
SAMPLE HISTORIC PRESERVATION ORDINANCE FOR SOUTH CAROLINA'S COMMUNITIES*

ESTABLISHING LOCAL HISTORIC PROPERTY DESIGNATION AND DESIGN REVIEW

SECTION 1. TITLE

The title of this ordinance shall be the (use the relevant City/County name) Historic Preservation Ordinance.

SECTION 2. PURPOSE

The purpose of this ordinance is:

- (1) to protect, preserve and enhance the distinctive architectural and cultural heritage of (use the relevant city/county name);
- (2) to promote the educational, cultural, economic and general welfare of the people of (use the relevant city/county name);
- (3) to foster civic pride;
- (4) to encourage harmonious, orderly and efficient growth and development of (use the relevant city/county name);
- (5) to strengthen the local economy; and
- (6) to improve property values.

It is the hope of the (use the relevant city/county name) that by encouraging a general harmony of style, form, proportion and material between buildings of historic design and those of contemporary design, the (city's/county's) historic buildings and historic districts will continue to be a distinctive aspect of the (use the relevant city/county name) and will serve as visible reminders of the significant historical and cultural heritage of the (use the relevant city/county name) and State of South Carolina.

This ordinance is part of the zoning ordinance of (use the relevant city/county name) and is enacted pursuant to the South Carolina Code of Laws, Sections 6-29-710 and Section 6-29-870 et sequitur. (The ordinance can also be referenced in the zoning ordinance and adopted as a separate ordinance. If the general zoning ordinance is still operating under the authority of Title 5 it will be necessary to include or substitute those citations; e.g. SCCL 6-29-710, 6-29-870 et sequitur or SCCL 5-23-320.)

SECTION 3. DEFINITIONS

Alteration

A change in the external architectural features of any historic structure or in the interior of any such structure if the interior feature is specifically included in the historic designation; a change in the landscape features of any historic site or place; or work having an adverse effect upon designated archaeological resources.

* Note: Items appearing in parentheses and underlined are for instructional purposes

Certificate of Appropriateness

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Document issued by the Board of Architectural Review, following a prescribed review procedure, certifying that the proposed actions by an applicant are found to be acceptable in terms of design criteria relating to the individual property or the historic district.

Historic District

An area, designated by the (city/county) council, upon the recommendation of the Board of Architectural Review and pursuant to the provisions of this ordinance.

Historic Property

Any place (including an archaeological site or the location of a significant historical event), building, structure, work of art, fixture or similar object that has been individually designated by (city/county) council or designated as a contributing property within a historic district.

Public Space within a building

Spaces designed for use by the public, such as auditoriums, court rooms, lobbies, entrance halls, etc. These spaces are usually gathering places as opposed to corridors for public use.

Substantial Hardship

Hardship, caused by unusual and compelling circumstances, based on one or more of the following:

- a. the property cannot reasonably be maintained in the manner dictated by the ordinance,
- b. there are no other reasonable means of saving the property from deterioration, or collapse, or
- c. the property is owned by a nonprofit organization and it is not feasible financially or physically to achieve the charitable purposes of the organization while maintaining the property appropriately.

SECTION 4. ARCHITECTURAL REVIEW BOARD ESTABLISHED**4.1 Creation**

To implement the provisions of this ordinance, there is hereby established a Board of Architectural Review, hereinafter referred to as the Board, for the (use the relevant city/county name) consisting of (5,7,9) members. Members shall be appointed by the (use the relevant city/county name) council upon the recommendation of the Board.

4.2 Composition and Qualifications.

All members of the board shall have a demonstrated interest in historic preservation. If available in the community, the board should have at least one member who is qualified as:

1. a historian, knowledgeable in local history,
2. an architect or if an architect is not available to serve, someone knowledgeable in building design and construction.

(Other designated members can be listed, such as, a lawyer, a real estate agent, engineer, and representative of the historical society.)

