

INCORPORATED COUNTY OF LOS ALAMOS CODE ORDINANCE NO. 02-271

AN ORDINANCE AMENDING CHAPTERS 8 AND 16 OF THE LOS ALAMOS COUNTY CODE OF ORDINANCES TO CHANGE THE NAME OF THE FULLER LODGE/HISTORIC DISTRICTS ADVISORY BOARD TO THE HISTORIC PRESERVATION ADVISORY BOARD, TO CHANGE THE NUMBER OF MEMBERS FROM SEVEN TO FIVE MEMBERS, AND TO CHANGE THE TERM OF MEMBERS FROM FOUR YEARS TO THREE YEARS

WHEREAS, Section 305 of the Charter of the Incorporated County of Los Alamos ("County"), provides that the County Council may by ordinance create standing boards and commissions; and

WHEREAS, the County Council June 6, 1994, in ordinance number 85-199, created the Fuller Lodge/Historic Districts Advisory Board with the purpose of making "...recommendations to the planning and zoning commission, variance board and county council regarding the protection, preservation and enhancement of places, sites, areas, buildings, structures and other objects within the corporate boundaries of the incorporated county having a special character or special historic, architectural or cultural interest or value, and to initiate and conduct research and investigations relating to them"; and

WHEREAS, the County Council, in establishing the Fuller Lodge/Historic Districts Advisory Board ("Board") provided that the Board was to be comprised of seven citizens "competent and informed in the historic, architectural and cultural traditions of the community"; and

WHEREAS, the County Council, in establishing the Fuller Lodge/Historic Districts Advisory Board ("Board") provided that Board members were to serve staggered terms of four (4) years each; and

WHEREAS, the Board, in consultation with the County staff liaison, County Manager, and related County departments, believes that change of the Board's name to Historic Preservation Advisory Board would correspond to the Board's broader goals of determining historic designation of properties and facilities; and

WHEREAS, since its inception, the Board has had difficulty finding and replacing the required number of Board members which at times has limited the Board's ability to operate due to necessary quorum restrictions; and

WHEREAS, the Board and County staff liaison, in consultation with the County Manager's Office, the Public Works Department, and other related County departments, believe that by reducing the required number of members and by reducing the term each member must serve, it will assist the Board in meeting the County Council's stated goals; and

WHEREAS, the County Council has determined that amendment to the Board's name, reduction in the number of required members, and reduction in the term of service of each member is in the best interests of the citizens of the County.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS as follows:

Section 1. Chapter 8, Article III, title and Section 8-51 of the Los Alamos County Code of Ordinances is hereby amended to change the name of the Fuller Lodge/Historic Districts Advisory Board to the Historic Preservation Advisory Board as follows:

ARTICLE III. - ~~FULLER LODGE/HISTORIC DISTRICTS ADVISORY BOARD~~HISTORIC PRESERVATION ADVISORY BOARD

Sec. 8-51. - Purpose.

~~A Fuller Lodge/historic districts advisory board~~Historic Preservation Advisory Board is established in order to make recommendations to the planning and zoning commission, variance board and county council regarding the protection, preservation and enhancement of places, sites, areas, buildings, structures and other objects within the corporate boundaries of the incorporated county having a special character or special historic, architectural or cultural interest or value, and to initiate and conduct research and investigations relating to them.

Section 2. Chapter 8, Article III, Section 8-52 of the Los Alamos County Code of Ordinances is hereby amended to change the name of the Fuller Lodge/Historic Districts Advisory Board to the Historic Preservation Advisory Board, change the number of members from seven (7) members to five (5) members, and reduce the term of each member from four (4) to three (3) years as follows:

Sec. 8-52. - Membership, terms and qualifications.

The ~~Fuller Lodge/historic district advisory board~~Historic Preservation Advisory Board shall be composed of ~~seven~~five citizens competent and informed in the historic, architectural and cultural traditions of the community. Members shall be appointed for staggered terms of ~~four~~three years.

Section 3. Chapter 8, Article III, Section 8-53 of the Los Alamos County Code of Ordinances is hereby amended to change the name of the Fuller Lodge/Historic Districts Advisory Board to the Historic Preservation Advisory Board as follows:

Sec. 8-53. - Duties and responsibilities.

