

**DRAFT**

**October 12, 2017**

**CHAPTER 264**

**LANDMARKS PRESERVATION AND HERITAGE AREA COMMISSION**

**§264-1. Purpose and Intent**

This chapter is intended to accomplish the following purposes:

- A. To provide for the promotion of the educational, cultural, economic and general welfare of the public through the protection, enhancement, perpetuation and preservation of landmarks and Landmark (L) Districts. The legislative body declares that it is in the public interest to ensure that the distinctive landmarks and Landmark (L) Districts shall not be injuriously affected, that the value to the community of those buildings having architectural and historical worth shall not be impaired and that said districts be maintained and preserved to promote their use for the education, pleasure and welfare of the citizens of the City of Kingston and others.
  
- B. To provide a basis for property owners, architects, engineers, landscape architects, developers, Planning Board members, residents and City officials to address site and building design issues within the core areas of Kingston – the Stockade Area, Broadway and Rondout – as they design and review the architecture, site development, vehicular, bicycle and pedestrian circulation, parking, streetscape improvements, signage and lighting of proposed development. More specifically, these Standards are intended to:

- (1) Provide clarification of the City's objectives in concert with existing zoning laws and to add consistency and predictability to the permit review process.
  - (2) Stimulate improvements to existing structures and encourage new development within the core areas of the City.
  - (3) Improve the visual appearance of the core areas to renew interest and viability to these hubs of activity in the City.
  - (4) Provide a consistent methodology for review of proposed new and redevelopment projects.
  - (5) Inspire creativity and quality in the design of all structures and in site development.
  - (6) Foster an exchange of ideas among developers, City officials and residents in an effort to improve the quality of design in all projects both public and private.
- C. To advise the Mayor and the Common Council on all matters related to the Kingston Heritage Area and its programs in a manner consistent with the concepts, goals, and objectives set forth in relevant state and local legislation regarding New York State Heritage areas and in the Urban Cultural Park Management Plan.
- D. To ensure that the preservation, enhancement and utilization of the natural and man-made resources of the unique coastal area of the City take place in a coordinated and comprehensive manner to maintain a proper balance between natural resources and the need to accommodate population growth and economic development. Accordingly, this article is intended to achieve such a balance, permitting the beneficial use of coastal resources while preventing: loss of living esturine resources and wildlife; diminution of open space areas or public access to the waterfront; erosion of shoreline; impairment of scenic beauty; losses due to

flooding, erosion and sedimentation; or permanent adverse changes to ecological systems. The purpose of this article is also to provide a framework for agencies of the City of Kingston to consider the policies and purposes contained in its approved Local Waterfront Revitalization Program (LWRP) when reviewing applications for actions or direct agency actions located in the coastal area; and to assure that such actions are consistent with said policies and purposes.

**§264-2. Establishment and Operation of Commission**

A. Creation; Composition and Terms

There is hereby created a Commission to be called the “Landmarks Preservation and Heritage Area Commission (LPHA) of the City of Kingston”. This Commission shall consist of nine members, to be appointed by the Mayor of the City of Kingston for terms of office of three years, which shall be so arranged that approximately 1/3 of the terms shall expire each year. Members of the Commission may be reappointed for succeeding terms.

B. Qualifications: To the extent possible, commission members shall have the following expertise or experience :

- (1) at least one shall be a historian with knowledge of local history;
- (2) at least one shall be a licensed architect or engineer;
- (3) at least one shall be a state-licensed real estate professional;
- (4) at least one shall have demonstrated significant interest in and commitment to the field of preservation planning as evidenced either by involvement in a local or regional historic preservation group, employment or volunteer activity in the field of preservation planning, or other serious interest in the field;
- (5) at least one shall be the owner of a City designated historic building or a building within a designated historic district;

(6) all members shall have a known interest in historic preservation and planning within the City of Kingston.

C. Appointments and Vacancies

The Commission shall, at least 30 days before the expiration of the terms of each class of Commissioners, submit to the Mayor of Kingston a list of eligible and qualified candidates, which the Mayor may consider in making a selection of successors. Vacancies shall be filled by appointment of the Mayor for the remainder of the unexpired term.

D. Administration

(1) Records: The commission shall be subject to the provisions of the Public Officers Law, including Article 7 related to the Open Meetings Law. The Commission records shall be readily available to the public. The vote or failure to vote of each Commission member shall be recorded. If any Commission member abstains from voting based on a conflict of interest or otherwise, the member must also state his or her reason(s) or ground(s) for doing so on the record.

