

CITY OF BONITA SPRINGS, FLORIDA

ORDINANCE NO. 06 – 08

**AN AMENDMENT TO BONITA SPRINGS LAND DEVELOPMENT CODE, RENUMBERING CHAPTER 22 (HISTORIC PRESERVATION SECTIONS 22-1 THROUGH 22-245) TO CHAPTER 5; AMENDING 5-3, DEFINITIONS, 5-72, MEMBERSHIP; COMPENSATION OF MEMBERS; REMOVAL OF MEMBERS; AND 5-73, ORGANIZATION AND MEETINGS, SO AS TO ESTABLISH A HISTORIC PRESERVATION BOARD OTHER THAN THE LOCAL PLANNING AGENCY SERVING IN THIS CAPACITY, PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, INCLUSION IN CODE AND AN EFFECTIVE DATE.**

WHEREAS, Bonita Springs City Council adopted Bonita Springs Ordinance No. 02-05 so as to establish its own procedures for Historic Preservation; and

WHEREAS, Bonita Springs Ordinance No. 02-05 establishes Land Development Code Chapter Sections 22-1 through 22-245, relating to Historic Preservation, where the initial historic preservation board was the Local Planning Agency, with City Council able, by ordinance, to create a different historic preservation board from a board of citizens with appointments, replacements and removal by resolution; and

WHEREAS, under Florida Statutes § 163.3174(4), the Local Planning Agency has the general responsibility for the conduct of the comprehensive planning program; and

WHEREAS, the Local Planning Agency voted at its May 25, 2006 meeting for City Council to establish a separate historic preservation board because of its other duties; and

WHEREAS, City Council finds it necessary to amend its Historic Preservation

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ordinance to renumber in accordance with the new Land Development Code provisions and to establish a separate historic preservation board.

**THE CITY OF BONITA SPRINGS HEREBY ORDAINS:**

**SECTION ONE:     BONITA SPRINGS LAND DEVELOPMENT CODE  
CHAPTER SECTIONS 22-5-1 THROUGH 22-5-245**

The City of Bonita Springs Land Development Code Sections ~~22- 5-1~~ through ~~225-~~ 245 are hereby amended by strikethroughs to delete existing text and by underlining new text, as indicated below:

**ARTICLE I. IN GENERAL**

**Sec. ~~22- 5-1~~. Purpose of chapter.**

- (a) The purpose of this chapter is to identify, evaluate, preserve and protect historical and archaeological sites and districts, and to promote the cultural, health, moral, economic, educational, aesthetic and general welfare of the public by:
  - (1) Creating a historic preservation board with the power and duty to review historic sites, areas, structures and buildings for possible designation as historic resources.
  - (2) Empowering the historic preservation board to determine the historical significance of a designated historic resource.
  - (3) Protecting designated historic resources by requiring the issuance of certificates of appropriateness and certificates to dig before allowing alterations to those resources.
  - (4) Encouraging historic preservation by creating programs of technical assistance and financial incentives for preservation practices.
  - (5) Stabilizing and improving property values through the revitalization of older residential and commercial neighborhoods.
  - (6) Enhancing the county's attraction to visitors and the ensuing positive impact on the economy as a result of historic preservation activities.
  - (7) Creating and promoting cultural and educational programs aimed at fostering a better understanding of the community's heritage.
  - (8) Promoting the sensitive use of historic and archaeological sites, resources and districts for the education, pleasure and welfare of the people of the City

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- (b) The further purpose of this chapter is to obtain Certified Local Government status pursuant to the Procedures for Approved State and Local Government Historic Preservation Programs, 36 CFR 67 (1987) and the National Historic Preservation Act of 1966, as amended, 16 USC 470.

**Sec. 22-5-2. Applicability of chapter.**

- (a) This chapter shall govern and be applicable to all property located in the City of Bonita Springs.
- (b) Nothing contained in this chapter shall be deemed to supersede or conflict with applicable building and zoning codes except as specifically provided in this chapter.

**Sec. 22-5-3. Definitions.**

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

*Archaeological site* means an individual historic resource recognized for its prehistoric or historic artifacts and features.

*Archaeologist* means a person who is qualified under the professional standards of the Florida Archaeological Council or the Society of Professional Archaeologists to conduct archaeological surveys, assessments or excavations, or is recognized as qualified to perform those tasks by the city.

*Area of archaeological sensitivity* means an area identified in the survey entitled "An Archaeological Site Inventory and Zone Management Plan For Lee County, Florida" (Piper Archaeological Research, Inc., 1987), as known or being likely to yield information on the history and prehistory of the county based on prehistoric settlement patterns and existing topographical features. Areas of archaeological sensitivity are divided into the following categories:

- (1) Sensitivity Level 1: Those areas containing known archaeological sites that are considered to be significant or potentially significant historic resources. These areas include sites listed on the National Register of Historic Places and those considered eligible or potentially eligible for listing on the National Register of Historic Places or local historic resource designation.
- (2) Sensitivity Level 2: Those areas containing known archaeological sites that

have not been assessed for significance but are likely to conform to the criteria for local designation, or areas where there is a high likelihood that unrecorded sites of potential significance are present.

*Building* means any structure, either temporary or permanent, having a roof intended to be impervious to weather, and used or built for the shelter or enclosure of persons or property of any kind, excluding animal cages.

*Building official* means the officer charged with the administration and enforcement of the city construction code as set out in chapter 6, article II.

*Certificate of appropriateness* means a written authorization by the historic preservation board or city staff to the owners of a designated property or any building, structure or site within a designated historic district, allowing a proposed alteration, relocation, or the demolition of a building, structure or site. Certificates of appropriateness are divided into the following two classes:

- (1) *Regular certificate of appropriateness* means a certificate of appropriateness issued by the city staff allowing activities which require the issuance of a building permit but which are classified as ordinary maintenance and repair under the provisions of this chapter and the criteria listed in the U.S. Secretary of the Interior's Standard for Rehabilitation, 36 CFR 67.
- (2) *Special certificate of appropriateness* means a certificate of appropriateness issued directly by the historic preservation board and required for any proposed work that will result in the alteration, demolition, relocation, reconstruction, new construction or excavation of a designated historic resource, based upon the criteria listed in the U.S. Secretary of the Interior's Standard for Rehabilitation, 36 CFR 67.

