

Model Ordinance
Historic Landmark and District Zoning Ordinance

WHEREAS, CH.221 TEXAS LOCAL GOVERNMENT CODE, the Municipal Zoning Authority, specifically authorizes zoning functions and procedures for municipalities; and

WHEREAS, CH.221 TEXAS LOCAL GOVERNMENT CODE, Section 211.005 authorizes the governing body of a municipality to divide the municipality into districts, within which the governing body may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land and within which zoning regulation must be uniform for each class or kind of building in a district; however, zoning regulations may vary from district to district.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF _____:

That the following Historic Landmark and District Zoning Ordinance is hereby **(adopted, Amended, enacted)** as part of the comprehensive zoning plan, pursuant to CH.211 TEXAS LOCAL GOVERNMENT CODE.

Section 1. Purpose

The City Council of _____ hereby declares that as a matter of public policy the protection, enhancement, and perpetuation of landmarks or district of historical and cultural importance and significance is necessary to promote the economic, cultural, educational, and general welfare of the public. It is recognized that the _____ represents the unique confluence of time and place that shaped the identity of generations of citizens, collectively and individually, and produced significant historic, architectural, and cultural resources that constitute their heritage. This act is intended to:

- (a) protect and enhance the landmarks and districts which represent distinctive elements of _____ s historic, architectural, and cultural heritage;
- (b) foster civic pride in the accomplishments of the past;
- (c) protect and enhance _____ s attractiveness to visitors and the support and stimulus to the economy thereby provided;
- (d) insure the harmonious, orderly, and efficient growth and development of the village/town/city;
- (e) promote economic prosperity and welfare of the community by encouraging the most appropriate use of such property within the village/town/city;
- (f) encourage stabilization, restoration, and improvements of such properties and their values.

[Note: Other purposes may be included, but a general statement on aesthetics should be avoided in most cases. Significant or unusual geographic and historic features may be mentioned here, e.g., riverfront, oceanfront, town form, etc., and how it is integral to the village/town/city.]

[Note: A list of definitions conforming to the ordinance should be included at this point. You may refer to the attached appendix for definitions.]

Section 2. Historic Preservation Commission

There is hereby created a commission to be known as the _____ Historic Preservation Commission.

[Note: Other possible names include _____ Landmark Commission, _____ Historic District and Landmark Commission, or Board of Architectural Review.]

- (a) The Commission shall consist of _____ members to be appointed, to the extent available among the residents of the community, by the (mayor, council, commission) as follows.

These are possible representatives.

at least one shall be an architect, planner, or representative of a design profession;

at least one shall be a historian;

at least one shall be a licensed real estate broker;

at least one shall be an attorney;

at least one shall be an owner of a landmark or of a property in a historic district;

at least one shall be a member of _____;

[Note: This blank should include the name of whatever preservation nonprofit exists.]

at least one shall be an archeologist or from a related discipline;

- (b) All Commission members, regardless of background, shall have a known and demonstrated interest, competence, or knowledge in historic preservation within the village/town/city of _____.

- (c) The Commission as a whole shall represent the ethnic makeup of the village/town/city.
- (d) Commission members shall serve for a term of (at least two) _____years, with the exception that the initial term of _____ members shall be _____years, and _____members shall be _____years.

[Note: The term may be set for one, two, or whatever necessary period to achieve a staggered term.]

- (e) The Chairman and Vice Chairman of the Commission shall be elected by and from the members of the Commission.

[Note: They also may be appointed by the mayor, council, or commission.]

- (f) The Commission shall be empowered to:
 - (i) Make recommendations for employment of staff and professional consultants as necessary to carry out the duties of the Commission.
 - (ii) Prepare rules and procedures as necessary to carry out the business of the Commission, which shall be ratified by the City Council.
 - (iii) Adopt criteria for the designation of historic, architectural, and cultural landmarks and the delineation of historic districts, which shall be ratified by the City Council.
 - (iv) Conduct surveys and maintain an inventory of significant historic, architectural, and cultural landmarks and all properties located in historic district within the village/town/city.
 - (v) Recommend the designation of resources as landmarks and historic districts.
 - (vi) Create committees from among its membership and delegate to these committees responsibilities to carry out the purposes of this ordinance.
 - (vii) Maintain written minutes which record all actions taken by the Commission and the reasons for taking such actions.
 - (viii) Recommend conferral of recognition upon the owners of landmarks or properties within districts by means of certificates, plaques, or markers.
 - (ix) Increase public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education programs.
 - (x) Make recommendations to the village/town/city government concerning the utilization of state, federal, or private funds to promote the preservation of landmarks and historic districts within the village/town/city.

