

SAMPLE LANGUAGE
FOR
HISTORIC PRESERVATION ORDINANCE

INTRODUCTION

Today, Ohioans are increasingly searching for effective ways to protect their historic neighborhoods, downtowns and rural landscapes and the irreplaceable character of the buildings and structures that define these places and provide us with visible evidence of our past. For over 75 years, the local historic preservation ordinance has been an effective tool for accomplishing this goal.

CONSTITUTIONAL BASIS FOR EFFECTIVE HISTORIC PRESERVATION LEGISLATION

Federal Level

The constitutionality of local historic preservation ordinances was upheld by the U.S. Supreme Court in the case *Penn Central Transportation Company v. New York City*, which was decided in 1978. Some people feel it is illegal for a city or village to tell them what they can or cannot do with their property, other than to insure healthy and safe conditions. However, the Supreme Court decision upheld the concept that a city can enact land use controls that preserve the aesthetic features of a city, including the areas that have special historical, archaeological and architectural significance. **The court ruled that such laws do not constitute a “taking” of a property as long as an owner may still get a reasonable return from his property and the restrictions are closely related to promoting the general welfare of the citizenry.**

State Level

Ohio facilitates the establishment of local preservation legislation by providing for strong “Home Rule” through which local communities can utilize their general municipal “police powers” to designate groups of historic or archaeological properties, usually called “historic districts,” or individual properties (sometimes referred to as “landmarks”) as zoning overlays. This means that the legal use of the land does not change, but that an additional designation of historic “zone” is identified.

Local Level

What the Supreme Court decision means to communities in Ohio is that the legal foundation for local historic preservation legislation is firmly upheld as long as there are well-thought-out criteria and standards, good hearing procedures, well-documented records and sound administrative oversight and as long as decisions are consistent and serve multiple public goals. Detailed minutes must be kept, historic sites and districts must be carefully researched and selected throughout the community, and design review decisions must be consistent and based upon sensible design guidelines which are readily understandable and available to the public.

What is a historic preservation ordinance?

The preservation ordinance is nothing more than local legislation (a law) enacted to protect historic districts, individual buildings and archaeological sites from destruction or insensitive remodeling. It is a legal means by which local communities can identify, evaluate and protect historic properties. Such laws empower a board or commission to regulate to a greater or lesser degree, the design of exterior changes to buildings within a defined area.

ESTABLISHING EFFECTIVE LOCAL LEGISLATION

The most effective local ordinances enable the establishment of a design review board or commission and the designation of local historic districts and individual landmarks. Ordinances of this type are called “enabling ordinances.” Most ordinances do not identify specific districts or landmarks in the ordinance itself. In this way additional historic properties may be identified and designated in the future.

An enabling ordinance:

- declares public policy
- explains why the review board is being established
- states how the members of the board will be appointed and their responsibilities
- includes criteria and procedures for the designation of historic districts and individual landmarks
- states procedures for review of work to be undertaken to the designated properties
- provides for the review of proposed demolition and new construction in historic areas
- stipulates penalties and appeals procedures

One clear advantage of the enabling ordinance is that it establishes a community’s historic preservation program as an integral part of city or village government, recognized by law.

ENABLING ORDINANCES SHOULD HAVE THE FOLLOWING SECTIONS:

• Title

The title should be brief and should identify the content of the ordinance.

• Statement of purpose

List the purposes served by the adoption of the ordinance. These might include the promotion of aesthetic and architectural values, civic-mindedness or cultural values.

• Definitions

Be thorough! Never assume that the public, elected officials or even members of a board or commission know the definition of terms routinely used in the administration of a local ordinance.

• Procedures for establishing a review board or commission

This section establishes and describes the entity within local government that will administer the ordinance. What is the name of the entity? How many members are there? Who appoints them and for how long? What are their qualifications? What officers will there be, etc.?

• Powers and duties of the review board or commission

Describe the actual responsibilities of the board or commission. Most boards are charged with conducting historic surveys, maintaining historic property inventories and keeping adequate records. However, their most important function, the authority to designate and regulate historic properties, varies from community to community. This includes the responsibility for approving applications for construction, preservation, demolition, restoration, reconstruction and rehabilitation submitted by the owners of individually designated properties and those within historic districts.

- **Criteria and procedures for identification, review and designation of historic districts and individual landmark**

This section spells out the criteria used for designating historic districts and landmarks. The criteria may vary from community to community but basically relies on the criteria for listing on the National Register of Historic Places. In addition, the designation process must allow for an adequate notification period; provide an opportunity for property owners to be heard before the designation and specify who can nominate properties, how and when property owners are notified, and whether public hearings are required.

- **Procedures and standards for reviewing proposed alterations (including demolition and new construction) and for the issuance of approval to proceed with work to a designated property**

This section gets at the heart of the design review process, the approval to proceed with work to a designated property, and the issuance of a certificate usually known as a Certificate of Appropriateness. The approval or denial should be based on specific criteria (design guidelines), which are based on the Secretary of the Interiors' Standards for Rehabilitation. Describe the types of changes subject to design review and the standards the board or commission will use to evaluate these changes. This section also sets out the timetables for commission decision-making, in order to insure timeliness and fairness.

