

SAMPLE HISTORIC AREA ZONING ORDINANCE
FOR
MUNICIPALITIES AND NON-CHARTER COUNTIES IN MARYLAND

(reflects revisions to Article 66B, §§ 8.01-8.17)

1. Authority.

The [*Mayor and City Council of the City of _____ / the Commissioners of _____ County, Maryland*], derive(s) authority for this ordinance by virtue of its conformance with provisions of the State of Maryland Enabling Act for Historic Area Zoning (Article 66B, Section 8.01-8.17, Annotated Code of Maryland, as amended).

2. Purpose.

- A. The preservation of sites, structures, and districts of historical, archeological, or architectural significance together with their appurtenances and environmental settings is a public purpose in [*City/County*].
- B. It is the further purpose of this article to preserve and enhance the quality of life and to safeguard the historical and cultural heritage of [*City/County*] by preserving sites, structures, or districts which reflect elements of cultural, social, economic, political, archeological, or architectural history; to strengthen the local economy; to stabilize and improve property values of such sites, Structures, or districts; to foster civic beauty; and to promote the preservation and appreciation of such sites, structures, and districts for the education and welfare of the residents of [*the City/County, the County of _____ (if a municipal ordinance)*].

3. Definitions.

For the purposes of the Historic Area Zoning Article the following words and phrases, shall have the meanings respectively ascribed to them:

- A. "Alteration" shall mean any exterior change that would affect the historic, archeological, or architectural significance of a designated site or structure, any portion of which is visible or intended to be visible from a public way, including, but not limited to, construction, reconstruction, moving, or demolition.
- B. "Appurtenances and environmental settings" shall mean all that space of grounds and structures thereon which surrounds a designated Site or Structure and to which it relates physically or visually. Appurtenances and environmental settings shall include, but not be limited to, walkways and driveways (whether paved or not), trees, landscaping, pastures, croplands, waterways, open space, setbacks, parks, public spaces, and rocks.
- C. "Certificate of Appropriateness" shall mean a certificate issued by the Historic [*District/ Preservation*] Commission indicating its approval of plans for construction, alteration, reconstruction, moving, or demolition of an individually designated landmark, site or structure or of a site or structure within a designated preservation district.
- D. "Demolition by neglect" shall mean any willful neglect in the maintenance and repair of an individually designated landmark, site, or structure, or a site or structure within a designated

preservation district, not including any appurtenances and environmental settings, that does not result from an owner's financial inability to maintain and repair such landmark, site, or structure, and which results in any of the following conditions:

1. The deterioration of the foundations, exterior walls, roofs, chimneys, doors, or windows, so as to create or permit a hazardous or unsafe condition to exist; or
 2. The deterioration of the foundations, exterior walls, roofs, chimneys, doors, or windows, the lack of adequate waterproofing, or the deterioration of interior features which will or could result in permanent damage, injury, or loss of or loss to foundations, exterior walls, roofs, chimneys, doors, or windows.
- E. "[Historic/Preservation] District" shall mean a significant concentration, linkage, or continuity of sites, structures, or objects united historically, architecturally, archeologically, culturally, or aesthetically by plan or physical development. A *[historic/preservation]* district shall include all property within its boundaries as defined and designated by the *[Mayor and City Council/ County Commissioners]*.
- F. "Exterior features" shall mean the architectural style, design, and general arrangement of the exterior of an historic structure, including the nature and texture of building material, and the type and style of all windows, doors, light fixtures, signs, or similar items found on or related to the exterior of an historic structure.
- G. "Historic Area Work Permit" shall mean a permit issued by the *[authorizing agency]* upon receiving a Certificate of Appropriateness from the Commission for all projects that *[the City/County]* conducts, assists, licenses, or permits that affect properties within a designated district or individually designated sites or landmarks.
- H. "Landmark" shall mean any designated site or structure outside the boundaries of a preservation district that is of exceptional historic, archeological, or architectural significance.
- I. "Reconstruction" shall mean the process of reproducing by new construction the exact form and detail of a vanished structure, or part thereof, as it appeared at a specific period of time.
- J. "Restoration" shall mean the process of accurately recovering the form and details of a property as it appeared at a specific period of time by means of removal of later work and the replacement of work missing from that period.
- K. "Site" shall mean the location of an event of historic significance or a structure, whether standing or ruined, which possesses historic, architectural, archeological, or cultural significance.
- L. "Structure" shall mean a combination of material to form a construction that is stable, including but not limited to buildings, stadiums, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks and towers, trestles, bridges, piers, paving, bulkheads, wharves, sheds, coal bins, shelters, fences, and display signs visible or intended to be visible from a public way. The term "structure" shall be construed as if followed by the words, "or part thereof."

