

REDLINE

COUNCIL BILL NO. 14-11

ORDINANCE NO. 14-11

1 AN ORDINANCE REPEALING CHAPTER 2 OF TITLE 64 OF THE BUTTE-
2 SILVER BOW MUNICIPAL CODE ENTITLED "BUTTE-SILVER BOW HISTORIC
3 PRESERVATION COMMISSION" AND REPLACING IT WITH A NEW CHAPTER 64
4 TO BE ENTITLED "BUTTE-SILVER BOW HISTORIC PRESERVATION
5 PROGRAM", ESTABLISHING THE PRESERVATION, PROTECTION, AND
6 PROMOTION OF HISTORIC PROPERTIES, ESTABLISHING THE APPOINTMENT,
7 QUALIFICATION, DUTIES AND RESPONSIBILITES OF MEMBERS OF
8 HISTORIC PRESERVATION COMMISSION, ESTABLISHING THE DUTIES OF
9 THE LOCAL HISTORIC PRESERVATION OFFICER; CREATION OF A LOCAL
10 REGISTER PROGRAM; CREATION OF DESIGN REVIEW CERTIFICATE OF
11 APPROPRIATENESS (COA) PROGRAM; CREATION OF DEMOLITION REQUEST
12 REVIEW PROGRAM; DEVELOPMENT OF PROCESS REGARDING REVIEW OF
13 GOVERNMENTAL UNDERTAKINGS; APPEALS PROCESS; ENFORCEMENT OF THIS
14 ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

15 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF COMMISSIONERS
16 OF THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA:

17 SECTION 1: 2.64.010 Purpose and Intent. The City-County of
18 Butte-Silver Bow (City-County) hereby recognizes
19 that the Butte-Anaconda National Historic

1 Landmark is nationally known and significant for
2 its extensive mining and labor history and
3 supporting collection of buildings and sites.
4 As a matter of public policy, the City-County
5 aims to preserve, enhance and perpetuate those
6 aspects of the City-County that have cultural,
7 architectural and/or archeological merit. Such
8 historic preservation activities will promote
9 and protect the health, safety, prosperity,
10 education and general welfare of the people
11 living in and visiting Butte-Silver Bow.
12 More specifically, this preservation ordinance
13 is designed to achieve the following goals:

14 A. Create a local historic preservation
15 program that will:

16 1. Recognize the uniqueness and visual
17 character of the area by encouraging historic
18 preservation activities;

19 2. Promote public appreciation and
20 education by encouraging greater knowledge,
21 awareness and understanding of the area's

1 cultural history;

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

6 4. Encourage the integration of historic
7 preservation into private, local, state and
8 federal decision-making processes having the
9 potential to affect prehistoric and historic
10 properties within the jurisdiction of the City-
11 County;

12 5. Strengthen civic pride and cultural
13 stability through preservation in neighborhoods
14 and commercial areas;

15 6. Stabilize and enhance the economy of
16 the City-County through the continued use,
17 preservation and revitalization of historic
18 resources;

19 7. Support the City-County's commitment
20 to historic preservation by participating in the
21 Certified Local Government Program, (established

1 by Section 101(c) of the National Preservation
2 Act, as amended, (16 USC 470 et seq.) and
3 Montana Code Annotated 76-2-301 and 321).

4 B. Establish a Historic Preservation
5 Commission, comprised of local residents and
6 citizens, to advise the local government in the
7 development of preservation programs and
8 policies.

9 C. Establish the position of local Historic
10 Preservation Officer, and describe the
11 qualifications, duties and responsibilities of
12 the position."

13 SECTION 2: "2.24.020 Objective. The objective of this
14 chapter is to establish a local historic
15 preservation program to promote the preservation
16 of historic preservation of historic resources
17 at the local level and describe the duties and
18 responsibilities of the Historic Preservation
19 Commission (HPC) and the Historic Preservation
20 office (HPO). The historic preservation program
21 will include the identification, evaluation and

1 protection of historic and prehistoric resources
2 within the City-County, including the Town of
3 Walkerville, as well as providing general
4 information and education about these
5 resources."

