



**NOTICE OF A WORK SESSION OF THE HISTORIC PRESERVATION COMMISSION
OF THE TOWN OF CLARKDALE
TUESDAY, AUGUST 6, 2024 AT 6:30 PM**

In Person: Clark Memorial Clubhouse, 19 N. Ninth St., Clarkdale AZ

Unless otherwise stated, the public will have physical access to the meeting place 15 minutes prior to the start of the meeting.

Town of Clarkdale Vision

The Town of Clarkdale connects our unique history, proximity to the Verde River, and small-town charm to a future with a vibrant economy.

We cultivate an environment where residents and businesses can thrive; providing services and jobs for our residents and capitalizing upon tourism.

We sustainably enhance our infrastructure, support the arts and education, and develop recreational opportunities to create a bright future for our entire community.

PURSUANT TO A.R.S. §38-431.02, NOTICE IS HEREBY GIVEN that the Historic Preservation Commission will hold a Work Session open to the public on Tuesday, August 6, 2024, at 6:30 PM at 19 N. Ninth Street, Clarkdale, Arizona, Clark Memorial Clubhouse, Men's Lounge. A quorum of Town Council members may be present at this meeting; however, they will not deliberate or take action on any items. All members of the public are welcome to attend.

ALL ITEMS ON THIS AGENDA ARE SCHEDULED FOR DISCUSSION AND POSSIBLE ACTION, UNLESS OTHERWISE NOTED.

1. CALL TO ORDER

2. ROLL CALL

3. DISCUSSION ITEMS ONLY - NO ACTION TAKEN

A. Historic Preservation Ordinance

Discussion only regarding the text amendments to add definitions of words and terms related to historic preservation to Chapter 2, Definitions, and add Article 3-170, Historic Preservation Ordinance, to Chapter 3, Zoning Districts, of the Town of Clarkdale Zoning Code. This will be a work session to include members of the Historic Preservation Commission and property owners included in the proposed Historic Overlay District.

4. FUTURE AGENDA ITEMS

Historic Preservation Commission may propose items to be placed on a future agenda. This item is for discussion only.

5. ADJOURNMENT

Values

Values are the guiding principles that provide an organization with purpose and direction. The Town of Clarkdale's organizational values are:

COPPER

Customer focused

Open, transparent and equitable

Preserving our history, charm, and environment

Planning for a sustainable future

Economic and social resiliency

Resourceful and innovative

Mission

The Town of Clarkdale serves the community by providing amenities, infrastructure, services, and public safety to enhance quality of life. We are stewards of our history while we sustainably and resiliently plan for the future with an emphasis on community engagement and transparency.

Persons with a disability may request reasonable accommodations by contacting the Town Hall at (928) 639-2400 (TTY: 1-800-367-8939) at least 72 hours in advance of the meeting.



Staff Report

Item Number: 3.A.

Agenda Item:**Historic Preservation Ordinance**

Discussion only regarding the text amendments to add definitions of words and terms related to historic preservation to Chapter 2, Definitions, and add Article 3-170, Historic Preservation Ordinance, to Chapter 3, Zoning Districts, of the Town of Clarkdale Zoning Code. This will be a work session to include members of the Historic Preservation Commission and property owners included in the proposed Historic Overlay District.

Staff Contact:

Ruth Mayday, Community Development Director

Meeting Date:

August 6, 2024

Strategic Goal:

This agenda item supports the following Clarkdale Strategic Goal Area:

- Goal Area 1 - Preserve and celebrate Clarkdale's unique, complex history.
- Goal Area 2 - Enhance the quality of life for residents, businesses, and visitors to Clarkdale.
- Goal Area 4 - Strengthen and diversify our economy through cultivating a business-friendly climate for business attraction and strategically capitalizing upon tourism.

Background:

The purpose of this roundtable work session is to continue the discussion from the July 11, 2024, roundtable meeting between the Historic Preservation Commission (HPC) and the building/business owner stakeholder group regarding the discussion of the proposed Historic Preservation Ordinance (HPO).

Ordinance #424 sets forth the proposed text amendments that add words and terms related to historic preservation, define the boundary of the Clarkdale Historic Preservation District, delineate areas of responsibility for overseeing the activities of the Historic Preservation Commission, and provide procedures and design guidelines for the review and permitting of construction and revitalization activities within the Historic Preservation District. The Historic Preservation District does not affect the Clarkdale Historic District boundary as approved by the Secretary of Interior as part of the application for National Register status.

Upon its creation on July 28, 2020, the Town of Clarkdale Historic Preservation Commission (HPC) was tasked with a number of goals and objectives to carry out. The development of an Historic Preservation Ordinance (HPO) would fulfill the last requirement for the State Historic Preservation Office (SHPO)'s Certified Local Government (CLG) status, which will enable the Town to apply for grants through SHPO for brick-and-mortar and other projects. It also helps ensure consistency in the preservation of existing structures and provides guidance with respect to infill development.

Work began on the ordinance early in 2021 with staff and the HPC.

Eventually, the Town retained Froke Urban Planning to assist with the development of the Ordinance, and work began on Jan. 3, 2023. Staff and commissioners worked through several iterations to develop a final draft, which was approved by the HPC on Dec. 5, 2023.

A joint workshop was held on Feb. 29, 2024, between the Town Council and Planning Commission to review the draft with staff and discuss concerns and suggestions they had. Subsequent to that meeting, the Planning Commission held a public hearing on April 16, 2024, after notice in conformance with A.R.S. 9-462.04. After a lengthy discussion and input from stakeholders, the Commission voted unanimously to return the proposed ordinance to staff and the HPC for additional work.

On May 21, 2024, the HPC discussed the Ordinance at a Special Meeting. Several business and building owners attended the meeting as well as members of the public. The ordinance was discussed, and language suggestions were made by both the public and the stakeholders. It was evident that there were significant concerns brought forth by both the stakeholders and the Commission. As a result, staff scheduled a roundtable workshop on July 11, 2024, to provide a forum for discussing issues with the proposed ordinance and resolutions for those problems.

The July 11, 2024, roundtable workshop focused on two areas: whether the ordinance is necessary to preserve historic structures in historic downtown Clarkdale, and whether it should be adopted as an "opt-in" ordinance rather than opt-out or mandatory participation.

Concerns were expressed about notification and why an ordinance was necessary, and whether it was just for the Town to access grant money. Staff explained that the primary purpose was to ensure the protection of the commercial structures in the district, and as the final step in obtaining Certified Local Government (CLG) status, which entitles the Town to apply for funding through state, local, and some foundation granting entities.