The ~~Fuller Lodge/historic districts advisory board~~Historic Preservation Advisory Board shall serve in an advisory capacity to the county council and shall have the following functions, responsibilities and duties:

- (1) Inspections, investigations and recommendations regarding any sites, buildings, structures or areas within the county which the ~~Fuller Lodge/historic districts advisory board~~Historic Preservation Advisory Board has reason to believe are or will become important historic, architectural or cultural landmarks; and
- (2) Making of recommendations to the county council regarding:
 - a. Policies for the use and management of Fuller Lodge, including: user fees, charges, control of events during which alcoholic beverages are served, security, replacement of fixtures and furnishings, and maintenance of Fuller Lodge;
 - b. Compliance with all federal, state and county laws, regulations, codes, ordinances and resolutions applicable to Fuller Lodge and other important historic, architectural or cultural landmarks owned or controlled by the county;

- c. Use of proceeds from grants or any historic building improvement tax approved by voters of the county at any general election or special election called for that purpose following the adoption of a resolution pursuant to the Historic Building Improvements Act, NMSA 1978, §§ 4-55b-1 to 4-55b-5 (1993 Supp.);
- (3) Make such recommendations as reasonably necessary on historic preservation issues to the planning and zoning commission, variance board, and county council, including but not limited to, site plans and variance requests in historic districts.
- (4) Provide citizen input to staff and council on ways and means for improving the county's historic preservation program. For this purpose, the board shall gather public input in ways appropriate to the circumstances, which may include public hearings dedicated to specific topics.
- (5) Recommend ways to involve and educate the community on historic preservation issues.
- (6) Such other activities, duties and responsibilities related to Fuller Lodge or the historic districts as may be assigned by the county council.

Section 4. Chapter 16, Article XV, Section 16-611 of the Los Alamos County Code of Ordinances is hereby amended to change the name of the Fuller Lodge/Historic Districts Advisory Board to the Historic Preservation Advisory Board as follows:

Sec. 16-611. - Definitions.

For the purposes of this article, the following words and phrases shall be defined as follows:

~~Fuller Lodge/historic districts advisory board~~ Historic Preservation Advisory Board (referred to as the FL/HDABHPAB in this article) means the board established by chapter 8 of the county code and authorized by this article to make recommendations to the planning and zoning commission and to county council on proposed historic designations and projects affecting historic properties within the county.

Historic district means an area within Los Alamos County that has been so designated by ordinance pursuant to the procedures outlined in this article and section 16-452(b) and mapped as an overlay district on the county's official zoning map.

Historic landmark means an individual building, structure or site within Los Alamos County that has been so designated by ordinance pursuant to this article and mapped as an overlay district on the county's official zoning map.

Historic property means a historic landmark or any property located within a historic district, including all structures or improvements thereon.

Historic property alteration certificate means the official form issued under this article stating that proposed work on a historic property is compatible with the historic character of the property and therefore: (1) has been recommended for approval as appropriate and may be completed as specified in the certificate subject to compliance with all local, state and federal laws, as applicable; and (2) any building permits or other construction-related permits regarding work specified in the certificate may be issued by the community development department or other regulatory department upon satisfaction of all requirements for such permits.

Section 5. Chapter 16, Article XV, Section 16-612 of the Los Alamos County Code of Ordinances is hereby amended to change the name of the Fuller Lodge/Historic Districts Advisory Board to the Historic Preservation Advisory Board as follows:

Sec. 16-612. - Designation of historic landmarks and historic districts.

- (a) *Generally.* The county council may designate and list individual historic landmarks or historic districts within the county and such landmarks or districts shall be designated on the official zoning map. Such

designation will result in the creation of an overlay district which will impose regulations on the designated property or district in addition to the zoning regulations already in effect in the underlying zones. Designated landmarks and districts may include publicly as well as privately owned property.