No members shall hold any other (municipal/county) office. S.C. Code 6-29-870(C).

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(A representative of the zoning commission could serve only as an ex-officio, non-voting member.)

Members shall assume their duties at the first regular meeting after their appointment. Members shall serve without compensation except for reimbursement for authorized expenses attendant to the performance of their duties.

4.3 Terms of Office.

The term of office for each member shall be two years. Any person who has served as a member of the Board for three consecutive terms shall not be eligible for reappointment for at least one year. A term of less than one year shall not be counted in determining eligibility for reappointment.

Membership shall be identified by place numbers 1 through (5/7/9). Terms of office for members in the odd-numbered places shall expire in odd numbered years; terms for even-numbered members expire in even numbered years, provided, however, that each member shall serve until his successor is appointed and installed.

4.4 Removal.

Any member of the Board may be removed by the (mayor/chairman of county council) upon confirmation of the (city/county) council, for repeated failure to attend meetings of the Board or for any other cause deemed sufficient by the (mayor/chairman of county council).

4.5 Appointment to Fill a Vacancy.

If any place on the Board becomes vacant due to resignation, removal, or for any reason, the (mayor/ chairman of county) council shall appoint a replacement within 60 days for the remainder of the unexpired term, subject to confirmation by the (city/county) council.

4.6 Conflicts of Interest.

Any member of the board who has a personal or financial interest, either directly or indirectly, in any property which is the subject of, or affected by, a decision of the Board shall be disqualified from participating in the decision of the Board concerning the property.

4.7 Liability of Members.

Any member of the Board acting within powers granted by the ordinance shall be relieved from personal liability for any damage and held harmless by the (use the relevant city/county name). Any suit brought against any member of the Board shall be defended by a legal representative furnished by the (city /county) until the termination of the proceedings.

(Note: See appendix E of the Comprehensive Planning Guide for Local Governments, "Board of Architectural Review Rules of Procedure" that sets forth the officers and duties of each, a hearing procedure, an appeals procedure and requirements for records. Appendix G of the same publication contains a sample form for notice of a Board of Architectural Review Hearing. Appendix H has a form for issuing a Stop Order to halt unapproved work.)

SECTION 5. POWERS AND DUTIES

The responsibility of the Board is to promote the purposes and objectives of this ordinance, to review and recommend to (city/county) council the designation of individual historic properties and historic districts, and to review plans and applications, as hereinafter provided, for all construction within historic districts and construction or demolition pertaining to or affecting duly designated historic properties. The Board shall have the power to approve, approve with modifications or deny approval for such applications in accordance with the prescribed procedures and guidelines.

SECTION 6. HISTORIC PROPERTY INVENTORY

The Board shall maintain a local inventory of buildings, structures, objects, and sites more than fifty years old. These records shall be available to the public.

SECTION 7. DESIGNATION OF HISTORIC PROPERTIES

7.1 Criteria for Historic Designation.

The Board shall review the local inventory and make recommendations for historic designation(s) to (city/county) council based on the following criteria.

A property may be designated historic if it:

1. has significant inherent character, interest, or value as part of the development or heritage of the community, state, or nation; or
2. is the site of an event significant in history; or
3. is associated with a person or persons who contributed significantly to the culture and development of the community, state, or nation; or
4. exemplifies the cultural, political, economic, social, ethnic, or historic heritage of the community, state, or nation; or
5. individually, or as a collection of resources, embodies distinguishing characteristics of a type, style, period, or specimen in architecture or engineering; or
6. is the work of a designer whose work has influenced significantly the development of the community, state or nation; or
7. contains elements of design, detail, materials, or craftsmanship which represent a significant innovation; or
8. is part of or related to a square or other distinctive element of community planning; or
9. represents an established and familiar visual feature of the neighborhood or community; or
10. has yielded, or may be likely to yield, information important in pre-history or history.