6 SECTION 3:

"2.64.030 Scope. The HPC will serve in an
7 advisory capacity to the general public and the
8 Council of Commissioners, planning board, zoning
9 board and other pertinent bodies or
10 organizations. The HPO is responsible for day-
11 to-day implementation of the historic
12 preservation programs and policies described
13 within this chapter. The HPC is responsible for
14 setting policy and administering the provisions
15 of this chapter, ensuring that preservation
16 concerns are considered at all levels of
17 planning and incorporated as goals of other
18 local, state and federal projects, assisting the
19 local government to develop preservation-
20 planning goals and standards, and providing the
21 local government with reviews and

1 recommendations on proposed actions which could
2 affect historic properties in the City-County
3 and provide guidance on the historic
4 preservation program in general. All actions of
5 the HPO and HPC are subject to appeal to the
6 Council of Commissioners."

7 SECTION 4: "2.64.040 Definitions.

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

11 A. "Alteration or change" means any
12 modification, demolition, removal, major repair
13 or construction involving a Local Register or
14 historic property. Alterations and changes may
15 include, but are not limited to, covering,
16 removing, and replacing of original materials
17 and features, the addition of new materials and
18 the construction of new additions.

19 B. "Appeal" means an applicant may challenge
20 an action of the HPO and HPC to the Council of
21 Commissioners.

1 C. "Applicant" means the owner of record of a
2 property, the lessee thereof with the approval
3 of the owner of record in notarized form or a
4 person holding a "bona fide" contract to
5 purchase a property.

6 D. "Butte-Silver Bow" means and includes that
7 territory within the jurisdictional limits of
8 the City and County of Butte-Silver Bow,
9 Montana.

10 E. "Certificate of Appropriateness (COA)"
11 means a signed and dated document submitted by
12 the applicant to the HPO or HPC for review of
13 proposed alterations or changes to, or
14 demolition of, a property, covered under this
15 chapter.

16 F. "Certified local government" (CLG) means a
17 local historic preservation program that has
18 been certified by the state historic
19 preservation office (SHPO) and National Park
20 Service.

21 G. "City-County" means the local government of

1 the city and county of Butte-Silver Bow, State
2 of Montana, and where applicable, includes its
3 officers, employees, agencies, boards and
4 commissions.

5 H. "City-County owned property" means property
6 owned by the local government, or its associated
7 departments or agencies.

8 I. "Council of Commissioners" hereinafter
9 referred to as "Council" means the governing
10 body of the local government of the City and
11 County of Butte-Silver Bow, State of Montana.

12 J. "Demolition" means the complete or partial
13 removal of any Local Register or historic
14 property. This includes the removal of
15 significant architectural and landscape
16 features, and historic signage, including ghost
17 signs.

18 K. "Demolition Alternatives" means alternatives
19 to demolition that the applicant must consider
20 before the HPC will approve the demolition
21 request, including, but not limited to:

1 1. Adaptive Reuse and Rehabilitation The
2 property owner agrees to work with the HPO and
3 HPC to explore practical new uses for historic
4 buildings or structures on their original sites
5 of construction. These new uses shall consider
6 the needs of the property owner, the historic
7 integrity of the building or structure, and the
8 opportunity for "economically viable"
9 rehabilitation of the building or structure. The
10 HPO will assist the property owner in
11 identifying possible sources of funding to
12 assist in rehabilitating the property.

13 (Supporting documentation includes a realtor's
14 estimate of fair market value of existing
15 property and a contractor's estimated cost to
16 rehabilitate the property, or equivalent
17 information, and a declaration of "unreasonable
18 economic hardship", if applicable.)

19 2. Transfer of Ownership or Operation - If
20 a property owner does not have the financial
21 resources to rehabilitate an otherwise useful,

1 "economically viable" building or structure, the
2 owner will offer to sell or lease the property.
3 The owner agrees to make a reasonable effort to
4 advertise the property for sale or lease to a
5 potential new owner or occupant. (Supporting
6 documentation includes proof of advisement for
7 sale, lease, or relocation (see Item 3 below)
8 for a minimum of 90 days within a local
9 newspaper, or local realtor, and an analysis of
10 offers made, if applicable.

