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**CHAPTER 1335**
**HISTORIC PRESERVATION REGULATIONS**

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**1335.01 Designation; Title**

This chapter shall be Chapter 1335 of the Code of the City of Niagara Falls and may be cited as the “Historic Preservation Law of the City of Niagara Falls.”

**1335.02 Authority**

In accordance with § 96-a of the General Municipal Law of the State of New York, entitled “Protection of historical places, buildings and works of art,” and Article 5-K of the General Municipal Law of the State of New York, entitled “Historic Preservation,” the City of Niagara Falls has authority to provide by local law, regulations, special conditions and restrictions for the protection, enhancement, perpetuation and the use of places, districts, sites, buildings, structures, works of art and other object having special character or special historical or other aesthetic interest of value. Pursuant to that authority, the Planning Board recommended and City Council adopted this chapter setting forth standards to be followed in historic preservation.

**1335.03 Purpose**

It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of landmark sites, historic structures, and/or districts are necessary to promote the economic, cultural, educational and general welfare of the public. Inasmuch as the identity of a place is founded in its past and inasmuch as Niagara Falls has many significant historic, architectural and cultural resources that constitute its heritage, this chapter is intended to:

- Protect and enhance the landmarks and historic districts that represent distinctive elements of Niagara Falls' historic, architectural and cultural heritage;
- Foster civic pride in the accomplishments of the past;
- Protect and enhance Niagara Falls' attractiveness;
- Support and stimulate the city's economy;
- Stabilize and improve property values.
- Ensure harmonious, orderly and efficient growth and development of the city, and;
- Promote the use of historic resources for education, pleasure and welfare of the citizens of the city and the state.

#### **1335.04 Historic Preservation Commission**

- A. There is hereby created a commission, to be known as the "City of Niagara Falls Historic Preservation Commission."
- A. The Commission shall consist of seven (7) members. Commission members shall serve terms of four (4) years, except for the initial term, in which four (4) members shall serve terms of four (4) years and three (3) members shall serve terms of two (2) years.
- A. The Mayor shall appoint three (3) individuals to serve on the Commission— two (2) individuals for 4-year terms and one (1) individual for a 2-year term. The City Council shall appoint four (4) individuals to serve on the Commission— two (2) individuals for 4-year terms and two (2) individuals for 2-year terms. Thereafter, the Council or the Mayor shall make appointments to fill vacancies, according to their original appointments, for succeeding four-year terms. Appointments to vacancies on the Commission shall be to fill an un-expired term or for a full term if no un-expired term remains.
- A. The Commission shall consist of the following City residents, and if practicable, they shall have the following occupations:
1. At least one (1) shall be an architect.
  1. At least one (1) shall be a historian.
  1. At least one (1) shall be a licensed real estate professional.
  1. At least one (1) shall be a licensed professional engineer.
  1. All members shall have demonstrated significant interest and commitment to the field of historic preservation.
  1. The Director of Inspections and the Director of Community Development, or their designees, shall be nonvoting, ex officio members of the Commission.
- A. The Chairperson and the Vice-Chairperson shall be elected by and from voting members of the Commission. The terms of office shall be two (2) years. If the Chairperson or Vice Chairperson cannot fulfill his or her term of office, a Chairperson or Vice Chairperson shall be elected by and from the membership to fulfill the remainder of the term until the next regular election.

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- A. If any Commissioner resigns or otherwise cannot fulfill his or her term of office, the term appointment process in (C) shall be followed.
- A. The Vice-Chairperson shall ensure that minutes of all Commission meetings are suitably recorded, prepared and distributed.
- A. The powers of the Commission shall include:
1. To conduct an initial comprehensive survey of properties within the City and to conduct additional surveys as may be necessary to further the purposes of this section.
  1. To recommend designation of historic landmarks, sites and structures and districts to the City Council for its consideration.
  1. To recommend to the City Council and Mayor that the City of Niagara Falls acquire the fee simple or any lesser interest, development right, easement, covenant or other contractual right of a landmark site or historic structure by purchase, gift, grant, bequest, devise, lease or otherwise as necessary to carry out the purposes of this Chapter.
  1. To recommend to the City Council and Mayor that the City of Niagara Falls restore, operate, lease, or sell a landmark site or historic structure. Leases or sales of such landmark sites and historic structures shall be upon such terms and conditions appropriate to ensure the maintenance of the historic quality of the landmark site or historic structure.
  1. To make recommendations to the City Council concerning the utilization of public and/or private funds to promote preservation of landmarks, historic structures, and/or historic districts within the City.
  1. To promulgate rules and regulations as necessary for the conduct of its business.
  1. To increase public awareness of the value of historic, cultural and architectural preservation by developing and participating in education programs.
  1. To approve or disapprove applications for Certificates of Appropriateness and for hardship.
- A. The Commission shall meet at any time on the call of the Commission Chair, or the written request of any two (2) Commission members. The Commission must meet at least once quarterly.
- A. A quorum for the transaction of business shall consist of a majority of the Commission members, but not less than a majority of the fully authorized membership may grant or deny a certificate of appropriateness.
- A. The Director of Community Development, or designee, shall serve as the secretary to the Commission.