(Note: These criteria are suggested, however, each community should review and revise them to reflect the needs and comprehensive plan for their community.)

7.2 Owner Notification.

Owners of properties proposed to be designated historic shall be notified in writing thirty days prior to consideration by city/county council. Owners may appear before the (city/county) council to voice approval or opposition to such designation.

(Additionally, the planning commission shall provide its formal comment to the council on ordinance adoption, amendment, and designation and may also serve as the entity conducting the required public hearing if so authorized by council.)

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7.3 Identification on Town Zoning Map.

All locally designated historic properties and historic districts shall be clearly shown on the zoning map.

7.4 Opposition to Designation

Any property owner may object to the decision by the (city/county) council to designate his property as historic by filing suit against the (use the relevant city/county name) before the Courts of the State of South Carolina.

(Note: This suit must be based on procedural nonconformities in the designation process or on the misapplication of the criteria for designation as specified in the (city's/county's) ordinance or under SCCL 6-29-870.0 not simply on the desire not to be included in the locally designated district. In the case of individual landmarks, the basis for challenging designation is the same.)

SECTION 8. JURISDICTION OF THE BOARD OF ARCHITECTURAL REVIEW

The jurisdiction of the Board, in general, is the (city limits/county line)*. The jurisdiction of the Board for the recommendation of properties to be designated historic is the (use the relevant city/county name) limits. The jurisdiction of the Board for the review of proposed alteration to exteriors of buildings, new construction, and demolition is the individual properties and areas that have been designated by the (use the relevant city/county name) council as historic.

* If the designating entity is a county, incorporated places are usually outside the jurisdiction of its Board unless included by specific agreement.

SECTION 9. NOMINATIONS TO THE NATIONAL REGISTER OF HISTORIC PLACES

The Board may conduct first review and evaluation of all proposed nominations for the National Register of Historic Places for properties that are within its jurisdiction, prior to consideration by the State Board of Review. The Board may send their recommendations to the State Historic Preservation Office for consideration at the meeting of the State Board of Review. The Board shall not nominate properties directly to the National Register; only the State Board of Review shall have this final review authority unless expressly authorized by federal statute.

SECTION 10. CERTIFICATE OF APPROPRIATENESS

A Certificate of Appropriateness is required before a building permit can be issued for the demolition, new construction, exterior alteration, modification or addition to a designated historic property. Any building permit not issued in conformity with this ordinance shall be considered void.

Application for a Certificate of Appropriateness must be signed by the owner or his authorized representative and the form must be signed by the chairman or vice-chairman of the Board stating its approval, denial, or approval with conditions and the reasons for the decision.

10.1 Required Procedure.

An application for a Certificate of Appropriateness shall be obtained from (insert the appropriate city or county office here), and when completed, filed with the appropriate administrative official as designated by the Board.

10.2 Time Limits.

Applications for a Certificate of Appropriateness shall be considered by the Board at its next regular meeting, provided they have been filed at least seven (7) calendar days before the regularly scheduled meeting of Board. If the Board fails to take action upon any application within 45 days after the complete application is received, the application shall be considered approved, except in cases where the Board has postponed an application to demolish a structure under the provisions contained in this ordinance.

10.3 Board Action on Application.

The Board shall review the application, using the design guidelines appearing in Section 11 of this ordinance to make findings of fact to decide whether or not the applicant's plans are appropriate. The decision of the Board, along with the reasons for each decision, will be recorded in the minutes and will be available upon request as a public reference for preservation procedures.

10.4 Contents of Application.

The Board shall, in its Rules of Procedure, require data as are reasonable and necessary to determine the nature of the application. An application shall not be considered complete until all the required data have been submitted.

10.5 Notification of Affected Property Owners.

Prior to the issuance of an approval or denial of a Certificate of Appropriateness, the Board shall inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard.

10.6 Submission of a New Application.

If the Board determines that a Certificate of Appropriateness should be denied, a new application affecting the same property may be submitted only if substantial change is made in the plans for the proposed work.

