ESTABLISHING A LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAM:
An Introduction to Local Ordinances

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WHY HISTORIC PRESERVATION?

Communities and local governments across the state have embraced historic preservation as an economic and community development tool. It is a way to improve the quality of life and preserve a sense of place. Historic preservation is a way to reinvest in the past through our historic buildings, sites, structures, and even entire districts. Such an investment brings vitality to the state and its communities. It is also an important element of comprehensive planning, which guides communities into the future.

What is the importance of historic preservation to a community?
Each community has a stake in properties which are significant to its history and culture. So too, should it decide how the preservation of these properties may best be addressed. A local government can address preservation as part of its overall effort to foster and promote the wellbeing of the community. Historic preservation at the local level establishes a comprehensive effort aimed at preserving a community’s historic and cultural properties. That comprehensive effort also injects an important element into the local comprehensive planning process, fostering needed and compatible economic growth and development, while preserving the community’s historical and cultural values. The primary reason for local historic preservation efforts is to manage change.

Why establish a local preservation ordinance?
The basis for promoting effective local preservation is an ordinance. It is not designed to halt progress or stop the clock on development and growth. In fact, the preservation and rehabilitation of historically important buildings fosters development and growth by encouraging investment in older buildings, commercial districts, and older neighborhoods. An ordinance guides local efforts and sets policy for preserving places of local importance. It establishes a community’s commitment to historic preservation and the benefits that come with preserving historic places.

What is a local preservation ordinance?
A local preservation ordinance establishes local government policy. A local historic preservation commission is established, which is composed of citizens having a stake in the community. The historic preservation commission provides interpretation for the ordinance and oversight in the duties and responsibilities it spells out. It addresses comprehensive planning, growth, and revitalization by identifying the community’s historic places. Historic places important to the community are identified as local “landmarks” or “landmark districts.” Typically, these are then subject to special zoning. Local governments may adopt a preservation ordinance that provides for design review of alterations or demolition of these properties. Guidelines for both the review of alterations and qualifications for local landmark designation are based on accepted preservation standards.
What are the benefits of a local ordinance?
Communities can invest in their historic places in the context of community development and pride in the past. Historic places are a legacy that can enhance the attractiveness, quality of life, and economic viability for its citizens. Integrating historic preservation into community priorities results in sound policies for both progress and preservation. These include:

- **Advancing historic preservation from grass roots to policy making.** Citizens care about the character of their community. Typically, citizens voice their concerns at the grassroots level. A preservation ordinance formalizes these concerns into actual policy.

- **Protection for historic places.** It is a frequent misconception that listing a property on the National Register of Historic Places will result in its long-term preservation. It is purely an honorary designation, which places no restriction on what a property owner can do to a historic property. Except in very limited circumstances, listing on the National Register provides historic properties no protection, although it does provide property owners with access to certain programs, such as tax benefits. Local landmark designation is one of the few means of providing for the protection of historic resources. By adopting a local preservation ordinance and designating local landmarks, proposed alterations can be reviewed and recommendations made. This process ensures that work is sensitive to historic landmarks. Adopting easy-to-understand preservation standards encourages owners to make the most feasible and sympathetic alterations to historic properties. The designation of local landmarks requires the consent of the property owner, or in the case of a landmark district, the majority of property owners.

- **Enhanced property values.** Historic designation of neighborhoods and commercial areas can help stabilize or increase property values. Increased property values protect the investment made by private property owners in their homes and businesses.

- **Maintaining the quality of historic districts.** Local landmark designation can attract people to downtowns and older neighborhoods where they recognize that design reviews will discourage improper changes to the area.

- **Local tax revenue.** Enhanced property values garner tax revenue to local governments. Improvement to one building commonly sparks the same in nearby buildings. This expands the tax base.

- **Investments.** By encouraging revitalization, a local preservation ordinance encourages investment in areas of cities that may have been long overlooked. As the position of downtown business districts, older neighborhoods, and a community’s older building stock face change, historic preservation is a recognized tool to address that change. Local landmark designation can result in the return of vacant, substandard, or underutilized buildings to use through public and private investment.

- **“Main Street” revitalization.** Downtowns are the civic and commercial heart of Nebraska’s communities, and their vitality is critical to the local economy. Historic preservation helps accomplish much needed development objectives. Some communities have organized “main street” revitalization programs, which emphasize sound local organization, promotion, design, and economic restructuring. These programs can work hand-in-hand with a local
preservation ordinance in revitalizing downtown districts.

- **Eligibility for tax benefits.** The Nebraska legislature has adopted legislation to create the “Valuation Incentive Program” (VIP). The program provides a property tax “hold” on the assessed value of historic properties that are rehabilitated. Local landmarks can qualify for these incentives under a certified local historic preservation program, and the local program allows for comment and input into both those properties that qualify and the quality of the rehabilitation. A federal investment tax credit is also available for rehabilitation of income-producing historic buildings. The federal investment tax credit encourages developers to invest in a community’s historic building stock. In Nebraska, this program has generated investment in hundreds of historic buildings, many historic districts, and has been responsible for the creation of a significant number of housing units. Innovative rehabilitation projects in Nebraska include the conversion of schools into elderly housing, mixed-use residential and retail developments, and the conversion of old, obsolete buildings to new uses. A local preservation program can promote these types of projects.

