

Chapter 38

HISTORICAL PRESERVATION*

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*State law reference—Michigan historical commission, MCL 399.1 et seq.

ARTICLE I. IN GENERAL

Secs. 38-1—38-100. Reserved.

ARTICLE II. HISTORIC DISTRICT*

Sec. 38-101. Short title.

This article shall be known as the "Historic District Ordinance of the City of Muskegon".
(Ord. No. 2290, § 1(38.101), 3-8-2011)

Sec. 38-102. Statement of purpose.

(a) Historic preservation is hereby declared to be a public purpose and the city commission may hereby regulate the construction, addition, alteration, repair, moving, excavation, and demolition of resources in historic districts within the city limits. The purpose of this article is to:

- (1) Safeguard the heritage of the city by preserving districts which reflect elements of its history, architecture, archaeology, engineering, or culture.
- (2) Stabilize and improve property values in each district and surrounding areas.
- (3) Foster civic beauty.
- (4) Strengthen the local economy.
- (5) Promote the use of historic districts for the education, pleasure, and welfare of the citizens of the city and of the state.

(b) The city may, by ordinance, establish one or more historic districts. The historic district shall be administered by the historic district commission and pursuant to this article.

(Ord. No. 2290, § 1(38.102), 3-8-2011)

Sec. 38-103. Definitions.

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

Alteration means work that changes the detail of a resource but does not change its basic size or shape.

*State law reference—Local historic districts act, MCL 339.201 et seq.

Certificate of appropriateness means the written approval of a permit application for work that is appropriate and does not adversely affect a resource.

Commission means the historic district commission of the city.

Demolition means the razing or destruction, whether entirely or in part, of a resource and includes, but is not limited to, demolition by neglect.

Demolition by neglect means neglect in maintaining, repairing, or securing a resource that results in deterioration of an exterior feature of the resource or the loss of structural integrity of the resource.

Denial means the written rejection of a permit application for work that is inappropriate and that adversely affects a resource.

Fire alarm system means a system designed to detect and announce the presence of fire or byproducts of fire. Fire alarm system includes smoke alarms.

Historic district means an area, or group of areas, not necessarily having contiguous boundaries, that contains one resource or a group of resources that are related by history, architecture, archaeology, engineering, or culture.

Historic preservation means the identification, evaluation, establishment, and protection of resources significant in history, architecture, archaeology, engineering, or culture.

Historic resource means a publicly or privately owned building, structure, site, object, feature or open space that is significant in the history, architecture, archaeology, engineering, or culture of the city, state, or the United States.

Notice to proceed means the written permission to issue a permit for work that is inappropriate and that adversely affects a resource, pursuant to a finding under Section 399.205(6) of Public Act 169 of 1970, as amended.

Open space means undeveloped land, a naturally landscaped area, or a formal or manmade landscaped area that provides a connective link or buffer between other resources.

Ordinary maintenance means keeping a resource unimpaired and in good condition through ongoing minor intervention, undertaken from time to time, in its exterior condition. Ordinary maintenance does not change the external appearance of the resource except through the elimination of the usual and expected effects of weathering. Ordinary maintenance does not constitute work for the purposes of this article.

Proposed historic district means an area, or group of areas not necessarily having contiguous boundaries, that has delineated boundaries and that is under review by a committee or a standing committee for the purpose of making a recommendation as to whether it should be established as a historic district or added to an established historic district.

Repair means to restore a decayed or damaged resource to good or sound condition by any process. A repair that changes the external appearance of a resource constitutes work for the purposes of this article.

Resource means one or more publicly or privately owned historic or non-historic buildings, structures, sites, objects, features, or open spaces located within a historic district.

Smoke alarm means a single-station or multiple-station alarm responsive to smoke and not connected to a system. As used in this subdivision, the term "single-station alarm" means an assembly incorporating a detector, the control equipment, and the alarm sounding device into a single unit, operated from a power supply either in the unit or obtained at the point of installation. The term "multiple-station alarm" means two or more single-station alarms that are capable of interconnection such that actuation of one alarm causes all integrated separate audible alarms to operate.

