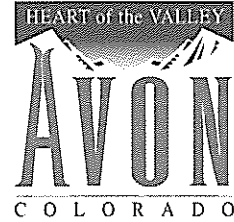



# Memo



**To:** Planning and Zoning Commissioners

**Thru:** Matthew R. Gennett, Planning Manager, AICP

**From:** Matt Pielsticker, Planner II 

**Date:** March 4, 2008 Meeting

**Re:** Ordinance No. 08-02 (Historic Preservation)

Amendments & Additions to Avon Municipal Code - Title 17: Zoning

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## Introduction:

Please find draft Ordinance No. 08-02 attached to this Memorandum for your review and consideration. The Ordinance would amend Title 17: Zoning, by adding a new Chapter (17.50), titled *Historic and/or Cultural Preservation Designated*. The Ordinance would also define the terms "Historic Preservation Committee" and "Historic Landmark."

The Ordinance was reviewed at the Planning and Zoning Commission's February 5, 2008, and February 19, 2008 meetings. The strikethrough version attached to this Memorandum is a reflection of the changes to the Ordinance, as directed by the Planning and Zoning Commission. Deletions to the Ordinance are in ~~strikethrough~~ and additions to the text are in **bold**.

The attached Ordinance was originally drafted by the Historic Preservation Committee, and reviews and edits were performed by the Town Attorney and legal subcommittee. Also, please find a Memorandum from John Dunn, Town Attorney, addressing issues raised at a previous hearing with regard to "takings".

## Historic Committee Background:

The Town Council expressed a value in historic preservation and stewardship of historic sites when the Historic Preservation Advisory Committee was established in 2005. The Historic Preservation Committee was formed by Resolution No. 05-13 on May 10, 2005, and serves as an advisory Committee for the purpose of promoting historical preservation in the Town. Town Council Resolution No. 05-13 is attached for reference.

The Committee meets quarterly and is charged with recognizing and recommending historic landmark structures and properties to the Town Council. When the Committee was formed, a "Heritage Fund" was created to fund their operation.

## **Staff Recommendation:**

Staff recommends that the Planning and Zoning Commission approve Resolution No. 08-02, recommending approval of the (revised) Historic and/or Cultural Preservation Ordinance, with the following findings:

1. This Ordinance will further the following Goals and Policies of the Town of Avon Comprehensive Plan:

**Goal D.3:** *"Develop new and continue to enhance existing cultural and heritage facilities, events, and programs that strengthen Avon's community character and image."*

**Policy D.3.6:** *"Maintain existing elements that contribute or reflect the heritage of the community and include forms and materials that reflect this heritage in new designs."*

**Policy E.3.2:** *"Strengthen the tourism potential within Avon by working collaboratively with organizations through the community to capitalize upon Avon's unique recreational and cultural assets and heritage (i.e. coordinated marketing efforts)."*

**Policy E.3.9:** *"Identify and honor cultural and heritage sites with elements such as museums, interpretive parks, markers, memorials, fountains, sculptures, statues...."*

2. The Ordinance will promote the health, safety and welfare of the residents and visitors of the Town of Avon through the regulation of historic and/or cultural sites and structures.

## **Recommended Motion:**

"I move to approve Resolution No. 08-02, a resolution recommending approval of Ordinance 08-02, as amended."

## **Attachments:**

- Ordinance 08-02 (REVISED)
- Resolution 08-02
- Memorandum From John Dunn, Town Attorney, dated February 19, 2008

TOWN OF AVON  
ORDINANCE NO. 08-02  
Series of 2008

AN ORDINANCE AMENDING TITLE 17, MUNICIPAL CODE OF THE TOWN OF AVON, ADDING A NEW CHAPTER, 17.50, AND ADDING DEFINITIONS TO CHAPTER 17.08, AND SETTING FORTH DETAILS IN REGARD THERETO

NOW THEREFOR, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, EAGLE COUNTY, COLORADO:

Section 1. Amendment. Section 17.08, Chapter 08 "Definitions" of Title 17, Avon Municipal Code, is amended by the addition of the following definitions:

*Historic Preservation Committee* means a five-person advisory committee appointed by the Town Council to make recommendations and findings regarding historic sites, structures or features in the Town of Avon.