Commissioner Lindner provided a list of the 32 cities and towns in Arizona that have adopted HPOs, including Cottonwood, Prescott, and Jerome. The Backus' expressed a desire to maintain a balance between the need to preserve downtown but not have excessive regulation by the Town.

Drake Meinke, Arizona Copper Arts Museum, expressed his support for the ordinance. Karen McClanahan and Steve Lauman provided suggestions for an Historic Preservation Incentive Program, which will be discussed later in this report.

Staff has scheduled this roundtable meeting to further the conversations regarding the ordinance and to cover issues not discussed previously.

This Meeting



The intent of this meeting is to build upon the previous meeting and continue review of the Historic Preservation Ordinance (HPO) to resolve questions and issues the stakeholder group may have.

The purpose of the Historic Preservation Ordinance (HPO) is not to punish building owners and tenants, dictate to them how buildings should be maintained, or require existing facades to be modified. Rather, it is to provide standards for current and future owners who may or may not have the devotion to preservation exhibited by the current

stakeholders.

The standards for demolition are critical. Any building in the district could be purchased and demolished; there is no review required. The example of the Theater building (right) illustrates modifications made to these buildings that have been made in the not-too-distant past. The story of Clarkdale and its historic structures are unique and worthy of preservation – the HPO is another tool to ensure their preservation now and in the future.

At the July 11 round table, there was discussion regarding the tone of the ordinance language. To be clear, ordinances are not written for those who comply with them, but rather those who try to avoid compliance. They are legal documents and thus must set forth what is permitted and not permitted, rather than what should and should not be done.

Historic Preservation Incentive Program: During the meeting, an alternative to the HPO was presented, called the Historic Preservation Incentive Program

that outlines an alternative approach to the HPO. Ideas include developing resources such as grant writing, fundraising, crowdfunding, establishing and managing an endowment; establishing an architectural salvage yard and a historic materials bank; recruiting and managing volunteers (researchers, grant writers, builders, laborers, engineers, designers, craftsmen, etc.); accepting donations; tapping into Town resources (project managers, the building official, etc.), managed by the Historic Preservation Commission.

Several of these suggestions such as making recommendations to the Town Council to accept gifts, grants, funds, etc.; Cooperating and enlisting the assistance...in matters of historic preservation; assisting property owners with advice regarding historic preservation; developing public education programs are set forth in the enabling ordinance for the HPC. Because the HPC has devoted so much time to this ordinance, they have not had the opportunity to work with staff and implement these programs.

However, some conflict exists with the unique nature of a municipality. First, public dollars cannot be used to improve private properties, unless it is via a pass-through grant. As much as staff would like to assist building owners with grant writing, project management, fundraising, and construction oversight for private projects, it is not legal for them to do so.

Secondly, work on commercial structures where the public is invited in must be done by commercial contractors with an active license on file with the Arizona Registrar of Contractors, or under the direct supervision of a general contractor with the appropriate commercial endorsement. It is difficult to find volunteers that can fill these roles. Similarly, engineers must be licensed in the State of Arizona and must also carry liability insurance.

Lastly, while an architectural salvage yard would be helpful, it cannot be funded with public dollars as items procured by the Town must be sold at auction and not private sale. This is not to say that a private organization such as the Clarkdale Historical Society and Museum, Clarkdale Downtown Business Alliance, or some other organization could not undertake the development of resources suggested or manage an architectural salvage yard.

The Incentive Program also suggests that projects requiring design review under existing code can qualify for historic preservation resources if it is determined to be a historic preservation or restoration project. Under the existing code, the Design Review Board is solely responsible for review of all commercial and industrial projects throughout Clarkdale. Unlike the Historic Preservation Commission, there are no requirements or qualifications for board members, other than residence in Clarkdale. Those with no understanding or experience with architecture, especially historic architecture, are not qualified to determine the appropriateness of proposed changes to historic structures. Thus, applicants would have to appear before the HPC to determine if the project is an historic preservation or restoration project, then go to the DRB for design approval. This adds an additional hearing; with

required notice, it would likely add another 30-45 days to the approval process.

In order to change the ordinance, it must be amended following a statutory process – staff, the Commission, and Council cannot simply change the language without the requisite public process. Further, the proposed ordinance provides for review of major projects (Major Certificate of Appropriateness) by the HPC and staff using the *Secretary of Interior's Standards for the Treatment of Historic Properties*, and uses the HPC as the recommending body rather than the DRB. The existing code does not allow the latitude that the HPO does; it grants the HPC the ability to vary from the requirements of the zoning code, where existing code requires a hearing before the Board of Adjustment. The current code also requires approval from the DRB before owners can paint their buildings, replace light fixtures, and other minor alterations that the HPO delegates to staff to approve. If staff and the applicant cannot agree as to the appropriateness of a modification, then the proposal is reviewed by the HPC for a determination.

Opting-in to the district allows for waived permits for all purposes, as the intent is to reduce the cost of repairing structures and reopening them to the public. For instance, if the Miller Building project were to request a building permit for plumbing only, it could have those fees waived as long as the repairs bring the plumbing up to current code. That same plumbing permit, however, would not require changes to the façade as it (along with all others in the district) are already in compliance with the HPO.

The HPO proposes the incentives that it does as the Town understands the challenges of construction projects, permitting and review times, and most importantly, the costs associated with those projects.

Adding regulations to an established district is never easy. Staff takes seriously its obligation to balance the desire to preserve the historic commercial block with the extraordinary costs associated with historic rehabilitation and the private property rights of building owners.

Budget Impact: No budget impact.

Recommendation: Staff strongly recommends that the election to participate in the Historic Preservation Ordinance should be an affirmative act on the part of the building owner, rather than the assumption that all structures are included unless there is a specific request to remove them. The burden of action should be on those who *want* to participate rather than those who do not.

Staff also recommends that the HPC and stakeholders review and discuss those portions of the code that were not discussed on July 11 with the intent of resolving any remaining conflicts in the text.

Section 2-010 Definitions

Building Official: Person appointed by the Town Manager that oversees the responsibility of issuing construction and demolition permits and enforcing the provisions of the Building and Property Maintenance Codes.

Bulk Standards: Requirements which establish the maximum size of buildings and structures on a lot or parcel and the buildable area within which the structure may be placed, including lot coverage, height, floor area ratio, setbacks, and yard area.

Community Development Director: Person appointed by the Town Manager that oversees the Community Development Department.

Hardship: a restriction on a property located in the Historic Preservation District that results in an arbitrary and capricious interference with basic property rights. Hardship relates to the physical characteristics of the property, not the personal circumstances of the owner or user, and the property is rendered unusable without the granting of a variance.