(2) Annual Reports: The Commission shall submit an annual report of its activities to the Mayor and each member of the Common Council and make such recommendations as it deems necessary to carry out the purposes of this local law.

(3) Regulations: The Commission may recommend to the Common Council regulations relating to any subject matter over which the Commission has jurisdiction under this local law. Any such recommendation may be adopted by local law.

(4) By-Laws, Meetings: The Commission may approve by-laws that are consistent with the regulations adopted by the Common Council. Such by-laws shall provide for the time and place to hold regular meetings; and may

provide for the calling of special meetings by the chairperson or by written request of at least two members of the Commission.

- (5) Any decisions shall be considered and decided by a majority vote of the total membership of the Commission at a duly called meeting of the Commission.

### **§264-3. Powers and Duties to Designate Landmarks**

A. The Commission shall have the following powers and duties:

- (1) To recommend to the Common Council that it establish certain landmarks or Landmark (L) Districts. A landmark or Landmark (L) District may be or may include an exterior or publicly accessible interior and may include areas comprising all or portion of: (a) one or more city blocks; (b) one or both sides of a city street; (c) one or more plots of unimproved land, or; (d) any other real property.
- (2) To review all applications for building permits and all appeals and applications transmitted to the Fire Officer which may affect any landmark or Landmark (L) District, and to make determinations accordingly, which shall be binding in accordance with §405-49C.
- (3) To apply or impose in accordance with the standards set forth in §405-63 herein, with respect to the construction, reconstruction, alteration or demolition of such building or the performance of work thereon, regulations, limitations, determinations or conditions which are more restrictive than those prescribed or made by or pursuant to other provisions of law applicable to such active ties, work or use.
- (4) At its discretion and with the property owner's consent, to cause to be prepared and placed upon or near any landmark or Landmark (L) District a suitable plaque declaring that fact.

- (5) The Commission may make such investigations and studies of matters relating to the protection, enhancement, perpetuation and restoration of landmarks as the commission may, from time to time, deem necessary or appropriate for the effectuation of the purpose of this article and may submit reports and recommendations as to such matters to the Mayor and other agencies of the city government. In making such investigations and studies, the commission may hold such public hearings as it may deem necessary or appropriate.
- (6) To make all appropriate arrangements for the general transaction of its business, including the receipt and disbursement of funds, and to retain or employ professional consultants, secretaries, clerks or other such personnel as may be necessary to assist the Commission in carrying out its duties with such funds as may be made available to it by the Common Council in its sole judgment and discretion.

**§264-4. Landmark or Landmark (L) District Designation Procedure**

- A. The Commission shall consider for a landmark or Landmark (L) District designation real property proposed by motion of any Commission member or by an owner of such property or by written request signed by 10 residents of the City of Kingston.
- B. The criteria for the designation of landmarks shall particularly favor such designation where the proposed landmark or Landmark (L) District:
  - (1) Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state or community;
  - (2) Is identified with historic personages or with important events in national, state or local history;

- (3) Embodies distinguishing characteristics of an architectural-type specimen, inherently valuable for a study of a period, style, method of construction or of indigenous materials or craftsmanship; or
  - (4) Is representative of the notable work of a master builder, designer or architect whose individual ability has been recognized.
- C. Notice of a proposed designation, including the amendment of a prior designation or proposed designation, shall be sent by the Commission by certified mail or personal delivery to the last owner of record, as the names and addresses shall appear on the records of the Assessor of the City of Kingston, briefly describing the proposal for designations and the date, time and location of the public hearing by the Commission to consider the proposed designation. The notice required hereunder shall be sent at least 14 days prior to the public hearing. Once the Commission has issued notice of a proposed designation, no building permits or demolition permits shall be issued by the Fire Officer until the Commission has made its decision.
- D. The Commission shall also cause notice of the proposed designation to be published at least once, at least 14 days prior to the public hearing, in a newspaper having general circulation in the City of Kingston.
- E. The Commission shall hold a public hearing to consider all proposals for the designation of any property as a landmark. The Commission and any other interested parties may solicit expert testimony and offer other evidence relevant to the designation of the proposed landmark.
- F. Following the public hearing, the Commission shall forward to the Common Council of the City of Kingston and to the proper owners its recommendations concerning designation of a landmark or a Landmark (L) District. The designation shall be effective upon ratification through ordinance by the Common Council.

Pending ratification, the proposed landmark or Landmark (L) District shall have interim protection.