- (b) *Criteria for designation.* Council may authorize the designation of a historic landmark or historic district where the landmark or district proposed for inclusion is found to possess not less than two of the following characteristics; the landmark or district:
 - (1) Embodies an architectural style or method of construction dating from one or more significant historic periods;
 - (2) Establishes a sense of time and place unique to Los Alamos County;
 - (3) Exemplifies or reflects the cultural, social, economic or political history of the nation, state or county;
 - (4) Is associated with the lives of significant historical persons or events;
 - (5) Has the potential to preserve, display, or yield significant historic or archaeological information; or
 - (6) Exists on the registry of the State or National Register of Historic Places.
- (c) *Owner consent required.* Any person or group may nominate a historic landmark or district for designation; however, written consent of the property owner(s) is required before the nomination of an individual landmark will be considered. A historic district nomination application requires the written consent of the owners of at least 66 percent of the properties within the proposed district.
- (d) *Application requirements.* Nominating applications shall be submitted to the community development department director and shall contain at a minimum:
 - (1) The proper application form as provided by the community development department director;
 - (2) Any application fees as established by resolution of the county council;
 - (3) A map showing the boundary of the proposed historic landmark or district, including all structures and property lines within the proposed landmark or district;
 - (4) Written consent of the owner(s) satisfying the requirement of subsection 16-612(c);
 - (5) A statement of justification reviewing the historical or architectural significance of the proposed landmark or district and how it meets the criteria for designation in this article;
 - (6) A description of the particular historic or architectural features that should be preserved. The description shall be based on a study prepared by an architectural or qualified authority on historic preservation surveying the proposed landmark or all properties within the proposed district, as applicable. The features deemed to be significant and worthy of preservation shall be specifically listed and illustrated in the study and shall form the basis for proposed preservation regulations within the district.
- (e) *Review and public hearing.*
 - (1) After the community development department director determines the nominating application is complete, the FL/HDABHPAB shall hold a public hearing to solicit comment on the application. At least 15 days prior to the public hearing the community development department shall send notice of the meeting by U.S. mail to all owners of property within the proposed district. At the public meeting, the FL/HDABHPAB shall make a recommendation, with rationale based on the criteria contained in this article, and forward the same to be heard by the planning and zoning commission. The FL/HDABHPAB may nominate or sponsor an application for the designation of an individual landmark or an historic district. In that case, the requirements for owner consent still apply, but the public hearing provisions of this subsection (e)(1) shall not apply and, after the community development department director determines the nominating application is complete, the application shall be heard at a public hearing of the planning and zoning commission as provided below in subsection (e)(2).

- (2) The planning and zoning commission shall hold a public hearing on the application and ~~FL/HDAB/HPAB~~'s recommendation. Notice of public hearing shall be as set forth in section 16-192. The planning and zoning commission shall make a recommendation to the county council as to whether the proposed historic landmark or district shall be officially designated on the county zoning map as an overlay district in accordance with section 16-452(b).
- (3) As soon as practicable thereafter, the county council shall hold a public hearing. Notice of public hearing shall be as set forth in section 16-192. The county council shall determine whether the proposed historic landmark or district shall be officially designated on the county zoning map as an overlay district in accordance with section 16-452(b).
- (4) The same application and processing procedures shall apply to subsequent amendments to any designated landmark or district.

Section 6. Chapter 16, Article XV, Section 16-613 of the Los Alamos County Code of Ordinances is hereby amended to change the name of the Fuller Lodge/Historic Districts Advisory Board to the Historic Preservation Districts Advisory Board as follows:

Sec. 16-613. - Historic property alteration certificate.

- (a) *Generally.* With respect to any designated historic property under this article, the exterior appearance of any structure shall not be altered, new structures shall not be constructed, and existing structures shall not be demolished until a historic property alteration certificate has been obtained by the owner. Construction, alteration, relocation or demolition of any fence or other landscape feature including, without limitation, any deck, wall, berm, garden structure, exterior lighting, driveway, or landscaping that has the potential for affecting historic structures or features shall also require an approved historic property alteration certificate.
- (b) *Exemptions.* Notwithstanding the foregoing, a historic property alteration certificate shall not be required for:
 - (1) Ordinary maintenance and repair where the purpose of the work is to preserve the integrity of the structure and/or materials, correct deterioration to the structure, and restore it to its condition prior to deterioration; or
 - (2) Construction, alteration or demolition involving only interior features of the structure, unless such work impacts the structure's exterior appearance.
- (c) *Application.* The owner of a designated historic property shall apply to the community development department director for a historic property alteration certificate using the forms and submitting the necessary documentation as prescribed by the director. The applicant also shall submit any fees as established by resolution of the county council.
- (d) *Standards for review.* No application for an historic property alteration certificate shall be approved unless the following conditions are satisfied:
 - (1) The proposed work will preserve, enhance, or restore and does not damage or destroy the significant features of the resource as identified in the nomination for designation under sections 16-612(d)(4) and (5) and any specific design guidelines adopted for the historic landmark or district; and
 - (2) The proposed work will be compatible with the relevant historic, cultural, or architectural qualities characteristic of the structure, site or district including, but not limited to, elements of size, scale, massing, proportions, orientation, materials, surface textures and patterns, details and embellishments and the relation of these elements to one another.
- (e) *Review and public hearing.*
 - (1) *Committee review.* Within ten business days after acceptance by the community development department director of an application for historic property alteration certificate, a committee

consisting of the community development department director, or designee, and two members of the FL/HDABHPAB designated by the FL/HDABHPAB chair shall meet to review the application and determine whether the proposed work will have a significant impact upon or be potentially detrimental to the historic property.