- **Public infrastructure.** By reusing existing buildings and infrastructure, fewer municipal dollars are spent on the construction of new roads, sewer and water lines and other utilities.

- **Rural development.** Many small communities face declines in both population and business. Historic preservation is a way to revitalize existing historic buildings and promote economic development. It capitalizes on existing assets.

- **Urban redevelopment.** Larger communities must address areas of their cities that are in decline, substandard, or blighted. These areas often include a substantial stock of older and historic buildings. By combining public tools that are available - including tax increment financing and historic rehabilitation tax benefits - creates a range of programs that can address these areas.

- **Learning about the past.** An important purpose of a local preservation program is to educate residents about historic preservation and create awareness and pride in a community’s history.

- **Increased tourism.** One of the main reasons people travel is to learn and enjoy the diversity of locales. “Heritage tourism” is a large and growing component of the travel industry. People seek out historic places, which serve as destinations or complement other attractions in the area, bringing increased tourism dollars to a community.

- **Planning.** Managing change and encouraging suitable growth is accomplished through comprehensive planning. Historic preservation issues should be understood and addressed at the local level and then integrated into the local planning and decision-making processes. A comprehensive plan and a strong emphasis on historic preservation provide a roadmap for community development and appropriate growth.

- **Local job creation.** When a building is rehabilitated, more local jobs are created in comparison to new construction and fewer dollars go to suppliers of materials outside the community.
Certified Local Government (CLG) status. Adopting a local preservation ordinance and appointing a historic preservation commission qualifies a local government to apply to the Nebraska State Historical Society for designation as a federally-certified local historic preservation program. A local preservation program is linked in a network of federal and state preservation programs. A CLG has direct access to state and federal preservation programs and technical assistance from the Nebraska State Historical Society. A CLG can also apply for competitive matching grant funds for local projects.
HOW TO BECOME A CERTIFIED LOCAL GOVERNMENT (CLG)

The Certified Local Government (CLG) program is federally sponsored by the National Park Service and administered in Nebraska by the Nebraska State Historical Society. CLG status makes local governments linked to technical assistance and training from the Nebraska State Historical Society. It also entitles them to apply for annual federal matching grants. Among eligible activities are the survey and evaluation of a community’s important historic places and local landmark designation, develop design guidelines to encourage appropriate alterations to buildings, increase public outreach through publications or workshops, participate in preservation education, and advance comprehensive planning to guide local government policy.

While the National Park Service establishes the minimum requirements for participation in the CLG program, Nebraska has shaped the program to the particular needs of its communities. To meet the minimum requirements for certification a local government must:

- Enforce appropriate legislation for the designation and protection of historic properties.
- Establish and maintain a qualified historic preservation commission.
- Maintain a system for identifying historic properties.
- Provide for public participation in the local historic preservation program.
- Satisfactorily perform other responsibilities delegated to it by the State Historic Preservation Officer (SHPO) by mutual, written agreement.

Local legislation. A local government must enact a preservation ordinance and establish and enforce a process for the designation and protection of historic properties, usually referred to as local “landmarks” or “landmark districts.” Once designated, historic properties undergo a design review for alterations or demolition.

Local historic preservation commission. The preservation ordinance must provide for a qualified historic preservation commission. A historic preservation commission provides interpretation for the ordinance and oversight in the duties and responsibilities set forth in the ordinance.

Surveys. Surveying and inventorying a community’s historic places is the basis for all preservation activities. The CLG program funds projects that investigate and identify properties of historical or cultural merit. This information is crucial to sound preservation planning. By identifying properties, efforts can be made to encourage their preservation and increase public awareness of their values. This can result in local landmark designations or listing in the National Register of Historic Places.
Public participation. One important purpose of a CLG program is to educate citizens about historic preservation and create awareness of a community’s historic places. CLG funds can be used to develop brochures and walking tours, programs in school systems, newsletters, conferences, and other ways to increase public awareness.

Other delegated responsibilities. As negotiated between the SHPO and CLG, a local government may assume other roles. A CLG may propose the qualification of properties for federal tax incentives. A CLG may participate in the designation of qualified buildings and the review of proposed work under the Nebraska Valuation Incentive Program. A CLG may also take part in the research and preparation of National Register nominations.

The Nebraska State Historical Society has promulgated procedures for qualifying for this status (“Nebraska Certified Local Government Procedures,” 2013 Revision).
SAMPLE ORDINANCE WITH ANNOTATIONS

While each preservation program should be unique and tailored to the needs of an individual community, the basic building block is the historic preservation ordinance. This section includes a sample ordinance with annotations that will guide a community into adopting an ordinance and to meet criteria for qualifying for Certified Local Government status.

