

Chapter 15 HISTORICAL PRESERVATION

Sec. 15-1. Purpose.

The historical heritage of the county is a valuable and important asset. By listing and regulating historic districts and landmarks, and acquiring historic properties, the county seeks:

- (1) To safeguard the heritage of the county by preserving districts and landmarks therein that embody important elements of its culture, history, architectural history, or prehistory; and
- (2) To promote the use and conservation of such districts and landmarks for the education, pleasure, and enrichment of the residents of the county and state as a whole.

(Ord. No. 009.01, § 1, 5-18-2009)

Sec. 15-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alteration means any change because of construction, repair, maintenance, or otherwise to buildings located within an historic district or designated as an historic property.

Archaeological resource means that material evidence of past human activity which is found below the surface of the ground or water, portions of which may be visible above the surface.

Building means any structure, place, or other construction built for the shelter or enclosure of persons, animals, chattels, or any part of such structure when subdivided by division walls or party walls extending to or above the roof and without opening in such separate walls.

Certificate of appropriateness means a document evidencing approval of the commission for work proposed in an historic district by an applicant.

Commission or resources commission means the Historic Resources Commission of Jackson County.

Commissioners means the members of the Historic Resources Commission of Jackson County.

Construction means the erection of any onsite improvements on any parcel of ground located within an historic district or on an historic site, whether the site is presently improved, unimproved, or hereafter becomes unimproved by demolition, destruction of the improvements located thereon by fire, windstorm, or other casualty.

Demolition means the complete or constructive removal by an applicant of a building on any site.

Department means the state department of cultural resources.

Designation means the creation of an historic district or an historic property through the passage of an ordinance by the governing body.

Exterior features means and includes the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material; the size and scale of the building; and the color and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, exterior features shall be construed to mean the style, material, size, and location of all such signs. Exterior features may, in the discretion of the local governing board, include color and important landscape and natural features of the area.

Governing body or body means the county governing body as their authority applies.

Historic district means an area containing buildings, structures or places which have a special character and ambiance, based on one or more of the following:

- (1) Historic value;
- (2) Notable architectural features representing one or more periods or styles of architecture of an era of history; and
- (3) The cultural and aesthetic heritage of the community, and which area constitutes a specific physical area of such significance to warrant its conservation, preservation and protection from adverse influences.

Historic property means any site, landmark, and structure, artifact, above or below the ground or water, which is so designated by an ordinance of the county governing body.

Local planning board means the Jackson County Planning Board.

Ordinary repairs and maintenance means work done on a building to prevent it from deterioration or to replace any part thereof in order to correct any deterioration, decay, or damage to a building on any part thereof in order to restore same as nearly as practical to its condition prior to such deterioration, decay or damage.

(Ord. No. 009.01, § 2, 5-18-2009)

Sec. 15-3. Historic preservation commission.

- (a) *Establishment.* There is hereby established an historic resources commission which shall serve jointly as the historic districts and historic properties commission for the county under the authority of G.S. 160A-400.1 et seq.
- (b) *Membership.*
 - (1) *Composition; terms.* The commission shall consist of up to 11 members. All members of the commission shall reside within the county. In addition, the members of the resources commission shall have demonstrated special interest, experience or education in history, archaeology or architecture. The terms of the resource commissioners shall be three years, with replacements to be appointed at the rate of four commissioners per year.
 - (2) *Appointment.* Initially, the resources commissioners shall be appointed for staggered terms in the following manner: six members shall be appointed for two year terms and five members for a three year term. All terms and subsequent terms shall begin on the first day of the month of the initial appointments.
 - (3) *Replacement.* Replacement appointments shall be made by the governing body.
 - (4) *Additional terms.* The members of the resources commission shall serve at the pleasure of the governing body. Resources commissioners may be reappointed for additional terms at the discretion of the governing body.
- (c) *Officers.* The resources commission shall annually elect from among its members a chairperson, vice-chairperson, secretary and treasurer.
- (d) *Adoption of bylaws.* Upon its first formal meeting, and prior to performing any duties under this chapter or under G.S. 160A-400.1 et seq., the resources commission shall adopt bylaws governing the commission's actions which are not governed by this chapter or state law. The bylaws shall include:

-
- (1) Establishment of regular meetings to be held at least once per month at a time and place that is convenient and conducive to public attendance.
 - (2) Member attendance requirements as follows: Members who miss more than four meetings in a year or three consecutive meetings shall be replaced at the discretion of the board of commissioners.
- (e) *Appropriation of budget; use of funds.* An annual budget may be appropriated by the county governing body. These funds shall be used by the resources commission for necessary expenditures, including, but not limited to, the employment of such staff as it may require, and shall determine the staff's qualifications, duties and compensation. Further, the commission may, with the consent of the county governing body call upon the county for such support services as it may require.
- (f) *Commission to act in dual role.* The historic resources commission shall perform the duties of both an historic districts commission and an historic properties commission and shall conform their actions to this chapter and the statutory directive when acting in either capacity.
- (Ord. No. 009.01, § 3, 5-18-2009)

Sec. 15-4. Historic districts.

- (a) *Designation of historic districts generally.* On recommendation by the resources commission and on completion of the procedure stated in this section, the governing body may enact an ordinance designating an historic district. No historic district may exist without an ordinance designating it as such.
- (b) *Ordinance procedure.*
- (1) The governing body may, as part of a land use ordinance enacted or amended pursuant to this section, designate (and from time to time amend) one or more historic districts within the area subject to the ordinance. Such ordinance may treat historic districts either as a separate use districts classification or as districts which overlap other regulated districts. Where historic districts are designated as separate use districts, the land use ordinances may include among permitted uses those uses found by the resources commission to have existed during the period sought to be restored or preserved, or to be compatible with the authentic restoration or preservation of the district. No historic district shall be designated until:
 - a. The local historic preservation commission shall have made an investigation and report on the historic significance of the buildings, structures, features, sites or surroundings, evidence of which is above or below the surface of the ground or water, included in any such proposed district, and shall have prepared a description of the boundaries of such district.
 - b. The department of cultural resources, acting through such agent or employee as may be designated by its secretary, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its analysis and recommendations to the governing body within 30 days after a written request for such analysis has been mailed to it shall relieve the governing body of any responsibility for awaiting such analysis, and such body may at any time thereafter take any necessary action to adopt or amend its ordinance.
 - (2) The governing body may also, in its discretion refer the planning board's report and proposed boundaries to the resources commission or other interested body for its recommendations prior to taking action to amend the ordinance.
 - (3) On receipt of these reports and recommendations, the governing body may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate ordinance provisions.

(c) *Designation of historic districts.*

- (1) The resources commission may initiate proposals to the governing body pertaining to the designation of any historic district.
- (2) The resources commission shall work with the local planning board in its effort to investigate and report on the historic significance of any proposed historic district.
- (3) The resources commission may supplement the report of the local planning board as the commission desires.

(d) *Issuance of certificates of appropriateness for certain uses.*

- (1) From and after the designation of an historic district, no exterior portion of any building or other structure, including stone or masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features; nor aboveground utility structure; nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the resources commission. Further, no archaeological resource associated with such a structure shall be altered, moved or removed within such district until after an application for a certificate of appropriateness as to the archaeological evidence has been submitted to and approved by the resources commission. The governing body shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other permit granted for purposes of constructing, altering, moving or demolishing structures, which certificate may be issued, subject to reasonable conditions necessary to carry out the purposes of this section. A certificate of appropriateness shall be required whether or not a building or other permit is required.
- (2) For purposes of this section, exterior features shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind of texture of the building material, size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In case of outdoor advertising signs, exterior features shall be construed to mean the style, material, size and location of all such signs. Such exterior features may, in the discretion of the local governing body, include color and important landscape natural features of the area.
- (3) The resources commission shall have no jurisdiction over interior arrangement and shall take no action under this section except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, other significant features or preventing the alteration, move or removal of archaeological evidence in the district which would be incongruous with the special character of the district.
- (4) Prior to issuance or denial of a certificate of appropriateness the resources commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the resources commission deems it necessary, it may hold a public hearing concerning the application made by the property owners. An appeal may be taken to the board of adjustment from the resources commission's action in granting or denying the certificate in the same manner as any other appeal to such board. Any appeal from the board of adjustment's decision in any such case shall be heard by the county superior court in which the county is located.
- (5) The state department of cultural resources, acting through any agent or employee designated by its secretary, shall, either upon the request of the department or at the initiative of the resources commission, be given an opportunity to review, comment and make recommendations upon the substance and effect of any application for a certificate of appropriateness in any historic district established pursuant to this section and G.S. 160A-400.1 et seq. Its comments and recommendations

may be provided in writing to the resources commission or made orally at any public hearing held in connection with the application. The resources commission shall consider these comments and recommendations prior to the issuance of a certificate of appropriateness. If any certificate is issued contrary to the recommendations of the department, the resources commission shall enter the reasons therefore in the minutes of the meeting at which such action is taken, and a copy of the minutes shall be forwarded to the department by the resources commission's secretary.