- G. Emergency Designation: The Commission shall forward to the Common Council of the City of Kingston and to the owners (if known) and also to the persons in charge of all property affected thereby its recommendations, if any, for the designation of a landmark or Landmark (L) District, together with notice of its finding of need for immediate designation of a landmark or Landmark (L) District. It shall forward copies of its recommendation to the Fire Officer's office, with notice of its finding of need for immediate designation, and, in that case, such recommendations shall be deemed to be in full force and effect, pending public hearing. Commission recommendation and final action by the Common Council, and the Fire Officer shall perform his respective functions and duties as though the recommendations of the Commission have been adopted in their entirety by the Common Council. A designation by the Commission on a finding of immediate need shall be effective from the date of mailing or personal delivery of the notice of designation to the owner of the property (if known) in the same manner as the notice requirements of **Subsection C** hereof and shall expire 90 days thereafter if the common council shall have failed to act within said period. The notice shall specify the recommendations of the Commission, its reasons therefor and the right of appeal.

#### **§264-5. Applicability and Guidelines**

- A. Applicability: This section shall apply to all buildings, structures, outbuildings, walls, fences, steps, topographical fixtures, earthworks, landscaping, paving and sign of a landmark or Landmark (L) Design. No changes in any exterior architectural feature, including but not limited to, construction, reconstruction, alteration, restoration, removal, demolition or painting, shall be made except as hereinafter provided. To assist in the conservation action, specific guidelines are included in **§405-** of the Zoning Law.



B. General Guidelines: In addition to the standards set forth in §405- of the Zoning Law and the following General Guidelines, the Commission shall be guided in its review of applicable actions in Landmark Districts or structures by the “Secretary of the Interior’s Standards for the Treatment of Historic Properties” as developed by the National Park Service (36 CFR 68.3, as may be amended).

(1) Site Design: In determining building setbacks for new construction, the Commission may require new buildings to be set behind existing building lines to give emphasis to existing structures of historic or aesthetic merit or to allow for suitable landscaping. New construction shall be compatible with the District in which it is located.

(2) Landscaping and Paving: Landscaping may be required by the Commission, and is deemed an important element of site development.

- (a) Evergreen materials may be required for screening purposes.
- (b) Recommendations may be made to the Commission by a landscape architect or designer approved by the Commission.
- (c) Bluestone, slate or brick may be prescribed for sidewalks.
- (d) Maintenance of plant material shall be the responsibility of the owner, including responsibility to keep growth trimmed and trained, to meet the Commission requirements.

(3) Parking: Parking areas shall be partially screened from public view, with appropriate walls, structures, fences or landscaping. The area allotted for planting of all parking lots shall be at least 5% of the amount allotted to parking surfaced.

(4) Maintenance: Preventive maintenance is required in order to assure that these buildings, spaces, elements and details are preserved. Failure to provide this preventive maintenance shall be a violation of this article.

C. Relation to Underlying Zoning Districts: The underlying zoning districts shall apply within the landmark or Landmark (L) District as follows:

(1) The zone regulations shall apply within the landmark or Landmark (L) District with respect to: limitations on height, except as noted above, building spacing, yard and parking requirements.

(2) Other provisions of these regulations related to land use shall remain in force; all other controls shall remain in force to the extent they do not conflict with the intent and purpose of this section.

**§264-6. Review Procedure**

A. No person shall carry out any exterior or historically designated publicly visible interior alteration, restoration, reconstruction, demolition, new construction or moving of a landmark or property within a Landmark (L) District nor shall any person make any material change in the appearance of such a property, its light fixtures, signs, sidewalks, fences, steps, paving or other exterior elements visible from a public street or alley which affect the appearance and cohesiveness of the historic district without first obtaining a preservation notice of action from the Landmarks Commission and a notification to the applicant to obtain a building permit, if necessary. A preservation notice of action does not obviate the need for a building permit.

B. Criteria: In making such determinations, the Commission shall consider:

(1) The effect of the proposed work in changing, destroying or affecting the exterior features of the landmark or Landmark (L) District upon which such work is to be done;

- (2) The relationship between the results of such work and the exterior architectural features of other neighboring improvements;
  - (3) The factors of aesthetic, historical and architectural values and significance, architectural style, design, arrangement, texture, material and color;
  - (4) The special character and aesthetic interest that any structure involved adds to the area; and
  - (5) The difficulty or impossibility of reproducing any structure involved because of its design, texture, material, position or detail.
- C. All applications shall be considered by the commission on at least the following points, these points to be used as a basis, where relevant, for establishing relationships to the external features of buildings in the immediate neighborhood: The building height in relation to surrounding buildings; the relationship to nearby roof shapes; the relationship between the width to height of the front elevation; the size, proportion and spacing of openings within the façade and elevations exposed to view; the rhythm of spacing of buildings and building elements on the street; the design and placement of entrances and projections; the relationships of materials, textures and colors; the relationship of architectural details; the continuity of walls; the relationship of landscape elements; the appropriateness of paving; and the effect on existing or historically significant spaces.
- D. It shall be the further duty of the Commission to exercise judgment in accord with the basis of decisions stated herein and maintain the desirable character of the landmark or Landmark (L) District and prevent construction, reconstruction, alteration or demolition out of harmony with existing buildings insofar as character, material, color, line and detail are concerned, and thus to prevent degeneration of property, to safeguard public health, promote safety and preserve the beauty of the character of the landmark or Landmark (L) District.

