

TO: Historic Landmarks Commission

THROUGH: Lisa Anderson-Ogilvie, AICP
Deputy Community Development Director and Planning
Administrator

FROM: Kimberli Fitzgerald, AICP
Historic Preservation Officer

DATE: For the meeting of August 20, 2020

SUBJECT: Historic and Archaeological Compliance Administrative Policies
and Procedures

ISSUE:

Information only.

SUMMARY BACKGROUND:

The City of Salem, a Certified Local Government (CLG) is updating Salem's 2010-2020 Historic Preservation Plan. The updated 2020-2030 Historic Preservation Plan recommends six goals with 57 actions related to improving public outreach and community education; streamlining historic code; increasing financial support; protecting the cultural landscapes and archaeological resources; encouraging sustainability; and surveying historic resources.

Goal #2 of the proposed Plan is *Streamline historic code, process and enforcement*. Action item #11 is establishing enforcement policies and procedures related to the protection of archaeological resources and Action item #50 is *Adoption of Administrative Policies and Procedures* related to archaeological compliance. Staff has worked with the Oregon State Historic Preservation Office and interested Tribes to develop policies and procedures that will address issues related to establishing administrative policies and procedures related to archaeological compliance.

Additionally, the City of Salem inadvertently authorized the Salem Art Association to install the art piece *The Sentinels* in Bush's Pasture Park in 2019 without going through the appropriate historic design review processes through the HLC. The City of Salem, in an agreement with the Oregon State Historic Preservation Office has committed to protect city owned historic resources by establishing internal administrative policies and procedures to ensure future compliance with local, state and federal regulations related to historic preservation.

FACTS AND FINDINGS:

- 1) The City Council adopted the 2010-2020 Salem Historic Preservation Plan (Plan) as a support document to the Salem Area Comprehensive Plan in 2010.
- 2) In March 2019, the City received a Certified Local Government (CLG) Grant to complete an update of the Plan.
- 3) The updated 2020-2030 Historic Preservation Plan recommends six goals with 57 actions related to improving public outreach and community education; streamlining historic code; increasing financial support; protecting the cultural landscapes and archaeological resources; encouraging sustainability; and surveying historic resources.
- 4) Implementation of the recommendations in the Historic Preservation Plan require that Administrative Policies and Procedures be established related to archaeological compliance.
- 5) A Memorandum of Agreement between the Oregon State Historic Preservation Office and the City of Salem related to the installation of *The Sentinels* in Bush's Pasture Park in 2019 requires that the City of Salem adopt policies and procedures related to historic preservation of city owned historic resources.
- 6) The City Manager has the authority to adopt rules and procedures as authorized under SRC 2.200(a).

Proposed Administrative Policies and Procedures

The proposed administrative policies and procedures (APPs) are intended to ensure the City of Salem's compliance with local, state, and federal regulations related to historic preservation and archaeology. The proposed APPs are described below.

1. Historic Preservation Compliance Policies and Procedures

Policies and procedures are proposed to establish processes and procedures related to authorizing work on City of Salem owned historic properties. Specific policies and procedures include:

- Establish process for historic clearance by the City Manager's Office to authorize work on City owned historic properties (ie. Deepwood, Bush House, Bush's Pasture Park; A.C. Gilbert Discovery Village);

- Establish submittal requirements for applicants (tenants of City owned historic properties or project managers);
- Define two classes of historic clearance procedures which are aligned with SRC 230.020, Major and Minor historic design review;
- Establish criteria for City Manager historic clearance authorization;
- Establish process for mitigation should a City project (which is determined to be necessary and in the best interest of the health and safety of the community) adversely affect a resource.
- Establish notification process to the SHPO and interested Tribes;

2. Archaeological Compliance Policies and Procedures

Policies and procedures are proposed to establish processes and procedures related to archaeological historic clearance for City of Salem projects. Specific policies and procedures include:

- Establish process for archaeological compliance coordination assistance to receive assistance with SHPO and Tribal consultation
- Establish process for archaeological historic clearance by the City Historic Preservation Officer to authorize work involving ground disturbing activity on City owned historic properties within Salem's Historic and Cultural Protection Zone;
- Establish submittal requirements for applicants (City project managers);
- Define three classes of archaeological historic clearance procedures which include two classes of minor archaeological historic clearance and one class of major historic clearance review;
- Establish criteria for City Historic Preservation Officer archaeological historic clearance review approval;
- Establish process for mitigation should a City project (which is determined to be necessary and in the best interest of the health and safety of the community) adversely affect an archaeological resource.
- Establish request for comment and notification process to the SHPO and interested Tribes;
- Establish process for inadvertent discoveries;
- Establish procedure for enforcement of unauthorized ground disturbing activity which harms or destroys an archaeological site.