Participation in the Certified Local Government programs requires the local government to enact and enforce appropriate state or local legislation for the designation and protection of historic properties with provisions for the following:

- A statement of purpose consistent with state enabling legislation.
- Establishment of an historic preservation commission including powers and duties, membership, and terms of appointment.
- Definition of actions that merit review by the historic preservation commission.
- Authorizes the local historic preservation commission the power to designate local historic districts and individual landmarks and to recommend such designation to the local governing body.
- Assigns a staff member to serve as director of the commission, without right to vote.
- Gives the commission authority to review and make recommendations upon all actions requiring building or demolition permits, including procedures for review concerning alteration, demolition, relocation and/or new construction of any structure within a locally designated historic district, or those which may be individually designated as local landmarks.
- Contains the specific time limits within which the commission and an applicant shall act for findings pertaining to decisions made.
- Provisions for enforcing decisions and the right of appeal.
- A process for appeals.
- A provision for economic hardship.

The Nebraska State Historical Society will provide technical assistance in the drafting of an ordinance. However, the drafting and adoption of an historic preservation ordinance must be made by the governing body of the local government in consultation with its own legal counsel.
ORDINANCE NO.______________

AN ORDINANCE OF THE CITY OF ________, NEBRASKA ESTABLISHING A HISTORIC PRESERVATION COMMISSION; PROCEDURES FOR DESIGNATION OF LANDMARKS AND LANDMARK DISTRICTS; PROCEDURES FOR CERTIFICATES OF APPROPRIATENESS FOR ALTERATIONS TO DESIGNATED LANDMARK PROPERTIES; AND TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS.

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF ________, NEBRASKA:

SECTION 1
FINDINGS

It is hereby declared a matter of the general welfare of the people of the City of ____ to preserve, protect and enhance historic buildings, places, and districts. The preservation of properties of historical and cultural significance located within the City contribute to the prosperity, civic pride, and educational values for the people; that the economic, cultural, historical, and aesthetic interests of the City cannot be maintained or enhanced by disregarding the heritage of the City; and that the people of the City have an interest in the maintenance, preservation, demolition, or other actions regarding such historical and cultural assets.

A local ordinance may be applied to any political subdivision of the state, such as a city, county, or village. This sample ordinance has been written for a city. What constitutes the “general welfare” of the citizens of a community? Where does a local government get authority to enact a preservation ordinance? This type of statement sets forth the local government’s reasons for enacting the ordinance, and ties this ordinance to state governmental authority and enabling legislation. This section includes the verbiage that is consistent with Section 19-903 of Nebraska Statutes: “general welfare” and regulations designed to “preserve, protect, and enhance historic buildings, places, and districts.” A community must always look at its comprehensive plan to ensure consistency with its stated guidelines for historic preservation. From a legal standpoint, if a local government can demonstrate that the ordinance is consistent with enabling legislation and a local comprehensive plan, the more likely it will be to survive legal scrutiny.

SECTION 2
PURPOSE

Upon these findings, the purpose of this Ordinance shall be to:
1. Effect and accomplish the protection, enhancement, and perpetuation of properties that reflect elements of the City’s historical and cultural significance;
2. Safeguard the City’s historical and cultural heritage, as reflected in such properties;
3. Promote revitalization, enhancement of property values, and economic development by the preservation of historic and cultural properties;
1. Foster civic pride in the heritage of the past;
2. Stabilize or improve the economic vitality and values of historic and cultural properties;
3. Enhance the City’s attraction to residents, tourists, and visitors;
4. Stimulate revitalization of the business district and neighborhoods;
5. Promote the use of historic properties for the education, pleasure, and general welfare of the people of the City;
6. Promote and encourage continued utilization and stewardship of historic properties; and
7. Enhance and accomplish goals of comprehensive community planning.

What are the broad statements that the preservation ordinance hopes to address? What does the community hope to accomplish by the ordinance? Is it growth management, community decline, tourism, downtown business revitalization, conservation of housing stock in older neighborhoods or others? The clear articulation of community goals is an important first step in drafting an ordinance. The ordinance, however, must apply to the entire community rather than one district. Every ordinance includes a purpose statement. Perhaps the most important thing to consider in drafting the purpose statement is that each community is unique and an ordinance that is copied from another community or this sample may not always address the same goals. A city, small village, or county will all have different needs.

SECTION 3
DEFINITIONS

The following words and phrases below shall be the controlling definitions: Alteration: Any act or process that changes one or more of the exterior architectural features of any landmark or property within a landmark district, exclusive of interior renovation or remodeling. Alteration includes demolition of a landmark or property within a landmark district or new construction within a landmark district. Certificate of Appropriateness. A certificate from the Historic Preservation Commission approving plans for the alteration of the exterior features of a historic property, demolition, or new construction within a landmark district. Commission. The Historic Preservation Commission created under this Ordinance. Director. The staff member appointed to serve the Historic Preservation Commission. Secretary of the Interior’s “Standards for Rehabilitation.” Ten standards promulgated by the U.S. Department of the Interior to guide alterations to a landmark or property within a landmark district. Certificate of Appropriateness. A certificate from the Historic Preservation Commission approving plans for the alteration of the exterior features of a historic property, demolition, or new construction within a landmark district. Commission. The Historic Preservation Commission created under this Ordinance. Director. The staff member appointed to serve the Historic Preservation Commission. Secretary of the Interior’s “Standards for Identification and Registration.” Criteria and procedures for the designation of historic properties promulgated by the U.S. Department of the Interior, National Park Service. Design Guidelines: Design criteria for alterations that include the application of the Secretary of the Interior’s “Standards for Rehabilitation.” Landmark. Any single building, site, structure, object, or improvement which has special historical or cultural significance to the City, state, or nation, or an integrated group of same on a single lot or parcel that has been designated as such, pursuant to the provisions of this Ordinance.
Landmark District. An area or section of the City containing a significant number of buildings, sites, structures, objects, or improvements which, considered as a whole, possess historical or cultural significance to the City, state, or nation pursuant to the provisions of this Ordinance.