*Certificate to dig* means a certificate issued by the city staff or the historic preservation board, authorizing certain clearing, digging, archaeological investigation or archaeological development projects that may involve the exploration of established or suspected archaeological sites in areas of archaeological sensitivity level 1 or 2.

*Certified local government* means a designated local government meeting the requirements of the National Historic Preservation Act of 1966, as amended, 16 USC 470, which extends some aspects of the federal and state responsibilities for historic preservation to qualified local governments. Under the program, local governments are certified to review and make recommendations to the Florida National Register Review Board concerning nominations to the National Register of Historic Places of properties located within the confines of their local jurisdictions.

*Contributing property* means any building, structure or site which contributes to the overall historic significance of a designated historic district and was present during the period of historic significance and possesses historic integrity reflecting the character of that time or is capable of yielding important information about the historically significant period

or independently meets the criteria for designation as a historic resource.

*Demolition* means the complete removal of a building or structure, or portions thereof, from a site.

*Demolition by neglect* means the willful abandonment of a building or structure by the owner resulting in such a state of deterioration that its self-destruction is inevitable or where demolition of the building or structure to remove a health and safety hazard is a likely result.

*Designation certificate* means a certificate issued by the historic preservation board declaring a building, structure, site or district to be a historic resource.

*Designation report* means a written document indicating the basis for the findings of the historic preservation board concerning the proposed designation of a historic resource pursuant to this chapter.

*Exterior* means all outside surfaces of a building or structure visible from a public right-of-way or the street easement of the building or structure.

*Historic district* means a geographically definable area designated pursuant to this chapter possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development. A district may also be comprised of individual elements separated geographically but linked by association or history. To qualify as a historic district, an area may contain both contributing and noncontributing properties.

*Historic preservation board or board* means a board of citizens appointed by the City Council of Bonita Springs to administer the provisions of this chapter. ~~For purposes of this Ordinance, the initial historic preservation board will be the Local Planning Agency, serving in this capacity, but that the Bonita Springs City Council may, by ordinance, create a different historic preservation board from a board of citizens with appointments, replacements and removal by resolution.~~

*Historic resource* means any prehistoric or historic district, site, building, structure, object or other real or personal property of historical, architectural or archaeological value. Historic resources may include but are not limited to monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government or culture of the city, county, the state or the United States.

*Historic resource database* means the compilation of data gathered on historical and archaeological sites in the county, based on the findings of the surveys entitled "Historical and Architectural Survey, Lee County" (1986) and "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida" (1987), and any subsequent historic or archaeological survey.

*National Register of Historic Places* means a federal listing maintained by the U.S. Department of the Interior of buildings, sites, structures and districts that have attained a

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quality of significance as determined by the Historic Preservation Act of 1966 as amended, 16 USC 470, as such act may be amended, renumbered or replaced, and its implementing regulation, 36 CFR 60, "National Register of Historic Places," as such regulations may be amended, renumbered or replaced.

*Noncontributing property* means any building, structure or site which does not contribute to the overall historic significance of a designated historic district due to alterations, disturbances or other changes and therefore no longer possesses historic integrity, or was not present during the period of historic significance or is incapable of yielding important information about that period.

*Ordinary maintenance and repairs* means work done to prevent deterioration, decay or damage to a building or structure, or any part thereof, by restoring the building or structure as nearly as practicable to its condition prior to such deterioration, decay or damage.

*Owner* means those individuals, partnerships, corporations or public agencies holding fee simple title to real property. The term "owner" does not include individuals, partnerships, corporations or public agencies holding easements or less than a fee simple interest (including leaseholds) in real property.

*Staff* means the city staff persons designated by the City Manager to serve as staff for the historic preservation board and to administer the provisions of this chapter in cooperation with the building official and the zoning director.

*Structure* means that which is built or constructed. The term "structure" shall be construed as if followed by the words "or part thereof."

*Undue economic hardship* means an onerous and excessive financial burden that would be placed upon a property owner by the failure to issue a special certificate of appropriateness for demolition, thereby amounting to the taking of the owner's property without just compensation.

*Zoning director* means the director of the zoning and development review division, or his successor or designee as the person responsible for administering the provisions of chapter 34.

#### **Sec. 22-5-4. Penalty for violation of chapter.**

- (a) Any person, or any agent or representative thereof, who violates any provision of this chapter shall, upon conviction, be subject to the following penalties:
- (1) *Criminal penalties.* Such person shall be punished as provided in section 1-5.
  - (2) *Civil penalties.* The following shall be applicable:
    - a. Injunctive relief to enjoin and restrain any person from violating the provisions of this chapter; and

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- b. Revocation, suspension or amendment of any permit granted pursuant to this chapter.

In addition to all other criminal and civil penalties contained in this section, any person applying for a permit after commencing or completing construction of a structure in violation of this chapter shall pay twice the amount of the building permit fee as established by the city administrative codes.

- (b) For purposes of this chapter, each day that a violation continues to exist will be considered a separate violation of this chapter, to which both civil and criminal penalties may apply.

**Secs. ~~22-5-5~~--~~22-5-40~~. Reserved.**

## **ARTICLE II. ADMINISTRATION AND ENFORCEMENT**

### **DIVISION 1. GENERALLY**

**Sec. ~~22-5-41~~. Stop work orders.**

Any work conducted contrary to the provisions of this chapter shall be immediately stopped upon notice from the building official or his designee that the work does not conform to the terms of this chapter. Notice shall be in writing and shall be given to the property owner or his agent, or to the person doing the work. If none of these persons are immediately available on the construction site to receive the required notice, it shall be posted on the property. The notice shall state all conditions under which work may be resumed. In emergencies, the building official shall not be required to furnish written notice of the stop work order.

