to a Certificate of Appropriateness wherever a Certificate of Appropriateness would otherwise be required. The purpose of the Certificate of Economic Hardship is to provide relief where the application of this Chapter would otherwise impose undue hardship.

Sec. 4-502. Application for Certificate.

a. Application for a Certificate of Economic Hardship shall be made on forms provided by the Administrator. Such application may be made in conjunction with, or separately from, an application for a Certificate of Appropriateness or upon the denial of a Certificate of Appropriateness. The Commission shall schedule a public hearing concerning such applications within 30 days of the receipt of a complete application.

b. The Administrator shall assist all applicants in the preparation of applications for Certificates of Economic Hardship. Every reasonable effort shall be made to limit the costs to the applicant and to assure efficient processing of the application. The Commission shall require the submission of financial documents, professional reports, and expert testimony only when they are necessary to review an application.

c. The notification and appeal provisions of this Chapter shall apply to applications for Certificate of Economic Hardship.

d. The Commission may solicit expert testimony or request that the applicant make submissions concerning any or all of the following information before it makes a determination on the application:

1. Estimate of the cost of the proposed construction, alteration, demolition or removal, and an estimate of any additional cost that would be incurred to comply with the recommendations of the Commission for changes necessary for the issuance of a Certificate of Appropriateness.
2. A report from a qualified or bonded person with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation.
3. Estimated market value of the property in its current condition; after completion of the proposed construction, alteration, demolition or removal; after any changes recommended by the Commission; and, in the case of a proposed demolition, after renovation of the existing property for continued use.
4. In the case of a proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property.
5. If the property is income-producing, the annual gross income from the property for the previous two years; itemized operating and maintenance expenses for the previous two years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period.
6. Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, for the previous two years.
7. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property.

8. Any listing of the property for sale or rent, price asked and offers received, if any, within the previous two years.
9. Assessed value of the property according to the two most recent assessments.
10. Real estate taxes for the previous two years.
11. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture or other entity.
12. Any other information considered necessary by the Commission to make a determination as to whether the property does yield or may yield a reasonable return to the owners.

Sec. 4-503. Determination.

The Commission shall review all the evidence and information required of an applicant for a Certificate of Economic Hardship and make a determination within 30 days of receipt of a complete application whether the denial of the application will deprive the owner of the property of reasonable use of, or reasonable economic return on, the property. Written notice of the determination shall be provided in the same manner as notification of a determination concerning a Certificate of Appropriateness.

Sec. 4-504. Appeal.

Any person dissatisfied with a determination by the Commission concerning a Certificate of Economic Hardship may file an appeal to the City Council within 15 days of the date of notification of that determination. The City Council shall consider and act on the appeal request within 30 days of receipt of the appeal. Should the City Council fail to act within 30 days, the appeal shall be deemed granted.

Article VI. Demolition by Neglect

Sec. 4-601. Provisions

In the event the Building Official determines that a landmark or a contributing structure located in a historic district is unsafe or dangerous, pursuant to Sec. 21-701, et seq. of the Hutchinson City Code, the following provisions shall apply:

- a. The Building Official shall provide a copy of the posting and notice of hearing to the Administrator. Notification shall follow the process outlined in Sec. 21-

703 of the Hutchinson City Code, except that additional time shall be added for Historic Review by the Landmarks Commission.

- b. If the property owner elects to correct deficiencies, the owner shall obtain a Certificate of Appropriateness in accordance with these regulations. If the property owner elects not to correct deficiencies or if the property owner fails to complete the repairs approved by the Certificate of Appropriateness within the timeframe established by Sec. 21-703 of the Hutchinson City Code, the Commission shall conduct a review for Demolition by Neglect.
- c. In the event that the Commission finds that the corrective actions needed to return the structure to a safe condition would impose a substantial hardship on the owner or any or all persons with any right, title or interest in the subject property, then the Commission shall establish a period of 45 days and direct the Administrator to seek alternative methods to preserve the landmark or contributing structure located within a historic district.
- d. If no alternative is found to preserve the structure without undue hardship to the owner, approval of the Demolition by Neglect shall be granted and a demolition permit may be issued.
- e. Any requirements imposed upon an applicant by the Commission under this section may be appealed to the City Council.