Historic Preservation Specialist: Town of Clarkdale Staff appointed by the Community Development Director that oversees the Historic Preservation Commission and the activities of the Clarkdale Historic Preservation Program.

Historic Preservation District: Includes areas of the Town within the boundary of the Historic District as identified in Exhibit 1, Historic Preservation District, in Section 3-170 Historic District, of the Town of Clarkdale Zoning Code. A map of the Clarkdale Historic Preservation District is on file with the Community Development Department.

Section 3-170 HISTORIC PRESERVATION DISTRICT (HD)

Section 3-170-010 Purpose

The purpose of this ordinance is to: support the preservation of buildings, structures, and sites identified in the Historic Resource Survey of Clarkdale (Ryden, 1989) and the National Register of Historic Places Designation (January 1, 1988), and to identify, preserve, and enhance the Town's significant historical, architectural, cultural, and archaeological resources in the interest of the welfare of the citizens of Clarkdale by:

1. Protecting, preserving, and enhancing the significant elements of the historical, architectural, cultural, and archaeological heritage of the Town;
2. Encouraging the identification and recognition of significant historic resources;
3. Encouraging the sensitive adaptation of historic properties to modern uses;
4. Ensuring that new construction, additions, alterations, and demolitions to both historic and non-historic properties within the Clarkdale Historic District are carried out in a manner which is not detrimental to the historic integrity of the district;
5. Encouraging the identification and protection of prehistoric and historic archaeological resources and enhancing the value of the historic district and properties;
6. Protecting and preserving those properties within the Town which are valuable to the preservation of the community character and identity;
7. Preserving and enhancing the attractiveness of the Town to potential home buyers, and business interests; and
8. Supporting historic tourism and promoting commercial development and economic benefit to the Town.

Section 3-170-020 Historic Preservation Overlay District Designation

The Historic Preservation District is an overlay zone. Overlay zones supplement the existing zoning by establishing additional requirements that are applied to the underlying zoning district.

A. Historic Preservation District Boundaries

The Historic Preservation District, which is subject to the regulations set forth herein, is designated by the boundaries identified in Exhibit 1: Historic Preservation District.

- 1) The provisions of this Section may be applied to properties within the Clarkdale Historic Preservation District identified in the map of the Clarkdale Historic Preservation District at

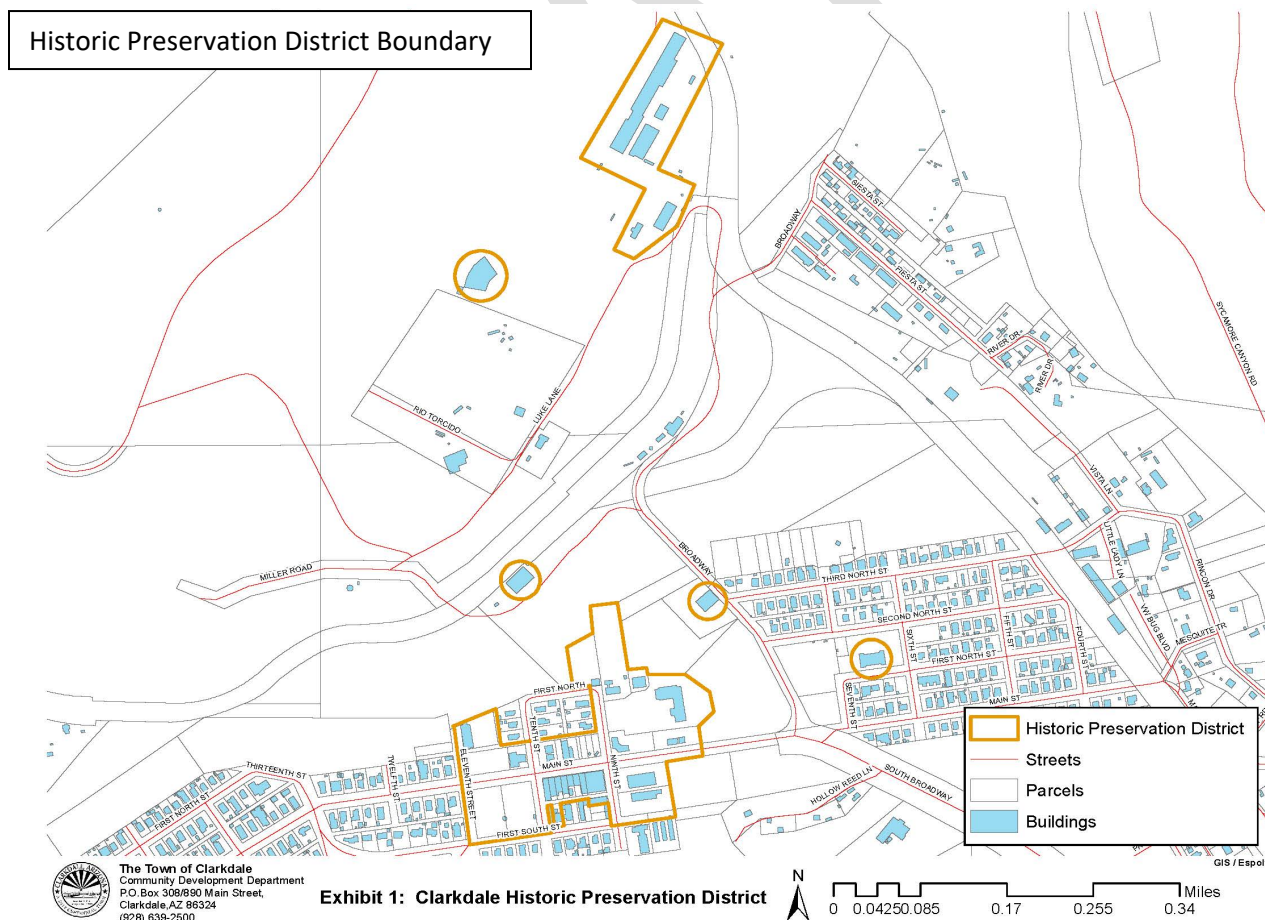
the option of the property owner. If the owner opts to apply the standards of this Section, all applicable standards in the Section shall be applied. An opt-in form must be signed by the property owner and submitted to the Town prior to issuance of any building permits under the Historic Preservation Ordinance.

2. Those property owners that do not opt-in are subject to the development standards for the underlying zoning classification of the Historic District.

3. Historic properties electing to adhere to the requirements of the Historic Preservation Ordinance (HPO) shall inure to the following benefits:

- a) Waiver of building permit fees for applications that bring existing historic structures in compliance with adopted building codes
- b) Accelerated review of historic preservation projects
- c) Accelerated permitting of historic preservation projects
- d) Waived application fees for historic preservation projects

B. The regulations set forth herein apply to all existing structures and to all new construction within the Historic District.