**Sec. ~~22-5-42~~. Appeals.**

- (a) Any owner of a building, structure or site affected by the operation of this chapter may appeal a decision of the historic preservation board by filing a written notice of appeal within 15 days of the date the written decision of the historic preservation board was rendered. The notice of appeal shall be filed with the City of Bonita

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Springs Board for Land Use Hearings and Adjustments and Zoning Board of Appeals (“Zoning Board”) and a copy provided to the historic preservation board staff, which shall state the decision being appealed, the grounds for the appeal and a summary of the relief sought.

- (b) Appeals shall otherwise be pursued using the procedure set forth in section 34-145(a), pertaining to appeals from administrative matters, and in accordance with the city administrative codes adopted to implement the provisions of chapter 34.
- (c) Except as may be required by F.S. § 163.3215, and then only pursuant to that statute, a third party shall not have standing to appeal a decision rendered under the provisions of this chapter.

**Secs. ~~22-5-43--22-5-70~~. Reserved.**

## **DIVISION 2. HISTORIC PRESERVATION BOARD\***

**Sec. ~~22-5-71~~. Establishment; general authority.**

There is hereby created a historic preservation board as an agency of the city government in and for the City of Bonita Springs. The historic preservation board is hereby vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological and architectural resources in the city, as prescribed by this chapter, under the direct jurisdiction and control of the City Council of Bonita Springs.

**Sec. ~~22-5-72~~. Membership; compensation of members; removal of members.**

- (a) The historic preservation board shall consist of the seven members appointed by City Council. ~~servicing concurrently as the Bonita Springs Local Planning Agency, or as created later by Ordinance.~~ Each member of the historic preservation board shall hold office only so long as he is a resident of the City. Appointments shall be made on the basis of a potential member's civic pride, involvement in community issues, integrity, experience and interest in the field of historic preservation. If possible, one member of the historic preservation board shall be an architect registered to practice in the state. City Council of Bonita Springs shall strive to appoint one member of the historic preservation board from each of the following categories:
  - (1) History or archaeology.
  - (2) Real estate land development or finance.
  - (3) Law or urban planning.

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(4) Engineering, architecture, building construction or landscape architecture. The two remaining positions shall be filled by citizens at large. All members of the historic preservation board must comply with the financial disclosure laws of the state.

(b) Members shall serve overlapping terms of three years. Initially, two members shall be appointed to one-year terms, two members shall be appointed to two-year terms, and three members shall be appointed to full three-year terms. After the initial appointments, all appointments shall be made for three years. A member of the historic preservation board shall be eligible for reappointment. Members of the historic preservation board shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their official duties, as shall be determined and approved by Bonita Springs City Council. Prior to the expiration of his term, a member of the historic preservation board may be removed from office only by a majority vote of the entire membership of the City Council. If, however, a member of the historic preservation board fails to attend three consecutive meetings, or four meetings in any one calendar year, the chairman shall certify such fact to the City Council. Upon such certification, that member shall be deemed to have been removed from the historic preservation board and the City Council shall fill the vacancy by appointment in accordance with its administrative code for advisory boards.

**Sec. 22-5-73. Organization; meetings.**

The Mayor shall appoint the Chairman and the historic preservation board shall elect a Vice-Chairman from among its membership ~~The chairman and vice chairman of the Local Planning Agency will also serve as the chairman and vice chairman of the historic preservation board.~~ The chairman shall preside at all meetings and shall have the right to vote. The vice-chairman shall preside in the absence of the chairman. The city shall provide adequate staff to allow the historic preservation board to perform its duties. Staff shall consist of at least one historic preservation planner, and one clerical person, who shall be responsible for recording and transcribing the minutes of all meetings of the historic preservation board. The city attorney shall be present at all historic preservation board meetings to represent the city. All meetings of the historic preservation board shall be open to the public. A public record of the minutes and resolutions of the historic preservation board shall be maintained and made available for inspection by the public. The historic preservation board shall meet at least once per month, at a date and time to be decided by the historic preservation board, unless there is no business pending before the historic preservation board. Regardless of the lack of pending business, the historic preservation board shall meet at least four times during any calendar year.

**Sec. 22-5-74. Powers and duties.**

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The historic preservation board shall have the following powers and duties:

- (1) To propose rules and procedures to implement the provisions of this chapter to Bonita Springs City Council.
- (2) To maintain and update the findings of the historical and archaeological surveys and validate those findings.
- (3) To evaluate the significance and eligibility of historic resources for designation pursuant to this chapter.
- (4) To designate eligible historic resources pursuant to this chapter.
- (5) To nominate historic resources to the National Register of Historic Places.
- (6) To approve, deny or approve with conditions applications for special certificates of appropriateness and certificates to dig applicable to historic resources designated pursuant to this chapter.
- (7) To issue designation certificates, place historical markers and administer other programs aimed at the proper recognition of designated historic resources.
- (8) To advise the Bonita Springs City Council on all matters related to historic preservation policy, including use, administration and maintenance of city-owned designated sites and districts.
- (9) To recommend zoning and building code amendments to the Bonita Springs City Council to assist in the preservation of designated historic resources or districts.
- (10) To review and make recommendations to the Bonita Springs City Council on proposed amendments to the comprehensive plan or land development regulations that may affect designated historic resources and districts or buildings, structures, districts or sites eligible for designation.
- (11) To propose and recommend to the Bonita Springs City Council financial and technical incentive programs to further the objectives of historic preservation.
- (12) To increase the awareness of historic preservation and its community benefits by promoting public education programs.
- (13) To record and maintain records of the actions and decisions of the historic preservation board.
- (14) To apply for, in the name of the city only, grant assistance from state, federal or private sources for the purpose of furthering the objectives of historic preservation.
- (15) Upon designation as a certified local government, to review and make recommendations concerning National Register of Historic Places nomination proposals to the Florida Review Board.
- (16) To perform any other function or duty assigned to it by the Bonita Springs

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**Sec. ~~22-5-75~~. Rules and regulations.**

Bonita Springs City Council shall develop and propose such rules and regulations as are reasonably necessary and appropriate for the proper administration and enforcement of the provisions of this chapter. Such rules and regulations shall conform to the provisions of this chapter and shall govern and control the procedures, hearings and actions of the historic preservation board. No such rules and regulations shall become effective until the proposed rules and regulations, and any amendments or modifications thereto, have been approved by the Bonita Springs City Council as a city administrative code policy.