Article VII. Administration

Sec. 4-701. Administrator.

The Governing Body hereby appoints the Director of Planning and Development or the Director's designee as the Administrator of this chapter. The Administrator is authorized to enforce and carry out all provisions of this chapter. The Administrator is authorized to develop application forms and establish procedures consistent with this chapter. The Administrator has the following additional powers and responsibilities:

- a. Make determinations as to the type of Historic Review to be conducted – Administrative (Minor) or Landmarks Commission (Major).
- b. Perform Historic Review for Administrative (Minor) Review projects and make and file appropriate findings.
- c. Receive, review, process, prepare reports and recommendations and refer to the Commission and the Governing Body applications for designation of landmarks and historic districts, building permits, demolition and clearance permits, Certificates of Appropriateness, preservation easements and appeals as provided for in this chapter.

- d. Record and file approved landmark and historic district designations, Certificates of Appropriateness, Certificates of Economic Hardship, preservation easements and decisions on appeals.
- e. Request revocation by the Building Official of any permit mistakenly issued due to factual errors or contrary to the provisions of this chapter.
- f. Maintain an up-to-date copy of the Map and List.
- g. Maintain agendas, minutes and records of all meetings of the Commission, including voting records, attendance, resolutions, findings, determinations and decisions.
- h. Maintain a record of attendance for Landmarks Commissioners at training sessions.

Sec. 4-702. Landmark Determination.

Before the Building Official may issue a building permit for any development designated as a Landmark or located in an Historic District, the Administrator must make a landmark determination as to whether the proposed project requires Administrative Historic Review or Landmarks Commission Historic Review. No structure or property so designated or located may be occupied or used in a different manner unless the Administrator has made a landmark determination and the appropriate level of Historic Review is conducted. Landmark determinations shall not authorize any action not in conformance with this chapter. Landmark determinations shall not constitute a defense in any action to abate an unlawful structure or property.

Sec. 4-703. Reports.

The Administrator shall be responsible for the preparation of reports as required in this chapter. The reports may summarize the applicable sections of this chapter, describe the historical and architectural significance of pertinent structures and/or properties, indicate the physical condition of the structures and/or properties under consideration, record recent real estate transactions in the neighborhood, list the assessed value of the structures and/or properties under consideration, record whether property taxes have been paid for the structures and/or properties, list positive and detrimental effects on structures and/or properties if an application is approved or if an application is not approved and provide other appropriate data and information. The report also may contain the recommendations of the Administrator. All recommendations shall be made in consideration of the City's comprehensive plan, zoning requirements, projected public improvements and other policies and plans. The staff report shall be completed at least five days prior to the meeting at which the case will be discussed.

Sec. 4-704. Fees.

For the purpose of defraying processing costs, the Administrator is authorized to require and accept payment of fees for historic review, landmarks designations, certificates of appropriateness, certificates of economic hardship, demolition and clearance permits, appeals and establishment of preservation easements. Such payment shall be made at the time an application is submitted, when review of a case commences or as otherwise specified. Said fees shall be established by the Master Fee Schedule, as adopted by the Governing Body, and may be based upon notification costs, number of structures involved and other factors that impact processing costs. All fees received shall be placed in the Preservation Fund.