C. The Historic Preservation Commission shall serve as the Design Review Board for the Historic Preservation District.

Section 3-170-030 Development Standards

Properties within the Clarkdale Historic Preservation District shall consider the context of the surrounding and existing structures with respect to architectural style, building form, and building massing. Projects shall honor the Secretary of the Interior's *Standards for the Treatment of Historic Properties*.

When designing new or remodeled buildings or considering an adaptive reuse of an existing building, the following design features and elements shall be incorporated:

A. Siting

Please refer to Exhibit 2: Town of Clarkdale Streetscape for a graphic representation of the requirements of this subsection.

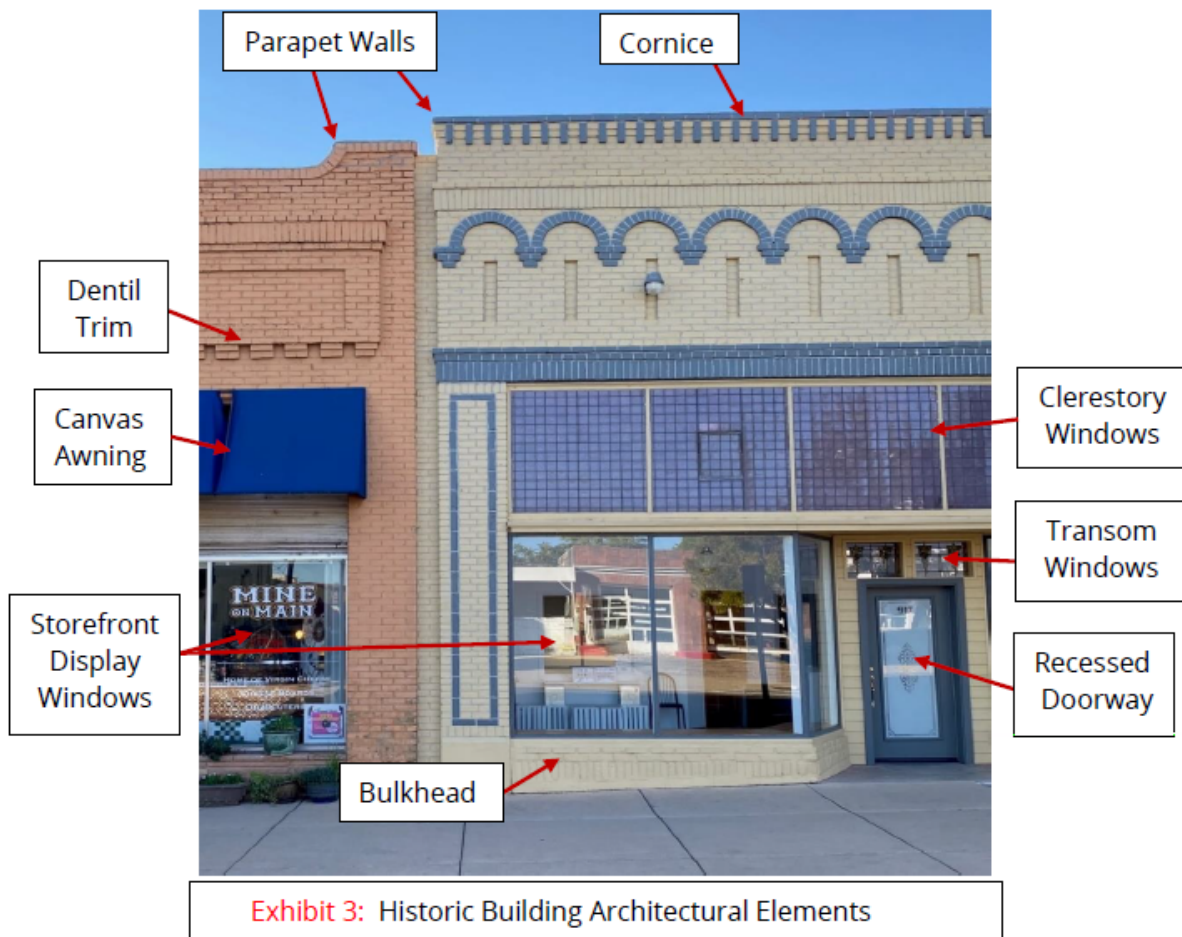
- 1) Establishment of a relationship to adjoining spaces. For new construction, one and two-story buildings are encouraged.
- 2) A connection to existing sidewalks or an extension of the sidewalk system.
- 3) Continuity of streetscape along Main Street.
- 4) The main entrance shall be from a public sidewalk.
- 5) The front yard setback shall be reduced to zero if the main building abuts a public sidewalk.



B. Exterior Wall Design, Materials & Finishes

Please refer to Exhibit 3: Historic Building Architectural Elements for a graphic representation of the requirements of this subsection.

- 1) Incorporation of design features such as parapet walls, cornices, friezes, dentil trim, metal canopies, canvas awnings, clerestory windows, transom windows, storefront display windows, recessed doorways and bulkheads are required for new construction.
- 2) Preservation of these features is required for rehabilitation or repair of existing structures.



- 3) Masonry may be structural or veneer. Brick façades and/or partial brick inlays are encouraged.
- 4) Painting of brick is discouraged, unless replicating historic signage or installation of murals.
- 5) Stucco, wood, stone, limestone, metal and other materials may be used as an accent.

C. Roof and Parapet

Please refer to Exhibit 4: Rooflines and Parapet Walls for a graphic representation of the requirements of this subsection.

- 1) Varied roof lines and parapet walls are required for new construction.
- 2) Preservation and restoration of existing parapet walls are required.
- 3) Metal roofing is acceptable.
- 4) Rooftop mechanical equipment shall be screened from public view. For corner lots, equipment shall be screened from both front and side elevation.



Exhibit 4: Rooflines and Parapet Walls

D. Storefronts, Doors, Windows & Awnings

Please refer to Exhibits 5A Wood Door Frame and 5B Entry Features for a graphic representation of the requirements of this subsection.

1. Large storefront display windows are required.
2. Wood is recommended for doors, trim and accenting the doorway and entry.
3. Windows shall be glass and shall be vertical in orientation and may be single, double hung, or fixed.

4. Steel may be used for doors and window frames if painted to match or anodized and compatible with the building.
5. Transom and clerestory windows are required for new construction and their restoration is required for existing buildings.
6. Rounded arches are encouraged when feasible in new construction and preserved or restored in existing structures.
7. The use of wood for doors is strongly encouraged.
8. The use of canopies and awnings is allowed.