**Secs. ~~22-5-76--22-5-100~~. Reserved.**

### **DIVISION 3. CERTIFICATE OF APPROPRIATENESS**

**Sec. ~~22-5-101~~. Required.**

No building, moving or demolition permit shall be issued for a designated historic resource, or a building, structure or site which is part of a designated historic or archaeological district, until a certificate of appropriateness has been issued. Except for applications requesting certificates of appropriateness for noncontributing properties, the criteria for issuance of a certificate of appropriateness (regular or special) shall be the U.S. Secretary of the Interior's Standards for Rehabilitation, 36 CFR 67 (1983), as such standards may be amended, renumbered or replaced, which are hereby adopted by reference as though set forth fully in this article. Applications for certificates of appropriateness for noncontributing properties shall be reviewed using the specific criteria set out in the resolution designating the historic district where the property is located.

**Sec. ~~22-5-102~~. Regular certificate of appropriateness.**

- (a) A regular certificate of appropriateness shall be required for work requiring a building permit and classified as ordinary maintenance and repair by this chapter, or for any work that will result, to the satisfaction of the city staff, in the close resemblance in appearance of the building, architectural feature or landscape feature to its appearance when it was built or was likely to have been built, or to its appearance as it presently exists so long as the present appearance is appropriate to the style and materials.

- (b) The historic preservation board staff shall, within five working days from the date a complete application has been filed, approve, deny or approve with conditions an application for a regular certificate of appropriateness presented by the owner of a designated historic resource or a property within a designated historic district. The findings of the staff shall be mailed by certified mail, return receipt requested, to the applicant within two working days of the staff decision, accompanied by a statement explaining the decision. The applicant shall have an opportunity to appeal the staff decision by applying for a special certificate of appropriateness within 30 calendar days of the date the decision is issued.

**Sec. 22-5-103. Special certificate of appropriateness.**

- (a) *Required.* A special certificate of appropriateness shall be issued by the historic preservation board prior to initiation of any work involving alteration, demolition, relocation, reconstruction, excavation or new construction which will result in a change to the original appearance of a designated historic resource or a contributing property within a designated historic district. A special certificate of appropriateness is also required prior to any new construction, reconstruction or alteration of a noncontributing property within a designated historic district. A special certificate of appropriateness may also be issued to reverse or modify a staff decision regarding an application for a regular certificate of appropriateness or a conditional certificate to dig.
- (b) *Application.* An applicant for a special certificate of appropriateness shall submit an application to the historic preservation board accompanied by full plans and specifications, a site plan and, in the case of sites involving buildings or structures, samples of materials as deemed appropriate by the historic preservation board to fully describe the proposed appearance, color, texture, materials or design of the building or structure and any outbuilding, wall, courtyard, fence, landscape feature, paving, signage or exterior lighting. The applicant shall provide adequate information to enable the historic preservation board to visualize the effect of the proposed action on the historic resource and on adjacent buildings and streetscapes within a historic district.
- (c) *Public hearing.* The historic preservation board shall hold a public hearing upon an application for a special certificate of appropriateness affecting designated historic resources or districts. Notice of the public hearing shall be given to the property owners by certified mail, return receipt requested, and to other interested parties by an advertisement in a newspaper of general circulation at least five calendar days but no sooner than 20 calendar days prior to the date of hearing.

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- (d) *Action of historic preservation board.* The historic preservation board shall meet and act upon an application for a special certificate of appropriateness on or within 70 calendar days from the date the application and materials adequately describing the proposed action are received. The historic preservation board shall approve, deny or approve the special certificate of appropriateness with conditions, subject to the acceptance of the conditions by the applicant, or suspend action on the application for a period not to exceed 35 calendar days in order to seek technical advice from outside sources or to meet further with the applicant to revise or modify the application. Failure of the historic preservation board to act upon an application on or within 70 calendar days (if no additional information is required) or 105 calendar days (if additional information is required by the historic preservation board) from the date the application was received shall result in the immediate issuance of the special certificate of appropriateness applied for, without further action by the historic preservation board.
- (e) *Notice of decision.* All decisions of the historic preservation board shall be in writing and shall include findings of fact. Evidence of approval of the application shall be by the special certificate of appropriateness issued by the historic preservation board or the board's designated staff representative. Notice of a decision shall be given to the applicant and to the building official, the zoning director and any other appropriate public agency, as determined by the historic preservation board. When an application is denied, the notice of the historic preservation board shall provide an adequate written explanation of its decision to deny the application. The historic preservation board shall keep a record of its actions under this chapter.

**Sec. 22-5-104. Demolition.**

- (a) Demolition of a designated historic resource or a contributing property within a designated historic district may only occur pursuant to an order of a governmental body or board or an order of a court of competent jurisdiction and pursuant to approval of an application by the owner for a special certificate of appropriateness for demolition.
- (b) Governmental agencies having the authority to demolish unsafe structures shall receive notice of the designation of historic resources and districts pursuant to article III of this chapter. The historic preservation board shall be deemed an interested party and shall be entitled to receive notice of any public hearings conducted by such agencies regarding demolition of any designated historic resource or contributing property to a designated historic district. The historic

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preservation board may make recommendations and suggestions to the governmental agency and the owner relative to the feasibility of and the public interest in preserving the designated resource.

- (c) No permit for voluntary demolition of a designated historic resource or contributing site within a historic district shall be issued to the owner thereof until an application for a special certificate of appropriateness has been submitted to the historic preservation board and approved pursuant to the procedures in this article. The historic preservation board shall approve, deny or approve with conditions the application for a special certificate of appropriateness for demolition. Refusal by the historic preservation board to grant a special certificate of appropriateness for demolition shall be evidenced by a written order detailing the public interest that is sought to be preserved. The historic preservation board may grant a special certificate of appropriateness for demolition, which may provide for a delayed effective date of six months to allow the historic preservation board to seek possible alternatives to demolition. During the demolition delay period the historic preservation board may take such steps as it deems necessary to preserve the structure concerned, in accordance with the purpose of this chapter. Such steps may include but shall not be limited to consultation with civic groups, public agencies and interested citizens, recommendations for acquisition of property by public or private bodies or agencies, and exploration of the possibility of moving the building or other feature.
  