Owner. The owner of record. A fee simple owner or owner’s authorized agent, a corporation which owns real estate, partnership owning real estate, limited liability corporation, or other device constituting ownership of real estate. Property. A building, site, structure, object, or improvement designated or proposed for designation as a landmark or within a landmark district. National Register of Historic Places. The nation’s official list of properties worthy of preservation. Properties so designated have local, state, or national significance. The National Register is maintained by the U.S. Department of the Interior, National Park Service.

Compatible. Assessment of the general design and character of a proposed alteration to a landmark or property within a landmark district, consistent with the “Secretary of Interior’s Standards for Rehabilitation or design guidelines.

Ensure consistency of terminology throughout the ordinance. This may avoid legal challenges if the terminology is charged with being vague and arbitrary.

SECTION 4
HISTORIC PRESERVATION COMMISSION

There is hereby created the Historic Preservation Commission of the City of _______.

1. The Commission shall be composed of not less than five (5) voting members and no more than (X) members, all of whom must have a demonstrated interest or expertise in historic preservation. All members shall reside within the corporate limits of the City.

2. A majority shall be professionals in the fields of archeology, historic archeology, architectural history, architecture, and history. All such appointments are to the extent that these professionals are available in the City.

3. The members of the Commission shall be appointed by the Mayor, subject to confirmation by the City Council. The Commission may recommend to the Mayor members to be appointed to the Commission.

4. Initially, (X) members of the Commission shall be appointed for a one (1) year term, (X) members shall be appointed for a two (2) year term, and (X) members shall be appointed for a three (3) year term. The term of service shall be (X) consecutive years. No member shall serve more than (X) successive terms.

5. In the event of a vacancy occurring in the membership of the Commission for any reason, an appointment shall be made to fill the vacancy in the same manner as the original appointments for the unexpired term.

6. The members of the Commission shall serve without compensation.

7. The Commission shall establish its own rules of procedure.

8. A simple majority of the total number of appointed Commission members shall constitute a quorum for the transaction of business.

9. A simple majority of affirmative votes shall be required for final action on any matter sent before the Commission.
1. The Commission shall meet at least quarterly at such times and places as it may determine, or upon the call of the Chair.

2. The Commission shall elect four (4) officers, each to serve for the full duration of his or her term of appointment to the Commission: Chair, Vice-Chair, Secretary, and Treasurer. The Chair shall preside at meetings, call special meetings, issue public statements for the Commission, and in general assume the duties of directing the activities of the Commission. The Vice-Chair shall act in the place of the Chair in the event of the latter’s absence. The Secretary shall keep a complete and current agenda, minutes of each meeting, and be responsible for publication and distribution of minutes, proceedings, and reports. The Treasurer shall be responsible for financial reports.

3. The Commission shall adopt guidelines and such standards and procedures not inconsistent with the provisions of this Ordinance as it may deem necessary to further the purposes herein stated.

What are other considerations for a commission? All must be residents of the corporate limits of a local government’s jurisdiction. All members must have a demonstrated interest in historic preservation. Membership includes a provision for the majority of members to be professionals in fields closed related to historic preservation. The professional disciplines that are generally recognized include archeology, architecture, architectural history, history, and historic archeology. Other disciplines may include conservation, cultural anthropology, curation, engineering, folklore, landscape architecture, historic preservation, planning, urban design, geography, or anthropology. An ordinance may want to identify other professional and citizen members, such as a realtor, attorney, a building tradesman, educator, member or officer of a local historical organization, or the owner of a local landmark or property within a landmark district. One reason for requiring professional qualifications is to ensure that the members have the necessary technical expertise to adequately review matters before the commission. This can avoid the perception that a decision made by the commission wasn’t based on professional merits. A preservation commission typically includes five to as many as fifteen members; an odd number helps prevent tie votes. Terms are staggered to ensure that experienced members will always be serving, and that turnover of the commission will not happen at one time. Communities will want to consider setting a maximum limit on the number of consecutive terms on the commission to allow other qualified persons to serve and avoid the perception of being a closed body. This sample identifies three-year terms. Duties should be assigned to chosen officers. These include the typical officers of any board: chair, vice-chair, secretary, and treasurer. The role(s) normally undertaken by the secretary and/or treasurer can also be held by the city staff appointed to the commission. Members of a local historic preservation are typically appointed by the mayor and confirmed by the city council. By adoption of - and rigidly following - guidelines, standards, and procedures protect the ordinance and its administration from a claim of being arbitrary.
SECTION 5
DIRECTOR; DUTIES