### **1335.05-1 Criteria for Designation of Historic Landmarks, Sites and Districts**

- A. The Commission may recommend designation of an individual structure as a historic structure, subject to City Council approval, if the structure:
- Is associated with the life of an individual, or a group of people, or events significant in the national, state or local history; or

- Embodies the distinctive characteristics of an architectural style, a period, or a method of construction; or
  - Represents the work of an acclaimed builder, architect, designer, or landscape architect; or
  - Represents a significant or distinguished entity but whose physical components may otherwise lack individual or special distinction; or
  - Because of unique location or singular physical characteristic, represent an established and familiar visual feature of the neighborhood.
- A. The Commission may recommend designation of a property or a group of properties as a landmark site, subject to City Council approval, if the site contains a significant historical or cultural association, such as a settlement, battlefield, cemetery, church, birthplace, or former transportation facility; or may yield information important to area history or provide scientific value due to an archaeological, paleontological, botanical or geological resource.
- A. The Commission may recommend designation of a property or a group of properties as a historic district, subject to City Council approval if the property or district:
- Is a geographically definable area representing a distinctive style of architecture, or pattern of construction, or a period of urban development; and
  - Contains one or more of the criteria found under A. and B. above; and
  - By reason of possessing such qualities, it constitutes a distinct section of the City.

#### **1335.05-2 Procedures for Designation of Historic Landmarks, Sites and Districts**

- A. The Historic Preservation Commission may act on its own initiative or upon application from the owner of the proposed landmark, site or property within the proposed district, to consider designation of an historic landmark, site, structure or district.
- A. If the proposed action is upon application from a property owner, the owner shall submit an application for designation to the Commission. If the proposed action is on its own initiative, the Historic Preservation Commission shall prepare a notice of proposed designation. Such application or notice shall contain:
1. The name and address of the property owner or owners;
  1. The Assessor's parcel number and address of the landmark site or historic structure, or the boundaries of the proposed historic district with the Assessor's parcel numbers and addresses of properties within such boundaries;
  1. Any available surveys, sketches, photographs or drawings of the property or properties;
  1. A legal description of the property or district;
  1. The zoning of the property or properties;
  1. A general statement of the current condition of the property or district;
  1. The Historic Preservation Commission's proposed action or action requested by the owner, and;
  1. Any additional information as the Historic Preservation Commission shall deem necessary.