4. Historic [District/Preservation] Commission.

- A. **Historic (District/Preservation) Commission.** The [City/County] hereby creates a commission to be called the [City/County] Historic [District/Preservation] Commission.
- B. **Membership.** The Historic [District/Preservation] Commission shall consist of seven (*note: could be more, but no fewer than five*) members appointed by the [Mayor and City Council/ County Commissioners]. A majority of the members of the Commission shall be residents of the [City/County of _____]. Each member shall possess a demonstrated special interest, specific knowledge, or professional or academic training in such fields as history, architecture, architectural history, planning, archeology, anthropology, curation, conservation, landscape architecture, historic preservation, urban design, or related disciplines. Nonresident appointees to the Commission must possess professional or academic qualifications as further defined in paragraph C of this subsection (*note: desired but not required by state law*). At least two (2) members of the Commission shall possess professional or academic training in one or more of the above-listed fields in accordance with the minimum professional requirements of the United States Department of the Interior for certifying local governments under 36 C.F.R. Part 61 (*note: for Certified Local Government (CLG) commissions only or those commissions planning to apply for CLG status in the near future*).
- C. **Commission Membership Qualification Criteria.** The requirement for Commission membership under the category of demonstrated special interest may be satisfied either by formal training in one or more of the fields listed in paragraph B of this subsection or active membership in a preservation-related organization. The requirement for membership under the category of specific knowledge may be satisfied by formal post secondary education, employment or practical experience in one or more of the above-listed fields. The requirement for Commission membership under the category of professional or academic training may be satisfied by, at a minimum, two years experience as a professional or a Bachelor's degree in one or more of the above-listed fields.
- D. **Terms.** Commission members shall be appointed for terms of three (3) years, except that the terms of the initial appointments shall be staggered so that three (3) members shall serve terms of three (3) years, two (2) members shall serve terms of two (2) years, and two (2) members shall serve terms of one (1) year so that not more than three (3) appointments shall expire in a given year. Commission members may be reappointed.
- E. **Commission Officers.** The Commission shall elect, from its membership, a Chairperson and Vice Chairperson. The Chairperson and Vice Chairperson shall serve for one (1) year terms and shall be eligible for reelection.
- F. **Vacancy.** Any vacancy in the membership of the Commission caused by the expiration of a term, resignation, death, incapacity to discharge duties, removal for cause, or any other reason, shall be filled for a new term, or for the remainder of the term for which there is a vacancy, as the case may be, in the same manner as provided herein for the appointment of the initial members of the Commission. Any vacancy on the Commission shall be filled by the appointing authority within sixty (60) days. In the case of expiration of term, a member may continue to serve until the member's successor is appointed. Unexcused absence at three (3) consecutive meetings shall constitute resignation by the member and shall create a vacancy.

- G. **Removal for Cause.** A member may be removed from the Commission for cause, upon written charges, and after a public hearing, by the *[Mayor with the consent and approval of the City Council/County Commissioners]*.
- H. **Compensation.** Commission members shall serve without compensation, but may be reimbursed for actual expenses incurred in the performance of their duties, provided said expenses are permitted by the budget and approved in advance by the *[authorizing agency]*.
- I. **Meetings.** The Commission shall hold such regular meetings and hearings as necessary to discharge its duties.
- J. **Staff.** Consistent with the *[City's/County's]* policies and procedures, employees may be assigned to the Commission, and such services and facilities shall be made available as the *[City/County]* deems necessary or appropriate for the proper performance of its duties.

5. Powers and Duties.

The Historic *[District/Preservation]* Commission shall have the following powers and duties:

- A. To direct studies, reports, and surveys to identify historical, archeological, or architecturally significant sites, structures, and districts that exemplify the cultural, social, economic, political, or architectural history of the *[City/County]*, state, or nation;
- B. Consistent with the *[City's/ County's]* charter, ordinances, resolutions, local public law, policies and procedures regarding the acceptance and use of gifts by public officials, to accept and use gifts for the exercise of its functions;
- C. To prescribe appropriate rules and regulations for transaction of its business;
- D. To recommend for adoption by the *[Mayor and City Council/County Commissioners]* rehabilitation and new construction design guidelines and criteria for construction, alteration, reconstruction, moving, and demolition of designated landmarks, sites, structures, and districts which are consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68). Guidelines may include design characteristics intended to meet the needs of particular types of sites, structures, and districts, and may identify categories of changes that, because they are minimal in nature do not affect historic, archeological, or architectural significance, do not require review by the Commission. These guidelines shall be used in the Commission's review of applications.
- E. Consistent with the *[City's/County's]* charter, ordinances, resolutions, local public law, policies and procedures governing the acquisition of easements, to accept or otherwise acquire historic preservation easements on designated landmarks, structures, or sites and, when deemed appropriate by the Commission, sites or structures located in, or adjacent to, a designated district; and
- F. To undertake any other action or activity necessary or appropriate to the implementation of its powers and duties or the implementation of the purpose of this article.