The Mayor shall assign a City staff member as the Director of the Commission, without the right to vote. In addition, the Director, for and on behalf of the Commission and with the approval and direction of the Commission, shall:

1. Work in conjunction with the City Clerk or other City official to keep complete and accurate records and accounting for all funds, grants, income, and expenditures of every nature of the Commission. All funds shall be placed with the City of ____ in a specially designated account;
2. Be the custodian of records, conduct official correspondence and generally supervise the clerical and technical work of the Commission as required to administer this Ordinance.
3. Prepare annual reports and other such reports that may be required;
4. Assure that public notices are posted and advertised, agendas are kept current and available for public inspection, and open meetings are conducted;
5. Provide for (X) days public notice of a meeting prior to such meeting;
6. Submit to the City Council for public hearing and approval, actions by the Commission; and
7. Make recommendations and do such other acts pursuant to this Ordinance as the Commission may require.

Why staff a commission? A commission is a function of local government. All ordinances should require a city staff person to assist the operations of the commission and ensure that legal requirements are met. In larger communities, a staff person is a hired professional, housed in city government. In smaller local governments this may not be feasible. A city planner, city manager, city clerk, or building inspector may serve in this capacity.

SECTION 6
POWERS AND DUTIES

The Commission shall establish and provide for the following duties:

1. Conduct an ongoing survey to identify historic and cultural properties and their eligibility as local landmarks and landmark districts;
2. Identify and designate local landmarks and landmark districts;
3. Adopt criteria and procedures for the survey, evaluation, and designation of local historic landmarks and districts which are consistent with the Secretary of the Interior’s “Standards for Identification and Registration;”
4. Keep a register of all historic properties that have been designated as local landmarks and landmark districts;
5. Comment on properties nominated to the National Register of Historic Places and cause to be processed nominations of properties potentially eligible for listing in the National Register;
6. Advise owners of the benefits of historic preservation and rehabilitation and the value to protect and enhance properties of historical and cultural value;
7. Consult with and receive input from the Planning Commission, civic groups, public agencies, and citizens interested in historic preservation;
8. Solicit gifts, contributions, and grants to be made to the City for the purpose of historic preservation; Disseminate information to the public concerning properties worthy of preservation and preservation in general;
9. Inform and educate citizens concerning properties which have historical or cultural value;
10. Call upon City staff members as well as other experts for technical advice;
11. Testify before all boards and commissions on matters of this Ordinance;
12. Present landmarks and landmark districts to the Planning Commission to determine if such designation is consistent with the comprehensive plan;
13. Act in an advisory role to other officials and departments of local government regarding the preservation of properties having historical or cultural value;
14. Hold public hearings and review applications for alterations to landmarks or properties within landmark districts;
15. Adopt the Secretary of the Interior’s “Standards for Rehabilitation” and any design guidelines for the review of landmarks or properties within landmark districts that are consistent with the “Standards for Rehabilitation;”
16. Review proposed zoning amendments, applications for special use permits, or variances that affect proposed or designated landmarks and landmark districts;
17. Periodically review the City’s zoning ordinances and recommend to the Planning Commission and the City Council any of the same that are appropriate for the protection and preservation of landmarks or landmark districts; and
18. Cooperate with the Nebraska State Historical Society in matters of proposed certification of this Ordinance and related duties and requirements.

What are the primary duties of a commission? Just as every ordinance should be unique, there are variances in the powers and duties of a local historic preservation commission. These are the most common. They should always include the conduct of comprehensive surveys to identify historical and cultural properties and those that may qualify as local landmarks or landmark districts, and encouraging public participation and public education. Why conduct a comprehensive survey? The most effective preservation ordinances are supported by thorough, methodical, and ongoing surveys of a community’s historic and cultural resources. Surveys provide information for a variety of local government purposes. They are the key element in making preservation planning complementary with development goals. They enable planning decisions to be made against a preservation background. They are useful in identifying properties that are consistent with the purpose of the ordinance. Ideally surveys should precede an active program to designate landmarks and landmark districts. By conducting a systematic survey and comparing resources within a community helps counter any argument that the act of designating a landmark or landmark district is arbitrary and capricious. Adoption of the Secretary of the Interior’s “Standards for Identification and Registration” ensures that accepted preservation standards are applied. Adoption of the Secretary of the Interior’s “Standards for Rehabilitation” ensures that uniform and accepted preservation standards are applied to the review of alterations to landmarks or properties within landmark districts. Local design guidelines may also be adopted for individual properties or local districts, but care should be taken to ensure consistency with the Secretary of the Interior’s “Standards for Rehabilitation.” This will help avoid the perception or challenge that the ordinance is arbitrary and capricious. Why maximize public participation and public education? Among other things, they create recognition of the importance of historic and cultural properties, create support from local government officials, and add to the education and awareness of the history and culture of the community. The local planning
commission is identified in the ordinance as one body presented with the actions and recommendations of the preservation commission in the designation of landmarks and landmark districts and zoning. The planning commission makes recommendations to the City Council. The provision for cooperation with the Nebraska State Historical Society is to allow for “Certified Local Government” status.