Work means construction, addition, alteration, repair, moving, excavation, or demolition. (Ord. No. 2290, § 1(38.103), 3-8-2011)

Sec. 38-104. Historic district study committee and the study committee report.

Before establishing a historic district, the city commission shall appoint a historic district study

committee. A majority of the persons appointed to the historic district study committee shall have a clearly demonstrated interest in or knowledge of historic preservation. The historic district study committee shall contain representation of at least one member appointed from one or more duly organized local historic preservation organizations. The historic district study committee shall do all of the following:

- (1) Conduct a photographic inventory of resources within each proposed historic district following procedures established by the state historic preservation office of the Michigan Historical Center.
- (2) Conduct basic research of each proposed historic district and historic resources located within that district.
- (3) Determine the total number of historic and non-historic resources within a proposed historic district and the percentage of historic resources of that total. In evaluating the significance of historic resources, the historic district study committee shall be guided by the selection criteria for evaluation issued by the United States Secretary of the Interior for inclusion of resources in the National Register of Historic Places, as set forth in 36 CFR 60, and criteria established or approved by the state historic preservation office of the Michigan Historical Center.
- (4) Prepare a preliminary historic district study committee report that addresses, at a minimum, all of the following:
 - a. The charge of the committee.
 - b. The composition of committee membership.
 - c. The historic district studied.
 - d. The boundaries of each proposed historic district in writing and on maps.
 - e. The history of each proposed historic district.
 - f. The significance of each district as a whole, as well as a sufficient number of its individual resources to fully

- represent the variety of resources found within the district, relative to the evaluation criteria.
- g. Transmit copies of the preliminary report for review and recommendations to the city planning commission, the state historic preservation office of the Michigan Historical Center, the Michigan Historical Commission, and the state historic preservation review board.
 - h. Make copies of the preliminary report available to the public pursuant to Section 3 (4) of Public Act No. 169 of 1970 (MCL 399.203(4)).
- (5) Not less than 60 calendar days after the transmittal of the preliminary report, the historic district study committee shall hold a public hearing in compliance with Public Act No. 267 of 1976 (MCL 15.261 et seq.). Public notice of the time, date and place of the hearing shall be given in the manner required by Public Act No. 267 of 1976 (MCL 15.261 et seq.). Written notice shall be mailed by first class mail not less than 14 calendar days prior to the hearing to the owners of properties within the proposed historic district, as listed on the most current tax rolls. The report shall be made available to the public in compliance with Public Act No. 442 of 1976 (MCL 15.231 et seq.).
- (6) After the date of the public hearing, the historic district study committee and the city commission have not more than one year, unless otherwise authorized by the city commission, to take the following actions:
- a. The committee shall prepare and submit a final report with its recommendations and the recommendations, if any, of the local planning body to the city commission as to the establishment of a historic district. If the recommendation is to establish a historic district, the final report shall include a draft of the proposed ordinance.
 - b. After receiving a final report that recommends the establishment of a historic district, the city commission, at its discretion, may introduce and pass or reject an ordinance. If the city commission passes an ordinance establishing one or more historic districts, the city shall file a copy of the ordinance, including a legal description of the property or properties located within the historic district, with the register of deeds. The city commission shall not pass an ordinance establishing a contiguous historic district less than 60 days after a majority of the property owners within the proposed historic district, as listed on the tax rolls of the local unit, have approved the establishment of the historic district pursuant to a written petition.
- (7) A writing prepared, owned, used, in the possession of, or retained by a committee in the performance of an official function of the historic district commission should be made available to the public in compliance with Public Act No. 442 of 1976 (MCL 15.231 et seq.).
- (Ord. No. 2290, § 1(38.104), 3-8-2011)
- Sec. 38-105. Establishing additional, modifying, or eliminating historic districts.**
- (a) The city commission may at any time establish by ordinance additional historic districts, including proposed districts previously considered and rejected, may modify boundaries of an existing historic district, or may eliminate an existing historic district. Before establishing, modifying, or eliminating a historic district, a historic district study committee appointed by the city commission shall follow the procedures as stated in Section 3 (1-3) of Public Act No. 169 of 1970 (MCL 399.203(1)—(3)). To conduct these activities, the city commission may retain the initial committee, establish a standing committee, or establish a committee to consider only specific proposed districts and then be dissolved. The