*Historic and/or Cultural Landmark* means a site and/or structure designated as an historic landmark by the Historic Preservation Committee within the Town of Avon.

Section 2. Amendment. Title 17, Avon Municipal Code, is amended by the addition of a Chapter 17.50 as follows:

CHAPTER 17.50

Historic **and/or** Cultural Preservation Designated

17.50.010. Intent and Purpose.

The purpose and intent of this Chapter is the promotion of the health, safety and welfare of the residents of the Town of Avon through the regulation of historic **and/or cultural** sites and structures in order to:

- (a) Foster civic pride in the beauty and accomplishments of the past;
- (b) Protect and enhance the Town's attraction to tourists and visitors and increase the quality of life of the residents;
- (c) Promote the use of historical or architectural sites, structures and objects for the education and welfare of the residents of the town;
- (d) Promote and encourage private ownership, stewardship and utilization of such sites, structures and objects;
- (e) Integrate historic preservation with the Town of Avon Comprehensive Plan;

- (f) Maintain the Town's unique character by recognizing the importance of preservation and renewing the Town's legacy for present and future generations;
- (h) Discourage the unnecessary demolition of historic and/or cultural resources;
- (i) Provide incentives for the continued use of historic and/or cultural resources and facilitate their appropriate stewardship and reuse;
- (k) Encourage the conservation of historic settings and landscapes; and
- (l) Promote retention of historical integrity in the context of proposed land use.

17.50.020. Landmark Designation.

A site or structure may be eligible for Historic **and/or Cultural** Landmark designation if it has been in existence for at least 50 years and meets any of the following criteria:

(a) Historic significance:

- (i) Has character or is a point of interest that reflects the heritage and political, economic and/or social history or cultural development of the Town, the state or the nation;
- (ii) Is associated with historical persons or groups or represents important events in national, state or local history;
- (iii) Is associated with an important individual or group who contributed in significant ways to the political, social and/or cultural life of the community; and,
- (iv) Has prehistoric interest or information.

(b) Architectural significance:

- (i) Characterizes a style associated with a particular era;
- (ii) Has a strong or unique relationship to other areas potentially eligible for preservation;
- (iii) Is architecturally unique or innovative; and,
- (iv) Has visual symbolic meaning or appeal for the community or, due to its unique location or singular characteristics, represents established and familiar visual features of the neighborhood or community.

17.50.030. Procedure for Landmark Designation.

The Historic Preservation Committee shall recommend to the **Planning and Zoning Commission, who will then recommend to** Town Council sites or structures for Historic **and/or Cultural** Landmark designation. The recommendation shall identify the criteria forming the basis of the recommendation and shall include all pertinent information related to the site or building supporting the designation.

The **Planning and Zoning Commission and** Town Council will approve or disapprove Historic **and/or Cultural Landmark** designation after public hearing, at which the owner of the site or structure and interested persons shall have an opportunity to be heard. **A majority decision of the Planning and Zoning Commission and Town Council is required for nomination.**

17.50.040. Incentives.

The benefits of Historic Landmark designation ~~may~~ **shall** include the following:

- (a) Waiver of building permit fees;
- (b) ~~Applicable state and federal income~~ **Local property** tax credits;
- (c) Preservation, maintenance or relocation assistance, if **and other incentives as deemed** necessary by **the Town Council**; and,
- (d) Other appropriate incentives, **also** as determined by the Town Council.

17.50.050. Review of plans for sites and structures having designation.

Any application for any permit which includes the exterior alteration, relocation or removal of a site or structure designated as a Historic **and/or Cultural** Landmark must be reviewed by the Planning and Zoning Commission for recommendation of approval or disapproval to the Town Council on the basis of the following criteria. The Town Council shall approve or disapprove the application after public hearing at which the landowner and interested persons have an opportunity to be heard.

- (a) Criteria for alteration of a site or structure:
  - (i) Whether the architectural or historical character will itself be materially altered so as to negatively impact the Historical Landmark;
  - (ii) Whether the architectural style and arrangement and the texture of the exterior surface materials of the existing structure and the proposed alteration appropriately relate to each other and to other structures in the vicinity;

- (iii) Whether the alteration will negatively change or destroy the exterior architectural features and details of the structure; and,
- (iv) The effect of the proposed alteration on the protection, enhancement, perpetuation and use of the Historic Landmark.