11 3. Relocation of Building or Structure - As
12 a last resort, the property owner agrees to work
13 with the HPO and HPC to explore opportunities to
14 move or relocate the historic building or
15 structure to a new historically compatible site.
16 The owner agrees to consider all reasonable
17 offers from another party to purchase the
18 building or structure for relocation purposes.
19 The owner of the building or structure agrees to
20 submit a relocation plan identifying the
21 proposed relocation site and affirming the

1 commitment and resources necessary to execute
2 the move in a timely and complete fashion.

3 (Supporting documentation, see Section K (2),
4 above)

5 L. "Demolition Conditions" means actions that
6 may apply to the conditional approval of a
7 demolition request, including:

8 1. Documentation - The owner will allow the
9 HPO a ~~minimum~~ maximum of ~~30~~ 45 calendar days to
10 access the property and any buildings and
11 structures on the property to document and
12 record historic resources prior to demolition.
13 The HPC shall determine if, and what type(s), of
14 additional documentation efforts are warranted
15 and require that the applicant pay for that
16 independent, professional documentation effort.

17 2. Salvage - The owner will work with the
18 HPO to identify salvageable materials, along
19 with potential buyers or recipients of those
20 materials. If historically significant
21 salvageable materials are identified, the owner

1 will allow a ~~minimum~~ maximum of 30 45 calendar
2 days for removal prior to demolition of the
3 building or structure.

4 3. Site Redevelopment Plan - The owner will
5 be required to submit to the HPC a Design Review
6 Certificate of Appropriateness for any new
7 buildings or structures proposed for
8 construction on the site.

9 M. "Demolition review certificate of
10 appropriateness (COA) program" means a procedure
11 designed to review applications for demolition
12 permits to prevent or mitigate the loss of Local
13 Register and historic properties through
14 demolition.

15 N. "Design review certificate of
16 appropriateness (COA) program" means a procedure
17 designed to review the historic compatibility of
18 proposed changes to the exterior of Local
19 Register and historic properties, beyond
20 ordinary maintenance and repair, including ghost
21 signs and the design of infill development

1 within historic districts.

2 O. "Economically viable" means the ability of
3 an owner to obtain a reasonable return on a
4 reasonable beneficial use of a property.

5 P. "Ghost sign" means advertising signage of
6 a historic nature typically painted directly
7 onto the side of a building.

8 Q. "Historic integrity" means the ability of a
9 property to convey its significance via its
10 location, design, setting, materials,
11 workmanship, feeling and association.

12 R. "Historic preservation" means
13 identification, evaluation, recordation,
14 documentation, curation, acquisition,
15 protection, management, rehabilitation,
16 restoration, stabilization, maintenance,
17 research, interpretation, conservation,
18 education and training regarding these
19 activities or any combination.

20 S. "Historic preservation commission" means
21 the body created by this chapter and appointed

1 by the Chief Executive and confirmed by the
2 Council, and that is responsible for advising
3 the City-County in the implementation of the
4 local historic preservation program.

5 T. "Historic preservation officer" (HPO) means
6 the person employed by the local government who
7 shall be responsible for coordinating the daily
8 activities of the historic preservation program
9 and serving as advisor to the local government,
10 historic preservation commission, and the
11 general public on historic preservation matters.

12 U. "Historic property" means any prehistoric
13 or historic district, site, landscape, building,
14 structure, object, or traditional cultural
15 property included in, or eligible for, the
16 National Register of Historic Places.

17 Properties classified as contributing resources
18 within a national historic landmark district are
19 automatically listed on the National Register.

20 V. "Historic Property Assessment Form (HPAF)"
21 in the absence of existing data, the HPO will

1 prepare a HPAF. The HPAF is a standardized form,
2 approved by the HPC designed to document and
3 assess the significance of a property, and its
4 eligibility for listing on the National Register
5 of Historic Places

6 W. "Historic significance" means a property
7 that is important for historic, architectural,
8 archeological, engineering or cultural values.

9 X. "Infill development" means, solely for this
10 chapter, new buildings or structures constructed
11 within a local historic district.

