

HISTORIC PRESERVATION ORDINANCE

SECTION 1 TITLE

The title of this ordinance shall be the city/county name Historic Preservation Ordinance.

SECTION 2 PURPOSE

Whereas the historical heritage of city/county name is a valued and important part of the general welfare; and whereas the conservation and preservation of that heritage, through the documentation and regulation of historic districts or landmarks, or through the acquisition of historic properties, stabilizes and increases property values, and pursuant to North Carolina General Statute (NCGS 160A-400.1 to 400.14) this ordinance is enacted in order to

- a. safeguard the heritage of city/county name by preserving districts and landmarks therein that embody important elements of its culture, history, architectural history, or prehistory; and
- b. promote the use and conservation of such districts and landmarks for the education, pleasure, and enrichment of the residents of city/county name and of the State as a whole.

SECTION 3 HISTORIC PRESERVATION COMMISSION

3.1 Creation and Appointment

There is hereby created, pursuant to general statute 160A-400.7, a historic preservation commission, hereinafter referred to as the "Commission." The Commission shall consist of seven (7) members¹ who shall be appointed by the local legislative body. Initially appointed terms shall be staggered so that one member serves a one-year term, two members serve a two-year term, two members serve a three-year term, and two members serve a four-year term. Thereafter, the local legislative body shall appoint members to terms of four (4) years², with not more than two (2) terms expiring annually. Commissioners shall serve until their successors are appointed. A commissioner may serve two (2) consecutive terms, after which he or she shall be ineligible for reappointment for four (4) calendar years, elapsed from the date of termination of the second term. All commissioners shall reside within the territorial jurisdiction of the city or county, depending on which legislative body creates the commission.

¹ The minimum number required by state law is three (3). The minimum number required by the Certified Local Government (CLG) Program is five (5). Although there is no maximum, it is recommended that the number not exceed nine (9) and that it be an odd number of voting members.

² Four years is the longest allowable term length; two years is the minimum.

3.2 Qualification of Members

Members of the commission shall have demonstrated education, experience, special interest, or a combination thereof, in historic preservation, history, architecture, architectural history, archaeology, cultural anthropology, planning, or related field.¹

3.3 Rules of Procedure

a. The Commission shall adopt rules of procedure necessary to the conduct of its affairs and in keeping with the provisions of this ordinance. The rules of procedure shall provide for at least the following:

- (1) selection of Commission officers
- (2) time and place of regular meetings, and calling of special meetings
- (3) procedures for conduct of public hearings
- (4) keeping of minutes and Commission records
- (5) conduct of voting
- (6) conflicts of interest policy
- (7) attendance policy
- (8) forms to be used in applying for Certificates of Appropriateness
- (9) sufficient project information to make sound determinations regarding applications for Certificates of Appropriateness
- (10) list of minor works for which Commission staff may issue Certificates of Appropriateness

b. The Commission shall meet at least quarterly. All meetings shall be conducted in accordance with the North Carolina Open Meetings Law, G.S. Chapter 143, Article 33C (NCGS 143-318.9 to 318.18).

c. The Commission shall annually present to the local legislative body a report of its activities, budget, findings, recommendations, and actions, which shall be made available to the public.

3.4 Powers and Duties

The Commission is hereby empowered to undertake such actions as may be reasonably necessary to the discharge and conduct of its duties and responsibilities as set forth in this ordinance and in the North Carolina General Statutes, including, but not limited to²

¹ It is assumed that professionals from these and similar disciplines will be appointed to the extent they are available within the community. However, the real requirement is not that the commission be composed entirely of professionals, but that the local government make – and be able to document – a “good faith effort” to seek out such professionals. It is still possible to have a legitimate commission without an architect, for instance. Professionals in these disciplines help enhance the commission’s credibility, but local governments are also encouraged to appoint members from other professions as well.

² Items a – h are required by state law and the Commission must be empowered with them; the ordinance may further authorize the Commission with any or all of the items i – t.