Exhibit 5A: Wood Door Configuration

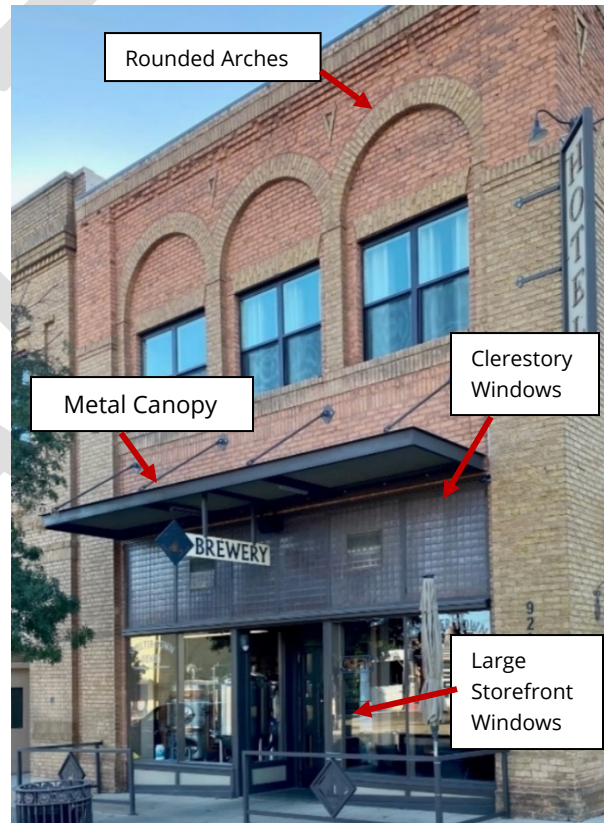


Exhibit 5B: Storefront Detail

E. Site Features:

1. The purpose of this section is to provide instruction for site features to enhance new construction and maintain continuity within the district. These features include but are not limited to walkways, benches, street lighting, paving materials, walls, stairs and landscaping. These features must be appropriate to the scale and character of the Historic Preservation District as follows:

- a. Landscaping shall be drought tolerant. Building planter beds or containers are allowed and drip irrigation is recommended. The Property owner is responsible for maintaining plants in live condition.
 - b. Lighting shall not detract from the historic character of the structure and must comply with the Town of Clarkdale Zoning Code, Section 8-070.
 - c. Benches shall be of similar form and character with existing benches on Main Street and shall be securely fastened to concrete footings or sidewalk and shall not detract from the character of the Historic Preservation District.
 - d. Outdoor sidewalk cafes are allowed and regulated through a separate permit application and shall be compliant with the Town of Clarkdale Zoning Code, Section 4-160. The application can be submitted concurrent with the review process set forth in Section 3-170-030.
2. All other development and performance standards are as found in the underlying zoning district.

Section 3-170-040 Application Process

- A. Prior to submitting a building permit application, in the Historic Preservation District, the applicant shall schedule a Pre-Application Review (PAR) meeting with the Community Development Department staff to review the required application submittals and review process.
 - B. All building permit applications for existing structures located in the Historic Preservation District, or proposed new construction located in the Historic Preservation District, shall be reviewed by the Community Development Director or designee ("Staff"), for classification as either a Minor or Major Certificate of Appropriateness as set forth in Section 3-170-040.
 - C. Plans showing the full scope of the proposed work shall be submitted at the time of application for a Major or Minor Certificate of Appropriateness. An approved plan shall be binding upon the applicant and their successors and assignees. No building permit shall be issued for any building or structure not in accordance with the plan except that temporary facilities shall be permitted in conjunction with construction after approval of temporary facilities by staff.
1. When a building permit is sought from the Town to demolish, alter, remodel, move, build, renovate or otherwise develop or landscape property in the Clarkdale Historic

Preservation District, issuance of the permit shall be deferred until after a Certificate of Appropriateness is obtained.

2. Permits with special circumstances that require a variance, including but not limited to the size, height, locations and number of signs, the location of off-street parking, required screening and landscaping, the height of fences and walls, and the number of required off-street parking and loading spaces may be recommended for approval through the Certificate of Appropriateness process. Such variances shall meet the following findings of fact:
 - a. Are not contrary to health, safety, or best interest of the public.
 - b. Enforcement of the provision shall cause an unnecessary hardship that is neither economic nor a self-imposed harm.
 - c. Condition unique to the property which was not created by the property owner.
 - d. The variance has no adverse effect on surrounding properties or the general public.
 - e. The variance does not conflict with the characteristics that make the property eligible for the National Register of Historic Places.
 - f. Practical difficulties or unnecessary hardship would result in having to comply strictly with the Zoning Ordinance.
 - g. No changes are made to underlying zoning districts or General Plan land use designations.
3. All other development and performance standards not found listed herein shall comply with the underlying zoning district.
4. Nothing in this ordinance shall be construed to prevent ordinary maintenance, cleaning, or repair of any structure in the Historic Preservation District, which does not alter or modify the historic character of the structure.

Section 3-170-050 Certificate of Appropriateness

A. Applications for Certificates of Appropriateness shall be submitted to the Town of Clarkdale Community Development Department. Staff will review the application for completeness and provide review comments to the Commission.

Applications shall include the following items:

1. Site Plan: Shall include topography, vegetation, property lines, building, on-site circulation, and adjacent building footprints, streets, right of ways, curb cuts, driveways, sidewalks, signage, lighting, fences, and walls.
2. Exterior Elevations: Shall include doors, windows, architectural features, and elevation marks from finished grade to highest point of eaves, roof ridge, or parapet walls.
3. Rehabilitation, Remodel, or Restoration Plans: Shall include identification of features proposed for preservation and proposed for replacement.
4. Floor Plans: For reference only, to help understand the overall plan.
5. Materials and Colors: Shall depict proposed building facade, materials and colors.
6. Historic Photographs: Shall provide project context, elements and compatibility with adjacent properties.
7. Color Renderings: Provide finished project illustrations to show post-improvement compatibility with adjacent properties.
8. Landscape Plan: May be required; Zoning Code Section 9, Landscape Design Standards will apply.
9. Other requirements, depending on scope of project and at the discretion of the Community Development Director:
 - a. Traffic impact analysis.
 - b. Preliminary and Final Plats or Development Plans.

B. Minor Certificate of Appropriateness

The Minor Certificate of Appropriateness (Minor COA) is subject to the review and approval of the Community Development Department and the Building Official. All proposed work will not diminish, eliminate, or adversely affect the historic character of the subject property or its effect on the Clarkdale Historic Preservation District as per the following Minor Certificate Standards:

1. The proposed work is clearly within the Development Standards.
2. Limited to work that does not significantly alter the character and appearance of the property.
3. Approval authorizes the issuance of permits required by the Building Official.
4. Approval of a Minor COA also serves as Design Review approval.
5. The public will be notified of approval, approval with stipulations, or denial of application at the next regular meeting of the HPC after approval by staff.