12 Y. "Jurisdiction" refers to "Butte-Silver
13 Bow".

14 Z. "Local public incentives" means public
15 funds (grant or loan), tax abatements, land or
16 property offered to a project by the City-
17 County, Urban Revitalization Agencies ("URA"),
18 or their equivalent.

19 aa. "Local register property" means an historic
20 property that has been designated by the HPC to
21 the "local register".

1 bb. "Local register" means a special
2 designation, in addition to the National
3 Register of Historic Places and National
4 Historic Landmark programs, which shall apply to
5 historic properties.

6 cc. "National Register of Historic Places"
7 means the official list of the nation's historic
8 places worthy of preservation. Authorized by
9 the National Historic Preservation Act of 1966,
10 the National Park Service's National Register of
11 Historic Places is part of a national program to
12 coordinate and support public and private
13 efforts to identify, evaluate, and protect
14 America's historic and archeological resources.

15 dd. "National Historic Landmark District" means
16 those properties within the City-County of
17 Butte-Silver Bow, which have been officially
18 recognized by the Secretary of the United States
19 Department of the Interior as nationally
20 significant by contributing to the understanding

1 of national, state and local history.

2 ee. "Ordinary maintenance and repairs" means
3 work to prevent deterioration of a property or
4 any part thereof by returning the property as
5 nearly as practical to its original condition.

6 ff. "Property owner" means the current owner of
7 record of a property.

8 dd. "State historic preservation office,"
9 hereinafter referred to as "SHPO," means the
10 Montana State Historic Preservation Office, a
11 department of the Montana Historical Society.

12 gg. "Unreasonable economic hardship" means the
13 inability of an owner to obtain a reasonable
14 return on a reasonable beneficial use from a
15 historic property as required by the United
16 States Supreme Court in Penn Central

17 Transportation Company vs. New York City, 438 US
18 104 (1978) and subsequent decisions.

19 hh. "Urban Revitalization Agencies" ("URA") means
20 any special economic development agencies
21 created by the City-County, including the

1 existing URA and Rural Revitalization Agency
2 ("RRA") programs, or equivalent."

3 SECTION 5: "2.64.050 Historic preservation commission (HPC)
4 established. In compliance with the Montana
5 Certified Local Government (CLG) Program, the
6 City-County shall appoint a local Historic
7 Preservation Commission (HPC). The HPC shall
8 consist of seven (7) residents of the City and
9 County of Butte-Silver Bow with a demonstrated
10 interest, competence, or knowledge in historic
11 preservation and, inasmuch as possible, shall
12 consist of the following mix:

13 A. Three members with professional expertise
14 in the disciplines of history, planning,
15 archaeology, architecture, architectural
16 history, historic archaeology or other
17 historic preservation related disciplines
18 such as cultural geography or cultural
19 anthropology to the extent that such
20 professional expertise is available in
21 the community.

1 B. Four members, among whom may include an
2 owner of property within a local historic
3 district, and a realtor licensed in the
4 State of Montana.

5 C. When the HPC considers any action that
6 will affect or potentially affect a
7 property that is normally evaluated by a
8 professional in a specific discipline,
9 and that discipline is not represented on
10 the HPC, the Commission shall seek
11 expertise in this area before formulating
12 its recommendation."

13 SECTION 6: "2.64.060 Officers-appointment-terms-vacancy.

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

1 B. Vacancies on the HPC shall be filled within
2 sixty days by appointment by the Chief Executive
3 and are subject to the confirmation of the
4 Council for the unexpired portion of the term.

5 C. The commission shall elect from its
6 membership a Chairperson and Vice Chairperson at
7 its first regularly scheduled meeting of each
8 year. The Chairperson shall preside at all
9 meetings and hearings of the commission and
10 shall have duties normally conferred by
11 parliamentary usage on such officers. The
12 Chairperson shall be a regular voting member of
13 the commission. In the absence of the
14 Chairperson, the Vice Chairperson shall preside
15 over meetings and hearings."

16 SECTION 7: "2.64.070 Duties of the historic preservation
17 commission (HPC). The HPC shall advise the
18 local government on ways to integrate historic
19 preservation goals and objectives into local,
20 state, and federal planning and decision-making
21 processes, including:

1 A. Participate directly in the protection of
2 prehistoric and historic resources and
3 implementation of historic preservation values
4 and objectives in the City-County.