- a. If the committee determines there will be no significant impact or potential detriment, the director shall issue an alteration certificate to the applicant and shall notify the FL/HDABHPAB and the planning and zoning commission of such issuance.
 - b. If it has been determined by the majority of the committee that the proposed work would create a significant impact or potential detriment to the historic property, the application shall be referred to a public hearing pursuant to section 16-613(e)(3) below, and the applicant shall be promptly notified of the referral.
- (2) *Expedited review.* The above notwithstanding, the director may review any application that seeks approval of common alterations; and if the director determines that there will be no significant impact or potential detriment from the alteration, then the director shall issue a historic property alteration certificate to the applicant.
- (3) *Review and recommendation by FL/HDABHPAB.* In addition to those applications referred for public meeting after administrative review pursuant to section 16-613(e)(1)b. above, a public meeting before the FL/HDABHPAB shall be required for any application requesting new construction over 200 square feet in gross floor area, or the relocation or demolition of a historic property.
 - a. Upon acceptance by the community development department director of any application for an historic property alteration certificate, the FL/HDABHPAB shall schedule a meeting to review the application.
 - b. The FL/HDABHPAB shall hold a public meeting on the application during which it shall make a recommendation to the planning and zoning commission regarding whether a historic property alteration certificate should be issued. The FL/HDABHPAB shall have 40 calendar days from the acceptance date of the application in which to hold said meeting. The planning and zoning commission shall take no action on the application until the FL/HDABHPAB has either made its recommendation or the 40-day review period has passed.
 - c. The FL/HDABHPAB recommendation on the application shall take one of three forms: (i) approval as presented; (ii) approval with conditions; or (iii) denial. A written explanation applying the standards for review under section 16-614(d) shall accompany the recommendation.
 - d. If the FL/HDABHPAB fails to make a recommendation within the 40-day period, the planning and zoning commission shall proceed with its determination.
- (4) *Determination by planning and zoning commission.* As soon as practicable after the FL/HDABHPAB meeting on an application for historic property alteration certificate, the planning and zoning commission shall hold a public hearing to consider the recommendation. In making its decision on whether the certificate shall issue, the planning and zoning commission shall apply the standards for review under section 16-613(d) and shall also consider any recommendation received from the FL/HDABHPAB. The planning and zoning commission shall make a determination whether the historic property alteration certificate shall issue. If the determination of the planning and zoning commission differs from the recommendation of the FL/HDABHPAB, such determination shall include a statement explaining why the FL/HDABHPAB recommendation was not followed, and this statement shall be forwarded to the FL/HDABHPAB.
- (5) *Appeals.* The final action of the planning and zoning commission regarding any historic property alteration certificate may be appealed to the county council in accordance with article XII of this chapter.

Section 7. Chapter 16, Article XV, Section 16-614 of the Los Alamos County Code of Ordinances is hereby amended to change the name of the Fuller Lodge/Historic Districts Advisory Board to the Historic Preservation Advisory Board as follows:

Sec 16-614. - Temporary restraint of demolition.

While it is the purpose of this article to preserve structures of historic or architectural significance, it is recognized that all areas of significance cannot be identified, analyzed, and designated at one time. However, it is important to protect properties with potentially qualifying buildings from inappropriate demolitions until review and hearings can be completed for possible historic preservation designation. Therefore:

