

ORDINANCE O-24-20

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, AMENDING THE ZONING CODE OF THE CITY OF BISBEE, BY AMENDING ARTICLE 3 “PROCEDURES,” SECTION 3.5 “ARCHITECTURAL DESIGN REVIEW FOR HISTORIC PRESERVATION (HP) OVERLAY DISTRICT,” SUBSECTION 3.5.5 “DEMOLITION AND MOVEMENT OF HISTORIC BUILDINGS” ADDING A NEW SUBSECTION 3.5.5(D) PENALTY FOR DEMOLITION WITHOUT A PERMIT IN THE HISTORIC DISTRICT; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PENALTIES.

WHEREAS, the City of Bisbee (“City”) Zoning Code serves to secure the social, physical, and economic advantages of the citizens of Bisbee; and,

WHEREAS, the City’s Planning and Zoning Commission develop and recommend ordinances to the City Council for carrying out plans, goals, and objectives related to growth, development, and redevelopment of the City; and,

WHEREAS, on October 17, 2024, the City of Bisbee Planning and Zoning Commission held a public hearing to consider the proposed amendment and voted unanimously to recommend the proposed amendment to Mayor and Council for approval; and,

WHEREAS, on all required public notice was provided, and all required public meetings and hearings were held, in accordance with applicable state and local laws; and,

WHEREAS, the City has considered the impact this Zoning Code text amendment may have on housing as provided for in the attached Zoning Housing Impact Form, attached hereto as Exhibit “A” and incorporated herein; and,

WHEREAS, it is in the best interest of the City and its citizens to adopt the amendment to Zoning Code, Article 3 Procedures, Section 3.5 Architectural Design Review for Historic Preservation (HP) Overlay District, Subsection 3.5.5 Demolition and Movement of Historic Buildings.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, THAT:

Section 1. The City of Bisbee Zoning Code, Article 3 Procedures, Section 3.5 Architectural Design Review for Historic Preservation (HP) Overlay District, Subsection 3.5.5 Demolition and Movement of Historic Buildings is hereby amended by adding a new Subsection 3.5.5(D) Penalty for Demolition Without a Permit in the Historic District, with all the additions in all CAPS as set forth below:

ARTICLE 3 PROCEDURES

SECTION 3.5 ARCHITECTURAL DESIGN REVIEW FOR HISTORIC PRESERVATION (HP) OVERLAY DISTRICT

SUBSECTION 3.5.5 DEMOLITION AND MOVEMENT OF HISTORIC BUILDINGS

The Design Review Board must approve all demolition permits and relocation permits for any significant part of any building in the Historic Preservation (HP) Overlay District. No permit shall be issued by the Building Official until DRB approval. However, if a structure is judged by the Building Official to be a hazard to public safety, the Building Inspector may order the immediate demolition of the building in accord with his charge to protect the public health and safety. The Inspector will notify the DRB members of his decision. In making its' decision, the Design Review Board should determine whether and to what extent demolition or movement affects the structure in question or any contributing structure within the district as demolition and/or movement can have significant impact on the City in general. For permit approval the applicant must show that preserving the building is not physically and/or economically feasible. The DRB reserves the right to gain access to the structure to inspect it, in line with a demolition application. However, if a structure is judged by the Building Official to be a hazard to public safety, the Building Official may order the immediate demolition of the building in accord with his charge to protect the public health and safety. The Building Official will notify the DRB Members of his decision.

- A. Approval: The Design Review Board may recommend approval of the demolition or relocation permit if any of the following conditions exist:
 - 1. It is demonstrated that the structure is a deterrent to a major improvement program which will be of substantial community benefit
 - 2. A determination is made that a building or structure no longer presents an opportunity for feasible rehabilitation, which is arrived at after an on-site visit by a licensed contractor, structural engineer or architect experienced in historic preservation work. Any costs shall be borne by owner.
 - 3. The investment required to preserve to preserve or rehabilitate the structure could not be offset by the return on the property.
 - 4. The Design Review Board shall notify the Building Official that the demolition permit is approved. The Building Official may do the following:
 - a. Issue the permit, or,
 - b. Deny the permit based on other duly adopted and applicable ordinances or regulations.
- B. Denial: If preservation or rehabilitation is determined to be feasible, and if the structure has been designated as one having special significance or as a contributing property within the District, the Design Review Board shall deny the permit for demolition or movement of a structure.