5 B. Ensure historic preservation concerns are
6 considered at all levels of local government
7 planning and are incorporated as goals of other
8 local, state, and federal projects.

9 C. Administer all provisions of this chapter
10 and the overall direction and administration of
11 the historic preservation program.

12 D. Review and comment on land use proposals
13 and planning programs related to historic and
14 prehistoric resources.

15 E. Participate in the development of and
16 comment upon the Butte-Silver Bow comprehensive
17 growth plans and other local planning
18 initiatives in the City-County.

19 F. Participate in, promote and conduct public
20 information, educational and interpretive
21 programs pertaining to historic preservation,

1 including, but not limited to, local, state,
2 national incentives, awards, regulations and
3 grants, when available.

4 G. Participate in a design review consultation
5 program based on local design review standards
6 for alterations to Local Register properties,
7 City-County owned historic properties, and
8 historic properties receiving local public
9 incentives. The Secretary of the Interior's
10 Standards for the Treatment of Historic
11 Properties will serve as the basis for the local
12 design review standards.

13 H. Participate in a demolition permit
14 application review program that shall apply
15 countywide, to Local Register, and National
16 Register of Historic Places-listed or eligible
17 properties, aka historic properties. The
18 demolition review program will entail working
19 with property owners to ensure that all viable
20 "Demolition Alternatives" are considered prior
21 to issuance of a demolition permit or that

1 appropriate "Demolition Conditions" to mitigate
2 the effects of demolitions proposed for approval
3 are determined in advance of demolition.

4 I. Review and comment on federal, state, and
5 local undertakings involving local historic and
6 prehistoric properties where such actions are
7 subject to provisions of authorities such as,
8 but not limited to, the National Historic
9 Preservation Act (16 U.S.C. 470 et seq.);
10 National Environmental Policy Act (42 USC
11 4321); Montana Environmental Policy Act (75-1-
12 101, et seq., MCA), Montana Major Facilities
13 Siting Act (Title 85, Chapter 20, MCA) or
14 similar authorities.

15 J. Participate in the development of local
16 historic preservation incentives in cooperation
17 with the Council of Commissioners, Montana
18 Department of Revenue Appraisal/Assessment
19 Office, Urban Renewal Agencies, or other
20 pertinent local agencies.

1 K. Participate in the continuing study and
2 survey of historic resources within the City-
3 County, and encourage nominations to Local
4 Register and the National Register.

5 L. Participate in on-going maintenance of a
6 detailed inventory of historic properties within
7 the City-County.

8 M. Participate in the review of all proposed
9 Local Register and National Register of Historic
10 Places nominations within the City-County.

11 N. Participate in the development and review
12 of an Annual CLG Report for submission to the
13 Montana SHPO and the Council of Commissioners.

14 O. Review and authorize the Annual CLG Grant
15 Application for submission to the Montana SHPO
16 and the Council of Commissioners.

17 P. Encourage that at least one HPC member
18 attend a training session each year, and provide
19 to all HPC members for review any orientation
20 materials provided by the state historic
21 preservation office.

1 Q. Develop and publish by-laws, and standards
2 to implement this chapter. The HPO shall
3 assist the HPC to develop and implement these
4 bylaws, and standards.

5 R. Review local zoning regulations for their
6 applicability to the preservation of historic or
7 local register properties and make appropriate
8 recommendations to the Butte-Silver Bow zoning
9 board or other units of local government
10 concerning amendments to the zoning regulations
11 or zoning district boundaries

12 S. The HPC may delegate, via the HPC by-laws,
13 certain duties or tasks associated with those
14 listed above to the HPO."

15 SECTION 8: "2.64.080 Qualifications and duties of the
16 historic preservation officer (HPO). In
17 compliance with the Montana Certified Local
18 Government (CLG) Program the City County shall
19 employ a local Historic Preservation Officer.

20 A. The HPO must have a demonstrated interest,
21 competence or knowledge in historic preservation

1 with professional expertise in history,
2 planning, archaeology, architecture,
3 architectural history, historic archaeology or a
4 closely related field to the extent that such
5 professional expertise is available to the
6 community. The HPO must be accessible to the
7 general public through regular office hours.