10.7 Maintenance, Repair, and Interior Projects.

Nothing in this document shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of structures designated as historic when that repair does not involve a change in design, material, color, or outer appearance of the structure. The Board shall not consider the interior arrangements or alterations to the interior of a building unless the interior of a public building or the public space of a private building is specifically described and designated as historic. The Board may authorize a staff member to approve minor projects involving repairs and ordinary maintenance that do not alter design, materials, color or the outer appearance of a structure or interior projects not subject to design review.

10.8 Fines and Penalties.

The system of fines applied by the (use the relevant city/county name) for violation of the building code will apply to violations of this ordinance.

10.9 Substantial Hardship.

In the event a Certificate of Appropriateness is denied, the property owner may apply for an exemption based on the substantial hardship of maintaining the property according to the design guidelines for historic properties. Substantial hardship is to be considered by the Commission where one or more of the following unusual and compelling circumstances exists:

- a. the property cannot reasonably be maintained in the manner dictated by the ordinance,
- b. there are no other reasonable means of saving the property from deterioration, or collapse, or
- c. the property is owned by a nonprofit organization and it is not feasible financially or physically to achieve the charitable purposes of the organization while maintaining the property appropriately.*

* While the Courts have consistently upheld designating and enforcing ordinance requirements on properties owned or operated by religious institutions and not-for-profit organizations, it is sometimes in the overall interest of community preservation efforts to specifically recognize that such institutions and organizations, in addition to private individuals, are subject to economic hardship issues.

The owner may be required to submit documents to show that he cannot comply with the design guidelines and earn a reasonable rate of return on his investment in the property. Information required may include:

1. costs of the proposed development with and without modification needed to comply with the design guidelines as determined by the Board,
2. structural report and/or a feasibility report,
3. market value of the property in its present condition and after completion of the proposed project,
4. cost of the property, date purchased, relationship, if any, between seller and buyer, terms of financing,
5. for the past two years, annual gross income from the property with operating and maintenance expenses, depreciation, and annual cash flow before and after debt service during that time, and
6. other information considered necessary by the Board to determine whether or not the property may yield a reasonable return.

10.10 Demolition.

If the Board denies, or postpones for 180 days, a request to demolish a historic building, the Board shall work closely with the owner to find an appropriate use for the property, to help find a buyer or to obtain funding for rehabilitation, including low interest loans or grants. The Board shall inform the community concerning the threat to the building, its value as part of the fabric of the community and, through publicity and contacts with civic groups, seek to provide assistance in preserving the property.

SECTION 11. DESIGN GUIDELINES

11.1 Intent.

It is the intent of this ordinance to ensure, insofar as possible, that properties designated as historic shall be in harmony with the architectural and historical character of the (use the relevant city/county name). In granting a Certificate of Appropriateness, the Board shall take into account

the architectural and historical significance of the structure under consideration and the exterior form and appearance of any proposed additions or modifications to that structure as well as the effect of such change or additions upon other structures in the vicinity.*

* (The Board can issue specific design guidelines for separately designated areas containing different categories of resources. Usually these guidelines are adopted by council.)

11.2 The Secretary of the Interior's Standards for Rehabilitation.

When considering an application for a Certificate of Appropriateness for new construction, alteration, repair, or restoration, the Commission shall use the Secretary of the Interior's Standards for Rehabilitation as guidelines in making its decisions. In addition, the Board may adopt more specific guidelines for local historic districts and local historic buildings. These guidelines serve as the basis for determining the approval, approval with modifications, or denial of an application.

The Secretary's Standards for Rehabilitation are:

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property shall be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other buildings, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale, and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

SECTION 12. APPEALS

Any person may appeal a decision of the Board to the Courts of South Carolina pursuant to the South Carolina Code of Laws, Section 6-29-900 et sequitur.