SECTION 7
LANDMARKS; LANDMARK DISTRICTS; REQUIREMENTS

A landmark or landmark district must meet one or more of the following criterion:
1. Be associated with important events that have contributed significantly to the broad patterns of history or culture, or the site of an historic event, or exemplifies the cultural, historical, political, economic, educational, social, aesthetic, or importance to the community.
2. Be associated with the life of a person significant in the past.
3. Embody the distinctive characteristics of a type, period, or method of construction, or represent the work of a master, or possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction.
4. Archeological significance if a site has yielded or is likely to yield important information regarding history or prehistory. A landmark or landmark district shall possess integrity of design, location, setting, feeling, association, materials, and workmanship. In the case of a landmark district, provisions shall be made to define an accurate boundary, identify properties that contribute to the historical significance of the district, and those because of age or integrity do not contribute. A property shall be eligible if it is fifty (50) years of age or older, unless exceptional significance can be demonstrated.

What types of historic and cultural resources should be protected? Clear criterion for the designation of landmarks and landmark districts are an essential feature of a preservation ordinance. These are the four that are most common and are taken from the criterion used for the National Register of Historic Places, meeting the Secretary of the Interior’s “Standards for Registration.” The term “integrity” means that if a property has been altered dramatically or its setting has been lost, it is probably not a good candidate for landmark designation. The provision for “contributing” and “not contributing” are important considerations. However, a noncontributing building may still be given considerations for such things as appropriateness of alterations, demolition, or replacement with new construction.

SECTION 8
PROCEDURES FOR DESIGNATING LANDMARKS; LANDMARK DISTRICTS

There is hereby established the provision for the designation of local landmarks and landmark districts.
1. A landmark or landmark district may be proposed by the Commission, City Council, Planning Commission, or upon petition of any person, group of persons, owners, residents, or other interested parties. Any such proposal shall be filed with the Director upon forms prescribed by him or her, and shall include all data required by the Commission. Applications shall require a description and statement of the significance of the landmark or landmark district to justify its proposed designation.
2. The recommendation of the Commission for approval of a proposed landmark or landmark district shall state the applicable criteria for such designation.

3. Each proposal of a landmark or landmark district shall be considered by the Commission at a public hearing.

4. Notice of the time, place and purpose of the public hearing to be held upon the nomination of a landmark or landmark district shall be given by the Commission in the official newspaper of the City not less than (X) days prior to the date of the hearing and by mail to the owners of all property included in the proposed designation, using for that purpose the names and addresses of the last-known owners as shown by the county real property tax records. Failure to send notice by mail to any such property owner where the address of the owner is not so recorded shall not invalidate any proceedings in connection with the proposed designation. The Commission may also give such other notice or conduct a public meeting as may be deemed desirable and practicable.

5. A record of the pertinent information presented at the hearing upon a proposed landmark or landmark district shall be made and maintained as a permanent public record.

6. The Commission may approve, disapprove, or modify the proposal of a landmark or a landmark district and shall notify the applicant of the action taken within (X) days of the referral thereof to the Commission.

7. Designation of a landmark shall not be proposed at the objection of an owner. Designation of a landmark district shall not be proposed if the owners of fifty-one (51%) percent of the front footage of the real property in the proposed landmark district object, not to include any public right-of-way located in such district.

Applications must include a description and statement of significance. The description will include factors of “integrity” and delineation of “contributing” and “noncontributing.” The statement of significance must include the criteria for designation that is applied to the property. Refer to Section 7.

SECTION 9
OVERLAY DISTRICT; ZONING OF LANDMARK DISTRICTS

A landmark or landmark district shall constitute a zoning overlay district for historic preservation purposes and shall be included as such on the official land use or zoning map. This zoning shall be in addition to the existing underlying land use zoning. Zoning amendments, applications for special use permits, or variances shall be considered to assist in the preservation, use, or rehabilitation of designated properties.

This section deals with such actions under the comprehensive plan and the planning commission’s authority to directly apply the comprehensive plan and zoning. An ordinance must be consistent with a local comprehensive plan under state statues 19-901 to 19-915. This gives the authority to zone. Failure to do so may place the ordinance or the conduct under the ordinance into legal scrutiny. A community may consider potential benefits associated with designation, such as modification of parking requirements in connection with an application involving a landmark or property within a landmark district, other non-conforming uses for existing zoning, or variances that assist in accomplishing the preservation of a property.
SECTION 10
TRANSMITTAL TO; RECOMMENDATIONS BY PLANNING COMMISSION

Pursuant to the provisions of this Ordinance, and the procedures set forth herein, the Commission shall transmit the proposal, along with the Commission’s recommendations thereon, for the designation of a landmark or landmark district to the Planning Commission within (X) days after consideration. This Section shall require comment by the Planning Commission to consider the degree of conformity or nonconformity with the comprehensive development plan of the City.

The proposal, along with recommendations by both the Commission and the Planning Commission thereon, for the designation of a landmark or landmark district shall then be transmitted to the City Council within (X) days after consideration.

Comment by the planning commission is limited to conformance or nonconformance with the comprehensive plan.