Attachment: Draft Historic and Archaeological Policies and Procedures

Administrative Policy and Procedures

Historic and Archaeological Resources on Publicly Owned Property and in the Public Right of Way

1. Purpose

The purpose of this Administrative Policy is to establish standards and procedures to protect historic and archaeological resources on publicly owned property and in the public right of way and prevent violations of federal, state, and local regulations encompassing these resources.

2. Policy

The City of Salem works to ensure that State and Federal regulations regarding archaeological resources are followed and appropriate permits are obtained when planned public improvements require removal of these resources.

The City of Salem communicates regularly with interested Tribes as outlined in all signed Tribal MOU's regarding redevelopment activities on publicly owned property, property in the right of way and publicly funded projects on private property.

SRC 230.105 protects archaeological resources subject to the requirements of federal, state and local regulations. It is the policy of the City to provide standards to prevent violations of SRC 230.105. In 2017 the City of Salem entered into a Memorandum of Understanding (MOU) with SHPO regarding the removal of archaeological resources related to transportation projects within the City limits and is entering into an MOU regarding historic and archaeological resources on publicly owned property.

3. Scope

This policy applies to all City elected and appointed officials, employees, volunteers and agents.

4. Definitions

Archaeological artifact – any pre-contact or historic objects or cultural material 75 years of age or older, or 50 years of age or older, which contains material remains of past human life or activity that are significant for their potential contribution to the understanding of history or prehistory.

Archaeological resource – an archaeological artifact or archaeological site.

Archaeological Permit – a permit issued by the Oregon State Parks and Recreation Department under ORS 390.235 which states that a person may not excavate or alter an archaeological site on public lands, make exploratory excavation on public lands to determine the presence of an archaeological site, or remove from public lands any material of an archaeological, historical, prehistorical, or anthropological nature without first obtaining a permit.

Archaeological Significance – archaeological significance means any archaeological object or site in, or eligible for inclusion in, the National Register of Historic Places (NRHP) as determined in writing by the Oregon SHPO; or any archaeological object or site that has been determined significant in writing by an Indian tribe.

Archeological site – ten or more archaeological artifacts, including debitage, likely to have been generated by patterned cultural activity within an area reasonable to that activity; or the presence of any archaeological feature such as a culturally modified tree, cache pit, hearth, housepit, rockshelter, cairn, historic mining ditch, petroglyph, or historic dendroglyph.

Categories of Archaeological Resources – Public Right of Way (per Transportation MOU-2017) Objects or resources uncovered during the course of design or construction within the Public Right of Way shall be categorized according to the following:

1. Category 1 Objects - These include isolated architectural debris representing the remnants of previous demolition such as isolated nails, brick fragments, glass fragments, concrete fragments, pipe fragments (sewer or water), and any other isolated object that clearly represent the scattered remains of a former structure that was intentionally removed or abandoned.
2. Category 2 Objects - These include portions of trolley and rail tracks, rails and ties, or other scatter associated specifically with the Salem Streetcar System (35MA325), the Oregon Electric Railway (35MA326), or the Southern Pacific/Union Pacific Railroad (NR).
3. Category 3 Objects - Category 3 Objects include, but are not limited to: the archaeological deposits of privies, wells, collections of historic artifacts, faunal remains, pre-contact archaeological materials, and human remains.

City Owned Historic Resource – a historic resource owned by the City of Salem.

Expedited Permit – a permit issued by the Oregon State Parks and Recreation Department under ORS 390.235 within 48 business hours.

Historic resource – any artifact, object, sign, structure, or building 50 years or older which has potential to further understanding of local, state, or national history or pre-history and designated on the City of Salem’s local historic resource list or on the National Register of Historic Places either individually or as part of a district. Historic resources on a site are categorized as either primary or accessory.

HPO – Historic Preservation Officer for the City of Salem and administrator of the City's historic preservation program and Cultural Resources program, including professional support to the Historic Landmarks Commission. The individual within this position shall meet the Secretary of the Interior’s Standards for a Preservation Professional and have experience and training in archeology and cultural resource management.

Inadvertent Discovery – archaeological sites or resources that are found during the course of construction.

Infrastructure – the system of public works of a state, region, or locality that includes any facility or structure needed for the operation of a utility (water, sanitary sewer, storm sewer) or transport of vehicles and pedestrians that is owned by the public or is for public use.

Public Lands – any lands owned by the City of Salem, or the State of Oregon, a city, county, district, or municipal or public corporation in Oregon.

Qualified Archaeologist – a historic preservation professional that meets the requirements of the Secretary of the Interior’s Professional Qualification Standards in archaeology, architectural history, or other as appropriate, and as defined in ORS 390.235 and approved by the Oregon State Historic Preservation Office.