- (a) No demolition permit shall be issued by the building official regarding any structure located within an area of an application for historic designation under section 16-612 between such time as the application is filed and the time the action is taken on the application by the county council unless it is determined after review by the committee established under subsection 16-613(e)(1) that the structure to be demolished contains no historic or architectural significance and is not an essential contribution to other historic features in the area.
- (b) If a demolition approval is not issued after committee review, then the ~~FL/HDABHPAB~~ shall, within 30 calendar days of the application acceptance date, hold a public hearing, at which time, the requesting party shall demonstrate:
 - (1) For total demolition:
 - a. The structure is of minimal historic significance because of its location, condition, modifications or other factors, and its demolition will be inconsequential to historic preservation needs of the area; or
 - b. The structure is determined to have historic or architectural significance but:
 - i. The structure proposed for demolition is not structurally sound despite evidence of the owner's efforts to maintain the structure; and
 - ii. The structure cannot be rehabilitated or reused on site to provide for any reasonable beneficial use of the property; and
 - iii. The structure cannot be practically moved to another site in Los Alamos; and
 - iv. The applicant demonstrates that the proposal mitigates the greatest extent practical the following:
 - a) Any impacts that occur to the visual character of the neighborhood where demolition is proposed to occur.
 - b) Any impact on the historical importance of the structure or structures located on the property and adjacent properties.
 - c) Any impact to the architectural integrity of the structure or structures located on the property and adjacent properties.
 - (2) For partial demolition:
 - a. The partial demolition is required for renovation, restoration, or rehabilitation of the structure; and
 - b. The structure is determined to have historic or architectural significance but, the structure proposed for demolition is not structurally sound despite evidence of the owner's efforts to maintain the structure; and
 - c. The applicant has mitigated, to the greatest extent possible:

- i. Impacts on the historic importance of the structure or structures located on the property.
- ii. Impacts on the architectural integrity of the structure or structures on the property.

At the conclusion of the meeting, the FL/HDABHPAB shall submit its recommendation if the permit should be approved or denied to the planning and zoning commission.

- (c) Within 14 days of the FL/HDABHPAB meeting date, the planning and zoning commission shall hold a public hearing. The recommendation of the FL/HDABHPAB shall be entered into the record and shall be considered by the planning and zoning commission in making its determination. The finding of the planning and zoning commission shall be final and may be appealed to the county council in accordance with article XII of this chapter.
- (d) If the request for demolition permit is denied, then no permit for demolition shall be issued for six months from the date of the planning and zoning commission hearing on the permit.
 - (1) If historic designation has not been granted for the property, at the expiration of the six-month period, the building official shall grant a demolition permit for the property.
 - (2) At the time of adoption of historic property designation, the temporary restraint of demolition and any stays of demolition in effect shall expire. Demolition approvals after that time shall be regulated by section 16-613.

Section 8. Chapter 16, Article XV, Section 16-616 of the Los Alamos County Code of Ordinances is hereby amended to change the name of the Fuller Lodge/Historic Districts Advisory Board to the Historic Preservation Advisory Board as follows:

Sec. 16-616. - Economic hardship.

- (a) An applicant who has been denied a historic property alteration certificate may seek an exemption from all, or portions of, the requirements of this article based on economic hardship. Economic hardship in this context does not relate to the applicant's financial status, but rather whether the impact of this ordinance is such that it denies the applicant all reasonable or beneficial use of the property. A request for relief from this ordinance on account of economic hardship shall be made using the necessary forms provided by the community development department.
- (b) If a request for economic hardship is made, the applicant may not undertake any work on the historic property until and unless the planning and zoning commission makes a finding that an economic hardship exists and a certificate has been issued.
- (c) When a claim of economic hardship is made due to the effect of this article, the owner must demonstrate:
 - (1) In the case of an income-producing property, that a reasonable rate of return cannot be obtained from the property in its present condition or if improved in compliance with this article.
 - (2) In the case of a non-income-producing property, that the property has no beneficial use as a dwelling or for an institutional use in its present condition or if improved in compliance with this article.
 - (3) The consideration for economic hardship shall not include willful or negligent acts by the owner, purchase of the property for substantially more than the market value, or failure to perform normal maintenance and repairs.
 - (4) In addition, the applicant shall demonstrate that it has consulted in with the FL/HDABHPAB, local preservation groups, or interested parties in a effort to seek an alternative that will result in preservation of the property.

- (d) The planning and zoning commission shall hold a public hearing on the economic hardship request at its next regularly scheduled meeting, or not less than 30 days after filing of the request with the community development department director.
- (e) Any decision of the planning and zoning commission regarding an economic hardship request may be appealed by the applicant to the county council in accordance with article XII of this chapter.

Section 9. Effective Date. This Ordinance shall become effective thirty (30) days after notice is published following its adoption.

Section 10. Severability. Should any section, paragraph, clause or provision of this ordinance, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

Section 11. Repealer. All ordinances or resolutions, or parts thereof, inconsistent herewith are hereby repealed only to the extent of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

PASSED AND ADOPTED this ____ day of _____, 2017.

**COUNCIL OF THE INCORPORATED
COUNTY OF LOS ALAMOS**

**David Izraelevitz
Council Chair**

ATTEST: (SEAL)

**Naomi D. Maestas
Los Alamos County Clerk**