8 B. Duties of the HPO include:

9 1. Serve as the primary point of contact
10 to the general public for the local historic
11 preservation program.

12 2. Coordinate the daily activities of the
13 historic preservation program.

14 3. Provide historic preservation
15 technical support and assistance to the HPC,
16 government agencies and the general public.

17 4. Assist the HPC and local government in
18 fulfilling their duties per this Chapter and the
19 Montana Certified Local Government Program."

20 SECTION 9: "2.64.090 Commission meetings and hearings.

1 A. The HPC shall conduct a minimum of one
2 regularly scheduled meeting each month, except
3 that the chairperson may cancel any meeting if
4 there are no matters to be considered or
5 schedule special meetings when such meetings are
6 necessary to carry out the provisions of this
7 ordinance. A schedule of regular meetings will
8 be posted annually.

9 B. Meeting agenda and project review materials
10 will be distributed electronically to the HPC
11 and posted on the BSB website no later than 48
12 hours (2 business days) prior to the meeting.
13 Hardcopy information is available upon request
14 from the HPO.

15 C. All meetings shall be held in public and in
16 accordance with the Montana open meeting law.

17 D. Public hearings may be held at the request
18 of the chairperson and conducted per the by-
19 laws.

20 E. Commission members must avoid conflicts of
21 interest (real and apparent) and declare such

1 conflicts and avoid discussion or vote on the
2 subject, pursuant to the Montana Certified Local
3 Government Program Manual and the BSB Municipal
4 Code Chapter 2.02 - Code of Ethics."

5 SECTION 10: "2.64.100 Local register program.

6 A. Designation Criteria:

7 1. A designated property shall have
8 documented evidence of significance for its
9 history or historical patterns, association with
10 a person(s) who is significant at the local,
11 state or national level, architectural,
12 landscaping or engineering merits, masterwork of
13 an architect, landscape architect or engineer,
14 has yielded or is likely to yield information
15 about history or pre-history;

16 2. A designated property shall have
17 documented evidence of its integrity;

18 3. A designated property shall have
19 documented evidence that it is at least forty
20 years old. A property that is less than forty
21 years old may be designated only if there is

1 documented evidence of exceptional significance;

2 B. The property owner must request the
3 designation in writing from the HPC.

4 C. The property owner must record the
5 designation on the property deed. The HPO will
6 assist in this effort. The designation will
7 remain with the property in perpetuity or until
8 such time that the property has lost its
9 integrity, and the HPC has approved removing the
10 designation.

11 D. The HPC shall serve as a review body with
12 the authority to approve or deny designation.

13 E. Owner(s) of local register property must
14 maintain the property in a manner to retain its
15 integrity, i.e., its ability to convey its
16 significance.

17 F. Owner(s) of local register properties must
18 apply for and receive an approved Design Review
19 Certificate of Appropriateness (COA) from the
20 HPC prior to undertaking any exterior changes to

1 the property, except for ordinary maintenance
2 and repairs.

3 G. In cooperation with the Building Official,
4 the HPO will create and maintain a list of Local
5 Register properties to facilitate tracking and
6 monitoring of building permit requests.

7 SECTION 11: "2.64.110 Design review certificate of
8 appropriateness program. The Design Review
9 Certificate of Appropriateness (COA) Program
10 applies countywide to "Local Register"
11 properties, City-County owned "historic
12 properties" and to historic or local register
13 properties receiving "local public incentives",
14 including in-fill development within a historic
15 district.

16 A. None of these properties shall be altered
17 without a Design Review Certificate of
18 Appropriateness (COA) approved by the HPC.

19 B. The intent of the Design Review Program is
20 to avoid, minimize, or mitigate adverse effects
21 to the "historic integrity" of the exterior of

1 these properties.

2 C. This review process does not apply to
3 "ordinary maintenance and repair" activities.

4 D. Evaluation of the historic compatibility of
5 the proposed work will be based on information
6 provided by the applicant in a Certificate of
7 Appropriateness (COA) application and the local
8 Design Review Standards. The Standards were
9 developed by the HPC in accord with the
10 Secretary of the Interior's Standards for the
11 Treatment of Historic Properties.