- a. organizing itself and conducting its business;
- b. receiving and spending funds appropriated by the local governing body for operating and performing its duties;
- c. conducting an inventory of properties of historical, archaeological, architectural, and/or cultural interest;
- d. recommending to the local governing body that individual buildings, structures, sites, areas, or objects within its zoning jurisdiction be designated as “historic landmarks” and that areas within its zoning jurisdiction be designated as “historic districts;”
- e. recommending to the local governing body that designation of any area as a historic district, or part thereof, or of any building, structure, site, area, or object as a historic landmark, be revoked or removed for cause;
- f. reviewing and acting on proposals for
 - (1) exterior alteration, relocation, or demolition of designated historic landmarks;
 - (2) exterior alteration, relocation, demolition, or new construction of properties within designated historic districts;
- g. negotiating with property owners who propose to demolish or relocate a designated landmark, or a building, structure, site, area, or object within a designated district, in an effort to find a means of preserving such properties, including consulting with private civic groups, interested private citizens, and other public boards or agencies;
- h. instituting action, through the office of the local government agency responsible for enforcing zoning and/or codes violations¹, to prevent, restrain, correct, or otherwise abate violations of this ordinance or of ordinances designating historic landmarks or districts;
- i. entering, at reasonable times and with the consent of the owner or occupant, upon private lands to make examinations, conduct surveys and

¹ The local government is legally obligated to enforce historic designation and zoning ordinances, just as it is obligated to enforce violations of fire code or local speed limits. The Commission is responsible for seeing that such ordinances are enforced by having commissioners who are attentive to all ongoing activities at a landmark or within a district and by notifying the proper enforcement official: the actual enforcement, such as a “stop work” order, is usually accomplished through the Building Inspector or Codes Official, according to whatever mechanism is commonly used in the local community.

inventories, or other purposes in performance of its official duties. However, no member, employee, or agent of the Commission shall enter any private building or structure without the express consent¹ of the owner or occupant thereof;

j. reviewing and acting on proposals for alterations of interior features of designated historic landmarks, as specified, and for which owner consent was given, in the ordinance establishing designation;

k. appointing advisory bodies or committees as appropriate;

l. negotiating with property owners for the acquisition or protection of significant historic properties;

m. acquiring by any lawful means, the purchase fee, or any lesser included interest, including options to purchase, properties designated as landmarks, properties located within designated districts, or land to which historic buildings or structures may be moved; holding, managing, preserving, and restoring such a property and improving the interest; and exchanging or disposing of the interest through public or private sale, lease, or other lawful means, provided the property shall be subject to covenants or other legally binding restrictions which shall secure appropriate rights of public access and the preservation of the property. All lands, buildings, structures, sites, areas, or objects acquired by funds appropriated by the local governing body shall be acquired in the name of city/county name unless otherwise provided by that body;

n. accepting grants of funds from private individuals or organizations for preservation purposes;

o. conducting educational programs pertaining to historic landmarks or historic districts within its jurisdiction;

p. publishing or otherwise informing the public about any matter related to its purview², duties, responsibilities, organization, procedures, functions, or requirements;

q. advising property owners about appropriate treatment(s) for characteristics of historic properties;

r. cooperating with the State of North Carolina, the United States of America, local governments, public or private organizations, or their agencies, in pursuing

¹ “Express consent” is consent can be given either verbally or in writing. Some commissions prefer to have owners or occupants sign a prepared form; others elect to accept verbal affirmatives.

² Within the range of the Commission’s function and mission – in other words, upon any matter pertaining to historic properties or districts within its jurisdiction.

the purposes of this ordinance, including entering into contracts, provided that such contracts are not inconsistent with state or federal law;

- s. preparing and recommending adoption of a preservation element, or elements, as part of a city/county name comprehensive plan;
- t. proposing to the local governing body amendments to this or to any other ordinance, and proposing new ordinances or laws relating to historic landmarks and districts or to the protection of the historic resources of city/county name and its environs.

SECTION 4 INVENTORY

The Commission shall use as a guide to identification, assessment, and designation of historic landmarks and districts an inventory of buildings, structures, sites, areas, or objects which are of historic, prehistoric, architectural, archaeological, and/or cultural significance. The Commission shall take steps as necessary to ensure that the inventory reflects information current to within twenty (20) years.

