

CODE OF ALABAMA – Title 11

Chapter 68: HISTORIC PRESERVATION COMMISSIONS AND ARCHITECTURAL REVIEW BOARDS.

Section 11-68-1

Purpose of chapter.

The purposes of this chapter are to provide for the establishment of historic preservation commissions and architectural review boards, and to promote the educational, cultural, economic and general welfare of Alabama municipalities: through the preservation and protection of buildings, sites, structures, areas and districts of historic significance and interest; through the preservation and enhancement of the national, state and local historic, architectural, archaeological and aesthetic heritage found in Alabama; and through the promotion and enhancement of Alabama's historic and aesthetic attraction to tourists and visitors.

Section 11-68-2

Establishment of historic preservation commission and architectural review boards.

The governing body of any municipality electing to enact an ordinance, pursuant to this chapter, to provide for the creation, protection and enhancement of historic properties or historic districts, shall establish an historic preservation commission, hereinafter sometimes called the commission, and may establish one or more architectural review boards, hereinafter sometimes called the boards, to carry out the purposes and responsibilities of that ordinance.

Section 11-68-3

Composition of commission; nomination of members; terms of office; removal; vacancies; officers; rules; reimbursement of expenses; personnel; annual report; meetings.

(a) An historic preservation commission created by an ordinance enacted pursuant to this chapter shall be composed of not less than 7 members, who shall have demonstrated training or experience in the fields of history, architecture, architectural history, urban planning, archaeology or law, or who shall be residents of an historic district designated pursuant to that ordinance. Members of the commission shall be bona fide residents of the territorial jurisdiction of the municipality creating the commission. Not more than one-fifth of the members of the commission shall be public officials.

(b) Members of the commission shall be nominated by the chief executive officer of the municipality creating the commission and appointed by the legislative body of that municipality. Nomination and appointment of members of the commission shall be made

so as to ensure that the commission will be composed of persons with as much of the training and experience specified in subsection (a) of this section as is possible.

(c) Except for the original members of the commission, members of the commission shall serve three year terms and shall be appointed in such a manner so as to serve overlapping terms. Two of the original members of the commission shall be appointed to serve one year terms, two of the original members of the commission shall be appointed to serve two year terms, and the remainder of the original members of the commission shall be appointed to serve three year terms. Members of the commission may be reappointed.

(d) Members of the commission may be removed for cause by the legislative body of the municipality creating the commission.

(e) Vacancies on the commission shall be filled by persons nominated by the chief executive officer of the municipality creating the commission and appointed by the legislative body of that municipality. Such appointments shall be for the unexpired term of the member replaced.

(f) Members of the commission shall elect a chairman and a vice chairman and such other officers as the members deem necessary. The commission shall adopt rules of procedure and bylaws to govern its operations and shall communicate those rules of procedure and bylaws to the municipality creating the commission. The rules of procedure and bylaws of the commission shall specify what number of members of the commission constitutes a quorum.

(g) Members of the commission shall serve without compensation but may be reimbursed for expenses incurred on behalf of the commission in accordance with the rules and regulations for the reimbursement of expenses adopted by the commission.

(h) The commission may employ such professional, technical, office and other personnel as may be necessary to carry out the purposes and responsibilities of the ordinance enacted pursuant to this chapter.

(i) The commission shall prepare and file with the municipality creating the commission, and with the Alabama Historical Commission, an annual report of its activities as required by the municipality and the Alabama Historical Commission.

(j) Meetings of the commission shall be public meetings and shall be held at times and places and pursuant to such notices specified in the ordinance creating the commission.

Section 11-68-4

Status of commission as nonprofit agency exempt from taxation.

An historic preservation commission shall constitute a non-profit governmental agency whose funds shall be used exclusively for public purposes. Such commission shall have

tax exempt status, and the properties of the commission and the income therefrom, together with all leases, agreements and contracts made by it, shall be forever exempt from any and all taxation by the State of Alabama and any political subdivision thereof, including, but not limited to, income, admission, amusement, excise and ad valorem taxes.

Section 11-68-5

Powers and duties of commission.

An historic preservation commission created by an ordinance enacted pursuant to this chapter shall be authorized to:

- (1) Preserve and protect buildings, structures and sites of historic and architectural value in the historic districts designated pursuant to that ordinance;
- (2) Prepare a survey of all property within the territorial jurisdiction of the municipality creating the commission;
- (3) Recommend to the municipality creating the commission buildings, structures, sites and districts for designation as historic properties or districts;
- (4) Restore and preserve any historic properties acquired by the municipality creating the commission or acquired by the commission;
- (5) Promote acquisition of facade and conservation easements by the municipality creating the commission or by the commission;
- (6) Develop and conduct educational programs on historic projects and districts designated pursuant to the ordinance and on historic preservation subjects;
- (7) Make such investigations and studies of matters relating to historic preservation as the municipality creating the commission or the commission deems necessary and appropriate for the purposes of this chapter;
- (8) Apply for funds to carry out the purposes and responsibilities of the commission from municipal, county, state, federal and private agencies and sources;
- (9) Purchase, sell, contract to purchase, contract to sell, own, encumber, lease, mortgage and insure real and personal property in carrying out the purposes and responsibilities of the commission;
- (10) Investigate, survey and process nominations of properties to the National Register of Historic Places;

(11) Investigate, survey and process applications for certification of historic properties for tax credits for preservation expenditures;

(12) Contract with other municipal, county, state, federal and private agencies and organizations to perform historic preservation related functions;

(13) Exercise such further powers as the commission may deem reasonably necessary and proper to carry out the purposes, responsibilities and powers of the commission.

Section 11-68-6

Designation of historic properties and historic districts by municipality on recommendation of commission; criteria.

(a) On recommendation of the historic preservation commission, a municipality enacting an ordinance, pursuant to this chapter, may designate historic properties and historic districts within the territorial jurisdiction of the municipality.

(b) The commission shall not recommend designation of an historic property or historic district unless such recommendation is based on a finding of a survey of such property or district conducted by or for the commission in accordance with the rules and regulations of the Alabama Historical Commission.

(c) The commission shall not recommend designation of an historic property or historic district unless it finds that the building, structure, site or district is identified with or represents a significant aspect of the cultural, political, economic, military or social history of the locality, region, state or nation or has had a significant relationship with the life of a historic person or event, representing a major aspect of the history of the locality, region, state or nation, or if a part of the historic, architectural, archaeological or aesthetic heritage of the locality, region, state, or nation. In the case of an individual building or structure, the commission may recommend designation as an historic property if the commission finds that the building or structure is an example of an architectural style, or combination of architectural styles, which is representative of the municipality creating the commission or which is unique to that municipality. In the case of a district, the commission may recommend designation as an historic district if the commission finds that the district contains vernacular structures which contribute to an overall character and sense of place which is representative of the municipality creating the commission.

Section 11-68-7

Public hearing on proposed recommendation; notification of property owners.

(a) Before the commission shall recommend the designation of an historic property or historic district, it shall hold a public hearing on the proposed recommendation of historic designation to be held at a time and place, and pursuant to such notices specified in the ordinance creating the commission.

(b) In addition to the notice of the public hearing required pursuant to subsection (a) of this section, all owners of property to be included in the proposed historic designation, as such owners are identified in the relevant property tax rolls, if such owners can be found on reasonable inquiry, shall be notified by mail of the public hearing to be held by the commission on the proposed recommendation of historic designation.

Section 11-68-8

Written notice of designation of historic property or district.

Upon the designation of any historic property or historic district by a municipality, pursuant to an ordinance enacted pursuant to this chapter, the historic preservation commission shall give notice in writing of that designation to all agencies of the municipality, and to all owners of property included in the historic designation.

Section 11-68-9

Certificate of appropriateness prerequisite to changes in historic property or district; submission and consideration of application for certificate; rules, regulations and standards; expedited procedure; records.

(a) No change in the exterior appearance of an historic property or any building, structure or site within an historic district may be made, and no historic property may be demolished, and no building or structure in an historic district may be erected or demolished unless and until a certificate of appropriateness for such change, erection or demolition is approved by the historic preservation commission created by the municipality designating the historic property or the historic district. Signs shall be considered as structures and no sign on an historic property or in an historic district shall be changed, erected or demolished unless and until a certificate of appropriateness is approved by the commission. The requirement of a certificate of appropriateness shall apply to public property which has been designated as an historic property or which is contained in an historic district, and shall apply to all actions by public authorities which involve historic properties and properties within historic districts. Demolition by neglect and the failure to maintain an historic property or a structure in an historic district shall constitute a change for which a certificate of appropriateness is necessary. A municipality enacting an ordinance, pursuant to this chapter, may include selection of paint colors in changes requiring a certificate of appropriateness. The painting of originally unpainted surfaces shall require a certificate of appropriateness.

(b) The commission shall adopt rules and regulations setting forth the procedure for submission and consideration of applications for certificates of appropriateness, and no certificate of appropriateness shall be approved unless an application for a certificate of appropriateness is submitted to the commission accompanied by such drawings, photographs and plans, as may be required by the commission.

(c) The commission shall adopt general design standards which shall apply in considering the granting and denial of certificates of appropriateness.

(d) Applications for certificates of appropriateness shall be considered by the commission at public meetings, held at times and places and pursuant to such notices as are specified in the ordinance creating the commission.

(e) The commission may adopt an expedited procedure for approval of routine maintenance to historic properties, or to buildings or structures in historic districts. Such expedited procedure may waive the requirements for submission of an application for a certificate of appropriateness and for consideration at a public meeting.

(f) The commission shall keep a record of all applications for certificates of appropriateness and requests for approval of routine maintenance and of all of its proceedings.

Section 11-68-10

Appeal of denial to circuit court.

Any person having a request for a certificate of appropriateness denied by the historic preservation commission, or architectural board as hereinafter provided, may appeal such denial to the circuit court of the county in which the commission exists.

Section 11-68-11

Issuance of certificate; factors considered; reasons for rejection; application for reconsideration; effect of rejection on issuance of building permit.

(a) The historic preservation commission shall approve an application and issue a certificate of appropriateness if it finds that the proposed change, erection or demolition conforms to the general design standards established by the commission, is compatible with the character of the historic property or historic district and does not detract from the value of the historic property or historic district. In making this determination, the commission shall consider, in addition to any other pertinent factors, the historic and architectural features involved and the proposed change thereto, and the relationship thereof, to the exterior architectural style, and pertinent features of other structures in the immediate neighborhood.

(b) In its review of applications for certificate of appropriateness, the commission shall not consider interior changes or use having no effect on the exterior of a building or structure.

(c) In the event the commission rejects an application, it shall state its reasons for doing so and shall transmit a record of such action and reasons therefore, in writing, to the applicant. The applicant may make modifications to its plans and resubmit the application for reconsideration at any time after doing so.

(d) In cases where the application is for a change in the exterior of the building or structure which would require the issuance of a building permit, the rejection of an

application for a certificate of appropriateness by the commission shall be binding upon the building inspector or other administrative officer charged with issuing building permits and, in such case, no building permit shall be issued.

Section 11-68-12

Institution of court proceedings to prevent violations and recover damages.

The historic preservation commission, or the municipality creating the commission, shall be authorized to institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any change in the exterior of a building or structure which is either an historic property or which is contained in an historic district, except in compliance with the provisions of an ordinance adopted in conformity with this chapter, or to prevent any illegal act or conduct with respect to such historic property, or historic district, and to recover any damages which may have been caused by the violation of that ordinance.

Section 11-68-13

Architectural review board; composition; nomination of members; terms; removal for cause; vacancies; officers; rules; reimbursement for expenses; personnel; meetings; multiple boards.

(a) A municipality enacting an ordinance pursuant to this chapter, may elect to create an architectural review board, hereinafter sometimes called the board, to perform the duties and responsibilities of the historic preservation commission in accepting, considering and approving or rejecting applications for certificates of appropriateness, as set out in Sections 11-68-9 through 11-68-12.

(b) If such board is created, it shall be composed of not less than five members who shall have demonstrated training or experience in the fields of history, architecture, architectural history, urban planning, archaeology or law. Members of the board need not be residents of the territorial jurisdiction of the municipality creating the board. No member of a municipal governing body shall serve as members of the board.

(c) Members of the board shall be nominated by the chief executive officer of the municipality creating the board, and appointed by the legislative body of that municipality or county. Nomination and appointment of members of the commission shall be made so that the board will be composed of persons with as much of the training and experience specified in subsection (b) of this section as possible.

(d) Except for the original members of the board, members of the board shall serve three year terms and shall be appointed in such manner as to serve overlapping terms. Two of the original members of the board shall be appointed to serve one year terms and the remainder of the original members of the board shall be appointed to serve three year terms. Members of the board may be reappointed.

- (e) Members of the board may be removed for cause by the legislative body of the municipality creating the board.
- (f) Vacancies on the board shall be filled by persons nominated by the chief executive officer of the municipality creating the commission and appointed by the legislative body of that municipality. Such appointments shall be for the unexpired term of the member replaced.
- (g) Members of the board shall elect a chairman and vice chairman and such other officers as the members deem necessary. The board shall adopt rules of procedure and shall communicate those rules of procedure to the municipality creating the board. The rules of procedure of the board shall specify what number of members of the board shall constitute a quorum.
- (h) Members of the board shall serve without compensation, but may be reimbursed for reasonable expenses incurred on behalf of the board, in accordance with the rules and regulations for the reimbursement of expenses adopted by the board.
- (i) The board may employ such professional, technical, office and other personnel, as may be necessary, to carry out the purposes and responsibilities of the board.
- (j) Meetings of the board shall be public meetings and shall be held at times and places and pursuant to such notices as are specified in the ordinance creating the board.
- (k) If, in the opinion of the governing body of the municipality creating a board, the work load of the board is, or is contemplated to be excessive, the governing body of the municipality creating the board may create more than one board, and designate the historic properties, and historic districts with which each board will be concerned, so long as each historic property and each historic district designated by the municipality shall be subject to the control of only one board. Each such board created shall have all of the powers and authority set forth in this chapter with respect to the historic properties and historic districts with which it is concerned.

Section 11-68-14

Effect of chapter on preexisting historic development commissions or architectural review boards.

No provision of this chapter shall be construed to require the dissolution of any historic development commission or architectural review board created by an ordinance enacted pursuant to prior laws. Any historic development commission or architectural review board created by an ordinance existing pursuant to prior laws and existing at the time of the enactment of this chapter shall continue in existence and shall have all of the purposes, powers and authority set out in the ordinances creating such commissions and boards. Any such commission or board shall also have the power set forth in this chapter, if so provided by ordinance enacted by the governing body of the municipality creating

the historic development commission or architectural review board. The fact that such a commission or board is not created by an ordinance enacted pursuant to this chapter shall not be cause for denying such commission or board certified local government status.

Section 11-68-15

Applicability of chapter to highways, bridges, etc.; applicability of federal provisions.

The provisions of this chapter shall not apply to a highway, road, street, bridge, or utility structure or facility, nor to any highway, road, street, bridge or utility structure or facility to be constructed or improved, including any property, building or other structure or facility to be changed, moved, demolished, acquired or utilized in connection therewith, lying or running within any municipality or county, or within an historic district or an area designated as historic properties under this chapter, nor to actions taken in connection therewith by public authorities or utilities charged with responsibility of constructing, maintaining, repairing or improving any such highway, road, street, bridge or utility structure or facility, including any property, building or other structure or facility to be changed, moved, demolished, acquired or utilized in connection therewith; provided further, however, that where property lying within an area designated as historic properties or as an historic district, pursuant to the provisions of this chapter is sought to be utilized or acquired by any such public authority for the purpose of construction or improvement of a highway, road, bridge, utility structure or facility or street, and the provisions and requirements of Section 106, et seq., of the National Historic Preservation Act of 1966 (16 USCA 470), are applicable to the property acquisition or utilization, the public authority or utility may utilize or acquire any such property, building or other structure or parts thereof, and change, move or demolish any building or other structure in accordance with the applicable provisions, requirements and procedure provided for under such act, including the requirements and procedure as applicable of the Advisory Council on Historic Preservation, Section 36, Code of Federal Regulations 800 (16 USCA 470i), and in accordance with the provisions, requirements and procedure as applicable under Section 4(f) of the U.S. Department of Transportation Act of 1966, as amended, 49 USCA 1653(f), and under 23 USCA 138.

In the event the foregoing National Historic Preservation Act or Section 4(f) are not applicable to the property, building or other structure, they shall be exempt from the provisions of this chapter.

(Acts 1989, No. 89-536, p. 1116, §1.)