- (6) If the department does not submit its comments or recommendations in connection with any application within 30 days following receipt by the department of any materials needed for its review of the application, whether such review is at the request of the department or the resources commission, the resources commission and county governing body shall be relieved of any responsibility to consider those comments and recommendations. In this case, the certificate of appropriateness may thereafter be issued without regard to the requirements of this section.
- (e) *Permitted uses.* Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in an historic district which does not involve a change in design, material, color, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition.
- (f) *Delay in demolition of historic buildings.* From and after the designation of an historic district, no building or structure therein shall be demolished or otherwise removed until the owner thereof shall have given the resources commission 180 days' written notice of his proposed action. During such 180-day period, the resources commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the building. If the resources commission finds that the building involved has no particular historic significance or value toward maintaining the character of the district, it may waive all or part of such 180-day period and authorize earlier demolition or removal. However, nothing herein shall prevent the property owner from demolishing the structures after the expiration of the 180-day period.

(Ord. No. 009.01, § 4, 5-18-2009)

Sec. 15-5. Historic properties.

- (a) *Appropriations.* The local governing body is authorized to make appropriations to the resources commission established pursuant to this chapter in any amount that it may determine necessary for the expenses of the operation of the resources commission, and may make available any additional amounts necessary for the acquisition, restoration, preservation, operation and management of historic properties, including historic buildings, structures, sites, areas or objects designated as historic properties, or of land on which historic buildings or structures are located or to which they may be removed.
- (b) *Ownership of property.* All historic properties acquired by funds appropriated by the county shall be acquired in the name of the county unless otherwise provided by the governing body. So long as they are owned by the county, historic properties may be maintained by or under the supervision and control of the county. However, all historic properties acquired by the resources commission from funds other than those appropriated by the county may be acquired and held in the name of the resources commission or the county.
- (c) *Application of chapter to publicly owned buildings and structures.* Nothing in this chapter shall be construed to prevent the regulation or acquisition of historic properties owned by the state or any of its political subdivisions, agencies, or instrumentalities.
- (d) *Remedies.* In case any building, structure, site, area or object designated a historic property is about to be demolished, whether as the result of deliberate neglect or otherwise; or materially altered, remodeled or

removed, except in compliance with this chapter, the county or the resources commission may institute any appropriate action or proceeding to prevent such unlawful demolition, material alteration, remodeling or removal; to restrain, correct or abate such violation; or to prevent any illegal act or conduct with respect to such historic property.

(e) *Appeals; statute of limitations.*

- (1) Any person aggrieved by any decision or the action of the resources commission shall have the right to appeal such action to the board of adjustment.
- (2) Likewise, any person aggrieved by any decision of the governing body in enacting any ordinance under the powers conferred by this chapter shall have the right to file a civil suit in a court of competent jurisdiction within 60 days from the date of decision by the governing body.

(f) *Designation of historic properties generally.* The designation of an historic property shall be effected through an ordinance passed by the governing body.

(g) *Adoption of an ordinance; criteria for designation.*

- (1) Upon complying with G.S. 160A-400.6, the governing body may adopt and from time to time amend or repeal an ordinance designating one or more historic properties. No property shall be recommended for designation as a historic property unless it is deemed and found by the resources commission to be of special significance in terms of its history, architecture, and/or cultural or archaeological importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association. In addition, the governing body may consider also the suitability of the property for preservation or restoration; educational value; cost of acquisition, restoration, maintenance, operation or repair; possibilities for adaptive or alternative use of the property; appraised value; and the administrative and financial responsibility of any person or organization willing to underwrite all or a portion of the costs.
- (2) The ordinance shall describe each property designated in the ordinance, the name of the owner of the property, and any other information the governing body deems necessary within the authority of this chapter and G.S. 160A-400.1—160A-400.14. For each building, structure, site, area or object designated as an historic property, the ordinance shall require that a 180-day waiting period is observed prior to its demolition, material alteration, remodeling or removal. For each designated historic property, the ordinance shall also provide for a suitable sign on the property stating that the property has been designated. If the owner consents, the sign shall be placed upon the property. If the owner objects, the sign shall be placed on a nearby public right-of-way.