committee shall consider any previously written committee reports pertinent to the proposed action.

(b) In considering elimination of a historic district, a committee shall follow the procedures set forth in Section 3 (1-3) of Public Act No. 169 of 1970 (MCL 399.203(1)—(3)) for the issuance of a preliminary report, holding a public hearing, and issuing a final report but with the intent of showing one or more of the following:

- (1) The historic district has lost those physical characteristics that enabled the establishment of the district.
- (2) The historic district was not significant in the way previously defined.
- (3) The historic district was established pursuant to defective procedures.

(Ord. No. 2290, § 1(38.105), 3-8-2011)

Sec. 38-106. The historic district commission.

(a) The city commission establishes a historic district commission. Each member of the historic district commission shall reside within the city limits. The historic district commission shall consist of seven members. Members shall be appointed by the city commission. A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation. Members shall be appointed for a term of three years. Members shall be eligible for reappointment. In the event of a vacancy on the historic district commission, interim appointments shall be made by the city commission within 60 calendar days to complete the unexpired term of such position. Two members shall be appointed from a list submitted by duly organized local historic preservation organizations. If such a person is available for appointment, one member shall be an architect who has two years of architectural experience or who is duly registered in the state.

(b) The city commission may prescribe powers and duties of the historic district commission, in addition to those prescribed in this article, that foster historic preservation activities, projects, and programs in the local unit.

(Ord. No. 2290, § 1(38.106), 3-8-2011)

Sec. 38-107. Historic district commission meetings, recordkeeping and rules of procedure.

(a) The historic district commission shall meet at least quarterly or more frequently at the call of the historic district commission.

(b) The business that the historic district commission may perform shall be conducted at a public meeting held in compliance with the open meetings act, Public Act No. 267 of 1976 (MCL 15.261 et seq.). Public notice of the date, time, and place of the meeting shall be given in the manner required by Public Act No. 267 of 1976 (MCL 15.261 et seq.). A meeting agenda shall be part of the notice and shall include a listing of each permit application to be reviewed or considered by the historic district commission.

(c) The historic district commission shall keep a record of its resolutions, proceedings and actions. A writing prepared, owned, used, in the possession of, or retained by the historic district commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Public Act No. 442 of 1976 (MCL 15.231 et seq.).

(d) The historic district commission shall adopt its own rules of procedure and shall adopt design review standards and guidelines to carry out its duties under this act.

(Ord. No. 2290, § 1(38.107), 3-8-2011)

Sec. 38-108. Delegation of minor classes of work.

The historic district commission may delegate the issuance of certificates of appropriateness for specified minor classes of work to city staff. The historic district commission shall provide to its delegated authority specific written standards for issuing certificates of appropriateness under this subsection. The historic district commission shall review the certificates of appropriateness issued by the delegate on at least a quarterly basis to determine whether or not the delegated responsibilities should be continued.

(Ord. No. 2290, § 1(38.108), 3-8-2011)

Sec. 38-109. Ordinary maintenance.

Nothing in this article shall be construed to prevent ordinary maintenance or repair of a resource within a historic district or to prevent work on any resource under a permit issued by the inspector of buildings or other duly delegated authority before this article was enacted. (Ord. No. 2290, § 1(38.109), 3-8-2011)

Sec. 38-110. Review by the historic district commission.