**§264-7. Preservation Permit for Change in Exterior Architectural Features**

- A. The preservation notice of action required by this section shall be in addition to, and not in lieu of, any building permit that may be required by any other ordinance of the City of Kingston, New York. In the event of overlapping reviews, the most restrictive review shall apply.
- B. Prior to the commencement of any work requiring a preservation notice of action, the owner shall file an application for a preservation notice of action, which shall be made, in writing, in duplicate, to the commission and shall contain the following:
- (1) The name, address, telephone number and signature of the owner.
  - (2) The name, address, telephone number and signature of the applicant.
  - (3) The location of the building, structure or land; the exterior architectural features which are proposed to be changed.
  - (4) The elevations of the proposed change.
  - (5) A perspective drawing.
  - (6) Samples of colors or materials to be used in the proposed change.
  - (7) Where the proposed change includes signs or lettering, all dimensions and colors, a description of materials to be used and the method of illumination, if any, and showing the location on the building or property.
  - (8) Photographs of existing conditions may be required.
  - (9) Whatever additional information the commission deems necessary to evaluate the application.

C. Prior to submitting a formal application, the applicant or his representative may meet with the Commission and/or its staff to informally discuss plans for alterations of exterior features. In order to avoid unnecessary expense and delay, a sketch or schematic design for the construction, alteration or repair of any regulated activity may be presented to the Commission. A preliminary design should show the relation to adjacent structures and spaces. The Commission may advise or recommend alteration and changes in the application.

D. Procedure to be followed for a Preservation Notice of Action.

(1) Within a reasonable time after a completed formal application is filed with the Commission, but in any event within 90 days after such filing or within such further time as the applicant may, in writing, allow, the Landmarks Commission shall conduct a public meeting to approve or deny the application or approve the application with modifications. At said public meeting, opportunity shall be provided to proponents and opponents to present their views.

(2) All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by mail and a copy filed with the Building Safety Division of the Fire Department for public inspection. The Commission's decision shall state the reasons for denying or modifying any application. Approval to proceed will be documented by the issuance of a Preservation Notice of Action. The conditions upon which the Preservation Notice of Action is issued will be stated, in writing, on the Preservation Notice of Action. During work upon any Preservation Notice of Action, if a modification is sought, such must be approved by an amended Preservation Notice of Action issued by the Commission. Compliance will be necessary to obtain a final Certification of Occupancy or Certificate of Compliance from the Building Safety Division of the Fire Department. The Preservation Notice of Action shall be valid for one year. At all times during this term, the Preservation Notice of Action shall be

prominently posted in public view pursuant to local law governing building permit posting.

- E. Inspection. If, upon inspection, the Historic Landmarks Preservation Commission (HLPC) determines that the work is not in conformity with the Preservation Notice of Action, the HLPC shall notify the Building Safety division of the Fire Department, in writing. No Certificate of Occupancy or Certificate of Compliance shall be issued thereupon until the work is altered to be in conformity with the Preservation Notice of Action.

**§264-8. Hardship**

- A. An applicant whose Preservation Notice of Action for a proposed demolition or alteration has been denied may apply for relief on the grounds of hardship. The hardship shall not be self-inflicted. In order to prove the existence of hardship, the applicant shall establish that:
  - (1) The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
  - (2) The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
  - (3) Efforts to find a purchaser interested in acquiring the property and preserving it have failed.
- B. Hardship application procedure.
  - (1) After receiving written notification from the commission of the denial or approval with modifications of a Preservation Notice of Action, an applicant

may commence the hardship process. No building permit or demolition permit shall be issued unless the Commission makes a finding that a hardship exists. The Commission will be provided for the proponents and opponents of the application to present their views.

- (2) The applicant shall consult in good faith with the Commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property.
- (3) All decisions of the commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the City Clerk's office for public inspection. The Commission's decision shall state the reasons for granting or denying the hardship application.
- (4) In the event the commission's denial based on hardship application, the applicant may apply to the City of Kingston zoning board for review of said application, applying Landmark Ordinance criteria.