- B. The application or notice of a proposed designation shall be sent to the City departments listed below, and to any other county or state agency as the Commission determines to be appropriate. The application or notice shall be given for the purpose of allowing the departments or agencies an opportunity to provide comments on the proposed designation. Any comments received shall be made part of the record.
- Engineering Department
  - Community Development Department
  - Assessors Department
  - Planning Board
  - Law Department
- C. If acting on its own initiative, the Commission may at any time terminate the proceeding for designation if the Commission determines that designation is not appropriate.
- D. Upon receipt of a complete application (or notice), the Commission shall set a public hearing date and shall send notice of public hearing for the proposed designation to the City Clerk. The City Clerk shall publish notice of the public hearing in the City's designated official newspaper for the proposed action at least ten (10) days in advance of any public hearing, and shall mail the notice to the owner(s) of any property(ies) proposed for historic designation or of each property to be included in the proposed district. The notice shall announce the proposed action and the date, time and location of the public hearing.
- E. Once the Historic Preservation Commission has accepted an application or issued a notice of a proposed designation for a landmark site or historic structure, no demolition permit shall be issued by the Director of Inspections, except for emergency work pursuant to Section 1133.09 of Chapter 1133 of the Codified Ordinances. The Director of Inspections shall not issue a building permit for exterior alterations or exterior construction at any such proposed landmark site or historic structure until a final determination on the proposed designation has been reached. The Director of Inspections may issue a building permit for interior construction, or emergency repairs provided the Commission receives prior notification.
- F. At the public hearing, the Commission, the property owner(s) and any interested parties may present testimony or documentary evidence at the hearing, which will become part of a record regarding the historic, architectural or cultural importance of the proposed landmark site, historic structure, or historic district. The record may also contain staff reports, public comments or other evidence offered outside the hearing.
- G. Within thirty (30) days of the conclusion of the public hearing, the Commission shall approve or disapprove each designation, and shall forward its recommendation to the City Council. If the Commission does not act in the time required, the designation shall be deemed disapproved.
- H. At its next scheduled meeting after receipt of any recommendation from the Commission, the City Council shall consider the designation of the landmark site or historic structure, or the designation of the historic district. A majority vote shall be required by the City Council for the designation. The Mayor shall approve or veto said designation as provided by law.
- I. The approval or denial by the City Council of a proposed designation as set forth herein shall be final.
- J. Upon approval of said designation by the Council and Mayor, the Commission shall file notice of each property designated as a landmark site or historic structure and/or of the boundaries of each designated historic district, with the Niagara County Clerk, the New York State Historic Preservation Officer, the City Assessor's Office, and the Niagara Falls Planning Board.

- K. Minutes of any business conducted by the Historic Preservation Commission shall be kept on file by the Niagara Falls City Clerk for public inspection.

### **1335.06 Sale of a City-owned Landmark Site or Historic Structure**

- A. The Historic Preservation Commission shall review proposed sale of any landmark site or a historic structure owned by the City, and the Commission shall send its recommendation to the Planning Board within sixty (60) days of the next meeting of the Commission. The Planning Board may not act until it receives the Commission's recommendation.
- B. A public notice of the availability by sale of a City-owned landmark site or a historic structure must be published by the City Clerk in the City's designated official newspaper at least thirty (30) days prior to the anticipated date of availability.
- C. Sale of a City-owned landmark site or a historic structure shall be for fair and adequate consideration of such sites or structures, including the expenses incurred by the City with respect to the acquisition and/or restoration of such sites or structures.

### **1335.07-1 Certificates of Appropriateness: General Requirements**

No person shall carry out, and no building permit shall be issued for, any exterior alteration, restoration, reconstruction, excavation, grading, demolition, new construction or moving of a designated landmark site or historic structure, whether within or outside a historic district, nor shall any person make any material change to such property, its light fixtures, signs, sidewalks, fences, steps, paving or other exterior elements which effect the appearance or cohesiveness of the landmark site, historic structure, or historic district without first obtaining a Certificate of Appropriateness from the Historic Preservation Commission. The Certificate of Appropriateness required by this chapter shall be in addition to and not in lieu of any building or other permit that may be required by any other ordinance of the City of Niagara Falls.

### **1335.07-2 Certificate of Appropriateness: Criteria**

- A. In passing upon an application for a Certificate of Appropriateness, the Historic Preservation Commission shall not consider changes to the interior of buildings, unless these are normally open to the public.
- B. The Commission's decision shall be based upon the following principles:
1. Features, which contribute to the character of the landmark site, historic structure, or district, shall be retained with as little alteration as possible.
  2. Any alteration of existing features shall be compatible with its historic character as well as with the surrounding property.
  3. New construction shall be compatible with the property in which it is located and/or surrounding historic district.
- C. In applying the above principles of compatibility, the Commission shall consider the following factors:
1. The general design, character and appropriateness to the property of the proposed alteration or new construction.
  2. The scale of proposed alteration or new construction in relation to itself, surrounding properties and the neighborhood.

3. Texture, materials and color and their relation to the property itself, surrounding properties and the neighborhood.
4. Visual compatibility with surrounding properties, including proportion of the property's front facade, proportion and arrangement of windows and other openings within the facade, roof shape and the rhythm of spacing of properties on streets, including setback.
5. The importance of historic, architectural or other features to the significance of the property.

