



Model Historic Preservation Ordinance, pursuant to Connecticut General Statutes Section 7-148, as amended by P.A. 13-181

Background

The recent passage of PA 13-181 by the Connecticut General Assembly specifically authorizes any municipality to

Protect the historic or architectural character of properties or districts that are listed on or under consideration for listing on, the National Register of Historic Places ... or the State Register of Historic Places.

This enabling legislation encourages communities to explore innovative ways to highlight and preserve historic resources that are listed on the State or National Register of Historic Places, but are not located in designated Local Historic Districts.

The Connecticut Trust for Historic Preservation proposed the new enabling act for the 2013 session of the state legislature, and has drafted a model Historic Preservation Ordinance for municipalities to consider and discuss.

The model ordinance derived from PA 13-181 offers three ways to encourage the preservation of a community's distinct historical and architectural heritage

- 1) Research, documentation, and public recognition of historic buildings, sites, and structures
- 2) Closer collaboration with municipal boards, commissions, and agencies in recognizing the value of historic resources and planning for preservation
- 3) Modest regulatory review for significant exterior alteration or demolition of historic properties

The ordinance can be shaped and customized to suit the needs of the individual municipality.

A town or city may want to adopt some or all of the model ordinance, or develop a different type of historic preservation ordinance under the general language of the new law. For communities that already have a demolition delay ordinance, a blight ordinance, or a local historic district ordinance, the new enabling legislation opens a new realm of possibilities.

As of 2013, EVERY ONE of Connecticut's 169 cities and towns has properties that are listed on the State and National Registers of Historic Places, either individually or in designated districts. For these municipalities, PA 13-181 provides a vehicle to create a framework of protection for designated historic properties without the cumbersome procedural constraints of a Local Historic District ordinance.

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Section 1. Legislative Authority

The purpose of this ordinance is to protect the historic and architectural character of properties and districts that are listed on, or under consideration for listing on, the National Register of Historic Places, Section 470 of Title 16a of the United States Code, or the State Register of Historic Places, as defined in Section 10-410 of the Connecticut General Statutes, as such sections now exist or may subsequently be amended. This ordinance is adopted pursuant to the authority granted to municipalities under Section 7-148 of the Connecticut General Statutes, as amended by Public Act 13-181, and the Charter of the Town of _____.

Comments: The ordinance falls under C.G.S. 7-148(c)(10)(F), rather than under C.G.S. 7-147a et seq. (local historic districts and properties). The last clause concerning the municipal charter should be omitted if the town has no such charter.

Section 2. Specific Purpose.

The purposes of the commission established by this ordinance are to promote the educational, cultural, economic, environmental, and general welfare of the municipality by:

- (a) Protecting the historic and architectural character of properties and districts that are listed on, or under consideration for listing on, the National Register of Historic Places or the State Register of Historic Places;
- (b) Strengthening the local economy by stabilizing and improving property values and economic activity through the adaptive use and reuse of historic structures;
- (c) Fostering appropriate use and wider public knowledge and appreciation of distinctive areas, sites, structures, features and objects that have historic or architectural significance;
- (d) Protecting and enhancing the attractiveness of the locality to homebuyers, homeowners, residents, tourists, visitors, businesses and shoppers;
- (e) Providing a resource for information, education and expertise to those interested in rehabilitation or construction in a historic district or of an historic structure;
- (f) Fostering civic pride in the locality's history and development patterns;
- (g) Protecting historical continuity and enhancing neighborhood character of the locality;
- (h) Ensuring and fostering preservation, restoration and rehabilitation that respects the historic, cultural, and architectural significance of distinctive areas, sites, structures and objects;
- (i) Drafting and applying design standards in a reasonable and flexible manner to prevent the unnecessary loss of a community's historic character and to ensure compatible rehabilitation and development in historic districts.

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Section 3. Relevant Definitions.

(a) “Protected property” means a property or historic district that is that is listed on, or under consideration for listing on, the National Register of Historic Places or the State Register of Historic Places, including any area and all sites, structures, features and objects within such area that is part of a historic district.

(b) “Under consideration” means, in regard to an application for placement on the National Register of Historic Places, that an application has been approved for study by the State Historic Preservation Office and, in regard to an application for placement on the State Register of Historic Places, that an application has been scheduled for hearing by the State Historic Preservation Council.

Comments: The definition of “under consideration” for National Register properties is based upon the Superior Court decision in Hill/City Point Neighborhood Action Group v. City of New Haven, 2000 WL 728841 (2000) and Opinion of the Attorney General (Jan. 6, 2003)

Section 4. Organization of the Historic Preservation Commission.