**§264-9. Demolition by Neglect**

- A. In its review to determine that demolition by neglect is occurring and upon consultation with the building Safety division of the Fire Department, the commission shall consider all of the foregoing criteria and shall also attempt to confer with the owner or person in charge of the real property concerned. It shall also review any communication it shall receive which indicates that demolition by neglect is or may be occurring in any landmark or Landmark (L) District. In the event that the Commission finds that such demolition is or may be taking place, it shall direct a letter to the building Safety Division of the Fire Department to notify the owner or person in charge of this finding, stating the reasons therefor and requesting that the owner or person in charge immediately take appropriate steps to cause such demolition to cease, and to confer with the Commission in connection therewith. Should the owner or person in charge fail to satisfy the

Commission that all necessary steps are or will be promptly taken, the Commission shall request the Building Safety Division of the Fire Department to notify the Corporation Counsel of the City of Kingston and request the consideration of the proceedings pursuant to §405-52D hereof.

B. No owner or person with an interest in real property designated as a landmark or included within a historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Historic Landmarks Preservation Commission, produce a detrimental effect upon the character of the property itself. Examples of such deterioration include:

- (1) Deterioration of exterior walls or other vertical supports.
- (2) Deterioration of roofs or other horizontal members.
- (3) Deterioration of exterior chimneys.
- (4) Deterioration or crumbling of exterior stucco or mortar.
- (5) Ineffective waterproofing of exterior walls, roofs or foundations, including broken windows or doors.\
- (6) Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.
- (7) Interior structural members shall be protected and maintained to resist and prevent deterioration.
- (8) Unheated attics, spaces below flat roofs and crawl spaces shall be ventilated to minimize deterioration.



(9) Interior and exterior chimneys and flues shall be maintained safe, sound and smoke-tight.

(10) Interior ceilings, walls, floors and stairways shall be maintained in a safe and sound condition.

#### **§264-10. Enforcement**

A. All work performed pursuant to a Preservation Notice of Action and/or building permit issued under this article shall conform to any requirements included therein. In the event that the Commission finds that work is not being performed pursuant to said Preservation Notice of Action or building permit, it shall notify the owner or person in charge of this building, stating the reasons therefor and requesting that the owner or person in charge immediately take appropriate steps to conform to said Preservation Notice of Action or building permit and to confer with the Commission in connection therewith. Should the owner or person in charge fail to satisfy the commission that all necessary steps are or will be immediately taken, the Commission shall request the Building Safety Division of the Fire Department to take appropriate action.

B. Similarly, should both a Preservation Notice of Action and a building permit be issued, the Fire Officer shall have all powers conferred upon him pursuant to the Zoning Ordinance to enforce the Preservation Notice of Action, including, but not limited to, stop-work orders.

#### **§264-11. Appeals**

Any person aggrieved by an action of the Commission in disapproving or limiting a Preservation Notice of Action application may, within 30 days of the decision, file a written appeal to the Common Council for review of the decision. The results of such review and decision may be contested in a manner provided by Article 78 of the Civil Practice Law and Rules in a court of record on the ground that such decisions are illegal, in whole or in part.

**§264-12. Review in Design Overlay Districts**

To be completed including reference to specific Design Standards to be included in the Zoning Law (Chapter 405)

**§264-13. Management of the Kingston Heritage Area**

As the successor to the previously designated Urban Cultural Park Commission and Heritage Area Commission, the Landmarks Preservation and Heritage Area Commission is charged with the responsibility of advising the Mayor and the Common Council on all matters related to the Kingston Heritage Area and its programs in a manner consistent with the concepts, goals and objectives set forth in relevant state and local legislation regarding New York State Heritage Areas and in the Urban Cultural Park Management Plan.

**§264-14. Waterfront Consistency Review**

The Commission is authorized to exercise and administer all the duties and responsibilities set forth in the City Code under Chapter 398, Waterfront, Article II, Waterfront Consistency Review. Said Article was adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization of Coastal Areas and Inland Waterways Act of the State of New York (Article 42 of the Executive Law). In accordance with such law, whenever a proposed action is located in the City's designated coastal area, an agency shall, prior to approving, funding or undertaking the action, make a determination that it is consistent with the policy standards and conditions set forth in the City's approved Local Waterfront Revitalization Program

(LWRP). Article II of Chapter 398, Waterfront Consistency Review, establishes the procedures which the Commission shall follow to arrive at such a determination.

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