- (d) The historic preservation board shall consider the following criteria in evaluating applications for certificates of appropriateness for demolition of designated historic resources or contributing properties within a designated historic district:
  - (1) Is the building or structure of such interest or quality that it would reasonably meet national, state or local criteria for additional designation as a historic or architectural landmark?
  - (2) Is the building or structure of such design, craftsmanship or material that it could be reproduced only with great difficulty or expense?
  - (3) Is the building or structure one of the last remaining examples of its kind in the neighborhood, the city or the region?
  - (4) Does the building or structure contribute significantly to the historic character of a designated historic district?
  - (5) Would retention of the building or structure promote the general welfare of the city by providing an opportunity for the study of local history or prehistory, architecture and design or by developing an understanding of the importance

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- and value of a particular culture and heritage?
- (6) Are there definite plans for reuse of the property if the proposed demolition is carried out, and what will be the effect of those plans on the character of the surrounding area?
  - (7) Has demolition of the designated building or structure been ordered by the appropriate public agency due to unsafe conditions?
- (e) Unless demolition has been ordered by a court of competent jurisdiction or another governmental body, a special certificate of appropriateness for demolition of a designated building or structure shall not be issued until there are definite plans for reuse of the property and a building permit or development order for the new construction has been applied for.
- (f) If an undue economic hardship is claimed by the property owner as a result of the denial of a special certificate of appropriateness for demolition, the historic preservation board shall have the power to vary or modify adherence to its original decision no later than 35 calendar days from the date the original decision is issued. Any variance or modification of a prior order shall be based upon sufficient evidence submitted by the owner and a subsequent finding by the historic preservation board that retention of the building or structure would deny the owner of all economically viable use of the property, thus creating an undue economic hardship. The owner may present the following evidence as grounds for such a finding:
- (1) For all property, the owner may present:
    - a. The amount paid for the property, the date of purchase and the party from whom purchased;
    - b. The assessed value of the land and improvements thereon according to the two most recent property tax assessments;
    - c. The amount of real estate taxes for the previous two years;
    - d. The annual debt service, if any for the previous two years;
    - e. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing or ownership of the property;
    - f. Any listings of the property for sale or lease, the price asked and offers received, if any; and
    - g. Any profitable adaptive uses for the property which have been considered by the owner.
  - (2) In addition to the items set forth in subsection (f)(1) of this section, the owner may present, for income-producing property:
    - a. The annual gross income from the property for the previous two years;

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- b. Itemized operating and maintenance expenses for the previous two years; and
- c. The annual cash flow, if any, for the previous two years.

**Sec. 22-5-105. Moving permits.**

The historic preservation board shall consider the following criteria for applications for special certificates of appropriateness for the moving of all historic resources and contributing properties located within a designated historic district:

- (1) The historic character and aesthetic interest the building or structure contributes to its present setting.
- (2) The reasons for the proposed move.
- (3) The proposed new setting and the general environment of the proposed new setting.
- (4) Whether the building or structure can be moved without significant damage to its physical integrity.
- (5) Whether the proposed relocation site is compatible with the historical and architectural character of the building or structure.
- (6) When applicable, the effect of the move on the distinctive historical and visual character of a designated historic district.

**Sec. 22-5-106. Archaeological sites and districts.**

- (a) *Designation.* The survey entitled "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida" (Piper Archaeological Research, Inc., 1987) shall be used as the initial database when considering the designation of areas of archaeological sensitivity level 1.
- (b) *Certificate of appropriateness.* A certificate of appropriateness shall be required prior to the issuance of a building permit for activity within an archaeological site or district designated pursuant to this chapter. An application for a certificate of appropriateness shall be accompanied by full plans and specifications indicating areas of work that might affect the surface and subsurface of the archaeological site or sites.
  - (1) The requirements outlined in article III of this chapter shall apply to all applications and the issuance of all certificates of appropriateness for

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- archaeological sites and districts designated pursuant to this chapter.
- (2) In reviewing the application for a special certificate of appropriateness for a designated archaeological site, the historic preservation board may also require any or all of the following:
- a. Scientific excavation and evaluation of the site by an archaeologist at the owner's expense.
  - b. An archaeological survey, conducted by an archaeologist, containing an analysis of the impact of the proposed activity on the archaeological site.
  - c. Proposal for mitigation measures.
  - d. Protection or preservation of all or part of the designated archaeological site for green space, in exchange for incentives as provided in article III, division 2, of this chapter.
- (3) To knowingly disturb human burial remains is a third degree felony in the state, pursuant to F.S. ch. 872, pertaining to offenses concerning dead bodies and graves. The law includes prehistoric as well as historic period interments, and aboriginal burial mounds or cemeteries as well as historic period cemeteries. Procedures for dealing with the accidental discovery of unmarked human burials are outlined in F.S. ch. 872. If unmarked human burials are suspected or known in an area under consideration for any certificate of appropriateness, the area shall be surveyed by a professional archaeologist to locate such remains. Procedures for dealing with human remains shall be carried out according to F.S. ch. 872. Any located human interments should be preserved in place if at all possible. If it is necessary to excavate or otherwise move the remains, every effort shall be made to identify and contact persons who may have a direct kinship, tribal, community or ethnic relationship with the deceased in order to arrange for their appropriate reinterment or disposition.
- (c) *Certificate to dig.* The survey entitled "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida" shall be used to identify areas of archaeological sensitivity levels 1 and 2.
- (1) A certificate to dig shall be required prior to or in conjunction with the issuance of a final development order for activity within any area of archaeological sensitivity levels 1 and 2 that may involve new construction, filling, digging, removal of trees or any other activity that may alter or reveal an interred archaeological site. If submerged or wetland areas, such as ponds, sloughs or swamps, are also to be damaged by development or by