Sec. 4-705. Enforcement.

a. In the event that an alteration is made to any structure or property or any structure or property is demolished or cleared in violation of the provisions of this chapter, the City may institute an appropriate action or proceeding to prevent or abate such unlawful action. The imposition of any penalty hereunder shall not preclude the City from instituting any proper action or proceeding to require compliance with the provisions of this chapter and with administrative orders and determinations made hereunder.

b. The Administrator shall give written notification of any violation of this chapter to a property owner, lessor, trustee or other legally responsible party. The notification shall describe and explain in clear, precise terms the nature of the violation. The property owner, lessor, trustee or other legally responsible party shall, within 30 days, correct such violation or give satisfactory evidence that steps have been taken that will lead to correcting such violation within a specified time period. The Administrator must approve the specified time period for correction of such violation as being fair and reasonable. The responsible party may elect to apply for a certificate of economic hardship under the provisions of this chapter in lieu of correcting the violation. If the certificate is not granted, the compliance schedule will be reinvoiced.

c. The City may abate a violation of this chapter; provided, that notification of a violation has been correctly issued and the 30-day time period has elapsed. The cost of abating a violation by the City may be assessed as a special assessment against the parcel on which the structure is located. The City Clerk and the County Clerk shall extend the same on the tax rolls of the County against the lot or parcel.

d. Any person violating any of the provisions of this chapter shall be guilty of a Class A misdemeanor as defined in Sec. 24-901, et seq., of the Hutchinson City Code, as amended. Each day or portion thereof during which any such violation is committed, continued or permitted shall constitute a separate offense. Any fines collected by reason of violations of this chapter shall be placed in the Preservation Fund.

e. The City may bring an action to require the rebuilding or restoration of a building, site, structure or object, or any part thereof, by any person who alters or improves any building,

site, structure or object, or any part thereof, in violation of the provisions of this chapter. Such action shall be in addition to and not in lieu of any criminal prosecution and penalty.

Sec. 4-706 Appeals.

a. Any person aggrieved by, or any office of the City, a governmental agency or other entity affected by, any decision of the Administrator or Landmarks Commission made in administering this chapter may apply for an Appeal. Appeals shall be heard by the City Council.

b. Applications for Appeal shall be filed with the Administrator. Applications shall be filed within 15 days after the Administrator or Commission made the pertinent decision, order, requirement or determination. Upon receipt of an application for appeal, the following procedures shall apply:

1. The Administrator shall set a reasonable time and place for a public hearing regarding the application. The Administrator shall publish a notice of the hearing in the official City newspaper at least 10 days prior to the hearing. The notice shall contain the time, place and subject of the hearing. Copies of the notice shall be made to each party to the application and to the Commission.
2. Prior to the hearing, the Administrator shall notify the Governing Body of the case, transmit copies of the application, forward copies of any associated correspondence and provide copies of other pertinent reports and materials.
3. The Governing Body shall conduct the hearing according to any adopted procedures and consistent with Kansas law. The hearing may be recessed from time to time. The Governing Body shall evaluate Appeal requests to determine if there are feasible and prudent alternatives to the project. Feasible and prudent alternative solutions are those that can be reasonably accomplished and that are sensible or realistic. Factors that shall be considered when determining whether or not a feasible and prudent alternative exists include, but are not limited to, the following:
 - a. Technical issues;
 - b. Design issues;
 - c. The project's relationship to the Comprehensive Plan;
 - d. Economic issues: and
 - e. Planning issues or alternatives.

4. The Governing Body shall make a ruling on the application, if not immediately at the conclusion of the hearing, then no later than 15 days after the hearing date. The Governing Body may affirm, reverse in whole or in part, or modify any decision, order, requirement or determination of the Administrator or the Commission. The Governing Body may attach appropriate conditions. The Governing Body may issue or direct the issuance of a permit.
5. All rulings of the Governing Body shall be final and binding on all parties. Any decision of the Governing Body may be appealed to the District Court.

Sec. 4-707. Severability.

If for any reason any part, section, subsection, sentence, clause or phrase of this chapter, or the application thereof to any person or circumstance, is declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this chapter.

SECTION 2. That the original Chapter 4 – Historic Preservation of the Hutchinson City Code is hereby repealed.

SECTION 3. This ordinance shall take effect and be in force from and after its passage and publication once in the official City newspaper.

PASSED BY THE GOVERNING BODY, this 1st day of March, 2016, for the City of Hutchinson, Kansas.

Jade Piros de Carvalho, Mayor

ATTEST:

Karen Weltmer, City Clerk