### **1335.07-3 Certificate of Appropriateness: Application**

Prior to the commencement of any work requiring a certificate of appropriateness, the owner shall file an application with the Director of the Department of Inspections, who shall refer the application to the Commission. The application shall be on a form prepared and/or approved by the Commission and an application fee of \$15.00 shall be payable.

A. The application shall contain:

1. The name, address and telephone number of the applicant;
2. The location and photographs of the property;
3. Samples of color and/or materials to be used;
4. Where the proposal includes signs or lettering, a scale drawing showing the type(s) of lettering to be used, all dimensions and colors, a description of materials to be used, the method of illumination and a drawing showing the sign's proposed location on the property, and;
5. Any other information that may be required by the Commission in order to help it visualize the proposed changes.

B. Upon the request of the Commission or the Director of Community Development, the application shall also contain any or all of the following:

1. A property survey;
2. A site plan containing the information and elements as required by City Ordinances Chapter 1324, and;
3. Elevation, construction and/or perspective drawings of any proposed changes, including the relationship to adjacent properties or similar visualization aid.

### **1335.07-4 Certificate of Appropriateness: Procedures**

A. No building permit shall be issued for any work requiring a Certificate of Appropriateness until such certificate has first been issued by the Historic Preservation Commission. The Commission shall act to approve or deny a Certificate of Appropriateness within forty-five (45) days of the date upon which an approved application form, as certified by the Director of Community Development, is considered by the Historic Preservation Commission. If the application is not acted upon within said forty-five (45) days; the application shall be deemed approved. Upon its own motion, the Commission may extend the decision deadline date for up to an additional thirty (30) days. Upon request of the applicant, the Commission may extend the decision deadline date for up to an additional sixty (60) days.

B. The Commission may schedule a public hearing on a request for a Certificate of Appropriateness, or any other matter subject to this Chapter. If such a hearing is held, it shall be within forty-five days of receipt of the application, and notice shall be given at least ten days prior to the hearing by publication in the official City newspaper.

- C. Commission decisions shall be in writing and shall state the reasons for denying or modifying any application. Commission decisions shall be filed with the City Clerk and mailed to the applicant.
- D. Certificates shall be valid for 18 months, unless extended by the Director of Community Development, one-time only, for a period not to exceed 12 months.

#### **1335.07-5 Certificate of Appropriateness: Demolition**

- A. Certificate of Appropriateness for a proposed demolition may be issued only on grounds of economic hardship. Appeal of the denial of a Certificate of Appropriateness for demolition shall be made pursuant to Section 1335.12.
- B. In order to prove the existence of hardship for a demolition, the applicant shall establish, by presenting corroborative evidence that:
  - 1. The property is incapable of earning a reasonable return regardless of whether that return represents the most profitable return possible.
  - 2. It is not economically feasible to reuse or rehabilitate the existing structure on the property for any other use permitted the City of Niagara Falls Zoning Ordinance that would result in a reasonable return. An estimate from an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation must, at a minimum, be submitted to document the economic feasibility or rehabilitation or reuse of the existing structure on the property; and
  - 3. Efforts to find a purchaser interested in acquiring the property and preserving it has failed.

#### **1335.08 Economic Hardship Appeal Procedures**

- A. Within sixty (60) days after receiving written notification from the Commission of the denial of a Certificate of Appropriateness for a proposed alteration or construction, an applicant may seek relief on the ground of hardship pursuant to this section. In order to prove the existence of hardship, the applicant shall establish that the property, without the owner's proposed alteration, is incapable or earning a reasonable return, regardless of whether that return represents the most profitable return possible.
- B. An application for a Certificate of Appropriateness on the grounds of hardship shall include:
  - 1. A verifiable estimate of the cost of the proposed construction or alteration 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; and
  - 2. An estimate of the market value of the property in its current condition; and after completion of the proposed construction or alteration and after renovation of the existing property for continued use; and
  - 3. Any listing(s) of the property for sale or rent, price asked and offers received, if any, within the previous two years; and
  - 4. The assessed value of the property according to the two most recent municipal assessments; and
  - 5. An indication of the form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other; and