- (xi) Approve or disapprove of applications for certificates of appropriateness pursuant to this act.
- (xii) Prepare and submit annually to the (mayor/council/commission) a report summarizing the work completed during the previous year.
- (xiii) Prepare specific design guidelines for the review of landmarks and districts.
- (xiv) Recommend the acquisition of a landmark structure by the village/town/city government where its preservation is essential to the purpose of this act and where private preservation is not feasible. **[optional]**
- (xv) Propose tax abatement programs(s) for landmarks or districts. **[optional]**
- (xvi) Accept on behalf of the village/town/city government the donation of preservation easements and development rights as well as any other gift of value for the purpose of historic preservation, subject to the approval of the City Council. **[optional]**
- (g) The Commission shall meet at least monthly, if business is at hand. Special meetings may be called at any time by the Chairman (or mayor) or on the written request of any two Commission members. All meetings shall be held in conformance with the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17.
- (h) A quorum for the transaction of business shall consist of not less than a majority of the full authorized membership.

Section 3. Appointment of Historic Preservation Officer

The (mayor, council, commission) or a designee shall appoint a qualified village/town/city official, staff person, or appropriate resident of the municipal entity to serve as historic preservation officer. This officer shall administer this ordinance and advise the Commission on matters submitted to it.

In addition to serving as representative of the Commission, the officer is responsible for coordinating the village/town/city s preservation activities with those of state and federal agencies and with local, state, and national nonprofit preservation organizations.

[Note: In the absence of a qualified official or staff person of the municipality, a volunteer resident serving as preservation officer should be aware of the liability issues involved in serving in this capacity.]

Section 4. Designation of Historic Landmarks

- (a) These provisions pertaining to the designation of historic landmarks constitutes a part of the comprehensive zoning plan of the City of _____.

- (b) Property owners of proposed historic landmarks shall be notified prior to the Commission hearing on the recommended designation. At the Commission's public hearing, owners, interested parties, and technical experts may present testimony or documentary evidence which will become part of a record regarding the historic, architectural, or cultural importance of the proposed historic landmark.
- (c) Upon recommendation of the Commission, the proposed historic landmark shall be submitted to the Zoning Commission within thirty (30) days from the date of submittal of designation request. The Zoning Commission shall give notice and conduct its hearing on the proposed designation within forty-five (45) days of receipt of such recommendation from the Commission. such hearing shall be in the same manner and according to the same procedures as specifically provided in the general zoning ordinance of the City of _____. The Zoning Commission shall make its recommendation to the City Council within forty-five (45) days subsequent to the hearing on the proposed designation.
- (d) The City Council shall schedule a hearing on the Commission's recommendation to be held within forty-five (45) days of receipt of the recommendation of the Zoning Commission. The City Council shall give notice, follow the publication procedure, hold hearing, and make its determination in the same manner as provided in the general zoning ordinance of the City of _____.

[Note: The general zoning ordinance should provide a time limit within which the City Council must make its determination. Time limits may be set in accordance with the city's own zoning ordinance.]

- (e) Upon designation of a (building, object, site, structure) as a historic landmark or district, the City Council shall cause the designation to be recorded in the Official Public Records of Real Property of _____ County, the tax records of the City of _____, and the _____ Appraisal District as well as the official zoning maps of the City of _____. All zoning maps should indicate the designated landmarks with an appropriate mark.

Section 5. Designation of Historic Districts

- (a) These provisions pertaining to the designation of historic district constitute a part of the comprehensive zoning plan of the City of _____.
- (b) Property owners within a proposed historic district shall be notified prior to the Commission hearing on the recommended designation. At the Commissioner's public hearing, owners, interested parties, and technical experts may present testimony or documentary evidence which will become part of a record regarding the historic, architectural, or cultural importance of the proposed historic district.
- (c) The Commission may recommend the designation of a district if it:
 - (i) Contains properties and an environmental setting which meet one or more of the criteria for designation of a landmark; and ,

- (ii) Constitutes a distinct section of the village/town/city.
- (d) Upon recommendation of the Commission, the proposed historic district shall be submitted to the Zoning Commission within thirty (30) days from the date of submittal of designation request. The Zoning Commission shall give notice and conduct its hearing on the proposed designation within forty-five (45) days of receipt of such recommendation from the Commission. Such hearing shall be in the same manner and according to the same procedures as specifically provided in the general zoning ordinance of the City of _____. The Zoning Commission shall make its recommendation to the City Council within forty-five (45) days subsequent to the hearing on the proposed designation.
- (e) The City Council shall schedule a hearing on the Commission's recommendation to be held within forty-five (45) days of receipt of the recommendation of the Zoning Commission. The City Council shall give notice, follow the publication procedure, hold hearings, and make its determination in the same manner as provided in the general zoning ordinance of the City of _____.