12 E. The HPO is responsible for the intial
13 review of these projects.

14 F. The COA will be forwarded to the HPC for
15 review at their next meeting. The applicant,
16 or a representative, is required to attend the
17 HPC meeting.

18 G. Failure by the HPC to render a decision,
19 recommending either approval, denial or approval
20 with conditions, and notify the applicant in
21 writing within 30 days of submission of a

1 complete COA application, shall constitute
2 approval of the COA, unless the applicant has
3 agreed to a delay beyond 30 days."

4 SECTION 12: "2.64.120 Demolition request review program.

5 The Demolition Request Review Program applies
6 countywide, to demolition permit requests
7 (applications) that impact Local Register or
8 "historic properties".

9 A. Except in the case of a clearly
10 established and documented public health and
11 safety concern, a Local Register or historic
12 property cannot be demolished without review and
13 recommendations submitted to the local
14 government by the HPC. (Refer to Section
15 2.64.140 Public Safety Exclusion for additional
16 information.)

17 B. The intent of the Demolition Request
18 Review Program is to ensure that all viable
19 "demolition alternatives" are considered before
20 the Building Official may issue a demolition
21 permit, and that "demolition conditions"

1 necessary to mitigate the effects of approved
2 demolitions are developed.

3 C. The HPO, in cooperation with the
4 Building Official, will review and investigate
5 all requests (applications) for demolition
6 permits.

7 D. The HPO is responsible for preliminary
8 review of these requests, including determining
9 the status of the property in regard to its
10 inclusion in the Local Register, National
11 Register listing, or whether it has been
12 previously evaluated for its eligibility to the
13 National Register.

14 E. If a Local Register, historic
15 property, or previously unevaluated property is
16 impacted by the request, the HPO will work with
17 the property owner to post the property, a
18 minimum of one week prior to the HPC meeting,
19 with a notice of the demolition request and
20 prepare a Demolition Review Certificate of
21 Appropriateness (COA) and Historic Property

1 Assessment Form (HPAF), if needed, for
2 presentation to the HPC.

3 F. The COA must describe the applicant's
4 efforts to explore "demolition alternatives" and
5 provide relevant supporting documentation. The
6 applicant, or a representative, is required to
7 attend the HPC meeting.

8 G. The HPC will review the information
9 provided, and if determined adequate, render a
10 recommendation to either approve, deny or
11 approve the demolition request, with or without
12 "demolition conditions", to the local government
13 and applicant in writing within 30-days of
14 submission of a complete COA application.

15 H. The HPC is authorized to invoke a 90-
16 45 day demolition delay to allow more time for
17 "demolition alternatives" to be explored, or to
18 conduct additional relevant research regarding
19 the request. The HPC will notify the applicant
20 in writing of the demolition delay and request
21 additional actions to be taken or information to

1 be provided by the applicant.

2 I. Failure by the HPC to render a
3 recommendation within ~~90~~ 45-days of imposing the
4 demolition delay shall be taken to constitute
5 approval of the demolition request."

6 SECTION 13: "2.64.130 Review of governmental undertakings.

7 A. Section 106 of the National Historic
8 Preservation Act (NHPA) provides the general public
9 the opportunity to comment when a project involving
10 a federal undertaking, including approval, license
11 or funding may affect properties that qualify for
12 the National Register of Historic Places. Per the
13 Montana Certified Local Government Program, the
14 local Historic Preservation Commission may provide
15 comment as a consulting party to the Section 106
16 process.

17 1. Upon notification of a federal
18 undertaking the HPO will contact the Montana
19 State Historic Preservation Office (SHPO) and
20 the applicable federal agency to request
21 confirmation of the project, and further

1 information.

2 2. The HPO will present information
3 relating to the undertaking to the HPC for
4 review.

5 3. The HPC shall provide written comment
6 to the SHPO, involved federal agency and the
7 applicant(s) as to the presence of historic
8 resources, potential impacts of the federal
9 undertaking on these resources, and mitigation
10 strategies.