6. Designation.

- A. Designation.** The *[Mayor and City Council of _____/County Commissioners of _____ County]* may designate boundaries for landmarks, sites, structures, or districts of historic, archeological, or architectural significance consistent with adopted criteria for such designation (*note: see Attachment A for sample designation criteria*).
- B. Designation Procedure.** The Historic *[District/Preservation]* Commission may, after making full and proper study, recommend any area within the limits of the *[City/ County]* for designation as a landmark, site, structure, or district of historic, archeological, or architectural significance. The Commission may also recommend boundaries for such landmarks, sites, structures or districts. The recommendations shall be submitted to the *[Mayor and City Council/County Commissioners]* for approval or disapproval.

7. Application for Certificate of Appropriateness and Commission Review

- A. Application for Certificate of Appropriateness.** Before the construction, alteration, reconstruction, moving, or demolition is undertaken of a designated landmark, site, or structure, or site or structure within a designated district, if an exterior change is involved which would affect the historic, archeological, or architectural significance of a designated landmark, site, or structure, or structure within a designated district, any portion of which is visible or intended to be visible from a public way, the person, individual, firm, or corporation proposing to make the construction or change shall file an application for a Certificate of Appropriateness with the Commission for permission to construct, alter, reconstruct, move, or demolish the landmark, site, or structure. Every application shall be referred to and considered by the Commission and accepted or rejected by the Commission. An application which is identical to a rejected application may not be resubmitted within a period of one year after the rejection. No Certificate of Appropriateness shall be granted until the Commission has acted thereon as hereinafter provided.
- B. Application Review.**
1. In reviewing applications, the Commission shall give consideration to the historic, archeological, or architectural significance of the landmark, site, or structure and its relationship to the historic, archeological, or architectural significance of the surrounding area; the relationship of the exterior architectural features of a landmark or structure to the remainder of the landmark or structure and to the surrounding area; the general compatibility of proposed exterior design, scale, proportion, arrangement, texture, and materials to the landmark, site, or structure and to the surrounding area; and any other factors including aesthetic factors which the Commission deems to be pertinent.
 2. The Commission shall consider only exterior features of a landmark or structure and shall not consider any interior arrangements.
 3. The Commission shall not disapprove an application except with respect to the several factors specified in paragraph (1) above.
 4. The Commission shall be strict in its judgment of plans for sites or structures determined by research to be of historic, archeological, or architectural significance. The Commission shall

be lenient in its judgment of plans for sites or structures of little historic, archeological, or architectural significance, or of plans involving new construction, unless in the Commission's judgment such plans would seriously impair the historic, archeological, or architectural significance of surrounding sites or structures. The Commission is not required to limit construction, reconstruction, or alteration to the architectural style of any one (1) period.

5. (i) If an application is submitted for construction, reconstruction, or alteration affecting a site or the exterior of a structure or for the moving or demolition of a structure, the preservation of which the Commission considers to be of unusual importance to the [City of _____/_____County] or of unusual importance to the State or the nation, the Commission shall attempt to formulate an economically feasible plan with the owner(s) of the site or structure for the preservation of the site or structure. Unless the Commission is satisfied that the proposed construction, alteration, or reconstruction will not materially impair the historic, archeological, or architectural significance of the site or structure, the Commission shall reject the application, filing a copy of its rejection with the [authorizing agency].

(ii) If an application is submitted for construction, reconstruction, or alteration, or for the moving or demolition of a site or structure that the Commission considers to be of unusual importance and no economically feasible plan can be formulated, the Commission shall have ninety (90) days, from the time it concludes that no economically feasible plan can be formulated, to negotiate with the owner and other parties in an effort to find a means of preserving the site or structure.

In the case of a site or structure considered to be valuable for its historic, archeological, or architectural significance, the Commission may approve the proposed construction, reconstruction, alteration, moving, or demolition despite the provisions of Section 7(B)(5) of this Article if:

- a. The site or structure is a deterrent to a major improvement program which will be of substantial benefit to the [City/County];
- b. Retention of the site or structure would cause undue financial hardship to the owner; or
- c. Retention of the site or structure would not be in the best interests of a majority of persons in the [City/County].