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- dredge and fill activities, these shall also be assessed for their potential to contain significant archaeological sites.
- (2) The purpose of a certificate to dig shall be to allow sufficient time to conduct any necessary investigations, including the location, evaluation and protection of significant archaeological sites in areas suspected of having such archaeological sites.
  - (3) The staff of the historic preservation board shall, within 15 calendar days of receipt of a complete application for a certificate to dig, approve the application for a certificate to dig, or approve the certificate to dig subject to specified conditions, including but not limited to a delay not to exceed 60 days to allow any necessary site excavation or additional archaeological assessment prior to commencement of the proposed construction activity. Staff's decision shall be based on the application and any other guidelines which the historic preservation board may establish. If the approved certificate to dig requires archaeological excavation, the certificate shall specify a period of time during which excavation shall occur, not to exceed 60 days unless the owner agrees to an extension. The owner shall have an archaeologist conduct excavations as necessary during this period. The certificate to dig and any staff findings shall be mailed to the applicant by certified mail, return receipt requested, within seven calendar days of its review and approval.
  - (4) The applicant shall have the opportunity to appeal any conditions attached to a certificate to dig by applying for a special certificate of appropriateness within 30 calendar days of the date the conditional certificate to dig is issued. The historic preservation board shall convene no later than 50 calendar days after the date a completed application for a special certificate of appropriateness is filed with the staff. Approved certificates to dig shall contain an effective date not to exceed 60 calendar days, at which time the proposed activity may begin, unless the archaeological excavation should uncover evidence of such significance that it warrants designation of the archaeological site as a historic resource pursuant to article III of this chapter.
  - (5) All work performed pursuant to the issuance of a certificate to dig shall conform to the requirements of such certificate. It shall be the duty of the appropriate city agencies and the staff of the historic preservation board to inspect work for compliance with such certificate. In the event of noncompliance the appropriate county staff shall have the power to issue a stop work order and all work shall cease.

**Secs. 22-5-107--22-5-140. Reserved.**

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## **ARTICLE III. DESIGNATION OF HISTORIC DISTRICTS AND RESOURCES**

### **DIVISION 1. GENERALLY**

**Secs. ~~22-5-141~~--~~22-5-170~~.** Reserved.

### **DIVISION 2. INCENTIVES**

**Sec. ~~22-5-171~~.**      **Financial assistance.**

All properties designated as historic resources or as a contributing property to a designated historic district shall be eligible for any financial assistance set aside for historic preservation projects by the city, county, the state or the federal government, provided they meet any additional requirements of those financial assistance programs. The historic preservation board and its staff shall investigate funding sources and make recommendations to the Bonita Springs City Council to establish a program providing for transfer of development rights, easements and other local financial assistance programs whenever possible.

**Sec. ~~22-5-172~~.**      **Nomination to National Register of Historic Places.**

The historic preservation board shall encourage and assist in the nomination of eligible income-producing properties to the National Register of Historic Places in order to make available to those property owners the investment tax credits for certified rehabilitations pursuant to the Tax Reform Act of 1986 and any other programs offered through the National Register of Historic Places.

**Sec. ~~22-5-173~~.**      **Relief from building regulations.**

Designated historic resources and contributing properties to a designated historic district may be eligible for administrative variances or other forms of relief from applicable building and zoning codes as follows: Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a building or structure may be made without conformance to the technical requirements of the Standard Building Code when the proposed work has been approved by a regular or special certificate of appropriateness and also by the building official, pursuant to the authority granted to the

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building official by other ordinances or statutes, provided that:

- (1) The restored building will be no more hazardous based on considerations of life, fire, sanitation and safety than it was in its original condition.
- (2) Plans and specifications are sealed by a Florida registered architect or engineer, if required by the building official.
- (3) The building official has required the minimum necessary corrections to be made before use and occupancy which will be in the public interest of health, safety and welfare.

**Sec. 22-5-174. Relief from zoning regulations.**

The zoning director may, by written administrative decision, approve any relief request for designated historic resources or contributing properties to a designated historic district, for matters involving setbacks, lot width, depth, area requirements, land development regulations, height limitations, open space requirements, parking requirements and other similar zoning relief not related to a change in use of the property in question.

- (1) Before granting relief, the zoning director must find that:
  - a. The relief will be in harmony with the general appearance and character of the community.
  - b. The relief will not be injurious to the area involved or otherwise detrimental to the public health, safety or welfare.
  - c. The proposed work is designed and arranged on the site in a manner that minimizes aural and visual impact on the adjacent properties while affording the owner a reasonable use of his land.
- (2) In granting any relief, the zoning director may prescribe any appropriate conditions necessary to protect and further the interest of the area and abutting properties, including but not limited to:
  - a. Landscape materials, walls and fences as required buffering.
  - b. Modifications of the orientation of any openings.
  - c. Modifications of site arrangements.

The owner of a building, structure or site affected by the operation of this chapter and the decision of the zoning director may appeal that decision according to the provisions of chapter 34.

**Sec. 22-5-175. Variances from floodplain management regulations.**

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Variances from the floodplain management regulations may be requested pursuant to the terms of chapter 6, article IV.

**Secs. ~~22-5-176~~--~~22-5-200~~. Reserved.**

### **DIVISION 3. PROCEDURE**

**Sec. ~~22-5-201~~. Initiation of process.**

The designation process under this chapter may be initiated by a written petition from the property owner. The historic resource database shall be used to identify buildings, structures and sites potentially eligible for historic designation.

*Designation proposed by owner.* When designation is requested by the owner, a written petition for designation shall be filed, accompanied by sufficient information to warrant further investigation of the property and to aid in the preparation of a designation report. The historic preservation board shall, based on the request and information presented, either direct staff to begin or assist in preparation of a designation report, accept and direct the filing of a designation report prepared by the owner, reject a report submitted for filing, or deny the designation petition. Upon the filing of a designation report, the historic preservation board may direct staff to commence the designation and notice process.

**Sec. ~~22-5-202~~. Designation report.**

Prior to the designation of any historic resource or historic district pursuant to this chapter, a designation report shall be filed with the historic preservation board. The designation report shall contain the following information:

- (1) For individual historic or archaeological buildings, structures or sites:
  - a. A physical description of the building, structure or site and its character-defining features, accompanied by photographs.
  - b. A statement of the historical, cultural, architectural, archaeological or other significance of the building, structure or site as defined by the criteria for designation established by this chapter.
  - c. A description of the existing condition of the building, structure or site, including any potential threats or other circumstances that may affect the integrity of the building, structure or site.