SECTION 5 HISTORIC LANDMARKS

5.1 Adoption of Ordinance of Designation

- a. The local governing body may adopt and, from time to time, amend or repeal an ordinance designating one or more historic landmarks. The ordinance shall include information which shall
 - (1) list the name or names of the owner or owners of the property;
 - (2) describe each property designated by the ordinance, including the address, if applicable, the physical configuration and orientation of the property so designated;
 - (3) describe those elements of the property which are integral to its historic, architectural, archaeological, and/or cultural significance;
 - (4) provide for each designated historic landmark a suitable sign or plaque indicating that the landmark has been so designated; and
 - (5) any other information deemed necessary, within the authority of this ordinance and the general statutes, as determined by the local governing body.
- b. The landmark designation process may be initiated by either the Commission or at the request of a property owner. No ordinance to designate any building,

structure, site, area, or object shall be adopted or amended until all of the requirements of this ordinance and its subsections have been satisfied.

5.2 Criteria for Designation

To be designated as a historic landmark, a property, building, site, area, or object shall be found by the Commission to possess special significance in terms of its history, prehistory, architecture, archaeology, and/or cultural importance, and to retain the integrity of its design, setting, workmanship, materials, feeling, and/or association.

5.3 Procedure for Designation

- a. The Commission shall make, or cause to be made, an investigation and designation report which includes
 - (1) the name of the property to be designated, including both common and historic names if they can be determined;
 - (2) the name(s) and address(es) of the current owner(s);
 - (3) the location of the property for which designation is proposed, including the street address and County name tax map parcel number or parcel identification;
 - (4) the dates of original construction and of all later additions or alterations, if applicable;
 - (5) an assessment of the significance of the building or site as prescribed by this ordinance;
 - (6) an architectural or archaeological description of the area of the site or structure, including descriptions of all outbuildings and appurtenant features, for which designation is proposed;
 - (7) a historical discussion of the site or structure within its type, period, and locality;
 - (8) a photograph showing, to the fullest extent possible, the overall disposition of the property; one photograph of each façade or elevation and supplementary photographs as necessary to illustrate architectural details or ornamentation, siting, scale, proportion, and relationship of features or buildings, structures, or objects to each other; and

(9) a map showing the location of the property, including all outbuildings and appurtenant features.

b. Pursuant to G.S. 160A-400.6, as amended, the designation report shall be submitted to the North Carolina Department of Cultural Resources, Division of Archives and History, or its successor agency, which, acting through the State Historic Preservation Officer, shall review it and provide written comments and recommendations to the local governing body regarding the substance and effect of the proposed designation. Failure of the Department to respond within thirty (30) days following its receipt of the report shall constitute approval of the report by the Department and relieve the local governing body of all responsibility to consider the Department's comments or recommendations concerning the report.

c. At the expiration of the thirty (30) day review period, the Commission shall consider the report and any comments or recommendations from the State Historic Preservation Officer, and shall accept it, amend it, reject it, or defer a decision until completion of a period of further study, not to exceed sixty (60) days. The Commission shall forward to the local governing body a copy of the report, copies of written comments received from the Department of Cultural Resources, and a recommendation either to approve or disapprove designation of the property, stating in its recommendation the extent to which the property meets the criteria for designation as set forth in this ordinance. A recommendation for approval shall be accompanied by a proposed ordinance of designation. A recommendation for disapproval shall not necessarily prevent any future consideration of a property for designation as a historic landmark.

d. The local governing body shall hold a public hearing, either jointly with the Commission, or separately, to consider the proposed ordinance. Reasonable notice of the time and place thereof shall be given.

e. Following the public hearing, the local governing body shall consider the Commission's designation report, its recommendation(s), the Department of Cultural Resources' recommendation(s), and comments made at the public hearing, and shall adopt the ordinance as proposed, adopt the ordinance with amendments, or reject the ordinance.

f. Upon adoption of the ordinance, the Commission staff

(1) shall, within thirty (30) days of adoption, send the owner(s) of the landmark(s) written notice of such designation, explaining the substance of the Commission's decision, via certified mail with a return receipt requested;