(a) Establishment of the commission: There is hereby established a historic preservation commission whose purpose and duty shall be to carry out the purpose and to administer the provisions of this ordinance.

Comments: The name of the commission should reflect its specific role in the municipality, e.g. Heritage Commission, Historical Commission, or Historic Preservation Commission

(b) Membership and appointing authority: The membership of the commission shall consist of five persons appointed by the mayor or chief elected official. The mayor or chief elected official may also appoint up to three alternates, who may be designated by the chairperson of the commission to sit as a commissioner if a commission member is absent.

Comments: The number of members, the number of alternates, and the appointing authority should be established by the town in adopting the ordinance.

(c) Qualifications: All members of the commission shall be residents of the town.

(d) Term: Members shall serve for a term of five years, except that the initial members

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of the commission shall be appointed for terms of one, two, three, four, and five years, respectively, so as to have staggered terms. Members shall serve until a successor is appointed. Members may be reappointed without limit.

Comments: The length of term, the staggering of terms, and any limit on reappointment should be determined by the town in adopting the ordinance.

(e) Officers: The historic preservation commission shall elect annually a chairperson, a vice-chairperson and a secretary from its members.

(f) Rules: The commission shall adopt rules of procedure for the receipt of [complaints] applications, the conduct of meetings and hearings, and any other matters deemed appropriate by the commission.

(g) Conflict of interest: No member of the historic preservation commission shall participate in a meeting or decision of the commission upon any matter in which the member has a unique financial interest.

(h) Compensation: The members of the historic preservation commission shall serve without compensation but may be reimbursed for their necessary and reasonable expenses in the performance of their duties.

(i) Meetings: The historic preservation commission shall meet monthly, except when there is no business for the commission to act upon, and at such other times as it deems necessary. A quorum shall consist of three commissioners. The commission shall keep records of its meetings and activities.

Comments: The monthly meeting requirement is included in the interest of relatively rapid action on applications. It is not required to be part of an ordinance.

Section 5. Community Heritage Responsibilities

- a) The Commission shall undertake, on their own initiative or with the cooperation of other partners, the research and documentation of historic buildings, sites, and structures in the town using public records, historical records, and visual observation from the public way.
- b) The Commission may enlist and supervise the work of volunteers, students, or paid consultants to help document historic resources in the community, subject to available resources. The standards and format for documentation shall comply with those of the

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State Historic Preservation Office for community-based surveys and inventories.

- c) The Commission shall compile and present historical and architectural information of general interest to the public through programs, tours, websites, or other events designed to encourage an appreciation of the heritage of the town and/or specific neighborhoods.
- d) The Commission shall plan and sponsor commemorative events, memorials, and celebrations to highlight the historic character of the community, to encourage local preservation efforts, and to acknowledge significant public and private achievements related to community heritage.
- e) With the approval of the Mayor or the chief elected official, the Commission shall be authorized to apply for grants from public and/or private sources to support the activities of the Commission as outlined in this ordinance.

Section 6. Advisory Responsibilities

- a) The Commission shall advise and assist other municipal boards, commissions, and staff in recognizing and preserving the buildings, sites, or structures of historical or architectural significance in the town.
- b) The Commission shall maintain a list of properties that are listed on or under consideration for listing on the State Register of Historic Places or the National Register of Historic Places, as well as any buildings that have been inventoried or documented by the Commission. The list shall be made available in printed form at the Municipal Clerk's Office and in the local library, as well as on the municipal website.
- c) The Commission shall submit annually to the Mayor or the Board of Selectmen a list of historic properties that are recommended for nomination to the State Register or the National Register of Historic Places. The Commission shall also have the authority to prepare and submit nominations to the State Historic Preservation Office on behalf of the town.
- d) The Commission shall advise other municipal boards, commissions, and staff on the preservation, rehabilitation, reuse, or demolition of any municipally owned properties of historic or architectural significance.
- e) The Commission shall advise and assist other municipal boards, commissions, and

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staff in implementing and administering local ordinances that may have an impact on historic properties, including zoning, demolition delay, and blight ordinances.

- f) The Commission shall participate in the periodic preparation and updating of the municipal Plan for Conservation and Development.

Section 7. Regulatory Responsibilities: Historic and architectural review.