(b) Criteria for relocation of a structure:

- (i) Significance of the original site;
- (ii) Whether the structure can be rehabilitated or used on its original site consistent with the reasonable and beneficial use of the property;
- (iii) Whether the proposed site is compatible with or detracts from the importance of the Historic Landmark;
- (iv) Whether the structure can be moved without causing significant damage to its physical integrity; and,
- (v) Whether the relocation of the structure is necessary to prevent undue hardship on the property owner.

(c) Criteria for removal of a structure:

- (i) Whether the structure presents an imminent hazard that cannot otherwise be properly mitigated;
- (ii) Whether the structure can reasonably be rehabilitated and maintained in its present location and the significance of the original site;
- (iii) Whether relocation of the structure is reasonably possible or practical;
- (iv) Whether the structure can be rehabilitated or used on its original site consistent with the reasonable and beneficial use of the property; and,
- (v) Whether the removal of the structure is necessary to prevent undue hardship on the property owner.

17.50.060. Standards governing approval of development plans for sites and structures having designation.

Any approved development plan including the alteration, relocation or removal of a Historic **and/or Cultural** Landmark shall be deemed to incorporate the following

standards except to the extent they are determined not to be applicable by the Town Council:

(a) The most current version of the **Secretary of the Interior's Standards for rehabilitation of Historic Structures**, as amended, shall be used as a guideline in carrying out any plans involving the alteration of Historic Landmarks;

(b) The Historic **and/or Cultural** Landmark shall be continue to be used in a manner consistent with its original purpose or a compatible purpose, so long as such use does not violate any of the provisions of this Code;

(c) The historic character of the Historic **and/or Cultural** Landmark shall be maintained by avoiding the removal or alteration of features important to such character;

(d) The use of original materials is encouraged. Distinctive and unique features, finishes, materials and examples of craftsmanship should be retained and preserved. Repairs and replacement of such features should match the original in color, shape, texture and design. Replacements should be fully documented with pictorial or physical evidence and a copy of such evidence filed with the Town; and,

(e) Where possible, additions and expansions shall be differentiated from the existing structure so as to protect the Historic Landmark's historic integrity. Additions and expansions shall also be undertaken in such a manner that their removal in the future would not destroy the form or integrity of the original structure.

~~17.50.070 — Protection of historic sites and structures.~~

~~Sites or structures which are under consideration for Historic Landmark designation and Historic Landmarks which are not the subject of any permit application shall remain undisturbed.~~

17.50.0870. Removal of Historic Landmark designation.

The Town Council, after public hearing at which the owner of the Historic **and/or Cultural** Landmark and interested persons shall have an opportunity to be heard, may remove Historic **and/or Cultural** Landmark designation from a site or structure, based upon one or more of the following findings:

(a) The Historic **and/or Cultural** Landmark designation creates undue hardship for the owner;

(b) The structure is an imminent hazard to the health and safety of the public despite the owner's efforts to properly maintain it; and,

(c) The structure is structurally unsound despite the owner's efforts to properly maintain it.

INTRODUCED, APPROVED, PASSED ON FIRST READING AND ORDERED POSTED the 11th day of March, 2008, and a public hearing on this ordinance shall be held at the regular meeting of the Town Council on the 25<sup>th</sup> day of March, 2008, at 5:30 P.M. in the Council Chambers, Avon Municipal Building, 400 Benchmark Road, Avon, Colorado.

\_\_\_\_\_  
Ronald C. Wolfe, Mayor

ATTEST:

\_\_\_\_\_  
Patty McKenny, Town Clerk

INTRODUCED, FINALLY APPROVED, AND PASSED ON SECOND READING, AND ORDERED POSTED the \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Ronald C. Wolfe, Mayor

ATTEST:

\_\_\_\_\_  
Patty McKenny, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
John W. Dunn, Town Attorney