- (2) shall file one copy of the ordinance, and any subsequent amendments thereto, in the office of the Register of Deeds of County name, which office shall index each historic landmark according to the name of the owner in the grantee and grantor indexes.
- (3) shall, if the landmark lies within the zoning jurisdiction of City name, file a second copy of the ordinance, and any subsequent amendments thereto, in the office of the municipal clerk, where it shall be made available for public inspection at any reasonable time, and shall provide a third copy to the building inspector.
- (4) shall notify the tax assessor of County name of the landmark designation.

g. Upon notification from the Commission, the tax assessor of County name shall clearly indicate the designation on all appropriate tax maps for as long as the designation remains in effect.

h. In disapproving a designation report, a copy of the minutes of the meeting at which such decision to deny was made shall be mailed to the owner of the property proposed for designation, together with a letter explaining the substance of the Commission's decision.

SECTION 6 HISTORIC DISTRICTS

6.1 Adoption of Ordinance of Designation

The local governing body may adopt and, from time to time, amend or repeal an ordinance designating a historic district. The ordinance shall include information which shall describe the physical area proposed for designation, its boundaries, and general historic, architectural, archaeological, and/or cultural significance. The district designation process may be initiated by either the Commission or at the request of any number of property owners. No ordinance to designate a district shall be adopted or amended until all of the requirements of this ordinance and its subsections have been satisfied.

6.2 Criteria for Designation

To be designated as a historic district, an area shall be found by the Commission to possess special significance in terms of its history, prehistory, architecture, archaeology, and/or cultural importance, and to retain the integrity of its design, setting, workmanship, materials, feeling, and/or association.

6.3 Procedure for Designation

a. The Commission shall make, or cause to be made, an investigation and designation report which includes

- (1) an assessment of the significance of the buildings, sites, structures, features, objects, or environs to be included in a proposed district and a description of its boundaries; and
- (2) a map clearly indicating the boundaries of the district and the properties, showing their County name tax map parcel numbers, contained therein.

b. A district designation report shall be

- (1) referred to the local planning agency for review and comment according to procedures set forth in the zoning ordinance of the city or county, depending on which legislative body creates the commission.
- (2) submitted to the North Carolina Department of Cultural Resources, Division of Archives and History, or its successor agency, which, acting through the State Historic Preservation Officer, shall review it and provide written comments and recommendations to the local governing body regarding the substance and effect of the proposed designation. Failure of the Department to respond within thirty (30) days following its receipt of the report shall constitute approval of the report by the Department and relieve the local governing body of all responsibility to consider the Department's comments or recommendations concerning the report.

c. At the expiration of the thirty (30) day review period, the Commission shall consider the report and any comments or recommendations from the State Historic Preservation Officer, and shall accept it, amend it, reject it, or defer a decision until completion of a period of further study, not to exceed sixty (60) days. The Commission shall forward to the local governing body a copy of the report, copies of written comments received from the Department of Cultural Resources, and a recommendation either to approve or disapprove designation of the district, stating in its recommendation the extent to which the proposed area meets the criteria for designation as set forth in this ordinance. A recommendation for approval shall be accompanied by a proposed ordinance of designation. A recommendation for disapproval shall not necessarily prevent any future consideration of an area for designation as a historic district.

d. Upon receipt of a recommendation and designation report from the Commission, the local governing body shall proceed in the same manner as would otherwise be required for the adoption or amendment of any other appropriate zoning provision.

6.4 Revisions to Districts

Changes in the boundaries of an adopted district subsequent to its initial establishment shall be effected as allowed by Sections 6.1 and 6.2 of this ordinance and as prescribed in Section 6.3.