[Note: The general zoning ordinance should provide a time limit upon which the city council must make its determination. Time limits may be set in accordance with the city's own zoning ordinance.]

- (f) Upon designation of a historic district the City Council shall cause the designated boundaries to be recorded in the Official Public Records of real property of _____ County, the tax records of the City of _____ and the _____ Appraisal District as well as the official zoning maps of the City of _____. All zoning maps should indicate the designated historic district by an appropriate mark.

Section 6. Criteria for Designation of Historic Landmarks and Districts

A historic landmark or district may be designated if it:

[Note: National Register criteria are most easily and often used here. Additional criteria may be added as appropriated. In order to have a valid zoning ordinance, criteria must be clearly established so that it can withstand a challenge for being unconstitutionally vague.]

- (a) Possesses significance in history, architecture, archeology, and culture
- (b) Is associated with events that have made a significant contribution to the board patterns of local, regional, state, or national history.
- (c) Is associated with events that have made a significant in our past.
- (d) Embodies the distinctive characteristics of a type, period, or method of construction.
- (e) Represents the work of a master designer, builder, or craftsman.

- (f) Represents an established and familiar visual feature of the neighborhood/village/town/city.

Section 7. Certificate of Appropriateness for Alteration or New Construction Affecting Landmarks or Historic Districts

No person shall carry out any construction, reconstruction, alteration, restoration, rehabilitation, or relocation of any historic landmark or any property within a historic district, nor shall any person make any material change in the light fixtures, signs, sidewalks, fences, steps, paving, or other exterior elements visible from a public right-of-way which affect the appearance and cohesiveness of any historic landmark or any property within a historic district.

[Note: In historic districts, it is a good idea to require a certificate of appropriateness for proposed new construction to ensure compatibility with the existing historic resources of the district.]

Section 8. Criteria for Approval of a Certificate of Appropriateness

In considering an application for a certificate of appropriateness, the Commission shall be guided by any adopted design guideline, and where applicable, the following from *The Secretary of the Interior's Standards for Rehabilitation of Historic Buildings*. Any adopted design guideline and *Secretary of the Interior's Standards* shall be made available to the property owners of historic landmarks or within historic districts.

- (a) Every reasonable effort shall be made to adapt the property in a manner which requires minimal alteration of the building, structure, object, or site and its environment.
- (b) The distinguishing original qualities or character of a building, structure, object, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- (c) All buildings, structures, objects, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- (d) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, object, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- (e) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, object, or site shall be kept where possible.
- (f) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should reflect the material being replaced in composition, design, color, texture, and other visual

qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historical, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

- (g) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- (h) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- (i) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.
- (j) Whenever possible, new additions or alterations to buildings, structures, objects, or sites shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the building, structure, object, or site would be unimpaired.

Section 9. Certification of Appropriateness Application Procedure

- (a) Prior to the commencement of any work requiring a certificate of appropriateness the owner shall file an application for such a certificate with the Commission. The application shall contain:
 - (i) Name, address, telephone number of applicant, detailed description of proposed work.
 - (ii) Location and photograph of the property and adjacent properties.

[Note: Historical photographs may be requested as well.]

- (iii) Elevation drawings of the proposed changes, if available.
- (iv) Samples of materials to be used.
- (v) If the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination (if any), and a plan showing the sign's location on the property.
- (vi) Any other information which the Commission may deem necessary in order to visualize the proposed work.

[Note: These requirement may be too extensive for small cities. If so, adjust them as necessary.]

- (b) No building permit shall be issued for such proposed work until a certificate of appropriateness has first been issued by the Commission. The certificate of appropriateness required by this act shall be in addition to and not in lieu of any building permit that may be required by any other ordinance of the village/town/city of _____.
- (c) The Commission shall review the application at a regularly scheduled meeting within sixty (60) days form the date the application is received, at which time an opportunity will be provided for the applicant to be heard. The Commission shall approve with modifications the permit within forty-five (45) days after the review meeting. In the event the Commission does not act within ninety (90) days of the receipt of the application, a permit may be granted.