- C. Commission Decision.** The Commission shall file with the [authorizing agency] a Certificate of Appropriateness certifying its approval, modification, or rejection of each application and plans submitted to it for review. Work shall not be commenced on any project until such a certificate of approval has been filed, and the [authorizing agency] shall not issue a building permit or historic area work permit for such change or construction unless it has received such a Certificate of Appropriateness. The failure of the Commission to act upon a completed application within forty-five (45) days from the date the completed application was filed shall be deemed to constitute automatic approval of the proposed changes unless an extension of this forty-five (45) day period is agreed upon mutually by the applicant and the Commission or the application has been withdrawn.

D. Routine Maintenance. Nothing in this Article shall be taken or construed to prevent maintenance that does not alter the exterior fabric or features of a designated landmark, site, or structure, customary farming operations, or landscaping which will have no material effect on the historic, archeological, or architectural significance of a designated landmark, site, structure, or district.

8. Demolition by Neglect.

- A. In the event of demolition by neglect, the Commission may request the *[authorizing agency]* to notify, in writing, the property owner of record, any person having a right, title, or interest therein, and the occupant or other person responsible for the maintenance of the property, of the deterioration. The notice shall specify the minimum items of repair or maintenance necessary to correct the deterioration or prevent further deterioration.
- B. Prior to the issuance of a written notice, the Commission may request the *[authorizing agency]* to establish a record of demolition by neglect. Such a record may include dated materials such as photographs and written reports of the condition of the property so as to record or measure the deterioration.
- C. The notice shall provide that corrective action shall commence within thirty (30) days of the receipt of said notice and be completed within a reasonable time thereafter. The notice shall state that the owner of record of the property, or any person of record with any right, title, or interest therein, may, within ten (10) days after the receipt of the notice, request a hearing on the necessity of the items and conditions contained in the notice. In the event a public hearing is requested, it shall be held by the Commission upon thirty (30) days written notice being mailed to all persons of record with any right, title, or interest in the property and to all citizens and organizations which the Commission determines may have an interest in the proceedings.
- D. If, after the public hearing, the Commission determines that the corrective actions remain necessary, the Commission may request *[authorizing agency]* corrective action to comply with the Final Notice within thirty (30) days of receipt of the Final Notice.
- E. Upon failure, neglect, or refusal of the property owner or other responsible person, duly notified, to take the corrective action specified in the Final Notice within the time required, the Commission may request that the *[authorizing agency]* institute any of the remedies and penalties provided by law for such violations.

9. Maryland Historical Trust.

The Commission may designate the Maryland Historical Trust to make an analysis of and report recommending the preservation of sites, structures, or districts of historic, archeological, architectural, or cultural significance within the *[City/County]*. The report may include proposed boundaries of sites, structures, or districts, as well as recommendations for the identification and designation of particular sites, structures, or districts to be preserved.

10. Appeals.

In the event that any party is aggrieved by a decision of the Commission, the party has the right of appeal as provided in Article 66B, Section 8.15, including either an appeal to the Zoning Board of Appeals (Article 66B, Section 4.07) or to the Circuit Court (Article 66B, Section 4.08). Appeals permitted to Circuit Court generally must be filed within thirty (30) days from the date of the Commission decision. Appeals permitted to a Zoning Board of Appeals must be filed within the time provided in the rules of the Board.

11. Violations.

Any willful violation of the provisions of this article [*by willfully performing or allowing to be performed any work without first obtaining a Certificate of Appropriateness, failing to comply with a Final Notice issued pursuant to this article, or disregarding a decision of the Commission will be in violation of this article. A violation of this article*] shall be a misdemeanor punishable by a fine of up to \$_____ and imprisonment up to ___ year(s), and shall be subject to such civil penalties as provided in Article_____, Section _____ of the Code for zoning violations. Each and every day that the violation continues may be deemed a separate offense.

12. Severability.

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

Attachment A: Sample Designation Criteria

Article 66B does not necessarily prescribe designation criteria. However, the definitions of site, district, and structure contained within Article 66B do provide guidance for the formulation of designation criteria. Historic District/Preservation Commissions should develop their own criteria based on the particular needs and conditions of their local communities.

The following sample designation criteria is a combination of that used by the Montgomery County Historic Preservation Commission and the Maryland Inventory of Historic Properties. It is intended to serve as a starting point, not a model, from which local commissions may develop their own designation criteria.

(1) Historical and cultural significance

The historic resource:

- a. has character, interest, or value as part of the development, heritage, or culture of the County, State, or Nation.
- b. is associated with events important in the past.
- c. is associated with persons important in the past.
- d. has the potential to provide important information about history or prehistory.

(2) Architectural and design significance

The historic resource:

- a. embodies the distinctive characteristics of a type, period, or method of construction.
- b. represents the work of a master.
- c. possesses high artistic values.
- d. represents a significant and distinguishable entity whose components may lack individual distinction.