6. Any other information the Commission needs in order to make its hardship decision.
- C. The Commission shall act on the hardship application at a public meeting of the Commission, at which time an opportunity will be provided for proponents and opponents of the application to present their views.
- D. The applicant shall consult in good faith with the Commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property.
- E. All decisions of the Commission should be within forty-five (45) days of the submission to the Commission of the completed application and shall be in writing. A copy of any Commission decision shall be sent to the applicant by mail, with a copy forwarded the Director of Inspections. The Commission's decision shall state the reasons for granting or denying the hardship application. If the Commission does not act on the application within forty-five (45) days, the hardship application shall be deemed denied.
- F. No exterior building permit or demolition permit shall be issued while the hardship application is pending, except for emergency work pursuant to Section 1133.09 of Chapter 1133 of the Codified Ordinances. The Commission shall make a determination on whether a hardship exists. Building and demolition permits shall be issued in accordance with that determination but for only such work as is necessary to alleviate the hardship.

### **1335.09 Maintenance and Repair**

Nothing in this chapter shall be construed to prevent the ordinary maintenance and repair of any architectural feature of a landmark site, historic structure or property within a historic district which does not involve a change in design, material, color or outward appearance. No owner or person with an interest in real property designated as a landmark or included in a historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Commission, produce a detrimental effect upon the character of the historic district as a whole or the life and character of the property itself.

#### **1335.10-1 Administration and Enforcement**

- A. The Director of Inspections shall enforce the provisions of this chapter. In connection with overseeing this responsibility, the Director of Inspections shall provide an appropriate permit procedure coordinated with the established building-permit and development-review procedures.
- B. The Director of Community Development, or his or her designee, shall be responsible for administrative oversight of the Commission.
- C. All work performed pursuant to this chapter shall conform to any requirements included herein. It shall be the duty of the Director of Inspections to inspect periodically any such work to assure compliance. In the event that work is found that is not being performed in accordance with the certificate of appropriateness, the Director of Inspections shall issue a stop-work order, and all work shall immediately cease. No further work shall be undertaken on the project as long as the stop-work is in effect.
- D. The Certificate of Appropriateness shall be displayed on the building in a location conspicuously visible to the public while work pursuant to the certificate is being done.

#### **1335.10-2 Effective Date**

This chapter shall take effect immediately.

### **1335.11 Violations**

- A. Any person who violates any provision of this chapter or any regulation adopted herein is guilty of an offense punishable by a fine not exceeding two hundred fifty (\$250) or imprisonment for a period not to exceed fifteen (15) days, or both. Each day's continued violation shall constitute a separate violation.
- B. Failure to comply with any of the provisions of this chapter shall result in the termination of any permits issued or any proceedings commenced under provisions of this chapter.
- C. Any person(s) who demolished, alters, constructs or permits a landmark site or historic structure to fall into a serious state of disrepair which results in a violation of this chapter shall be required to restore the property and its site to an appearance acceptable to the Historic Preservation Commission. Any action to enforce this subsection shall be brought by the Corporation Counsel upon authorization by the City Council. This civil remedy shall be in addition to and not in place of any criminal prosecution and penalty.

### **1335.12 Appeals**

Any person aggrieved by a decision of the Historic Preservation Commission relating to economic hardship may, within fifteen (15) days of the filing of the decision in the City Clerk's office, file a written request with the City Clerk for City Council review of the decision. The City Council shall schedule a public hearing on the matter within forty-five (45) days of receipt of the request for review. The appeal of the Commission's decision may be based only upon the record and criteria utilized by the Commission to render its decision. If new information becomes available subsequent to the Commission's decision, a new application (and fee) must be submitted to the Commission. The City Council's decision on the appeal shall be considered final.

### **1335.13 Compliance Required Prior to Action**

No decision to carry out or approve an action subject to the provisions of this chapter shall be rendered by any department, board, commission, officer or employee of the City of Niagara Falls until there has been full compliance with all requirements of this chapter. This shall not prohibit environmental, engineering, economic feasibility or other studies, preliminary planning or budgetary processes, nor the granting of an application relating only to technical specification and requirements, without authorizing commencement of action until full compliance with this chapter has been met.

### **1335.14 Severability**

If any section, clause or provision of this chapter or the application thereof to any persons is adjudged invalid, the adjudication shall not affect other sections, clauses or provisions or the application thereof which can be sustained or given effect without the invalid section, clause or provision or application, and to this end, the various sections, clauses or provisions of this chapter are declared to be severable.