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- C. Demolition by Neglect: If a structure in the District is judged by the Building Official to be in danger of falling into irreparable condition because of neglect, a Notice of Neglect will be sent to the Legal Owner(s) stating the conditions that must be remedied. Within 60 days of such notice, the Owner(s) may request a public hearing before the DRB Board. The DRB Board may rescind or confirm all or part of the Notice of Neglect based on information provided by the Owner(s). If the DRB confirms the Notice of Neglect or the Owner(s) fails to correct the conditions listed, the City of Bisbee will begin issuing violation notices and seek all remedies and penalties in accordance with Bisbee City Code.
- D. **PENALTY FOR DEMOLITION WITHOUT A PERMIT IN THE HISTORIC DISTRICT: FOR PURPOSES OF THIS SECTION 3.5.5, A “RESPONSIBLE PARTY” SHALL BE DEFINED AS AN OCCUPANT, LESSOR, LESSEE, MANAGER, LICENSEE, CONTRACTOR, ARCHITECT OR OTHER PERSON HAVING CONTROL OVER OR USE OF A STRUCTURE OR PARCEL OF LAND.**
 - 1. **IN ADDITION TO THE GENERAL PENALTIES FOR A VIOLATION OF THE ZONING CODE, ANY OWNER AND/OR RESPONSIBLE PARTY WHO CAUSES, PERMITS, FACILITATES, OR AIDS OR ABETS ANY VIOLATION OF THIS SECTION 3.5.5, OR WHO FAILS TO PERFORM ANY ACT OR DUTY REQUIRED THEREBY IS GUILTY OF A CLASS 1 MISDEMEANOR, WHICH CAN RESULT IN A MAXIMUM PENALTY AND SENTENCE OF UP TO SIX MONTHS IN JAIL AND A \$2,500 FINE, PROVIDED, HOWEVER, THAT THE CITY ATTORNEY MAY AUTHORIZE THE FILING OF CERTAIN CASES OR CLASSES OF CASES AS CIVIL VIOLATIONS SUBJECT TO A CIVIL SANCTION OF NOT LESS THAN \$500 OR MORE THAN \$2,500.**
 - 2. **EACH DAY A VIOLATION OF ANY PROVISION OF THIS SECTION 3.5.5 OR A FAILURE TO PERFORM ANY ACT OR DUTY REQUIRED THEREBY EXISTS MAY CONSTITUTE A SEPARATE OFFENSE UNTIL ALL THE FOLLOWING HAVE BEEN COMPLETED:**
 - a. **BUILDING PERMIT SUBMITTED AND ACCEPTED BY THE CITY; AND**
 - b. **DEMOLITION PERMIT SUBMITTED AND ACCEPTED BY THE CITY; AND**
 - c. **PLANS SUBMITTED AND APPROVED BY THE CITY; AND**
 - d. **MUST HAVE DESIGN REVIEW BOARD APPLICATION PACKET SUBMITTED FOR PROCESSING.**
 - 3. **IN ADDITION TO ANY FINE OR PENALTY IMPOSED IN ACCORDANCE WITH THIS SECTION 3.5.5(D)(1), THE BUILDING OFFICIAL SHALL, UPON FINALIZATION OF JUDGMENT:**
 - a. **ISSUE A FORMAL COMPLAINT WITH THE ARIZONA STATE REGISTRAR OF CONTRACTORS AGAINST ANY CONTRACTOR OR COMPANY INVOLVED WITH AN UNAUTHORIZED DEMOLITION; AND,**
 - b. **ISSUE A FORMAL NOTIFICATION OF THE VIOLATION TO THE STATE HISTORIC PRESERVATION OFFICE REGARDING THE**

UNAUTHORIZED DEMOLITION OF ANY STRUCTURE, SITE, OR HISTORIC LANDMARK.

4. **IN ADDITION TO ANY FINE OR PENALTY IMPOSED IN ACCORDANCE WITH SECTION 3.5.5(D)(1), ONE OF THE FOLLOWING MAY BE IMPOSED AS AN ADDITIONAL PENALTY OR REMEDY:**
 - a. **RECONSTRUCTION OR RESTORATION OF A CONTRIBUTING STRUCTURE OR A HISTORIC LANDMARK TO ITS APPEARANCE PRIOR TO THE VIOLATION;**
 - b. **PROHIBITION OR RESTRICTION OF BUILDING PERMITS FOR NEW CONSTRUCTION ON THE SITE FOR NOT MORE THAN SEVEN YEARS, BUT NOT LESS THAN 30 DAYS.**