[Note: The Commission s decision is limited to those decisions stated in the ordinance, i.e., approve, deny, or approve with modifications. Suspension of action for a specified time also can be provided for in lieu of or in addition to these provided.]

- (d) All decisions of the Commission shall be in writing. The Commission s decision shall state its findings pertaining to the approval, denial, or modification of the application. A copy shall be sent to the applicant. Additional copies shall be filed as part of the public record on that property and dispersed to appropriated departments, e.g., building inspection.
- (e) An applicant for a certificate of appropriateness dissatisfied with the action of the Commission relating to the issuance or denial of a certificate of appropriateness shall have the right to appeal to the City Council within (30) days after receipt of notification of such action. The City Council shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in the general zoning ordinance of the city.

[Section 10. Certificate of Appropriateness Required for Demolition

A permit for the demolition of a historic landmark or property within a historic district, including secondary buildings and landscape features, shall not be granted by the (building inspector or other city official) without the review of a completed application for a certificate of appropriateness by the Commission, as provided for in Section 7,8 and 9 of the ordinance.

Section 11. Economic Hardship Application Procedure

- (a) After receiving written notification from the Commission of the denial of certificate of appropriateness, an applicant may commence the hardship process. No building permit or demolition permit shall be issued unless the Commission makes a finding that hardship exists.
- (b) When a claim of economic hardship is made due to the effect of this ordinance, the owner must prove that:
 - (i) the property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;

- (ii) the property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
 - (iii) efforts to find a purchaser interested in acquiring the property and preserving it have failed.
- c) The applicant shall consult in good faith with the Commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property. Such efforts must be shown to the Commission.
- d) The Commission shall hold a public hearing on the application within sixty (60) days from the date the application is received by the (building inspector, preservation officer). Following the hearing, the Commission has thirty (30) days in which to prepare a written recommendation to the (building inspector or other official). In the event that the Commission does not act within ninety (90) days of the receipt of the application, a permit may be granted.
- e) All decision of the Commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the village/town/city clerk s office for public inspection. The Commission s decision shall state the reasons for granting or denying the hardship application.
- f) An applicant for a certificate of appropriateness dissatisfied with the action of the Commission relating to the issuance or denial of a certificate of appropriateness shall have the right to appeal to the City Council within thirty (30) days after receipt of notification of such action. The City Council shall give notice, follow publication procedure, hold hearings, and make its decision in the same manner as provided in the general zoning ordinance of the city.

Section 12. Enforcement

All work performed pursuant to a certificate of appropriateness issued under this ordinance shall conform to any requirements included therein. It shall be the duty of the (building inspector or other official) to inspect periodically any such work to assure compliance. In the event work is not being performed in accordance with the certificate of appropriateness, or upon notification of such fact by the Commission and verification by the (designated employee), the (designated employee) shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work is in effect.

Section 13. Ordinary Maintenance

Nothing in this ordinance shall be construed to prevent the ordinary maintenance and repair of any exterior architectural feature of a landmark or property within a historic district which does not involve a change in design, material, or outward appearance. In-kind replacement or repair is included in this definition of ordinary maintenance.

[Note: Color may be included as ordinary maintenance if not part of that regulated in Section 7.]

Section 14. Demolition by Neglect

No owner or person with an interest in real property designated as a landmark or included within a historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Commission, produce a detrimental effect upon the character of the historic district as a whole or the life and character of the property itself.

Examples of such deterioration include:

- (a) Deterioration of exterior walls or other vertical supports.
- (b) Deterioration of roof or other horizontal members.
- (c) Deterioration of exterior chimneys.
- (d) Deterioration or crumbling of exterior stucco or mortar.
- (e) Ineffective waterproofing of exterior walls, roof, or foundations, including broken windows or doors.
- (f) Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition is necessary for the public safety.

Section 15. Penalties

Failure to comply with any of the provisions of this ordinance shall be deemed a violation and the violator shall be liable for a misdemeanor charge, and be subject to a fine of not less than _____ nor more than _____ for each day the violation continues.

[Note: Penalties should conform to the penalties provided for in the existing zoning ordinance. The Municipal Zoning Authority authorizes imprisonment as well as a civil penalty. It also should be noted that if a violation occurs or is about to occur, the municipality is authorized to bring action to enforce the ordinance. See Sec. 211.012 of the Municipal Zoning Authority.]