- **Enforcement provisions and penalties**

Enforcement provisions are necessary to ensure that a commission's authority is binding. The ordinance should describe the consequences of failure to follow the law. The ordinance may establish specific penalties for violation or provide for civil remedies.

- **Appeals procedures**

In many cases ordinances allow a property owner to appeal to another decision-making body, such as a plan board or commission, with final determination generally made by the elected city or village council.

- **Severability**

Most ordinances have a severability clause, which allows the ordinance as a whole to remain in effect if a court has determined that a specific provision is invalid.

- **Minimum Maintenance**

If not already included in a separate city ordinance, preservation ordinances often include some means of addressing the deterioration of historic buildings from neglect. Minimum maintenance provisions should:

1. Clearly state prohibited conditions of deterioration
2. Provide adequate enforcement procedures
3. Contain some means of addressing cases of economic hardship

MODEL ORDINANCE

The following model ordinance meets the Ohio Historic Preservation Office requirements for becoming a Certified Local Government. It includes sample language for all of the ordinance sections highlighted above. However, communities that are interested in adopting an historic preservation ordinance should remember that the ordinance should be tailored to meet their particular needs and administrative structure.

SECTION 1.0 Title

Sample language:

1. Historic Preservation
2. This chapter shall be referred to as the Historic Preservation Code
3. The ordinance shall be known as the “Historic Preservation Ordinance of the City or Village of _____.”

1.2 Statement of Purpose

Sample language:

1. To foster civic beauty
2. To stabilize and increase property values
3. To strengthen the local economy
4. To maintain and enhance the distinctive character of historic buildings and areas
5. To safeguard the heritage of the City or Village of _____ by preserving districts which reflect elements of its history, architecture, archaeology, engineering or culture
6. To protect and enhance the City’s attractions to prospective residents, businesses and tourists
7. To facilitate reinvestment in and revitalization of certain older districts and neighborhoods

1.3 Definitions

When drafting your ordinance you may wish to include other terms that do not appear here.

Sample definitions:

1. **Alteration**-Any act or process that changes one or more of the exterior architecture features of a building or structure, including but not limited to the erection, construction, reconstruction, or removal of the building or structure
2. **Addition**-Any act or process that changes one or more of the exterior architectural features of a building or structure by adding to, joining with or increasing the size or capacity of the building or structure
3. **Building**-Any structure created for the support, shelter or enclosure of persons, animals, or property of any kind and which is permanently affixed to the land
4. **Certificate of Appropriateness**-A certificate issued by the architectural review board or commission indicating that a proposed change, alteration or demolition of a historic building or structure or within a historic site or district, is in accordance with the provisions of this chapter and local design guidelines
5. **Change**-Any alteration, demolition, removal or construction involving any property subject to the provisions of this chapter
6. **Construction**-The act of constructing an addition to an existing structure or the erection of a new principal or accessory structure on a lot or property
7. **Demolition**-Any act or process that destroys in part or in whole any building or structure
8. **Historic District**-Any area designated by ordinance of the city or village council which may contain within definable geographic boundaries, buildings, structures or sites of historic, architectural or archaeological significance
9. **Historic Structure**-Any building or structure which has historic, architectural or archaeological significance and has been so designated according to the provisions of this chapter. The significance of a property to the history, architecture, archaeology,

engineering, or culture of a community, state, or the nation. It may be achieved in several ways:

- Association with broad pattern of our history, events, activities, or patterns
 - Association with important persons • Distinctive physical characteristics of design, construction, or form
 - Potential to yield information important in history or prehistory (archaeology)
10. **Landmark**-Any building, structure or archaeological site that has been designated as a "landmark" by ordinance of the city or village council, pursuant to procedures proscribed herein, that is worthy of preservation, restoration or rehabilitation because of its historic, architectural or archaeological significance
 11. **Owner**-the owner or owners of record
 12. **Preservation**-The act or process of applying measures necessary to sustain the existing form, integrity and materials of an historic property
 13. **Reconstruction**-The act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure or object for the purpose of replicating its appearance at a specific period of time and in its historic location
 14. **Rehabilitation**-The act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features, which convey its historical, cultural, or architectural values
 15. **Restoration**-The act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project
 16. **Review Board or Landmarks Commission**-the board or commission established under the provisions of the enabling legislation

1.4 Procedures for Establishing a Board or Commission

Sample language

1. The board or commission shall consist of a minimum of five members, all of whom have demonstrated a special interest, experience or knowledge in history, architecture or related disciplines
2. At least (2) preservation related professional members to the extent such professionals are available in the community (this shall include the professions of architecture, architectural history, history, archaeology, planning or related disciplines)
3. At least (2) year terms of office which are staggered
3. Rules of procedure, including a section addressing conflict of interest, established and made public
4. At least (4) meetings a year held at regular intervals, in a public place, advertised in advance and held in a public place
5. Review decisions made in a public forum, applicants notified of meeting's and advised of decisions
6. Written minutes of board or commission actions available for public inspection

7. Written annual report of board or commission activities, including: cases decisions, special projects, qualifications of members etc., kept on file and available for public inspection
8. Vacancies on the board or commission filled within 60 days, unless
9. extenuating circumstances require a longer period

1.5 Powers and Duties of Board or Commission

Sample language:

- The board shall have the sole power to permit, by approval of the application of any property owner, the demolition, construction, preservation, restoration, rehabilitation of any home, commercial establishment or other structure, or new construction within the historic district.
- The board or commission shall determine the appropriateness of the application regarding demolition, construction, preservation, restoration, reconstruction and rehabilitation of structures within the designated historic district.