Salem Historic and Cultural Protection Zone – georeferenced map created utilizing information from known archaeological sites and additional data points utilized in consultation with the SHPO and tribes to determine areas where there is a high probability of encountering archaeological resources within the City of Salem. The mapping of this zone is not visible to the public, in order to protect the location of these sites in compliance with State law. However a lookup database is available to the public.

SHPO – the Oregon State Historic Preservation Office.

Transportation MOA – Memorandum of Agreement between the City of Salem and the Oregon State Historic Preservation Office Regarding Transportation and Infrastructure Related Projects within the Public Right of Way signed in 2017.

Transportation project – projects that are planned, designed, and constructed to improve the movement of vehicles, pedestrians, or other modes of transport, throughout the City or area. These projects have limited potential for deep ground disturbances that could potentially affect buried historical sites. Projects of this type include, but are not limited to: replacement of street pavement, sidewalks, curbs, turn lanes, medians, traffic light installation, traffic signal installations, signs, parking meters, other lighting installations, bike paths, and e-vehicles charging stations.

Tribal MOU – Memorandum of Understanding between the City of Salem and individual Native American Tribes with an interest in archaeological resources and redevelopment activity within the City of Salem.

5. Policy and Procedure References

ORS 358.905
ORS 390.235
ORS 97.740
SRC 320.105

6. Procedures

(A) Roles and Responsibilities

1. City Manager's Office Liaison. A representative from the City of Salem's City Manager's office is responsible for facilitation the historic clearance process for historic resources owned by the City of Salem and ensuring communication protocols between existing tenants and the City of Salem relating to the historic and archaeological resources on property owned by the City of Salem are maintained in compliance with all local, state and federal laws relating to the protection of historic and archaeological resources.
2. Historic Preservation Officer. The HPO is responsible for facilitating the historic clearance process for archaeological resources and ensuring communication protocols relating to archaeological resources are maintained between the City of Salem and the Tribes as outlined in the executed Tribal MOU's.

Project managers, supervisors, team leaders, City and outside design professionals are obligated and responsible for complying with all local, state and

federal laws relating to the protection of archaeological resources within the public right of way, on public property and on private property where public funds are used for redevelopment. The City's HPO is available to support project managers and others with compliance coordination through the HCR process.

The HPO will provide annual training opportunities so that design professionals and construction employees are aware of the requirements set forth in the Transportation MOU and all Tribal MOU's as well as the citywide IDP(s).

(B) Historic Clearance - City Owned Historic Resources. All historic resources owned by the City of Salem require historic clearance authorization from the Salem City Manager in order to ensure compliance with all federal, state and local laws. In order to ensure better compliance within the City of Salem, project managers or building tenant representatives shall obtain historic clearance authorization from the City Manager's Office Liaison prior to obtaining any land use approvals, historic design review approvals or permits authorizing any activities that would permanently alter any portion of the interior, exterior or site of the resource. Should the City Manager's Office Liaison determine that the project will not permanently alter the resource, it shall be exempt from this process.

1. Project Classes. There are two classes of projects which include Minor Historic Clearance Authorization and Major Historic Clearance Authorization.

Minor Historic Clearance Authorization. Minor Historic Clearance is for interior alterations, or projects requiring either a Class 1 or Class 2 Minor Historic Design Review as defined in SRC 230.020.

Major Historic Clearance Authorization. Major Historic Clearance Authorization is for exterior alterations requiring a Class 3 Major Historic Design Review as defined in SRC 230.020.

2. Procedures

- a. *Class 1 and Class 2 Minor Historic Clearance Authorization* decisions are made by the City of Salem City Manager's Office Liaison with input and recommendations made by the HPO and interested department staff (Building and Safety; Facilities; Parks).
- b. *Class 3 Major Archaeological Historic Clearance Review Authorization* decisions are made by the Salem City Manager's Office Liaison with input and recommendations made by the HPO and interested department staff (Building and Safety; Facilities; Parks) during Salem's quarterly Historic

Properties Coordination Meeting.

3. Submittal Requirements. The City Manager Liaison shall require the following information submitted by project managers or tenants prior to granting authorization to proceed with the alteration of a City of Salem historic resource:
 - a. Worksheet. Completed worksheet, on a form provided by the City Manager Liaison which includes an application sheet requesting authorization to proceed with any necessary land use approvals, historic design reviews and building permits authorizing the alteration of a city owned historic resource; and
 - b. Site Plan. A site plan, containing the total site area, property lines with dimensions, and orientation relative to north; the location, width, and names of all existing streets, alleys, flag lot accessways, and public accessways abutting the perimeter of the subject property; and the location and distance to property lines of all existing and proposed primary and accessory structures and other improvements including fences, walls, driveways and off-street parking areas.
 - c. Plan and elevation drawings of the existing building or structure and of the proposed changes, including materials;
 - d. Photos of the existing building or structure; and
 - e. Historic photos of the existing building or structure, if available.