SECTION 7 CERTIFICATES OF APPROPRIATENESS

7.1 Certificate of Appropriateness Required

- a.** From and after the designation of a historic landmark or district, no construction, alteration, reparation, rehabilitation, relocation, or demolition of any building, structure, site, area, or object shall be performed upon such landmark or within such district until a Certificate of Appropriateness (or "Certificate") has been granted by the Historic Preservation Commission. A Certificate shall be required for any and all exterior work, including masonry walls, fences, light fixtures, steps and pavement, any other appurtenant features, any above ground utility structures, and any type of outdoor advertising sign.
- b.** A Certificate shall be required in order to obtain a building permit, or any other permit granted for the purposes of constructing, altering, moving, or demolishing structures, and shall be required whether or not a building permit or other permit is required. Any building permit or other permit not issued in conformity with this Section shall be invalid.
- c.** For the purposes of this ordinance, "exterior features" shall include architectural style, general design, general arrangement, kind and texture of material, size and scale, and type and style of all windows, doors, light fixtures, signs, any other appurtenant features, historic signs, historic advertising, color, landscape, and archaeological or natural features.
- d.** A Certificate shall be required for specific interior features of architectural, artistic, or historic significance in publicly owned landmarks and in privately owned landmarks for which consent to review has been given in writing by the owner. Such consent shall be filed in the County name Register of Deeds and indexed according to the name of the property owner in the grantee and grantor indexes and shall bind future owners and/or successors in title. The ordinance establishing historic designation of the property shall specify the interior features subject to review and the specific nature of the Commission's jurisdiction over those features.
- e.** In approving a Certificate, the Commission may attach reasonable conditions necessary to the proper execution of this ordinance.
- f.** Commission staff may issue a Certificate for minor works as defined in the Commission's Rules of Procedure. Minor works shall include the ordinary

maintenance or repair of any exterior feature of a historic landmark or property located within a historic district, provided such maintenance or repair does not involve a change in design, material, or appearance thereof.

g. No application for a minor works Certificate shall be denied without deliberation by the Commission.

h. Under this section, the Commission shall institute action, through the office of the local government agency responsible for enforcing zoning and/or codes violations, to prevent, restrain, correct, or otherwise abate the construction, reconstruction, alteration, restoration, relocation, or demolition of buildings, structures, appurtenant features, or any other features which would be incongruous with the special character of the landmark or district.

7.2 Review Guidelines

Prior to the designation of any historic landmark or district, the Commission shall prepare and adopt guidelines not inconsistent with G.S. 160A-400.1 – 400.14 for constructing, altering, restoring, rehabilitating, relocating, removing, or demolishing of property designated as historic, which guidelines shall ensure, insofar as possible, that changes in designated landmarks or properties located within designated districts shall be in harmony with the reasons for designation.

7.3 Certain Changes not Prohibited

Nothing in this ordinance shall be construed to prevent

- a.** the ordinary maintenance or repair of any exterior feature of a historic landmark or property located within a historic district, provided such maintenance or repair does not involve a change in design, material, or appearance thereof;
- b.** the construction, alteration, relocation, or demolition of any such feature, building, or structure when the building inspector or similar official certifies to the Commission that such action is necessary to the public health or safety because of an unsafe or dangerous condition;
- c.** a property owner from making of his property any use not otherwise prohibited by statute, ordinance, or regulation; or
- d.** the maintenance of, or, in the event of an emergency, the immediate restoration of any existing above ground utility structure without approval by the Commission.

7.4 Delay of Demolition

a. Except as provided below, a Certificate authorizing the demolition of a designated historic landmark or property located within a designated historic district may not be denied. However, the Commission may delay the effective date of such a Certificate for a period of up to 365 calendar days from the date of approval. The Commission may reduce the period of delay where it finds that the owner would suffer extreme hardship or be deprived permanently of all beneficial use of such property as a result of the delay. During the delay period, the Commission shall negotiate with the property owner and with any other party in an effort to find a means of preserving the property as provided in Section 3.4.

b. The Commission may deny an application for a Certificate authorizing the demolition or destruction of any designated landmark, or of any property, building, site, object, area, or structure located within a designated district, which the State Historic Preservation Office has determined to be of Statewide Significance, as defined by the criteria of the National Register of Historic Places, unless the Commission finds that the owner would suffer extreme hardship or be deprived permanently of all beneficial use of the property as a result of the denial.

c. In the event that the Commission has voted to recommend designation of a property as a landmark, or of an area as a district, and such designation has not yet been made by the local governing body, the demolition of any building, site, object, area, or structure located on the property of the proposed landmark or within the proposed district may be delayed by the Commission for a period of up to 180 calendar days or until the local governing body takes final action on the proposed designation, whichever occurs first. Should the local governing body approve the designation prior to the expiration of the 180 day delay period, an application for a Certificate of Appropriateness authorizing demolition must then be filed; however, the maximum delay period of 365 days shall be reduced by the number of days elapsed during the 180 day delay while designation was pending.