The historic district commission shall review and act upon only exterior features of a resource and shall not review and act upon interior arrangements unless specifically authorized to do so by the city commission or unless interior work will cause visible change to the exterior of the resource. The historic district commission shall not disapprove an application due to considerations not prescribed in Subsection 5(3) of Public Act No. 169 of 1970 (MCL 399.205(3)). (Ord. No. 2290, § 1(38.110), 3-8-2011)

Sec. 38-111. Design review standards and guidelines.

(a) In reviewing plans, the historic district commission shall follow the U.S. Secretary of Interior's Standards for Rehabilitation and guidelines for rehabilitating historic buildings as set forth in 36 CFR 67. Design review standards and guidelines that address special design characteristics of historic districts administered by the historic district commission may be followed if they are equivalent in guidance to the Secretary of Interior's Standards and guidelines and are established or approved by the state historic preservation office of the Michigan Historical Center.

(b) In reviewing plans, the historic district commission shall also consider all of the following:

- (1) The historic or architectural value and significance of the resource and its relationship to the historic value of the surrounding area.

- (2) The relationship of any architectural features of the resource to the rest of the resource and to the surrounding area.
- (3) The general compatibility of the design, arrangement, texture, and materials proposed to be used.
- (4) Other factors, such as aesthetic value, that the historic district commission finds relevant.
- (5) Whether the applicant has certified in the application that the property where the work will be undertaken has, or will have before the proposed project completion date, a fire alarm system or a smoke alarm complying with the requirements of the Stille-DeRossett-Hale single state construction code act, Public Act No. 230 of 1972 (MCL 125.1501 et seq.).

(Ord. No. 2290, § 1(38.111), 3-8-2011)

Sec. 38-112. Permit applications.

(a) A permit shall be obtained before any work affecting the exterior appearance of a resource is performed within a historic district. The person, individual, partnership, firm, corporation, organization, institution, or agency of government proposing to do that work shall file an application for a permit with the inspector of buildings. Upon receipt of a complete application, the inspector of buildings shall immediately refer the application, along with all required supporting materials that make the application complete, to the historic district commission. A permit shall not be issued and proposed work shall not proceed until the historic district commission has acted on the application by issuing a certificate of appropriateness or a notice to proceed as prescribed in this article. A historic district commission shall not issue a certificate of appropriateness unless the applicant certifies in the application that the property where work will be undertaken has, or will have before the proposed project completion date, a fire alarm system or a smoke alarm complying with the requirements of the Stille-DeRossett-Hale single state construction code act, Public Act No. 230 of 1972 (MCL 125.1501 et seq.).

(b) The historic district commission shall file certificates of appropriateness, notices to proceed, and denials of applications for permits with the inspector of buildings. A permit shall not be issued until the historic district commission has acted as prescribed by this article.

(c) If an application is for work that will adversely affect the exterior of a resource the historic district commission considers valuable to the city, the state, or the nation, and the historic district commission determines that the alteration or loss of that resource will adversely affect the public purpose of the city, state, or nation, the historic district commission shall attempt to establish with the owner of the resource an economically feasible plan for the preservation of the resource.

(d) The failure of the historic district commission to act on an application within 60 calendar days after the date a complete application is filed with the historic district commission, unless an extension is agreed upon in writing by the applicant and the historic district commission, shall be considered to constitute approval.

(e) The historic district commission may charge a reasonable fee to process a permit application. (Ord. No. 2290, § 1(38.112), 3-8-2011)

Sec. 38-113. Denials.

If a permit application is denied, the decision shall be binding on the inspector or other authority. A denial shall be accompanied by a written explanation by the historic district commission of the reasons for denial and, if appropriate, a notice that an application may be re-submitted for historic district commission review when the suggested changes have been made. The denial shall also include the notification of the applicant's right to appeal to the state historic preservation review board and to the circuit court. (Ord. No. 2290, § 1(38.113), 3-8-2011)

Sec. 38-114. Notice to proceed.