1.6 Procedures for the Identification, Review and Designation of Individual Landmarks and Historic Districts

Sample language (Designation Criteria):

In considering the designation of any area, property, or site as a historic district or landmark, the board or commission shall apply the following criteria:

- Its character, interest or value as part of the development, heritage or
- cultural characteristics of the city, state or nation
- Its location as a site of a significant historic event
- Its identification with a person significant in our past
- Its exemplification of the cultural, economic or social heritage of the city, state or nation
- Its portrayal of a group of people in an era of history, characterized by a distinctive architectural style
- Its embodiment of distinguishing characteristics of a building type or architectural style
- Its embodiment of elements of architectural design, detail, materials or craftsmanship, which represent a significant architectural innovation
- Its identification as the work of an architect or master builder whose work has influenced the city, state or nation
- Its potential to yield information important in prehistory or history (archaeology)

1.7 Procedures for Reviewing Proposed Alterations (Including Demolition and New Construction) to Designated Resources

Sample language:

1. No person shall demolish or make any alteration or environmental change to any designated historic property without first obtaining a certificate of appropriateness.
2. The design review board shall make a determination on an application for certificate of appropriateness within 30 days of the filing of the action, or within 60 days if a public hearing is required, unless the applicant approves an extension of time. The board may also table the application for additional information, or for lack of information or clarification until the next meeting or for a specific period of time. If the board fails to

render its decision within the specified time period, the application for certificate of appropriateness shall be deemed approved.

3. The board or commission shall make a determination on an application for certificate of appropriateness within 30 days of the filing of the action, or within 60 days if a public hearing is required.
4. In making such a determination, the Commission shall refer to the Secretary of the Interior's *Standards' for Rehabilitation* and to design guidelines adopted by the Commission.

Note: Some ordinances address the issue of demolition under a separate section.

Sample Language:

In addition to the above procedures, if an application for a certificate of appropriateness seeks approval of demolition, the board or commission may delay determination of the application for a period of (60, 90, 180) days upon a finding that the structure is of such importance that alternatives to demolition may be feasible and should be actively pursued by both the applicant and the board. In the event that action on an application is delayed as provided herein, the board may take such steps as it deems necessary to preserve the structure in accordance with the purposes of this ordinance. Such steps may include but are not limited to, consultation with civic groups, public agencies, and interested citizens, marketing plans, recommendation for acquisition of the property by public or private bodies or agencies, and exploration of the possibility of moving the structure or structures.

1.8 Enforcement Provisions and Penalties

Sample language:

1. If it is found that any of the provisions of these standards are being violated, the person responsible for such violations shall cease all work upon notification, and no work shall be performed except to correct the violations. All work shall be corrected within a reasonable period and any violations not corrected within the specified time may be prosecuted.
2. Whoever constructs, reconstructs, or alters any exterior architectural feature or demolishes a substantial part or all of any building within the historic district without a Certificate of Appropriateness shall be fined not more than one hundred dollars (\$100.00). Each day of violation shall be considered a separate offense. Whoever violates this section shall be required to restore and reconstruct such features in full detail.
3. Whoever constructs reconstructs or alters any exterior architectural feature now or hereafter in violation of this chapter shall be deemed guilty of a misdemeanor and shall be fined not less than \$50.00 nor more than \$5,000.00.

1.9 Appeals Procedures

Sample language:

1. Decisions by the historic district commission may be appealed to the City Plan Commission within ten (10) days of the board or commission hearing. No building permit or other permit required for the activity applied for shall be issued during the ten-day period or while an appeal is pending.
2. The City Plan Commission shall consider an appeal within thirty (30) days of receipt and shall utilize the written findings of the board or commission in rendering their decision. A

majority vote of the Plan Commission shall be required to overturn a decision of the board or commission.

2.0 Severability

Sample language:

If any provision of this Ordinance or the application thereof is held invalid, such invalidity shall not affect other provisions or application of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are hereby declared severable.

2.1 Minimum Maintenance Requirement

Sample language:

No owner of a building or structure in the historic district, shall by willful action or willful neglect, fail to provide sufficient and reasonable care, maintenance and upkeep to ensure such building's perpetuation and to prevent its destruction by deterioration. The owner of a protected property shall provide sufficient maintenance to ensure its protection from hazards and to prevent deterioration.

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