7.5 Demolition through Neglect

Failure of an owner to regularly, consistently, and fully maintain a designated landmark or any property located within a designated district shall constitute demolition, through neglect, without a valid Certificate of Appropriateness and a violation of this ordinance. The Commission shall institute action, through the office of the local government agency responsible for enforcing zoning and/or codes violations, to prevent, restrain, correct, or otherwise abate such demolition,

provided such action includes appropriate safeguards to protect property owners from undue economic hardship.¹

7.6 Applications and Required Procedures

- a.** An application for a Certificate shall be obtained from Commission staff. Applications shall be completed in form and in content and filed with the staff at least ten (10) business days prior to the next regularly scheduled Commission meeting. Late applications shall be deferred until the following regularly scheduled meeting.
- b.** The Commission shall have, as detailed in its Rules of Procedure, broad powers to require the submittal, with the application, of pertinent information sufficient to determine an application.
- c.** Incomplete applications shall not be accepted.
- d.** Before considering an application for a Certificate, the Commission shall notify by mail the owners of any adjacent property. Such notices are for the convenience of property owners and occupants and no defect or omission therein shall impair the validity of issuing a Certificate or of any subsequent action.
- e.** When considering an application for a Certificate, the Commission shall give the applicant and owners of any property likely to be materially affected by the application an opportunity to be heard.
- f.** When considering the application, the Commission shall apply the review guidelines required by Section 7.2 and shall, in approving, approving with conditions, disapproving, or deferring an application, make findings of fact, indicating the extent to which the application is or is not in compliance with review criteria, and shall cause these findings of facts to be entered into the minutes of its meetings. The minutes shall also contain a summary of any citation to evidence, testimony, studies, or other authority upon which the Commission based its decision.
- g.** The Commission shall have ninety (90) calendar days following submittal of a complete application within which to act. Failure by the Commission to take final action within such period shall constitute approval of the application as submitted. This period may be extended by mutual agreement between the Commission and the applicant.

¹ For more information on demolition by neglect and how to define and remedy “economic hardship,” please contact the North Carolina State Historic Preservation Office: <http://www.hpo.ncdcr.gov/>.

h. A Certificate shall be valid for 180 calendar days from date of issuance, or, in the case of a Certificate for demolition, from the effective date. If the authorized work has not commenced within that period, or has been discontinued for more than 365 calendar days from the date of issuance, such Certificate shall immediately expire and the applicant shall be required to reapply.

i. If the Commission denies a Certificate, a new application affecting the same property may be submitted, provided a substantial change is proposed in the plans.

j. An appeal of a final action by the Commission may be made to the board of zoning adjustment for the jurisdiction served by the Commission. Written notice of intent to appeal must be sent to the Commission, postmarked within twenty (20) calendar days following the Commission's decision. Appeals must be filed with the board of zoning adjustment for the jurisdiction served by the Commission within sixty (60) calendar days following the Commission's decision and shall be in the nature of certiorari. A decision by the board of zoning adjustment may be appealed to the superior court of County name.

k. A Certificate shall be required for designated landmarks or buildings, structures, sites, areas, or objects within designated districts which are owned by the State of North Carolina or any of its agencies, political subdivisions, or instrumentalities, subject to the regulations of this ordinance and in accordance with North Carolina General Statute 160A-400.9(f).

l. In the case of any building, structure, site, area, or object designated as a historic landmark or of any property located within a designated historic district being threatened with demolition, as the result of willful neglect or otherwise, material alteration, rehabilitation, or removal, except in compliance with this ordinance, the Commission, the local governing body, or any other party aggrieved by such action may institute any appropriate action or proceeding to prevent, restrain, correct, or otherwise abate such violation, or to prevent any illegal act or conduct with respect to such property.

SECTION 8 CONFLICT WITH OTHER LAWS

Whenever the provisions of this ordinance are in conflict with any other statute, charter provision, ordinance, or regulation of the local governing body, the more restrictive ordinance or regulation shall govern.