Work within a historic district shall be permitted through the issuance of a notice to proceed by the historic district commission if any of the following conditions prevail and if the proposed

work can be demonstrated by a finding of the historic district commission to be necessary to substantially improve or correct any of the following conditions:

- (1) The resource constitutes a hazard to the safety of the public or to the structure's occupants.
- (2) The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances.
- (3) Retaining the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner.
- (4) Retaining the resource is not in the interest of the majority of the community. (Ord. No. 2290, § 1(38.114), 3-8-2011)

Sec. 38-115. Appeal of a historic district commission decision.

(a) An applicant aggrieved by a decision of the historic district commission concerning a permit application may file an appeal with the state historic preservation review board. The appeal shall be filed within 60 calendar days after the decision is furnished to the applicant. The appellant may submit all or part of the appellant's evidence and arguments in written form. The state historic preservation review board shall consider an appeal at its first regularly scheduled meeting after receiving the appeal. A permit applicant aggrieved by the decision of the state historic preservation review board may appeal the decision to the county circuit court.

(b) Any citizen or duly organized historic preservation organization in the city, as well as resource property owners, jointly or severally aggrieved by a decision of the historic district commission may appeal the decision to the county circuit court, except that a permit applicant aggrieved by a decision rendered under this article may not appeal to the court without first exhausting the right to appeal to the state historic preservation review board.

(Ord. No. 2290, § 1(38.115), 3-8-2011)

Sec. 38-116. Work without a permit.

When work has been done upon a resource without a permit, and the historic district commission finds that the work does not qualify for a certificate of appropriateness, the historic district commission may require an owner to restore the resource to the condition that the resource was in before the inappropriate work or to modify the work so that it qualifies for a certificate of appropriateness. If the owner does not comply with the restoration or modification requirement within a reasonable time, the historic district commission may seek an order from the county circuit court to require the owner to restore the resource to its former condition or to modify the work so that it qualifies for a certificate of appropriateness. If the owner does not comply or cannot comply with the order of the court, the historic district commission or its agents may enter the property and conduct work necessary to restore the resource to its former condition or modify the work so that it qualifies for a certificate of appropriateness in accordance with the court's order. The costs of the work done shall be charged to the owner, and may be levied by the city as a special assessment against the property. When acting pursuant to an order of the circuit court, the historic district commission or its agents may enter a property for purposes of this section.

(Ord. No. 2290, § 1(38.116), 3-8-2011)

Sec. 38-117. Demolition by neglect.

Upon a finding by the historic district commission that a historic resource within a historic district or a proposed historic district subject to

its review and approval is threatened with demolition by neglect, the historic district commission may do either of the following:

- (1) Require the owner of the resource to repair all conditions contributing to demolition by neglect.
- (2) If the owner does not make repairs within a reasonable time, the historic district commission or its agents may enter the property and make such repairs as necessary to prevent demolition by neglect. The costs of the work shall be charged to the owner, and may be levied by the city as a special assessment against the property. The historic district commission or its agents may enter the property for purposes of this section upon obtaining an order from the circuit court.

(Ord. No. 2290, § 1(38.117), 3-8-2011)

Sec. 38-118. Review of work in proposed districts.

Upon receipt of substantial evidence showing the presence of historic, architectural, archaeological, engineering, or cultural significance of a proposed historic district, the city commission may, at its discretion, adopt a resolution requiring that all applications for permits within the proposed historic district be referred to the historic district commission as prescribed in section 38-112. The historic district commission shall review permit applications with the same powers that would apply if the proposed historic district was an established historic district. The review may continue in the proposed historic district for not more than one year, or until such time as the city commission approves or rejects the establishment of the historic district by ordinance, whichever occurs first.

(Ord. No. 2290, § 1(38.118), 3-8-2011)

Sec. 38-119. Emergency moratorium.

If the city commission determines that pending work will cause irreparable harm to resources located within an established or proposed historic district, the city commission may by resolution declare an emergency moratorium on all such work for a period not to exceed six months. The

city commission may extend the emergency moratorium for an additional period not to exceed six months, upon finding that the threat of irreparable harm to resources is still present. Any pending permit application concerning a resource subject to an emergency moratorium may be summarily denied.

(Ord. No. 2290, § 1(38.119), 3-8-2011)

Sec. 38-120. Penalties for violations.

(a) A person that violates this article is responsible for a municipal civil infraction and may be fined the maximum permitted by law, not more than \$5,000.00.

(b) A person that violates this article may be ordered by the court to pay the costs to restore or replicate a resource unlawfully constructed, added to, altered, repaired, moved, excavated or demolished.

(Ord. No. 2290, § 1(38.120), 3-8-2011)

Sec. 38-121. Acceptance of gifts or grants.

The city commission may accept state or federal grants for historic preservation purposes, may participate in state and federal programs that benefit historic preservation, and may accept public or private gifts for historic preservation purposes. The city commission may appoint the historic district commission to accept and administer grants, gifts, and program responsibilities.

(Ord. No. 2290, § 1(38.121), 3-8-2011)

Sec. 38-122. Acquisition of historic resources.

If all efforts by the historic district commission to preserve a resource fail, or if it is determined by the city commission that public ownership is most suitable, the city commission, if considered to be in the public interest, may acquire the resource using public funds, public or private gifts, grants or proceeds from the issuance of revenue bonds. The acquisition shall be based upon the recommendation of the historic district commission. The historic district commission is responsible for maintaining publicly owned resources using its own funds, if not specifically designated for other purposes, or public funds committed for that use by the city commission. Upon recommendation of

the historic district commission, the city may sell resources acquired under this section with protective easements included in the property transfer documents, if appropriate.

(Ord. No. 2290, § 1(38.122), 3-8-2011)

Sec. 38-123. Historic district boundary.

(a) *Houston Historic District.* All land located within an area described by blocks 336, 337, 348, 349, 350, 351; block 367, lots 3-10; block 368.

(b) *Campus Historic District.* All land located within an area described by blocks 396, 397, 399.

(c) *McLaughlin Historic District.* All land located within an area described by blocks 226, lots 1-5, and 12; blocks 227, 228, 229; block 230, lots 1-5 and 14; block 238, lots 1-5 and 12; blocks 239, 240, 241; block 242, lots 7-10; blocks 243, 253; block 254, easterly 66 feet of lots 7-10; block 362, lots 10-19; block 383, lots 7-12; block 394, lots 9-16.

(d) *Clinton-Peck Historic District.* All land located within an area described by block 275, lots 1-9; block 276, lots 7-14; block 277; block 278, lots 1-6; blocks 288, 289; block 300, lots 1-6; block 423, lots 7-12; block 424, lots 7-12; block 444, lots 7-12; block 445, lots 7-12.

(e) *Jefferson Historic District.* All land located within an area described by block 425, lots 1-6; block 426, lots 8-14; block 442, lots 8-14; block 443, lots 1-6; block 446, W 162 feet lot 1, N 74.5 feet of W 154 feet lot 2, and N 75 feet of S 149.5 feet of W 154 feet lot 2; block 447, lots 8-14; block 463, lots 7-9 and E 105.1 feet lot 10; block 464, lots 1-4.

(f) *Clay-Western Historic District.* All land located within an area described by blocks 314, 315, 316, 323, 568 and 570.

(g) *National Register Historic District.* All land located within an area described by blocks 324, 325, 326; block 327, lots 4-9; block 334, lots 4-9; block 335.

(h) *Other areas.* The following land area is hereby included within the historic districts: Block 313, lots 1, 2 and the east 20 feet of lot 3; block 327, lots 10, 11; block 334, lots 1-3 and 10-12.

(Ord. No. 2290, § 1(38.123), 3-8-2011)