4. Criteria for Authorization. The City Manager Liaison shall issue authorization to proceed provided the following criterion have been met:
 - a. Compliance with Existing Agreements. The City Manager Liaison shall ensure that the proposed work is in compliance with existing agreements in place with tenants of City owned Historic Resources; and
 - b. Compliance with Existing Master Plans or Strategic Plans. The City Manager Liaison shall ensure that the proposed work does not conflict with and is in alignment with any existing City of Salem master plans (ie. Parks Master Plan) or strategic plans adopted by the City of Salem; and
 - c. Compliance with Historic Design Review criterion and Building Code. The City Manager Liaison shall consult with the Historic Preservation Officer and Building and Safety Division to determine whether the proposal can potentially meet the applicable code and criterion for both historic design

review and building codes. This review does not substitute for the historic design review or building permit process.

5. Adverse Effect and Mitigation. Should it be determined by the City Manager Liaison that it is in the best interest of the health and safety of the public to proceed with a proposed alteration to a historic resource, but it will have an adverse effect to the historic resource, the adverse effect to the historic resource shall be classified by the Historic Preservation Officer as to the level of effect, as set forth in Table 230-4. The level of effect is based on the scale of work and the location of the work. Mitigation shall be completed as defined in SRC 230.082.

- a. SHPO Notification. The City of Salem shall request comments from the SHPO regarding all Class 3 Major Historic Clearance Reviews which require mitigation. The Oregon State Historic Preservation Office (SHPO) shall be notified of the Salem Historic Preservation Officer's Finding of Effect and mitigation plan. The SHPO shall have thirty (30) days to review and comment on the proposal and Finding of Effect and mitigation plan.
- b. Tribal Notification. The City of Salem shall request comments from each THPO regarding all Class 3 Major Historic Clearance Reviews which require mitigation. The appropriate Tribes as identified by the Commission on Indian Services (CIS) shall be notified regarding the Historic Preservation Officer's Finding of Effect and mitigation plan. Each THPO shall have thirty (30) days to review and comment on the proposal and Finding of Effect and mitigation plan.

(C) Historic Clearance - Archaeology. All archaeological sites, features or objects on public lands are the collective property of the public and are protected by federal, state, and local law. In order to ensure better compliance with these applicable statutes on property owned by the City of Salem, project managers completing work on City of Salem owned property or within the right of way shall obtain Archaeological Historic Clearance Review Approval for ground disturbing activity prior to obtaining a permit authorizing such activity within Salem's Historic and Cultural Protection Zone.

1. Archaeological Historic Clearance Alternatives and Exemptions.

- a. SHPO Historic Clearance. Below ground known archaeological resources on public lands are currently protected under the requirements of federal, state, and local regulations, including SRC 230.105 and the guidelines administered by the Oregon State Historic Preservation Office and ORS 358.905—358.961. In order to ensure compliance with these applicable

statutes within the City of Salem, public agencies shall obtain Historic Clearance Review Approval from the Oregon State Historic Preservation Office (SHPO) for ground disturbing activity prior to obtaining a permit authorizing this activity within the City of Salem's Historic and Cultural Protection Zone. All required historic clearance review approvals must be in place prior to the issuance of any related permits. The public agency is responsible for including any historic clearance review approvals as part of their submittal for these permit applications.

- b. Archaeological Historic Compliance Coordination and Alternative Compliance.
 - i. *Archaeological Historic Compliance Coordination.* The project manager may request Historic Compliance Coordination assistance from the City of Salem Historic Preservation Officer in order to receive assistance with SHPO consultation and consultation with interested Tribes in order to better ensure Historic Clearance approval and compliance with all applicable federal, state and local laws related ensuring archaeological resources are protected within the City of Salem. Requests for Historic Compliance Coordination shall be submitted on forms provided by the Historic Preservation Officer and shall include coordination for the historic clearance of the following type of work on either private or publicly owned property:
 - ii. Oregon State Historic Preservation Office (SHPO) Clearance Review.
 - iii. Section 106 Review Coordination as required for projects that have a federal nexus either through permitting requirements or federal funding.
 - c. City of Salem Alternative Archaeological Compliance. The City of Salem project manager may obtain alternative archaeological historic clearance approval from the City of Salem Historic Preservation Officer for ground disturbing activity related to a City of Salem funded project on public property prior to obtaining a building or grading permit (city permit) authorizing this activity as defined in the process below. The City of Salem's Historic Preservation Officer is authorized to issue a Certificate of Historic Clearance Review Approval should the applicable criterion be met. Regardless of this alternative clearance, all ground disturbing activity on public lands, including investigatory archaeology on public lands must still comply with applicable state laws related to archeological permitting as defined under ORS 358.905-358.961 and ORS 390.235. Nothing within

these policies and procedures precludes compliance by both private and public property owners with applicable federal and state archaeological laws. Archeological resources shall be protected and preserved in place subject to the requirements of federal, state, and local regulations, including the guidelines administered by the Oregon State Historic Preservation Office and ORS 358.905—358.961. A person may not excavate, injure, destroy or alter an archaeological site or object or remove an archaeological object located on public or private lands unless that activity is authorized by a permit issued under ORS 390.235. A violation of this subsection is a misdemeanor.