6. If a Minor COA is not issued, a Major Certificate of Appropriateness (MCOA) shall be required.

C. Major Certificate of Appropriateness

The Major Certificate of Appropriateness (Major COA) shall be subject to the review and approval of the Historic Preservation Commission for all major new construction, significant restoration, alteration, demolition, or other major construction activity in the Clarkdale Historic Preservation District.

1. All proposed work shall not diminish, eliminate, or adversely affect the historic character of the subject property or its effect on the Clarkdale Historic Preservation District.
2. All work is subject to review and approval by the Building Official, Public Works Director, Town Engineer, and any other agency having jurisdiction over the project.
3. The Major COA includes anything that constitutes substantial work including but not limited to alteration, restoration, new construction, demolition, or other significant activities.
4. The Major COA requires a public hearing before the Historic Preservation Commission. Notice shall be given in conformance with the notification process for public hearings before the Planning Commission.
5. The Historic Preservation Commission shall recommend approval of the application, approval with stipulations, or recommend denial of the application. The Commission may also send the application back to staff for additional work.
6. The application shall then be forwarded to Town Council with a recommendation of approval, approval with stipulations, or denial.

D. The Historic Preservation Commission shall evaluate all proposals in accordance with the *Secretary of the Interior Standards for the Treatment of Historic Properties* and the adopted design guidelines for the district. A Certificate of Appropriateness shall be recommended if the Historic Preservation Commission determines that the proposed work:

1. Is compatible with the relevant historic, cultural, educational, or architectural qualities and characteristics of the property; and
2. Does not diminish or adversely impact the integrity of the Clarkdale Historic Preservation District.

3. Prior to forwarding the decision of the Historic Preservation Commission to the Town Council, the Historic Preservation Commission shall affirm whether the project conforms to the following findings of fact:

- a. Conforms to the Design Guidelines for the Historic Preservation District
- b. Meets all applicable, adopted building codes of the Town of Clarkdale.
- c. Does not diminish or adversely impact the integrity of the Historic Preservation District.

E. Approval of a Certificate of Appropriateness authorizes the issuance of permits required by the Building Official.

Section 3-170-060 Demolition & Moving of Buildings & Structures

It is the intent of this ordinance to preserve the historic and architectural resources within the Historic Preservation District. However, it is recognized there can be circumstances beyond the control of a property owner which may result in the necessary demolition of a structure within the Historic Preservation District.

These circumstances include a building which constitutes an imminent safety hazard, which involves a resource whose loss does not diminish or adversely affect the integrity of the district, or which imposes hardship on its owners as follows:

- A. No permit shall be issued to move or demolish all or any part of a building, or other structure in the Historic Preservation District without approval of a Certificate of Appropriateness as established in Section 3-170-050.
- B. Request for a demolition permit shall be exempt from these requirements if the Building Official determines, according to the criteria set forth in adopted codes, that the building is an imminent safety hazard to the public and that necessary repairs would be impractical. The Building Official shall first notify the Historic Preservation Specialist in writing before issuing the demolition permit.
- C. If demolition approval is not granted, then no demolition permit shall be issued for a period of one (1) year. A subsequent demolition application may be made and granted for a property which has previously been the subject of a one (1) year demolition permit denial if new facts or circumstances can be presented in support of the application.
- D. If demolition approval is granted on any basis other than that of an imminent hazard, hardship, or upon expiration of a restraint of demolition, a demolition permit shall not be issued until a redevelopment or reuse plan for the property has received a Certificate of Appropriateness.

1. The redevelopment or reuse plan cannot be comprised of vacant land or propose no use to replace the demolished structure.
 2. A redevelopment or reuse plan shall consist of a site plan illustrating the location of building, parking, walls, and landscaping, as well as building elevations which depict roof lines, doors, windows, and other architectural details.
 3. A redevelopment or reuse plan shall also meet the requirements for Site Plan Review as set forth in Chapter 11, Section 11-110 of the Zoning Code.
 4. A demolition approval may be conditioned on stipulations which provide for rights of access to the property for the purposes of documentation, including photo documentation, or for agreed upon removal of artifacts.
- E. Relocation of structures shall follow the process set forth in Section 3-170-060 (D), and also obtain a Certificate of Appropriateness as set forth in Section 3-170-050.