(h) *Powers.* The resources commission appointed or designated pursuant to this chapter shall be authorized to:

- (1) Recommend to the county governing body structures, sites, areas or objects to be designated by ordinance as historic properties.
- (2) Within budgetary limits acquire the fee or any lesser included interest to any such historic properties, to hold, manage, restore and improve the same, and to exchange and dispose of the same by sale, lease or otherwise subject to the rights of public access and other covenants and in a manner that will conserve the property for the purposes of this chapter.
- (3) Restore, preserve and operate such historic properties.
- (4) Recommend to the governing body that designation of any building, structure, site, area or object as a historic property be revoked or removed.
- (5) Conduct an educational program on historic properties within its jurisdiction.
- (6) Cooperate with the state, federal and local governments in pursuance of the purposes of this chapter. The governing body or the resources commission when authorized by the governing body may contract

with the state, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with state or federal law.

- (7) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination of survey thereof. However, no member, employee or agent of the resources commission may enter any private building or structure without the express consent of the owner or occupant thereof.
- (8) All meetings or hearings of the resources commission shall be open to the public, and reasonable notice of the time and place thereof shall be given to the public in accordance with G.S. 143-318.9 et seq., the open meetings statute.

(i) *Required procedures.*

- (1) No ordinances designating an historic building, structure, site, area or object nor any amendment thereto may be adopted, nor may any property be accepted or acquired by the resources commission or the governing body, until the following procedural steps have been taken:
 - a. The resources commission shall make or cause to be made an investigation and report on the historic, architectural, educational, archaeological and cultural significance of each historic property proposed for designation or acquisition.
 - b. The department of cultural resources, or another agent or employee of the department designated by the secretary, shall make an analysis of and recommendations concerning the report of this historic properties commission. This requirement is waived if the department fails to submit its analysis and recommendations to the governing board within 30 days after written request for the analysis has been mailed to the department by the clerk of the governing body. This requirement is also waived with respect to any building, structure, site, area or object of national, state and local historical significance that is currently listed (as certified by the secretary of cultural resources) on the National Register of Historic Places established by the National Historic Preservation Act of 1966, Public Law 89-655, 16 USC 470a, as amended.
 - c. The resources commission and the governing body shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published at least once in a newspaper generally circulated within the county in which the property or properties to be designated or acquired are located, and written notice of the hearing shall be mailed by the resources commission to all owners and occupants of properties whose identity and current mailing address can be ascertained by the exercise of reasonable diligence. All such notices shall be published or mailed not less than ten nor more than 20 days prior to the date set for the public hearing.
 - d. Following the joint public hearing, the governing body may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposal.
 - e. Upon adoption of the ordinance, the owners and occupants of each designated historic property shall be given written notification of such designation by the governing body, insofar as reasonable diligence permits. One copy of the ordinance and each amendment thereto shall be filed by the historic resources commission in the office of the register of deeds of the county in which the property or properties are located. Each historic property designated in the ordinance shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the resources commission shall pay a reasonable fee for filing and indexing. A third copy of the ordinance and each amendment thereto shall be given to the county building inspector, if any. The fact that a building, structure, site, area or object has been designated an historic property shall be clearly indicated on all tax maps maintained by the county for such period as the designation remains in effect.