11 B. The HPC may consult with local, state and
12 federal agencies on all local, state or federal
13 actions regarding the potential for effects to
14 historic properties in the City-County. If the
15 HPC chooses to comment on such actions, those
16 comments shall be provided to the Council of
17 Commissioners, the local, state or federal
18 agency, the Montana State Historic Preservation
19 Officer and the applicant(s). The HPC shall
20 also encourage participation in the review of
21 such actions by the general public."

1 SECTION 14: "2.64.140 Appeals.

2 A. An applicant who desires to appeal a
3 recommendation of the HPC shall file an appeal
4 with the Council of Commissioners within thirty
5 days of the HPC's written response to the
6 applicant.

7 B. The council shall consider the purposes of
8 this chapter in rendering its decision."

9 SECTION 15: "2.64.150 Public safety exclusion. None of the
10 provisions of this chapter shall be construed to
11 prevent any action of construction, alteration
12 or demolition necessary to address, correct or
13 abate the unsafe or dangerous condition(s) of
14 any historic property, or part thereof, when the
15 building official, and/or the fire department
16 and/or the health department has submitted
17 evidence, in writing, to the Council of
18 Commissioners that such historic property, or
19 part thereof is unsafe or dangerous and where
20 the proposed actions have been declared
21 necessary by such authorities to correct the

1 said condition. In the event any historic
2 property shall be damaged by fire or other
3 calamity to such an extent that it cannot be
4 reasonably repaired and restored, as determined
5 by the building official or fire department, it
6 may be removed in conformity with normal permit
7 procedures and applicable laws."

8 SECTION 16:

"2.64.160 Enforcement and penalties. The
9 following civil and criminal penalties may be
10 imposed upon those persons, firms or
11 corporations found to have violated requirements
12 or prohibitions contained within this chapter.

13 A. Civil Penalty:

14 1. Any person who constructs, alters,
15 relocates or demolishes any historic property in
16 violation of this chapter or who causes any
17 historic property to be constructed, altered,
18 relocated or demolished in violation of this
19 chapter shall be required to return the historic
20 property to its appearance or setting prior to
21 the violation. Any action to enforce this

1 provision shall be brought by the City-County.
2 This civil remedy shall be in addition to, and
3 not in lieu of, any criminal prosecution and
4 penalty.

5 2. If demolition of a historic property
6 occurs in violation of this chapter then any
7 permits on subject property, with the exception
8 of a permit to restore the historic property as
9 set forth above, will be denied for a period of
10 three years.

11 B. Criminal Penalty:

12 1. Any person or entity who constructs,
13 alters, relocates or demolishes any historic
14 property in violation of this chapter or who
15 causes any historic property to be constructed,
16 altered, relocated or demolished in violation of
17 this chapter shall be guilty of a misdemeanor,
18 and each shall be deemed guilty of a separate
19 violation for each day during which any
20 violation hereof is committed. Upon conviction,
21 each violation shall be punishable by a fine not

1 to exceed one thousand dollars.

2 SECTION 17: "2.64.170 Severability clause. If any section,
3 subsection, sentence, clause, phrase or word of
4 this chapter is, for any reason, held to be
5 invalid or unconstitutional, such decision shall
6 not affect the validity of the remaining
7 portions of this chapter and the remainder of
8 this chapter will remain in force and effect."

9 SECTION 18: Repealer: All ordinances and resolutions in
10 conflict herewith are repealed.

11 SECTION 19: Effective Date. This Ordinance shall be in full
12 force and effect from and after thirty (30) days
13 after its passage and approval.

14 PASSED this ____ day of _____, 2014.

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20 _____
21 CINDI SHAW
22 CHAIRMAN OF THE COUNCIL OF COMMISSIONERS
23

24 APPROVED this ____ day of _____, 2014.

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27 _____
28 MATT VINCENT
CHIEF EXECUTIVE

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ATTEST:

SALLY J. HOLLIS
CLERK AND RECORDER

BY _____
ITS _____

APPROVED AS TO FORM:

EILEEN JOYCE
COUNTY ATTORNEY

WILLIAM O. ANDERSEN
CHAIRMAN, JUDICIARY COMMITTEE