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- d. A statement of rehabilitative or adaptive use proposals.
  - e. A location map, showing relevant zoning and land use information.
  - f. Staff recommendations concerning the eligibility of the building, structure or site for designation pursuant to this chapter, and a listing of those features of the building's structure or site which require specific historic preservation treatments.
- (2) For historic or archaeological districts:
- a. A physical description of the district, accompanied by photographs of buildings, structures or sites within the district indicating examples of contributing and noncontributing properties within the district; also, a list of all contributing properties outside the proposed boundaries of the district.
  - b. A description of typical architectural styles, character-defining features and types of buildings, structures or sites within the district.
  - c. An identification of all buildings, structures and sites within the district and the proposed classification of each as contributing, contributing with modifications, or noncontributing, with an explanation of the criteria utilized for the proposed classification.
  - d. A statement of the historical, cultural, architectural, archaeological or other significance of the district as defined by the criteria for designation established by this chapter.
  - e. A statement of recommended boundaries for the district and a justification for those boundaries, along with a map showing the recommended boundaries.
  - f. A statement of incentives requested, if any, and the specific guidelines which should be used in authorizing any alteration, demolition, relocation, excavation or new construction within the boundaries of the district.

**Sec. 22-5-203. Required notices; action by historic preservation board.**

The historic preservation board will hold timely public hearings on every petition for designation made pursuant to this chapter. References in this chapter to calendar days will include Saturdays, Sundays and legal holidays. References in this chapter to working days excludes Saturdays, Sundays and legal holidays.

- (1) *Notice to owner.* The historic preservation board shall notify the property owners of its intent to consider a proposed designation at least 20 calendar days prior to the date of the public hearing. Notice shall be sent by certified

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mail, return receipt requested, to the record owners of the property as reflected by the current ad valorem tax roll. Prior to the hearing, the city staff shall furnish the owners with copies of the designation report and this chapter. City staff shall make a reasonable effort to contact the owners after mailing the notice of intent to designate, answer the owner's questions and address areas of concern prior to the public hearing.

- (2) *Notification of public hearing.* For each proposed designation pursuant to this chapter, the historic preservation board shall hold a public hearing no sooner than 20 calendar days and no later than 70 calendar days from the date a designation report has been filed with the historic preservation board and notice of the intent to designate sent to the owners. Notice of the public hearing shall be published in a newspaper of general circulation at least five calendar days but no sooner than 20 calendar days prior to the date of the public hearing.
- (3) *Decision deadlines.* Within 14 calendar days after the date of the public hearing, the historic preservation board shall render, by written resolution, its decision approving, denying, or approving with conditions a proposed designation pursuant to this chapter. The rendering of a decision by the historic preservation board shall constitute final administrative action. The historic preservation board shall notify the following parties of its actions and shall attach a copy of the resolution:
  - a. The owner of the affected property.
  - b. The building official.
  - c. The zoning director.
  - d. The city clerk.
  - e. The planning division.
  - f. The Public Works Manager.
  - g. The county property appraiser.
  - h. Any other county, municipal, state or federal agency, including agencies with demolition powers that may be affected by the decision of the historic preservation board.
- (4) *Recording of designation.* All resolutions designating historic resources shall be recorded in the public records of the county within 25 calendar days of the date the historic preservation board renders its decision, unless an appeal of that decision has been filed within the time limits established by this chapter.
- (5) *Suspension of activities.* Upon the filing of a designation report, no permits may be issued authorizing building, demolition, relocation or excavation on the subject property until final administrative action occurs or the expiration of 75 calendar days from the date the designation report is filed with the historic

preservation board, whichever occurs first, unless an appeal of the decision of the historic preservation board is filed. If an appeal is filed as provided in this chapter, the suspension of activities will continue in effect for an additional 35 calendar days from the date the historic preservation board renders its decision or until the rendering of a decision on the appeal, whichever occurs first. The property owner may waive the suspension of activities deadlines set out in this section. Waivers must be in the form of a notarized statement to the historic preservation board for inclusion in the board's files. The historic preservation board will notify all affected government agencies of the suspension of activities upon the filing of a designation report. The suspension of activities expires after 60 days if no public hearing is held.

**Sec. 22-5-204. Criteria for designation.**

- (a) The historic preservation board shall have the authority to designate historic resources based upon their significance in the city's history, architecture, archaeology or culture, or for their integrity of location, design, setting, materials, workmanship or associations, and because they:
  - (1) Are associated with distinctive elements of the cultural, social, political, economic, scientific, religious, prehistoric or architectural history that have contributed to the pattern of history in the community, the city, southwestern Florida, the state or the nation;
  - (2) Are associated with the lives of persons significant in our past;
  - (3) Embody the distinctive characteristics of a type, period, style or method of construction or are the work of a master; or possess high artistic value or represent a distinguishable entity whose components may lack individual distinction;
  - (4) Have yielded or are likely to yield information on history or prehistory; or
  - (5) Are listed or have been determined eligible for listing in the National Register of Historic Places.
- (b) A historic resource shall be deemed to have historical or cultural significance if it is:
  - (1) Associated with the life or activities of a person of importance in local, state or national history;
  - (2) The site of a historic event with a significant effect upon the city, county, state or nation;
  - (3) Associated in a significant way with a major historic event;