-
- f. Upon the adoption of the historic properties ordinance or any amendment thereto, it shall be the duty of the resources commission to give notice thereof to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes.
 - g. From and after designation, no local historic property, nor any associated advertising sign, shall be materially altered, restored, moved, or demolished without issuance of a certificate of appropriateness indicating approval of the action or change. This provision applies to stone walls, fences, exterior light fixtures, steps, pavement, doors, and windows and any other features of the property specifically designated as significant to its historic or architectural character. The governing body shall require such a certificate to be issued by the resources commission prior to the issuance of a building permit or any other permit granted for purposes of construction or altering structures. A certificate of appropriateness shall be required whether or not a building permit is required.
 - h. Prior to issuance or denial of a certificate of appropriateness, the resources commission shall take such steps as may be reasonably required in the ordinance or rules of procedure to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the resources commission deems it necessary, it may hold a public hearing concerning the application. Notification of the public hearing shall be given to all parties having interest no later than ten days prior to the date of the hearing. All meetings of the resources commission shall be open to the public in accordance with the state open meetings law, G.S. 143-318.9 et seq.
 - i. An appeal may be taken to the board of adjustment from the resources commission's action in granting or denying the certificate in the same manner as any other appeal to such board. Any appeal from the board of adjustment's decision in any such case shall be heard by the Superior Court of Jackson County.
 - j. The Secretary of Interior Standards for Rehabilitation Guidelines for Rehabilitating Old Buildings shall be the standards by which applications for certificate of appropriateness by local historic property owners shall be evaluated.
 - k. The department of cultural resources, acting through any agent or employee designated by its secretary, or the state advisory council on historic preservation, shall, either upon the request of the department or at the initiative of the resources commission, be given an opportunity to review, make comment and make recommendations upon the substance and effect of any application for a certificate of appropriateness on any local historic property established pursuant to this chapter and G.S. 160A-400.1 et seq. Its comments and recommendations may be provided in writing to the resources commission or made orally at any public hearing held in connection with the application. The resources commission shall consider these comments and recommendations prior to the issuance of a certificate of appropriateness. If any certificate is issued contrary to the recommendations of the department, the resources commission shall enter the reasons therefor in the minutes of the meeting at which such action is taken, and a copy of the minutes shall be forwarded to the department by the commission's secretary.
- (2) Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any portion or architectural feature of a local historic property which does not involve a change in design, material, color or general appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which the building inspector shall certify is required for the public safety because of an unsafe or dangerous condition.

-
- (j) *Prohibitions; required waiting period.* A property which has been designated as an historic property by ordinance as provided in this chapter may, after notice has been made to the owner, as provided in G.S. 160A-400.1 et seq., be demolished, materially altered, remodeled or removed only after 180 days' written notice of the owner's proposed action has been given to the resources commission. During this period, the resources commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the property. During this period, or at any time prior thereto following notice of designation to the owner, as provided in subsection (i)(1)e of this section, and, where such action is reasonably necessary or appropriate for the continued preservation of the property, the resources commission may enter into negotiations with the owner for the acquisition by gift, purchase, exchanges or otherwise of the property or any interest therein authorized by G.S. 160A-400.1 et seq. The resources commission may reduce the waiting period required by this section in any case where the owner would suffer extreme hardship, not including loss of profit, unless a reduction in the required waiting period were allowed. The resources commission shall have the discretionary authority to waive all or any portion of the required waiting period, provided that the alteration, remodeling or removal is undertaken subject to conditions agreed to by the resources commission ensuring the continued maintenance of the architectural or historical integrity and character of the property.
- (k) *Permitted uses.* Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior feature in or on an historical property that does not involve a change in design, material, or outer appearance thereof nor to prevent the construction, reconstruction, alteration, restoration, demolition or removal of any such feature when a building inspector or similar official certifies to the resources commission that such action is required for the public safety because of an unsafe or dangerous condition. Nothing in this section shall be construed to prevent a property owner from making any use of his property not prohibited by other statutes, ordinances, or regulations.
- (l) *Authority to acquire historic building.*
- (1) *Resources commission.* The resources commission may, with the approval of the governing body, acquire property designated by ordinance as historic property, and may pay therefor out of any funds which may be appropriated for that purpose.
- (2) *Governing body.* The governing body may do the following:
- a. Within the limits of its jurisdiction, the governing body may acquire property designated by ordinance as historic property and may pay therefor out of any funds which may be appropriated for that purpose.
 - b. The governing body may acquire, maintain, manage, repair, restore, exchange or dispose of any historic resources designated as a historic property under this chapter.
 - c. If the property is acquired under this chapter but is not used for some other governmental purpose, it shall be deemed to be a museum under the provisions of G.S. 160A-488 and 153A-445, notwithstanding the fact that the property may be or remain in private use, so long as the property is made reasonably accessible to and open for visitation by the general public.

(Ord. No. 009.01, § 5, 5-18-2009)