- d. Archaeological Historic Clearance Review Exemptions. The following are exempt from the alternative City of Salem Historic Clearance Review Approval process:
 - i. Ground disturbing actions or activities on public lands not triggering a city permit;
 - ii. Ground disturbing activities on private lands not utilizing public funding;

2. City of Salem Alternative Compliance: Archaeological Historic Clearance Review Procedures and Criteria

- 1. Project Review Classes. The three classes of Archaeological Historic Clearance Review are:
 - i. Class 1 Minor Archaeological Historic Clearance Review. Class 1 Minor Historic Clearance Review is for ground disturbing activity requiring a permit within the Historic and Cultural Protection zone where documentary study alone demonstrates that there is no known significant archaeological site, feature or object within the proposed ground disturbance area and that the proposed ground disturbing activity will not impact native, undisturbed soil from the historic or pre-historic period.
 - ii. Class 2 Minor Archaeological Historic Clearance Review. Class 2 Minor Historic Clearance Review is for ground disturbing activity requiring a city permit within the Historic and Cultural Protection zone where documentary study concludes that potentially significant archaeological resources may be present on the project site and that the project may have an impact on these resources, and therefore field testing shall be required. The purpose of the testing shall be to determine whether the

site actually contains significant archeological resources.

- iii. *Class 3 Major Archaeological Historic Clearance Review.* Class 3 Major Historic Clearance Review is for ground disturbing activity requiring a city permit within Historic and Cultural Protection zone where documentary study and field testing have confirmed that significant archaeological resources are present within the project site.

2. Procedures

- i. Class 1 and Class 2 Minor Archaeological Historic Clearance Review Decisions are made by the Historic Preservation Officer.
 - ii. Class 3 Major Archaeological Historic Clearance Review Decisions are made by the Historic Preservation Officer with input and recommendations to the HPO made by the SHPO and interested Tribes during Salem's monthly Historic and Cultural Resource Compliance Coordination Meeting.
 - iii. Request for Comment and Notice. Notice of the City of Salem's Archaeological Historic Clearance Review shall be provided as follows:
 - a) SHPO Notification. The City of Salem HPO shall request comments from the SHPO regarding all Class 3 Major Archaeological Clearance Reviews. The Oregon State Historic Preservation Office (SHPO) shall be notified of the Historic Preservation Officer's Finding of Effect regarding the request for the Historic Clearance Review approval for ground disturbing activity on public lands within Salem's Cultural and Historic Protection zone. The SHPO shall have thirty (30) days to review and comment on the proposal and Finding of Effect.
 - b) Tribal Notification. The City of Salem HPO shall request comments from each THPO regarding all Class 3 Major Archaeological Clearance Reviews. The appropriate Tribes as identified by the Commission on Indian Services (CIS) shall be notified regarding the Historic Preservation Officer's Finding of Effect for the Historic Clearance Review approval for ground disturbing activity on public lands within Salem's Cultural and Historic Protection zone. Each THPO shall have thirty (30) days to review and comment on the proposal and Finding of Effect.
3. Submittal requirements. The Historic Preservation Officer may require the following submittals in order to complete the Archaeological Historic Compliance Coordination and Archaeological Historic Clearance Review as follows:

- i. *Archaeological Documentary Study*. The initial documentary study shall be prepared by a qualified archaeologist and shall provide an overview of all historic and archaeological records associated with the land proposed for development, including relevant property documentation, maps and other pertinent literature related to the history and development of the site. On the basis of this initial review, a preliminary recommendation shall be made regarding the assessment of whether archaeological resources are likely to be present within the proposed project area. The findings and analysis provide a basis for deciding whether archaeological field work is needed. To conclude the review process and obtain historic clearance review approval the documentary study alone shall demonstrate that there is no known archaeological site, feature or object within the proposed ground disturbance area and that the proposed ground disturbing activity will not impact native, undisturbed soil from the historic or pre-historic period.
- ii. *Documentation of site surface*. This shall include a visual inspection of the surface of the site, including photographs; topographic maps, historic and aerial maps and site plans.
- iii. *Archaeological Field-Testing Proposal*. The proposal shall include the methodology for field testing and for documentation of the subsurface soils throughout the site including the nature and distribution of the soil. Subsurface investigation shall be completed by a qualified archaeologist and shall comply with the *Guidelines for Conducting Field Archaeology in Oregon*. Subsurface investigation shall include an adequate number of subsurface probes in order for an archaeologist to provide adequate analysis of the soil stratigraphy including the location and depth of fill and the location and depth of natural soil. No artifacts shall be collected as part of this preliminary assessment should any be uncovered. In order to conclude the review process and obtain historic clearance review approval the documentary study and field testing shall demonstrate that there is no known archaeological site, feature or object within the proposed ground disturbance area and that the proposed ground disturbing activity will not impact native, undisturbed soil from the historic or pre-historic period. (Class 2 – Class 3)
- iv. *Preliminary Assessment Report* completed by an archaeologist including a specific determination regarding the probability of the existence of an archaeological site within the disturbance area (Class 1-Class 3). Recommendations shall include (but not be limited to) whether any of the following actions are recommended:

- a) Additional archaeological survey/testing;
 - b) Archaeological Monitoring during ground disturbing activity
 - v. *Inadvertent Discovery Plan (Class 1-Class 3)*. An inadvertent discovery plan shall be developed on forms provided by the Historic Preservation Officer.
 - vi. *Treatment Plan*. A treatment plan (Plan) shall be proposed if the documentary study and field testing have determined that the ground disturbing activity will place significant archaeological resources at risk. The priority of the Plan shall be the preservation of the significant archaeological resources in situ if feasible. Therefore, the Plan must include the following:
 - a) *Alternatives to Avoid Impact*. The Treatment Plan shall include alternatives considered and recommendations for project redesign to avoid impacting the artifacts or features through the ground disturbing activity associated with the redevelopment of the site.
 - b) *Infilling*. Alternatives shall be considered to retain the significant archaeological resources in situ by covering them with additional earth or other fill material so that they will not be disturbed by the proposed ground disturbing activity.
 - vii. *Mitigation and Data Recovery Plan (Class 3)*. A mitigation and data recovery plan shall be developed when documentary study and field testing have confirmed that archaeological resources are present within the project site, adverse effects cannot be avoided and data recovery and mitigation is required. This plan shall also include a public education component and additional funds donated to the City's Historic Preservation Trust Fund as required.
4. **Historic Clearance Review Approval Criteria**. Any non-exempt ground disturbing activity within Salem's Historic and Cultural Resource Protection zone for which a city permit is required on City of Salem public lands, historic clearance review approval shall be granted as follows:
- i. **Class 1 and Class 2 Historic Clearance Review Approval Criteria**. Approval shall be granted for Class 1 and Class 2 Clearance Review provided the documentary study and necessary field testing demonstrate that the following criteria have been met:
 - a) The proposed ground disturbing activity will not impact native, undisturbed soil from the historic or pre-historic archaeological period;

- b) No known significant archaeological site, feature or object exists within the proposed ground disturbance area.
- c) An Inadvertent Discovery Plan (IDP) has been developed for the proposed ground disturbance project;
- d) The SHPO and the appropriate Tribes have been notified of the Historic Preservation Officer's Finding of Effect and either concur there will be No Effect to archaeological resources or have no objection.

ii. Class 3 Historic Clearance Approval Criteria. If the documentary study and field testing have determined that the ground disturbing activity will place significant archaeological resources at risk, a treatment plan is required. Class 3 Historic Clearance Review approval shall be granted if the following criteria have been met:

- a) The proposed ground disturbing activity will not impact the known archaeological feature or objects because the project has been redesigned to avoid the significant archaeological resource; or
- b) The Treatment Plan demonstrates that the proposed ground disturbing activity will not impact the known significant archaeological resource because the archaeological resource has been capped by fill or some other method of infill, allowing the archaeological resource to remain intact, undisturbed in situ; and
- c) An Inadvertent Discovery Plan (IDP) has been developed for the proposed ground disturbance project; and
- d) The SHPO and the appropriate Tribes have been notified of the Historic Preservation Officer's Finding of Effect, the proposal has been presented, reviewed and discussed at the City of Salem's monthly Historic and Cultural Resource Compliance Coordination Meeting and the Tribes and SHPO concur there will be No Effect to archaeological resources.

5. **Adverse Effect to Archaeological Resources and Archaeological Mitigation.**

- i. **Level of effect.** Any proposed ground disturbing activity that will have an adverse effect to the archaeological historic resource shall be classified as to the level of effect, as set forth in the table below. The level of effect is based on the scale of work and its impact to the resource. Impacts to resources eligible for the National Register of Historic Places as determined by the Oregon State Historic Preservation Office, shall have a

higher effect than an ineligible resource. Even if a resource has been determined ineligible for the National Register, should a majority of this resource be impacted it shall be documented prior to removal. If the site boundary cannot be defined or the significance confirmed, the resources shall be treated as eligible and the highest level of effect shall be applied.