SECTION 11
CONSIDERATION BY; ACTION BY COUNCIL

Pursuant to the provisions of this Ordinance, and the procedures set forth herein, the City Council shall, by ordinance, designate a landmark or a landmark district.

1. The City Council shall take into consideration the recommendation of the Commission and Planning Commission and shall further give consideration to the economic consequences to the City and the affected Owner.

2. Within (X) days after final adoption of the ordinance designating the property as a landmark or landmark district, the Director shall send a copy of such ordinance and a letter outlining the basis of such designation and the obligations and restrictions which result from such designation to the owner of record of each landmark so designated or each property within a designated landmark district by registered or certified mail.

Designation of a landmark or landmark district is made by ordinance.

SECTION 12
PROCEDURES AND CRITERIA FOR ACTIONS SUBJECT TO REVIEW; CERTIFICATE OF APPROPRIATENESS

No person shall carry out or cause to carry out alteration of a landmark or property within a landmark district for which a building or demolition permit is required except as provided by this Section. Actions shall be subject to the controls, standards, and procedures set forth in this Section. For the purposes of this Section, alteration includes any act or process that changes, obstructs, or is incompatible with the historic character of a landmark or property within a landmark district; changes to one or more of the exterior architectural features of a historic property upon any landmark or property within a landmark district, exclusive of interior renovation or remodeling; demolition or partial demolition of a landmark or property within a landmark district; changes to noncontributing properties within a landmark district; new
construction within a landmark district; or additions to properties. Such actions shall be deemed to require a Certificate of Appropriateness. The Commission’s decision to approve, approve with modification(s), or deny an application for a Certificate of Appropriateness shall include the following criteria:

1. Any alteration of an existing landmark shall be compatible with its historic character and meet the Secretary of the Interior’s “Standards for Rehabilitation” or other such design guidelines as may have been adopted;
2. Any alteration of a property within a landmark district shall be compatible with its historic character and that of such district and meet the Secretary of the Interior’s “Standards for Rehabilitation” or other such design guidelines as may have been adopted; or
3. New construction shall be compatible with the landmark district in which it is located.

Procedures and conditions for obtaining a Certificate of Appropriateness shall be:

1. Prior to commencement of work requiring a Certificate of Appropriateness, the owner shall file an application for such a certificate with the Commission on forms available at the Director’s office.
2. All applications shall be immediately forwarded to the Commission.
3. All plans, projects, proposals, evaluations, specifications, sketches, and other information necessary for the review of the Commission shall be made available to the Commission by the Owner or appropriate department of the City, along with a copy of the application for the building or demolition permit.
4. The Commission shall hold a public hearing on applications for a Certificate of Appropriateness.
5. The determination by the Commission on an application for a Certificate of Appropriateness, or report of any action taken, shall be forwarded to the Director for action not later than (X) days after receipt of the application by the Commission.
6. The Commission, in considering the appropriateness of any work shall consider, among other things, the purposes of this Section; the historic and architectural value and significance of the landmark or property within a landmark district; the integrity of design, location, setting, feeling, association, materials, and workmanship of the property in question or its appurtenant structures; new additions or new construction, including appurtenant structures, signs, and fences; the relationship of such features to similar features of other properties within a landmark district; or a property’s relationship to the public right-or-way.
7. If, after considering the application for a Certificate of Appropriateness required by this Section, the Commission shall determine if the proposed alterations are consistent with the criteria for historic preservation established by this Section.
8. The Commission shall recommend to the Director the issuance of the Certificate of Appropriateness, Certificate of Appropriateness with modifications, or no certificate if the Commission finds that the application does not meet one or more of the criteria of this Section. The Commission’s decision must be accompanied by written findings of fact.
9. If no certificate is issued, the Owner and the Commission shall enter into negotiations to develop a plan whereby modifications in the application will enable the Commission to issue a Certificate of Appropriateness under the criteria listed above.
10. If negotiations result in no resolution, the applicant may appeal to the Council. If economic hardship is contended, Section 14 shall be applied.
11. The determination by the Commission on an application for a Certificate of Appropriateness, or report of any action taken, shall be forwarded to the Director for appropriate action not later than (X) days after receipt of the application by the Commission.

12. A Certificate of Appropriateness must be presented to the building official prior to any building or demolition permit being issued.

13. Notwithstanding any other provision of law, the Director shall not permit any work except as pursuant to a Certificate of Appropriateness issued by the Commission.

14. No change shall be made in the application for a building or demolition permit after issuance of a certificate by the Commission without the resubmittal to the Commission and approval in the same manner as provided above.

15. The Commission may impose such reasonable conditions or restrictions as it deems necessary or appropriate on a case-by-case basis to promote or achieve the purpose of this Ordinance.

From a technical standpoint, the procedural considerations in reviewing applications for certificates of appropriateness are quite similar to those for designating landmarks or landmark districts. Basically, the owner must be given an opportunity to be heard, present his or her case, and rebut an opposing argument. The main procedural elements that should be included in any local preservation ordinance include: the applicability of the review process and criteria (i.e. types of projects); the basic process (i.e. initiation and timing); contents of an application; the criteria or source of criteria to be applied (i.e. the Secretary of the Interior’s “Standards for Rehabilitation”); and any specific powers (i.e. conditional permit approval) deemed appropriate for the certification process. Actions of this section are not taken to the planning commission. Actions of this section are only taken to the city council upon appeal.