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- (4) Exemplary of the historical, political, cultural, economic or social trends of the community in history; or
  - (5) Associated in a significant way with a past or continuing institution which has contributed substantially to the life of the community.
- (c) A historic resource shall be deemed to have architectural or aesthetic significance if it fulfills one or more of the following criteria:
- (1) Portrays the environment in an era of history characterized by one or more distinctive architectural styles;
  - (2) Embodies the characteristics of an architectural style, period or method of construction;
  - (3) Is a historic or outstanding work of a prominent architect, designer or landscape architect; or
  - (4) Contains elements of design, detail, material or craftsmanship, which are of outstanding quality or which represented, in its time, a significant innovation, adaptation or response to the South Florida environment.
- (d) A historic resource shall be deemed to have archaeological significance if it meets one or more of the following criteria:
- (1) There is an important historical event or person associated with the site;
  - (2) The quality of the site or the data recoverable from the site is significant enough that it would provide unique or representative information on prehistoric or historical events;
  - (3) The site was the locus of discrete types of activities such as habitation, religious, burial, fortification, etc.;
  - (4) The site was the location of historic or prehistoric activities during a particular period of time; or
  - (5) The site maintains a sufficient degree of environmental integrity to provide useful archaeological data. Such integrity shall be defined as follows:
    - a. The site is intact and has had little or no subsurface disturbance; or
    - b. The site is slightly to moderately disturbed, but the remains have considerable potential for providing useful information.
- (e) Properties not generally considered eligible for designation include cemeteries, birthplaces or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, buildings or sites primarily commemorative in nature, reconstructed historic buildings, and properties that have achieved significance less than 50 years prior to the date the property is proposed for designation. However, such properties will qualify if they are integral parts of districts that do meet the criteria described in this section or if they fall within one or more of the following categories:

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- (1) A religious property deriving primary significance from architectural or artistic distinction of historical importance.
- (2) A building or structure removed from its location but which is primarily significant for architectural value, or is the surviving structure most importantly associated with a historic event or person.
- (3) A birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his productive life.
- (4) A cemetery, which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events.
- (5) A property primarily commemorative in nature if design, age, tradition or symbolic value has invested it with its own historical significance.
- (6) A building, structure, site or district achieving significance less than 50 years from the date it is proposed for designation if it is of exceptional historical importance.

**Secs. ~~22-5-205~~--~~22-5-240~~. Reserved.**

## **ARTICLE IV. MAINTENANCE AND REPAIR OF PREMISES**

### **Sec. ~~22-5-241~~. Ordinary maintenance and repair.**

Nothing in this chapter shall be construed to prevent or discourage the ordinary maintenance and repair of the exterior elements of any historic resource or any property within a designated historic district when such maintenance and repair do not involve a change of design, appearance (other than color) or material, and do not require a building permit.

### **Sec. ~~22-5-242~~. Correction of deficiencies generally.**

When the historic preservation board determines that the exterior of a designated historic resource, or a contributing property within a designated historic district, is endangered by lack of ordinary maintenance and repair, or that other improvements in visual proximity of a designated historic resource or historic district are endangered by lack of ordinary maintenance, or are in danger of deterioration to such an extent that it detracts from the desirable character of the designated historic resource or historic district, the historic preservation board may request appropriate officials or agencies of the city

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government to require correction of such deficiencies under the authority and procedures of applicable ordinances, laws and regulations.

**Sec. 22-5-243. Unsafe structures.**

If the building official determines that any designated historic resource or contributing property is unsafe pursuant to the provisions of the applicable city ordinances, the building official will immediately notify the historic preservation board by submitting copies of such findings. Where appropriate and in accordance with applicable city ordinances, the historic preservation board shall encourage repair of the building or structure rather than demolition. The building official will, in these instances, take into consideration any comments and recommendations made by the historic preservation board. The historic preservation board may also endeavor to negotiate with the owner and interested parties, provided such actions do not interfere with procedures established in the applicable ordinances.

**Sec. 22-5-244. Emergency work.**

For the purpose of remedying an emergency condition determined to be imminently dangerous to life, health or property, nothing contained in this chapter will prevent the temporary construction, reconstruction, demolition or other repairs to a historic structure, building or site or a contributing or noncontributing property, structural improvement, landscape feature or archaeological site within a designated historic district. Such temporary construction, reconstruction or demolition must take place pursuant to permission granted by the building official, and only such work as is reasonably necessary to correct the emergency conditions may be carried out. The owner of a building or structure damaged by fire or natural calamity will be permitted to immediately stabilize the building or structure and to later rehabilitate it under the procedures required by this chapter. The owner may request a special meeting of the historic preservation board to consider an application for a certificate of appropriateness to provide for permanent repairs.

**Sec. 22-5-245. Demolition by neglect.**

If the staff of the historic preservation board or the building official inform the historic preservation board that a designated historic resource or contributing property within a historic district is being demolished by neglect, as defined pursuant to this chapter, the historic preservation board shall notify the owners of record by certified mail of its preliminary findings and intent to hold a public hearing no later than 35 calendar days from the date the notice was sent to determine evidence of neglect. The owner shall have until

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the time of the public hearing to make necessary repairs to rectify the evidence of neglect as identified in the certified notice. Upon failure by the owner to abate the structural, health or safety hazards identified in the initial notice within 35 calendar days, the historic preservation board shall hold a public hearing to consider recommending to the building official that the owner be issued a citation for code violation. The owner shall have the right to rebut the preliminary findings of the historic preservation board at the public hearing. If the historic preservation board finds that the building or structure is being demolished by neglect pursuant to this chapter, the historic preservation board may recommend to the building official that the owner be issued a citation for code violations and that penalties be instituted pursuant to this chapter.

**SECTION TWO:**                    **REPEALER**

Upon the effective date of this Ordinance, Sections 14-71 through 14-79 of the Bonita Springs Land Development Code are hereby repealed and replaced by the provisions of this Ordinance.

**SECTION THREE:**                **SEVERABILITY**

The provisions of this Ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any Court of competent jurisdiction shall hold any of the provisions of this Ordinance unconstitutional, the decision of such Court shall not affect or impair any remaining provisions of this Ordinance. It is hereby declared to be the legislative intent of the City Council for the City of Bonita Springs that this Ordinance would be adopted had such unconstitutional provision not been included herein.

**SECTION FOUR:**                **CONFLICTS OF LAW**

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted City of Bonita Springs Ordinance or Florida Statutes, the more restrictive shall apply.

**SECTION FIVE:**                **CODIFICATION, INCLUSION IN CODE AND  
SCRIVENER'S ERRORS**

It is the intention of the City Council for the City of Bonita Springs that the provisions of this ordinance shall become and be made a part of the Bonita Springs City Code; and that sections of this ordinance may be renumbered or re-lettered and that the word

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