Historic District Certificate of Appropriateness Flow Chart

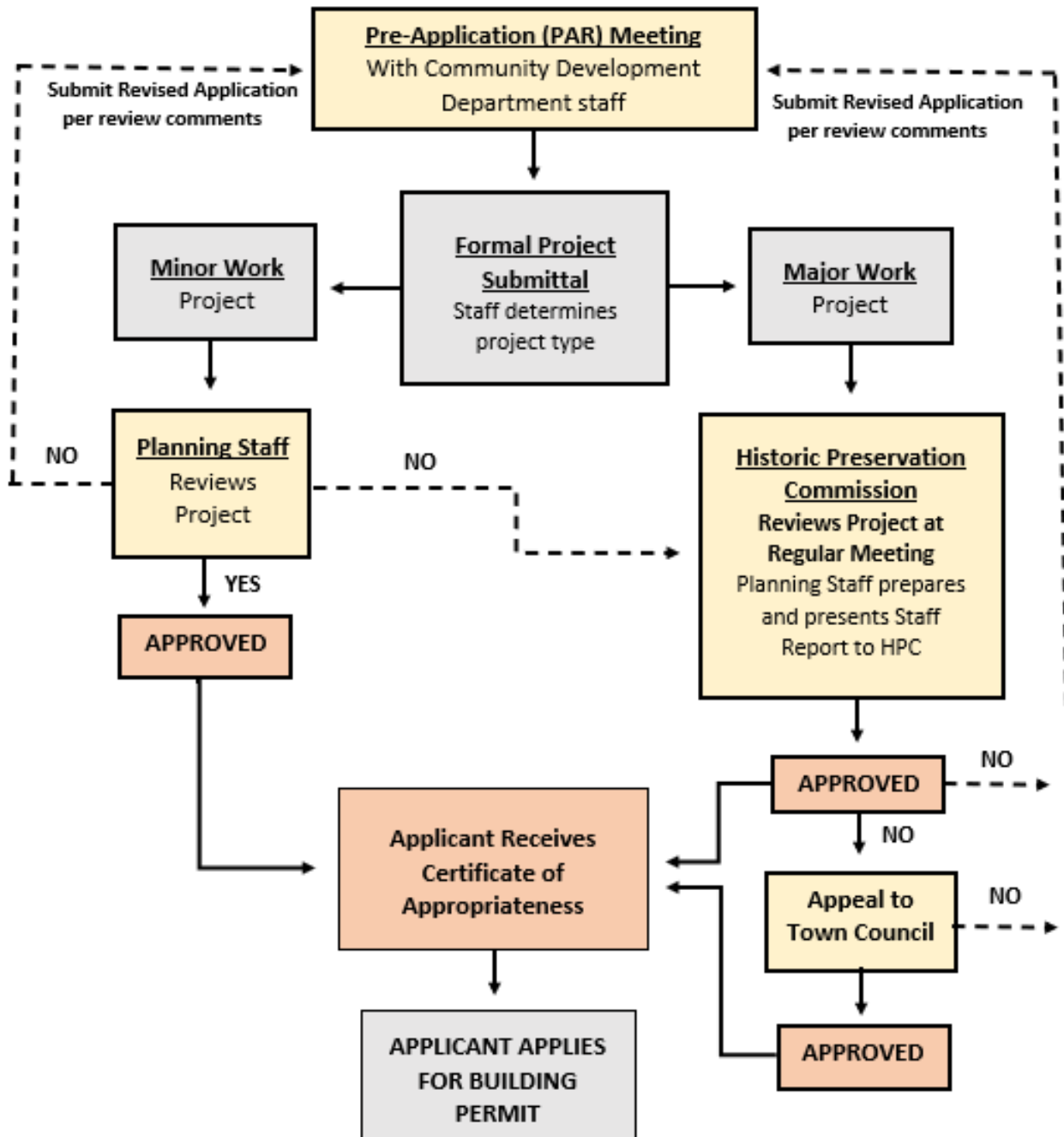


EXHIBIT 6: CERTIFICATE OF APPROPRIATENESS PROCESS

Historic Main Street

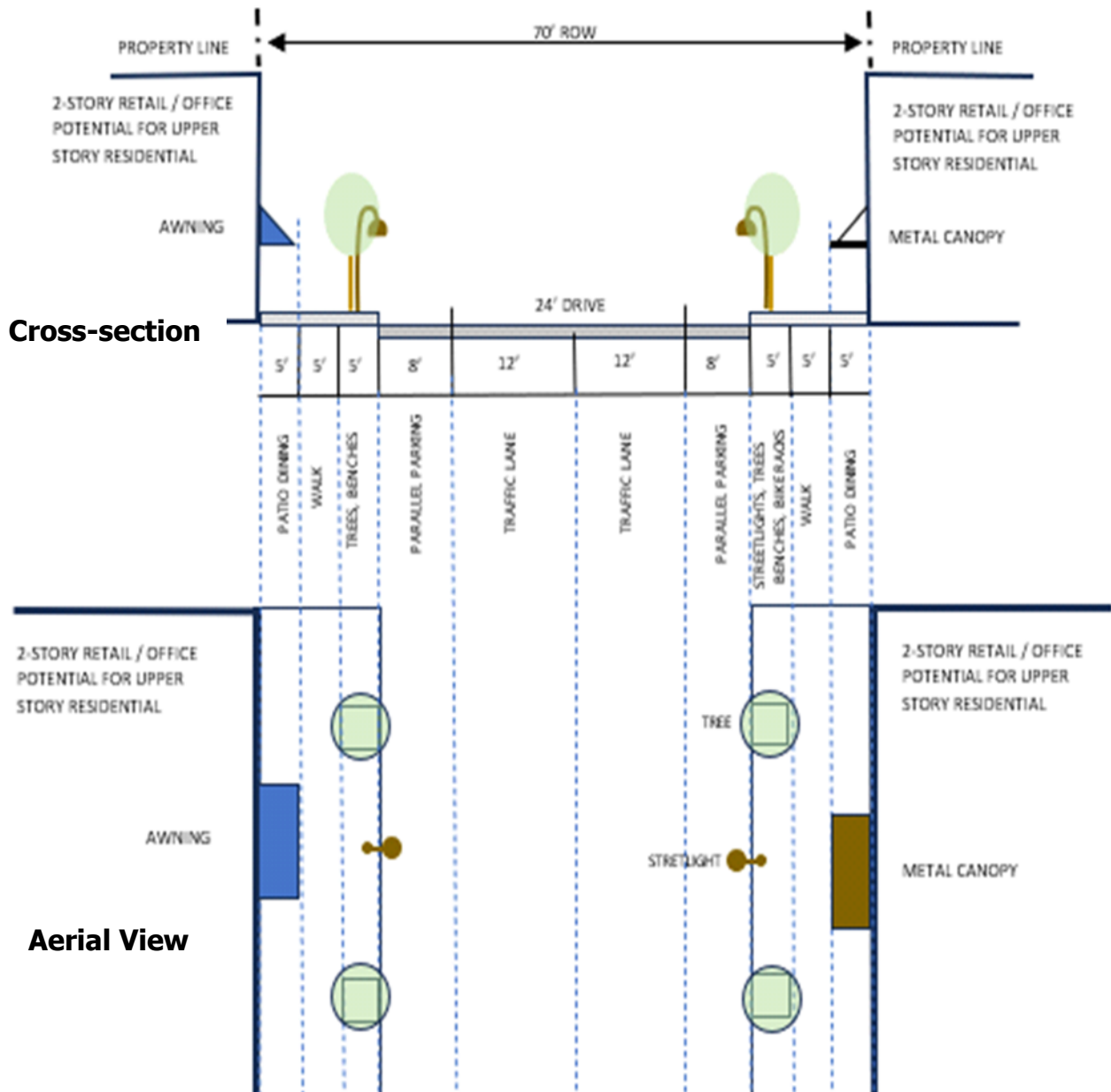


EXHIBIT 7: Historic Main Street Configuration

Memorandum BOYLE, PECHARICH, CLINE, WHITTINGTON & STALLINGS, P.L.L.C.

To: Assistant Town Manager From: Stephen W. Polk, Esq. cc: Susan Guthrie
Ruth Mayday Clarkdale Town Attorney Town Manager

File: Town of Clarkdale – Legal Opinions File #: 5043.264

Re: Potential Exposure to Prop 207/A.R.S. § 12-1134 Diminution in Value Claims Due to Adoption of a Mandatory Historic Preservation Ordinance Date: June 6, 2024

Question: Would the adoption of a mandatory Historic Preservation Ordinance expose the Town to Prop 207/A.R.S. § 12-1134 Diminution in Value claims?