SECTION 13
HAZARDOUS STRUCTURES

The Commission shall issue a Certificate of Appropriateness for razing a landmark or property within a landmark district if City codes determine that the landmark or property within a landmark district poses a hazard to human health and safety. However, no owner shall by deliberate acts or deliberate neglect allow a landmark or property within a landmark district to become hazardous to human health and safety with the intent of avoiding this Section. In such cases, the owner shall be subject to Section 15.

A deliberate act of neglect is often termed “demolition by neglect.”

SECTION 14
ECONOMIC HARDSHIP

The Commission shall, in the administration and enforcement of the provisions of this Ordinance, take into account all economic factors presented to it. The Commission shall recognize the necessity of weighing potential economic detriments against preservation objectives and shall strive to affect a fair balance in all instances. A determination of economic hardship shall require the applicant to provide evidence sufficient to demonstrate that the
application of the standards and regulations of this Ordinance deprives the applicant of all reasonable economic use or return on the subject property.

The Commission shall apply the following standards and make findings concerning economic hardship:

1. If the applicant was notified of pending landmark designation subsequent to acquisition;
2. The current level of economic return on the property, if any;
3. The marketability of the property for sale or lease, considered in relation to any listing of the property for sale or lease, and the price asked and offers received;
4. The infeasibility of alternative uses that can earn a reasonable economic return for the property; and
5. Availability of economic incentives and/or funding available to the applicant through federal, state, city, or private programs.

The ordinance should include a procedure for allowing a property owner to make a case that, in some situations, enforcement of the ordinance will cause unusual and extreme economic hardship. The lack of a provision for economic hardship may result in a constitutional challenge of a “taking.”

SECTION 15
ENFORCEMENT; PENALTIES

Whoever violates or fails to comply with any of the provisions of this Ordinance for which no penalty is otherwise provided, shall be fined not more than (X) dollars. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs and continues to occur.

Generally, the penalty is a misdemeanor.

SECTION 16
APPEALS

Any person aggrieved by a decision of the Commission relating to a Certificate of Appropriateness may appeal to the City Council. Such appeal may be initiated by filing a petition to appeal, specifying the grounds therefore, with the Director within (X) days of the date of the decision of the Commission that is being appealed. The City Council shall hold a public hearing on the appeal and may by majority vote of its members reverse or modify any decision of the Commission.

SECTION 17
APPLICATION TO PUBLIC PROPERTY

Unless otherwise exempted, all properties owned by the City shall be subject to the provisions of this Ordinance.

All visible modifications or additions to public areas near a landmark or within a landmark district, including street furniture, lighting fixtures, and paving materials shall be subject to review by the Commission.
SECTION 18
PASSAGE AND EFFECT.

All ordinances, resolutions and orders, or parts thereof, in conflict herewith, shall be and the same are hereby repealed. This Ordinance shall be in full force and take effect from and after its passage and publication as provided by law.

PASSED AND APPROVED this______day of___________________, 200_.

Mayor ________________________________

ATTEST:______________________________

City Clerk
LOCAL HISTORIC PRESERVATION
ORDINANCES: An Abstract of Nebraska Enabling Legislation

The following is an abstract of Nebraska statutes that may apply to local land use regulation as it relates to the adoption of an historic preservation ordinance. It is not, however, presented as a comprehensive study of Nebraska statutes and enabling legislation. The determination regarding whether sufficient authority exists, and the drafting and adoption of an historic preservation ordinance or regulation, must be made by the governing body of the local government in consultation with its own legal counsel. The Nebraska State Historical Society cannot render an opinion regarding the authority of cities, villages, or counties to enact local ordinances.

FIRST AND SECOND CLASS CITIES, VILLAGES First and second class cities and villages may find sufficient authority to enact historic preservation ordinances or regulations under Neb. Rev. Stat., Section 19-903 (Reissue 1977). A city or village may exercise such powers and adopt zoning regulations only after the municipal legislative body has appointed a planning commission and adopted a comprehensive development plan (Neb. Rev. Stat., Section 19-901, Reissue 1977). Zoning regulations and restrictions authorized by Sections 19-901 to 19-915 must be made in accordance with the comprehensive development plan. The comprehensive plan and its zoning regulations must be designed "to preserve, protect, and enhance historic buildings, places and districts" (Neb. Rev. Stat., Section 19-903, Reissue 1977).

COUNTIES A county may adopt zoning regulations that are consistent with a comprehensive development plan designed for such specific purposes as "preserving, protecting, and enhancing historic buildings, places, and districts" (Neb. Rev. Stat., Section 23-114.03, Reissue 1977). The comprehensive plan must include "surveys of structures and sites determined to be of historic, cultural, archeological, or architectural significance or value...taking into account...the preservation of sites of historic, cultural, archeological, and architectural significance or value" (Neb. Rev. Stat., Section 23-174.05, Reissue 1977).