**TOWN OF AVON  
PLANNING & ZONING COMMISSION  
RESOLUTION NO. 08-02**



**A RESOLUTION RECOMMENDING APPROVAL OF THE HISTORIC  
AND/OR CULTURAL PRESERVATION ORDINANCE, AMENDING  
TITLE 17 OF THE AVON MUNICIPAL CODE, TOWN OF AVON,  
COUNTY OF EAGLE, STATE OF COLORADO, AND SETTING FORTH  
DETAILS IN REGARD THERETO**

**WHEREAS**, the Planning and Zoning Commission held public hearings concerning the Historic and/or Cultural Preservation Ordinance at the following regular meetings: February 5, 2008, February 19, 2008, and March 4, 2008; and,

**WHEREAS**, the 2006 Town of Avon Comprehensive Plan ("the Plan") contains the following goal with respect to recognition and the promotion of historic and cultural resources:

Goal D.3: "Develop new and continue to enhance existing cultural and heritage facilities, events, and programs that strengthen Avon's community character and image"; and,

**WHEREAS**, the Plan contains the following policies related to the Historic and/or Cultural Preservation Ordinance:

Policy D.3.6: "Maintain existing elements that contribute or reflect the heritage of the community and include forms and materials that reflect this heritage in new designs."

Policy E.3.2: "Strengthen the tourism potential within Avon by working collaboratively with organizations through the community to capitalize upon Avon's unique recreational and cultural assets and heritage."

Policy E.3.9: "Identify and honor cultural and heritage sites with elements such as museums, interpretive parks, markers, memorials, fountains, sculptures, statues..." and,

## MEMORANDUM

**TO: PLANNING AND ZONING COMMISSION**

**FROM: TOWN ATTORNEY**

**RE: HISTORIC PRESERVATION ORDINANCE**

**DATE: February 19, 2008**

The purpose of this memorandum is to address concerns raised by members of the Commission regarding the proposed historic preservation ordinance. As a matter of background, the ordinance was submitted by the Town's Historic Preservation Committee after research of similar ordinances in other jurisdictions. The ordinance was reviewed and commented on by the Colorado Historical Society. In part on the basis of those comments, I drafted the present version of the ordinance with the assistance of the Legal Subcommittee.

Concerns were expressed by members of the Commission that the ordinance in its present form is a "taking" in the constitutional sense. In my opinion it is not.

The Colorado Supreme Court established the requirements for a valid historic preservation ordinance in *South of Second Associates v. Georgetown*, 580 P.2d 807 (Colo. 1978). In order for such an ordinance to pass constitutional muster, it must contain adequate criteria defining architectural and historical significance and it must contain sufficient criteria defining the area subject to the ordinance. In *South of Second Associates*, the court upheld the criteria defining architectural and historical significance but concluded that the ordinance did not sufficiently define the area subject to the ordinance. Because the ordinance applied to the entire town, it was held to be void.

Courts in other jurisdictions, including the United States Supreme Court, have upheld historic preservation ordinances in the face of a takings challenge. 2 Anderson's Am. Law Zoning § 9.74.

The ordinance submitted to the Commission satisfies the requirements of *South of Second Associates*. The criteria defining historic and architectural significance include the criteria in the Georgetown ordinance along with other, more extensive criteria. The ordinance is town-wide, but it contains criteria whereby only particular properties will be given landmark designation and thereby be subject to the ordinance. Those criteria are detailed and in my opinion pass constitutional muster.

Concern was also expressed as to the purpose language of the ordinance being to promote the health, safety and welfare of the residents. That language is the "magic" language necessary to invoke the police power of the Town in order to adopt any zoning ordinance. In my opinion that legislative finding would be upheld by any court.

**WHEREAS**, the Planning and Zoning Commission finds that the Historic and/or Cultural Preservation Ordinance will further the Goals and Policies from the Plan, as outlined above, and will promote the health, safety and welfare of the residents and visitors of the Town of Avon;

**NOW, THEREFORE, BE IT RESOLVED**, that the Planning and Zoning Commission of the Town of Avon recommends approval of the Historic and/or Cultural Preservation Ordinance via this Resolution, signed on March 4, 2008.

**ADOPTED THIS 4<sup>th</sup> DAY OF March, 2008**

*Signed:*

\_\_\_\_\_ Date: \_\_\_\_\_

Chris Evans, Chair

*Attest:*

\_\_\_\_\_ Date: \_\_\_\_\_

Phil Struve, Secretary