6. PUBLIC Archaeological Resource MITIGATION - LEVEL OF EFFECT				
7. Activity Proposed	8. Resource Type- NR Eligible-Significant	10. Level of Effect	11. Resource Type-Not eligible	12. Level of Effect
13. Demolition – entire resource affected	14. Adverse Effect	15. Level Three	16. Adverse Effect	17. Level Two
18. Utility Trenching; 19. Less than ½ resource impacted	20. Adverse Effect	21. Level One	22. No Adverse Effect	23. None
24. Utility Trenching; 25. More than ½ resource impacted	26. Adverse Effect	27. Level Two	28. Adverse Effect	29. Level One
30. Seismic Retrofit/Foundations 31. Less than ½ resource impacted	32. Adverse Effect	33. Level One	34. No Adverse Effect	35. None
36. Seismic Retrofit/Foundations 37. More than ½ resource impacted	38. Adverse Effect	39. Level Two	40. Adverse Effect	41. Level One
42. Grading/Site scraping 43. Less than ½ resource impacted	44. Adverse Effect	45. Level One	46. No Adverse Effect	47. None
48. Grading/Site scraping 49. More than ½ resource impacted	50. Adverse Effect	51. Level Two	52. Adverse Effect	53. Level One
54. Other ground	56. Adverse Effect	57. Level One	58. No Adverse	59. None

55. Less than ½ resource impacted			Effect	
60. Other ground disturbing activity 61. More than ½ resource impacted	62. Adverse Effect	63. Level Two	64. No Adverse Effect	65. None

ii. **Mitigation required.** Mitigation shall be commensurate with the level, as set forth in this subsection.

- a) *Level One: minor adverse effect.* Work involves some loss of site artifacts or minor alterations to archaeological resources. Mitigation shall include georeferenced mapping and photo documentation of original feature or features prior to removal and an intensive level documentation of the archaeological resource. The archaeological resource shall be documented utilizing the standards for photographing and documenting historic resources established by the SHPO.
- b) *Level Two: moderate adverse effect.* Work involves major alterations to the resource, and more than half of the site will be impacted. Mitigation shall include data recovery from a minimum of five 1 meter by 1 meter units and three shovel tests per impacted acre of the site to standards meeting applicable *Guidelines for Conducting Field Archaeology in Oregon* georeferenced mapping and photo documentation of original feature or features prior to removal, intensive level documentation of the historic resource, and the development of both on-site and stand-alone educational materials which will meaningfully educate the public about the historic resource. Examples include, but are not limited to, public archaeology open house during on-site excavation, informational websites/ pamphlets, and a public display of recovered artifacts. On-site materials include, but are not limited to, informational kiosks, utility wraps or panels containing historical photos and information and maps relating to the archaeological resource and site that are installed on the site of the historic resource.
- c) *Level Three: major adverse effect.* Work results in demolition of the archaeological site and associated artifacts. Mitigation shall include ten 1 meter by 1 meter units and six shovel tests per impacted acre of the site, georeferenced mapping and photo documentation of original feature or features prior to removal and commencement of

demolition. Intensive level documentation of the archaeological resource, and the development of both on-site and stand-alone educational materials which will meaningfully educate the public about the archaeological resource as defined above, and a donation of 0.1 percent of the project cost to the City's Historic Preservation Trust Fund.

f. **Certificate of Mitigation**. If the documentary study and field testing have determined that the ground disturbing activity will place significant archaeological resources at risk, a Certificate of Mitigation shall be granted in lieu of the Historic Clearance Review Approval provided the following criteria have been met prior to issuance of a permit authorizing the ground disturbing activity:

- a. The Data Recovery Plan includes a methodology for artifact recovery, treatment, curation and documentation of artifacts and features meeting applicable standards within the Oregon State Historic Preservation Office's *Guidelines for Conducting Field Archaeology in Oregon*.
- b. (B)The Mitigation Plan includes a public educational component which provides both on site and standalone education about the archaeological resources that will be impacted by the development; and
- c. (C) Mitigation funds in the amount of .1% of the value of the development project are committed and will be placed in the City's Historic Preservation Trust Fund prior to the issuance of the permit authorizing the redevelopment; and
- d. (D) The SHPO and the appropriate Tribes have been notified of the Historic Preservation Officer's Finding of Effect and have been provided the Data Recovery and Mitigation Plan, the proposal has been presented, reviewed and discussed at the City of Salem's monthly Historic and Cultural Resource Compliance Coordination Meeting and the Tribes and SHPO concur the proposed Mitigation Plan is acceptable.

f. **Issuance**. The Historic Preservation Officer is authorized to issue a Certificate of Historic Clearance Review Approval once the applicable approval criteria have been met for Class 1, Class 2 and Class 3 Clearance Review proposals. The Historic Preservation Officer is authorized to issue a Certificate of Mitigation once the applicable criterion have been met for Mitigation.