5. **THE FOLLOWING FACTORS ARE CONSIDERED WHEN IMPOSING ANY PENALTY OR REMEDY IN ACCORDANCE WITH SECTION 3.5.5(D)(1) AND (4):**
 - a. **WHETHER THE STRUCTURE, SITE, OR HISTORIC LANDMARK IS ONE OF THE LAST REMAINING EXAMPLES OF ITS KIND IN THE NEIGHBORHOOD, CITY, OR REGION;**
 - b. **WHETHER THERE EXISTS SUFFICIENT DOCUMENTATION, PLANS, OR OTHER DATA SO AS TO MAKE RECONSTRUCTION FEASIBLE;**
 - c. **THE AGE OF THE ORIGINAL STRUCTURE, SITE, OR HISTORIC LANDMARK AND ALL SUBSEQUENT ADDITIONS AND MODIFICATIONS;**
 - d. **THE PHYSICAL CONDITION OF THE STRUCTURE, SITE, OR HISTORIC LANDMARK IMMEDIATELY PRIOR TO ITS TOTAL OR PARTIAL DEMOLITION;**
 - e. **THE AMOUNT OF DEMOLITION SUSTAINED BY THE STRUCTURE, SITE, OR HISTORIC LANDMARK;**
 - f. **WHETHER OR NOT, HAD TOTAL OR PARTIAL DEMOLITION OCCURRED, THE STRUCTURE, SITE, OR HISTORIC LANDMARK COULD HAVE BEEN PUT INTO A REASONABLE ECONOMIC USE EITHER PRIOR TO OR AFTER REHABILITATION;**
 - g. **WHETHER THE STRUCTURE, SITE, OR HISTORIC LANDMARK WAS ELIGIBLE FOR INCLUSION ON THE NATIONAL REGISTER OF HISTORIC PLACES IMMEDIATELY PRIOR TO ITS TOTAL OR PARTIAL DEMOLITION;**
 - h. **WHETHER THE STRUCTURE, SITE, OR HISTORIC LANDMARK IS INCLUDED ON THE NATIONAL REGISTER OF HISTORIC PLACES; OR,**
 - i. **WHETHER THE OWNER AND/OR RESPONSIBLE PARTY HAS A LEGAL OR EQUITABLE INTEREST IN THE STRUCTURE, SITE, OR HISTORIC LANDMARK.**

Section 2. Providing For Repeal of Conflicting Ordinances. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Zoning Code adopted herein by reference, are hereby repealed.

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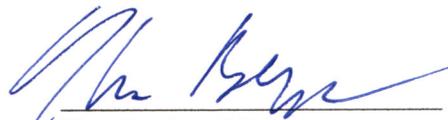
Section 3. Providing For Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Zoning Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 4. Providing For Penalties. A violation of this Ordinance is subject to the following penalties:

1. In addition to the general penalties for a violation of the Zoning Code, any owner and/or responsible party who causes, permits, facilitates, or aids or abets any violation of Zoning Code Section 3.5.5, or who fails to perform any act or duty required thereby is guilty of a class 1 misdemeanor, which can result in a maximum penalty and sentence of up to six months in jail and a \$2,500 fine, provided, however, that the City Attorney may authorize the filing of certain cases or classes of cases as civil violations subject to a civil sanction of not less than \$500 or more than \$2,500.
2. Each day a violation of any provision of this Ordinance or a failure to perform any act or duty required thereby exists may constitute a separate offense.
3. In addition to any fine or penalty imposed in accordance with this Ordinance, one of the following may be imposed as an additional penalty or remedy:
 - A. Reconstruction or restoration of a contributing structure or a historic landmark to its appearance prior to the violation;
 - B. Prohibition or restriction of building permits for new construction on the site for not more than seven years, but not less than 30 days.

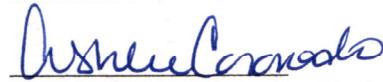
PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Bisbee on this 19th day of November, 2024.

APPROVED:



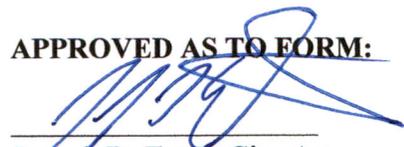
Ken Budge, Mayor

ATTEST:



Ashlee Coronado, City Clerk

APPROVED AS TO FORM:



Joseph D. Estes, City Attorney
Pierce Coleman

EXHIBIT "A"

A.R.S. § 9-462.01 HOUSING IMPACT STATEMENT

Ordinance No. 24-20

General estimate of the ordinance's probable impact on the average cost to construct housing for sale or rent.

The proposed language to the Demolition and Movement of Historic Buildings does not impact on the average cost to construct housing for sale or rent as a result of this zoning code text amendment.

Describe any data or reference material on which the ordinance is based.

City of Tombstone Violation and Penalties

City of Douglas Penalties

City of Flagstaff Enforcement Authority

Washington DC Historic Preservation Violations and Fines

City of Jefferson Missouri Penalties

Preservation Resource Center of New Orleans "Just Fine? Rethinking penalties for illegal demolition in local historic districts"

Describe any less costly or less restrictive alternative methods of achieving the ordinance's purpose.

None.