Answer: Yes, the adoption of a mandatory Historic Preservation Ordinance could expose the Town to Prop 207/A.R.S. § 12-1134 Diminution in Value claims.

Analysis

Under Arizona law, specifically Prop 207/A.R.S. § 12-1134, any land use law that reduces the fair market value of private property can lead to a diminution in value claim against the Town. If a property owner believes that the Historic Preservation Ordinance has decreased the value of their property, perhaps by making redevelopment more expensive and slower or through other means, they may submit a Diminution in Value Demand to the Town. The owner is not required to first submit a land use application to remove, modify, vary or otherwise alter the application of the land use law to the owner's property as a prerequisite to demanding or receiving just compensation pursuant to Prop 207.

Upon receiving a diminution in value claim, the Town has the option to exempt the affected property from the ordinance to avoid potential liability. This exemption would serve as a mitigation strategy to prevent financial and legal repercussions.

Should the Town choose not to exempt the property in question, the property owner has the right to sue the Town for the alleged diminution in value. The Town could defend on the basis that the Historic Preservation Ordinance did not, in fact, reduce the value of the property. This would be fact-specific, likely requiring an expert witness to support the Town's position.

If the property owner prevails in court, the Town would be liable for both the reduction in property value and the owner's attorney's fees. Conversely, if the Town wins the lawsuit, each party would bear its own attorney's fees.

Conclusion:

The Town should carefully consider the potential implications of adopting a mandatory Historic Preservation Ordinance.

Sincerely,
BOYLE, PECHARICH, CLINE
WHITTINGTON & STALLINGS, P.L.L.C.

A handwritten signature in blue ink, appearing to read "Stephen W. Polk". The signature is fluid and cursive, with the first name "Stephen" and last name "Polk" being more prominent than the middle initial "W".

Stephen W. Polk, Esq.
Clarkdale Town Attorney

12-1134. Diminution in value; just compensation

(Caution: 1998 Prop. 105 applies)

A. If the existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law enacted after the date the property is transferred to the owner and such action reduces the fair market value of the property the owner is entitled to just compensation from this state or the political subdivision of this state that enacted the land use law.

B. This section does not apply to land use laws that:

1. Limit or prohibit a use or division of real property for the protection of the public's health and safety, including rules and regulations relating to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, and pollution control;
2. Limit or prohibit the use or division of real property commonly and historically recognized as a public nuisance under common law;
3. Are required by federal law;
4. Limit or prohibit the use or division of a property for the purpose of housing sex offenders, selling illegal drugs, liquor control, or pornography, obscenity, nude or topless dancing, and other adult oriented businesses if the land use laws are consistent with the constitutions of this state and the United States;
5. Establish locations for utility facilities;
6. Do not directly regulate an owner's land; or
7. Were enacted before the effective date of this section.

C. This state or the political subdivision of this state that enacted the land use law has the burden of demonstrating that the land use law is exempt pursuant to subsection B.

D. The owner shall not be required to first submit a land use application to remove, modify, vary or otherwise alter the application of the land use law to the owner's property as a prerequisite to demanding or receiving just compensation pursuant to this section.

E. If a land use law continues to apply to private real property more than ninety days after the owner of the property makes a written demand in a specific amount for just compensation to this state or the political subdivision of this state that enacted the land use law, the owner has a cause of action for just compensation in a court in the county in which the property is located, unless this state or political subdivision of this state and the owner reach an agreement on the amount of just compensation to be paid, or unless this state or political subdivision of this state amends, repeals, or issues to the landowner a binding waiver of enforcement of the land use law on the owner's specific parcel.

F. Any demand for landowner relief or any waiver that is granted in lieu of compensation runs with the land.

G. An action for just compensation based on diminution in value must be made or forever barred within three years of the effective date of the land use law, or of the first date the reduction of the existing rights to use, divide, sell or possess property applies to the owner's parcel, whichever is later.

H. The remedy created by this section is in addition to any other remedy that is provided by the laws and constitution of this state or the United States and is not intended to modify or replace any other remedy.

I. Nothing in this section prohibits this state or any political subdivision of this state from reaching an agreement with a private property owner to waive a claim for diminution in value regarding any proposed action by this state or a political subdivision of this state or action requested by the property owner.

An Alternative Approach to Historic Preservation in Clarkdale (Instead of a Restrictive Set of Regulations Imposed on Private Property Owners)

If the Town needs a historic preservation ordinance to achieve certified local government status, then the ordinance should take the form of a proactive incentive program. It should be comprised of two systems: a system to bring in and develop resources for preservation projects, and a system to deploy these resources. Call it the **Historic Preservation Incentive Program**.

Ideas for bringing in and developing resources:

- Grant writing
- Fundraising
- Crowdfunding
- Establishing and managing an endowment
- Establishing an architectural salvage yard and a historic materials bank
- Recruiting and managing volunteers (researchers, grant writers, builders, laborers, engineers, designers, craftsmen, etc.)
- Accepting donations
- Tapping into existing Town resources (project managers, the building official, etc.)
- The HPC could manage these resources.

Ideas for a system to deploy resources:

The HPC can send out requests for proposals to historic property owners for preservation projects.

Additionally, any project requiring design review under the existing code can qualify for access to preservation resources if it is determined to be a historic preservation or restoration project.

The HPC can make this determination using the Secretary of Interior's standards as a guideline and issue a certificate of appropriateness.

A certificate of appropriateness issued by the HPC comes with incentives:

- Waived fees for permits and applications
- Priority of the building official
- Fast-track permitting
- Access to available grant money
- Access to all the resources mentioned above

Arizona Certified Local Governments:

Arizona	Certification
Total Number of CLGs	30
Benson	05/15/1992
Bisbee	03/17/1989
Casa Grande	10/21/1991
Clifton	03/10/1998
Coolidge	11/30/2000
Cottonwood	01/08/2014
Flagstaff	10/14/1997
Florence	09/12/1985
Glendale	11/01/1995
Globe	08/25/1986
Holbrook	10/14/1997
Jerome	01/17/1986
Kingman	09/29/1986
Mesa	10/05/1995
Nogales	12/18/2000
Oro Valley	05/03/2009
Payson	12/20/2001
Peoria	03/10/2004
Phoenix	04/28/1988
Pima County	03/04/2011
Prescott	01/03/1986
Scottsdale	04/17/2001
Sedona	09/06/2000
Taylor	04/09/2001
Tempe	10/14/1997
Tucson	03/06/1990
Willcox	09/24/1985
Williams	09/11/1986
Winslow	04/27/1999
Yuma	02/11/1986

Source: https://grantsdev.cr.nps.gov/CLG_Review/Get_All_CLG.cfm