7. Inadvertent Discoveries

- A. Should artifacts be inadvertently discovered as part of any permitted ground disturbing activity on private or public lands the protocol identified within the Inadvertent Discovery Plan adopted as part of the project shall be followed.
- B. Work within the transportation right of way shall follow the Transportation IDP adopted as part of the Transportation MOA between the City of Salem and the Oregon State Historic Preservation Office on file with the Historic Preservation Officer.
- C. If there is no adopted Inadvertent Discovery Plan for a project where ground disturbing activity has resulted in the inadvertent discovery of artifacts or archaeological features on either private or public lands, the citywide IDP on file with the Historic Preservation Officer shall be utilized.
- D. If human remains are discovered during a field investigation all work shall halt in the vicinity of the discovery and the procedures identified in the citywide Inadvertent Discovery Plan for Human Remains shall be followed.
- E. Artifacts or features shall be documented in situ on forms provided by the Historic Preservation Officer.
- F. Authorization to Continue Work. The Historic Preservation Officer shall authorize the continuation of work once the artifacts or features have been documented and the SHPO and the Tribes have been notified and consulted regarding their appropriate treatment.

8. Procedures for City Staff: Project Managers and Planners

- A. Is the project within Salem's Historic and Cultural Protection Zone? Project managers and construction supervisors within the City of Salem managing publicly funded projects that include ground disturbing activity on public or private lands shall contact the City's HPO to conduct research prior to bidding, funding or constructing any transportation and infrastructure project within the right of way or on public or private property with public funds to determine the likelihood of encountering archaeological resources during ground disturbing activity. The City of Salem's Historic and Cultural Protection Zone Lookup Map is available on the City's website

(<https://www.cityofsalem.net/Pages/protecting-salem-historic-and-cultural-resources.aspx>)

- B. Historic and Cultural Resource Compliance Coordination - Archaeological Classification. The HPO will review the proposed project and determine which classification the project area falls within per the procedures identified in 6(C) of these policies and procedures.
- C. Archaeological Contractors and State Archaeological Permits May be Required). Project managers may need to hire archaeological contractors to monitor ground disturbing activity for all classes of projects. Additionally, Class 2 and Class 3 projects with the potential for deep ground disturbances may require an archaeological permit from SHPO prior to archaeological testing or any ground disturbing activity. Historic Clearance Review and Approval may be required from the Oregon SHPO office for certain publicly funded projects on public property.
- D. Coordination with other Divisions
 - i. Land Use Reviews. For land use reviews that require compliance with Goal 5 (Preservation of Historic and Archaeological Resources) be demonstrated, planning case managers shall determine whether the project is within the Historic and Cultural Protection Zone and consult with the Historic Preservation Officer to determine whether a condition of approval is required that may include a requirement that historic clearance approval is needed prior to the issuance of permits authorizing ground disturbing activity.
 - ii. Building and Grading Permits. Prior to issuance of any permit authorizing ground disturbance on public property or private property utilizing public funds within the Historic and Cultural Protection zone, the applicant shall submit documentation of Oregon SHPO Historic Clearance approval or the Salem Historic Preservation Officer Certificate of Clearance or the Certificate of Mitigation.

9. Enforcement.

A. Unauthorized Ground Disturbing Activity.

- i. Policy. It is the intent of the Community Development Department and staff to ensure that archaeological resources within the City of Salem are protected in a manner that does not allow their destruction. SRC 230.105 protects archaeological resources subject to the requirements of federal, state and local regulations. SRC 230.105(b) states that a person may not excavate, injure, destroy or alter an archaeological site or remove an archaeological object located on public or private lands unless that activity is authorized by a permit issued under ORS 390.234. A violation of this subsection is a misdemeanor.
- ii. Complaints. If a complaint is received by Community Development staff regarding unauthorized ground disturbing activity, the Historic Preservation Officer shall be authorized to issue a stop work order in order to halt the unauthorized ground disturbing activity and will attempt to gain voluntary compliance prior to taking any formal enforcement action.
- iii. Enforcement. If the Historic Preservation Officer is not able to gain voluntary compliance, the case will be turned over to the Neighborhood Enhancement Division. SRC 230.110 authorizes enforcement of 230.105 through SRC 110.110.
- iv. Civil Penalties. Salem Revised Code (SRC) 20J.140 authorizes the imposition of a civil penalty when a person has violated a provision of the SRC that specifically provides for a civil penalty as a sanction. Administrative Rules have been established under 104-001 which assign a value to four criterion (Intent, Cooperation, Mitigation and History). This matrix shall be utilized in order to assign the correct amount of the civil penalty to impose.

Authority: SRC 230.105