(a) No person or entity may, without first applying and obtaining the approval of the commission, file an application for a demolition permit pursuant to section _____ of the Municipal Code or for a building permit pursuant to section 9-15 of _____ Municipal Code for

(1) any demolition of any protected property or part thereof that is listed on, or under consideration for listing on, the National or State Register of Historic Places, or, in regard to the National Register, for which a National Register application has been approved for study by the State Historic Preservation Office,

(2) any alteration of any such protected property or part thereof if that alteration is visible from a street other than a street which faces only the back of the building, or

(3) any construction of a new structure in a historic district or on the site of a demolished protected property.

Comments: This section is critical because it describes the scope of the ordinance. It is based upon the Hartford ordinance, which is triggered only by an application for a building or demolition permit.

(b) The commission shall adopt the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (36 CFR Part 68), which shall serve as the guidelines for the Commission unless the Commission adopts design guidelines of its own. Such guidelines shall provide for flexibility in materials and design to promote economic feasibility and describe a variety of methods and designs for preserving the historic architectural character of buildings and neighborhoods. The commission shall make reasonable efforts to guide owners in preserving historic architectural character in a cost-effective manner.

(c) Any application for commission approval shall, at the latest, be placed on the agenda of the next commission meeting which occurs more than seven days after receipt of the application, except as otherwise provided in this subsection. The commission may define one or more classes of minor alterations to be delegated to the [Department of Planning] for review, based upon the applicable design standards. A copy of each administrative action by the [Department] shall be transmitted to each member of the commission by the [Department]. If within ten days of an approval or rejection any person requests that the commission review the action of the [Department], the action shall be suspended and the application shall be placed on

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the next commission agenda for action by the commission.

Comments: This is a modified version of a provision in the Hartford ordinance. It is optional as part of an ordinance and is probably undesirable for any commission that expects to receive only a small number of applications. It would in any event not be appropriate in any town in which there is no municipal staff assigned to the commission.

(d) Demolition of a protected property shall be approved by the commission only if the applicant establishes, to the satisfaction of the commission, that (1) there is no feasible nor prudent alternative to demolition or (2) the property, through no fault of any owner of the property after the effective date of this [chapter] ordinance, does not contribute to the architectural or historic character of the district and its demolition will not detract from the architectural or historic character of the district or area.

Comments: Note that subsection (d) is about the standard to be met for demolition. In contrast, subsection (e) is about the circumstances in which a health and safety demolition of a historic property can be implemented without going through the commission first and is intended to be a difficult standard for the municipality to meet.

(e) This section shall not apply to any structure for which an emergency demolition or repair has been ordered by the municipality, but only if the emergency condition represents so immediate a hazard to public safety that demolition or repair cannot be deferred and the structure cannot be protected, secured, or stabilized by reasonable temporary measures until the commission is able to meet.

Section 7.1. Appeals Process.

(a) There shall be a board of preservation appeals which shall be comprised of three persons appointed by the mayor. Any person aggrieved by a final regulatory decision of the commission may petition for a review of such decision to the board of preservation appeals within fifteen (15) days of the commission's decision. The board shall adopt rules and procedures for the aforesaid review of such decision within sixty (60) days of its appointment. Any decision by the board shall be based upon the same standards as are to be applied by the commission and shall include a statement of the reasons for the decision.

Comments: The size, membership, and appointing authority for the appeal board is up to the municipality. Need to require transcript of proceedings or at a minimum- minutes of meeting filed per FOIA

(b) Any person aggrieved by a decision of the board of preservation appeals, or by a decision of a municipal historic preservation commission if no board of preservation appeals has

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been created, may appeal to the superior court within fifteen days of the adverse ruling.

Comments: Subsection (b) is actually unenforceable under state law, because towns cannot create jurisdiction in the Superior Court, and there is no state statute granting jurisdiction. See *Danziger v. Demolition Board of the City of Stamford*, 18 Conn. App. 40, 556 A.2d 625 (Appellate Court, 1989). As a result, challenge to a final commission order is not by “appeal” but rather by the bringing of a separate action in the Superior Court

Section 8. Policy of municipal departments and agencies.

It shall be the policy of the municipality and its departments and agencies to give priority to the preservation of the municipality’s historic architecture and character. All departments and agencies of the municipality, including but not limited to those dealing with planning, zoning, health, and safety, shall consider historic and architectural significance and preservation when making decisions concerning whether and how properties should be rehabilitated, mothballed, or demolished, including decisions concerning to whom dispositions of property will be made. Demolition shall be treated as an alternative of last resort and shall be utilized only when other reasonable alternatives do not exist.

Comments: This section is especially important in urban areas, where most demolitions are conducted by the city itself and not by private individuals.

Effective date: