



Municipal Code, Mishawaka, Indiana

Part II / Chapter 125 – HISTORIC PRESERVATION¹

ARTICLE I. - IN GENERAL

Sec. 125-1. - Objective.

The preservation and conservation of the unique character of many of the city's residential and commercial areas recognizes that the preservation and protection of the elements that make these areas attractive is consistent with the goal of residential and business district vitality. The historic district objective is to protect a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. The conservation district objective is to retain the overall physical dimension of areas through appropriately scaled and sited new construction as well as sensitive rehabilitation of those structures which continue to retain functional usefulness.

(Code 1985, § 160.01; Ord. No. 3793, 12-6-1993)

Sec. 125-2. - 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:

Alterations means any material change in the external architectural features of any historic structure within an historic district or within any conservation district.

Building, accessory, means a building which is subordinate to and serves a principal building and contributes to the comfort, convenience or necessity of occupants of the principal building.

Building, principal, means the main building on a lot.

Commission means the historic preservation commission.

Conservation district means a continuous and distinctive urban area where a majority of the buildings retain an adequate amount of historic character for interpretation, although some alterations may have occurred. A conservation district may be limited to the boundaries of a property containing a single building, structure, object or site and have been designated by ordinance by the common council, or for which application for such listing is pending within the commission, provided that the commission will determine within 90 days of receipt of application pursuant to section 125-3 whether to list such property, and any property not so listed will not be considered a conservation district within the terms of this chapter.

Demolition means the substantial deterioration and/or complete removal of an historic structure or any structure which is located within an historic district or conservation district.

Historic district means a concentration of buildings, structures, objects, spaces or sites which may be limited to the boundaries of a property containing a single building, structure, object or site and have been designated by ordinance by the common council, or for which application for such listing is pending with the commission, provided that the commission will determine within 90 days of receipt of an application pursuant to section 125-3 whether to list such property, and any property not so listed will not be considered an historic district within the terms of this chapter.

Public way means a strip of land for purposes of vehicular travel, including the entire area within the right-of-way and includes the terms highway, parkway, road, street, avenue, boulevard, lane, court, place, drive, trail, terrace, and other such terms.

Staff means the city planner and each member of the department of city planning.

Structure means an edifice or building of any kind, or any piece of work artificially built up or, composed of parts joined together in some definite manner. Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground.

(Code 1985, § 160.02; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-3. - Purpose.

- (a) The historic district regulations provided in this chapter are intended to preserve and protect historic or architecturally significant buildings, structures, sites, monuments, streetscapes, squares and neighborhoods of the historic districts.
- (b) The conservation district regulations provided in this chapter are intended to provide a means for accommodating new buildings and structures which are compatible with the overall physical dimension of a specific area through appropriately scaled and sited new construction, as well as sensitive rehabilitation of existing structures.
- (c) It is the intent of this chapter to promote and protect the health, safety, and general welfare of the public through:
 - (1) The enhancement of property values, the protection of property rights of all citizens, and the stabilization and revitalization of distinctive areas of the city through the establishment of historic districts and conservation districts;
 - (2) The protection, enhancement, and use of structures, sites, and neighborhoods which have an urban character unique within the city; and
 - (3) The recognition of the need to conserve certain unique city areas by focusing on how each structure and element of the area blends and fits with other features of the area.
- (d) Properties within the boundaries of an historic district or conservation district are subject to the regulations of both the zoning district and the historic district or conservation district. If there is a conflict between the requirements of the zoning district and the historic district or conservation district, the more restrictive shall apply.

(Code 1985, § 160.03; Ord. No. 3793, 12-6-1993)

Secs. 125-4—125-24. - Reserved.

ARTICLE II. - BOUNDARIES MAP

Sec. 125-25. - Approval by common council required.

The map setting forth the historic district and conservation district boundaries as well as building classifications must be submitted to, and approved in an ordinance by the common council before the historic district or conservation district is established and the building classifications take place.

(Code 1985, § 160.06; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993)

Sec. 125-26. - Further surveying and mapping.

- (a) The commission may conduct additional surveys, and draw and submit additional maps for approval by the common council as it considers appropriate.

- (b) When submitting a map to the legislative body under section 125-25 and subsection (a) of this section, the commission may declare one or more buildings or structures that are classified and designated as historic on the map to be under interim protection.
- (c) If a building or structure is declared to be under interim protection pursuant to subsection (b) of this section, the commission shall, by personal delivery or first class mail, provide the owner or occupant of the building or structure with written notice of the declaration within two days after declaring a building or structure to be under interim protection. The written notice must:
 - (1) Cite the authority of the commission to put the building or structure under interim protection under this section;
 - (2) Explain the effect of putting the building or structure under interim protection; and
 - (3) Indicate that the interim protection is temporary.
- (d) A building or structure put under interim protection under subsection (b) of this section remains under interim protection until the map is submitted to and approved in an ordinance or rejected by the common council.
- (e) While a building or structure is under interim protection under this section:
 - (1) The building or structure may not be demolished or moved; and
 - (2) The exterior appearance of the building or structure may not be conspicuously changed by addition, reconstruction or alteration.

(Code 1985, § 160.07; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Secs. 125-27—125-55. - Reserved.

ARTICLE III. - CERTIFICATE OF APPROPRIATENESS

Sec. 125-56. - Required.

Except as provided in sections 125-96 and 125-123, a certificate of appropriateness must be issued by the historic preservation commission before an improvement location permit, demolition permit, building permit or moving permit is issued for, or work is begun on, any of the following:

- (1) Within all areas of the historic district or conservation district.
 - a. The demolition of any building;
 - b. The moving of any building;
 - c. A conspicuous change in the exterior appearance of historic buildings by addition, construction, alteration, or maintenance involving exterior color changes; or
 - d. Any new construction of a principal building or accessory building or structure subject to view from a public way.
- (2) Within a primary area of the historic district or conservation district.
 - a. A change in walls and fences or construction of walls and fences, if along public ways; or
 - b. A conspicuous change in the exterior appearance of nonhistoric buildings subject to view from a public way by additions, reconstruction, alteration, or maintenance involving exterior color change.

(Code 1985, § 160.08; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-57. - Application.

An application for a certificate of appropriateness may be filed in the office of the department of city planning on forms provided and shall be subject to the following requirements:

- (1) The commission may adopt, as a part of its rules, filing requirements which it finds reasonable and necessary to expedite the business of the commission. These rules may include, but are not limited to, filing deadlines and application requirements such as sketches, drawings, photographs, descriptions, or other information which the commission requires to make a decision.
- (2) A fee of \$10.00 shall be charged for such application to cover the cost of processing the application.
- (3) Applications are to be filed at least two weeks prior to the regularly scheduled commission meeting.

(Code 1985, § 160.09; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-58. - Action on certificate by commission.

- (a) The commission may advise and make recommendations to the applicant before acting on an application for a certificate of appropriateness.
- (b) If an application for a certificate of appropriateness is approved by the commission, or is not acted on by the commission within 30 days after it is filed, a certificate of appropriateness shall be issued by the department of city planning. If the certificate is issued, the application shall be processed in the same manner as applications for improvement, location, building, demolition or moving permits required by the city.
- (c) If the commission denies an application for a certificate of appropriateness within 30 days after it was filed, the certificate shall not be issued. The commission must state its reasons for the denial in writing, and must advise the applicant. An application that has been denied shall not be processed as an application for an improvement, location, building, demolition or moving permit and shall not authorize any work by the applicant.
- (d) The commission may grant an extension of the 30-day limit prescribed by subsections (b) and (c) of this section, if agreed to by the applicant.

(Code 1985, § 160.10; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Secs. 125-59—125-89. - Reserved.

ARTICLE IV. - REGULATORY PROVISIONS

Sec. 125-90. - Development standards.

- (a) An historic building, structure or site or any part of or appurtenance to such, including stone walls, fences, light fixtures, steps, paving and signs may be reconstructed, altered or maintained only in a manner that will preserve the historical and architectural character of the building, structure, site or appurtenance.

- (b) An historic building may be relocated or moved to another site only if it is shown that preservation on its current site is inconsistent with subsection (a) of this section.

(Code 1985, § 160.11; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993)

Sec. 125-91. - Visual compatibility.

Visual compatibility standards preserve or protect the unique character of designed historic districts and conservation districts. These standards are appropriate additions to regulations for historic districts and conservation districts. Except as provided in section 125-123, the construction of a new building or structure, and the moving, reconstruction, alteration, major maintenance, or repair involving a color change conspicuously affecting the external appearance of any nonhistoric building, structure, or appurtenance within the historic district or conservation district must be generally of a design, form, proportion, mass, configuration, building material, texture, color, and location on a lot compatible with other buildings in the historic district or conservation district, particularly with buildings designated as historic, and with squares and places to which it is visually related.

(Code 1985, § 160.12; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993)

Sec. 125-92. - Visual compatibility factors.

Except as provided in section 125-123, within the primary area of the historic district or conservation district, new buildings, structures and sites, as well as buildings, structures, sites and appurtenances that are moved, reconstructed, materially altered, repaired, or changed in color, must be visually compatible with buildings, squares, and places to which they are visually related. These factors and standards are appropriate additions to regulations for historic districts and conservation districts. Such controls shall include, but are not limited to:

- (1) *Height.* The height of proposed buildings must be visually compatible with adjacent buildings.
- (2) *Proportion of building's front facade.* The relationship of the width of a building to the height of the front elevation must be visually compatible to buildings, squares and places to which it is visually related.
- (3) *Proportion of openings within the facility.* The relationship of width of the windows to the height of windows in a building must be visually compatible with buildings, squares and places to which it is visually related.
- (4) *Rhythm of solids to voids in front facades.* The relationship of solids to voids in the front facade of a building must be visually compatible with buildings, squares and places to which it is visually related.
- (5) *Rhythm of spacing of buildings on streets.* The relationship of a building to the open space between it and adjoining buildings must be visually compatible to the buildings, squares and places to which it is visually related.
- (6) *Rhythm of entrances and porch projections.* The relationship of entrances and porch projections to sidewalks of a building must be visually compatible to the buildings, squares and places to which it is visually related.
- (7) *Relationships of materials, texture and color.* The relationship of the materials, texture and color of the facade of a building must be visually compatible with the predominant materials used in the building to which it is visually related.
- (8) *Roof shapes.* The roof shape of a building must be visually compatible with the buildings to which it is visually related.

- (9) *Walls of continuity.* Appurtenances of a building, such as walls, wrought iron fences, evergreen landscape masses, and building facades, must form cohesive walls of enclosure along the street, if necessary to ensure visual compatibility of the building to the buildings, squares and places to which it is visually related.
- (10) *Scale of a building.* The size of a building, and the building mass of a building in relation to open spaces, windows, door openings, porches, and balconies must be visually compatible with the buildings, squares and places to which it is visually related.
- (11) *Directional expression of front elevation.* A building must be visually compatible with the buildings, squares and places to which it is visually related in its directional character, including vertical character, horizontal character, or nondirectional character.
- (12) *Exterior paint colors.* In an ordinance establishing an historic district or conservation district, an individual district may exclude changes in paint colors from the activities requiring the issuance of a certificate of appropriateness.

(Code 1985, § 160.13; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993)

Sec. 125-93. - Appeal provisions.

- (a) The purpose of this section is to preserve historic districts or conservation districts that are important to the education, culture, traditions and economic values of the city and to afford historic organizations, and other interested persons the opportunity to acquire or to arrange for the preservation of these buildings, structures or sites.
- (b) If the commission denies the issuance of a certificate of appropriateness for the demolition of a building or structure, a demolition permit may be issued by other agencies and a building may be demolished, but only after establishing all of the following:
 - (1) The property owner must demonstrate to the commission that an historic building or structure is incapable of earning an economic return on its value, as appraised by a licensed real estate appraiser.
 - (2) The property owner shall file with the administrator documented evidence that a good faith effort is being made to sell or otherwise dispose of such property at fair market value to any public or private person or agency which gives a reasonable assurance of its willingness to preserve and restore such property. Such documented evidence shall be provided at the expense of the property owner and shall include:
 - a. Offering price;
 - b. Date the offer of sale is to begin;
 - c. Name and address of listing real estate agency, if any;
 - d. A copy of an advertisement to run in the same manner as the notice in subsection (c) of this section which offers the property for sale; and
 - e. An appraisal of the property's fair market value by a licensed real estate appraiser.
- (c) Notice of the proposed demolition must be given for a period fixed by the commission, based on the commission's classification on the approved map, but not less than 60 days nor more than one year. Notice must be posted by the staff of the department of city planning on the premises of the building, structure or site proposed for demolition in a location clearly visible from the street. In addition, notice must be published in a newspaper of general local circulation at least three times before demolition, with the first publication not more than 15 days after the application for a permit to demolish is filed, and the final publication at least 15 days before the date of the permit.

- (d) The commission may approve a certificate of appropriateness at any time during the notice period under subsection (c) of this section. If the certificate is approved, a demolition permit shall be issued without further delay, and demolition may proceed.

(Code 1985, § 160.14; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-94. - Maintenance.

Historic buildings shall be maintained to meet the applicable requirements of state and local building codes so as to prevent the loss of historic material and the deterioration of important character defining details and features.

(Code 1985, § 160.15; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-95. - Recording the fact of historic district designation or conservation district designation.

The boundaries of any historic district or conservation district shall be recorded in the office of the county recorder by the staff.

(Code 1985, § 160.16; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993)

Sec. 125-96. - Conservation districts.

- (a) In an ordinance approving the establishment of an historic district, the city may provide that the establishment occur in two phases. Under the first phase, which lasts three years from the date the ordinance is adopted, a certificate of appropriateness is required only for the activities described in section 125-56(1)a, (1)b, and (1)d. At the end of the first phase, the district becomes fully established, and, subject to subsection (b) of this section, a certificate of appropriateness must be issued by the commission before a permit may be issued for or work may begin on an activity described in section 125-56.
- (b) The first phase described in subsection (a) of this section continues and the second phase does not become effective if a majority of the property owners in the district object to the commission in writing to the requirement that certificates of appropriateness be issued for the activities described in section 125-56(1)c, (2)a and b. The objections must be received by the commission not earlier than 180 days or later than 60 days before the third anniversary of the adoption of the ordinance from which this chapter is derived.

(Code 1985, § 160.17; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-97. - Annexed landmarks.

- (a) Where the Historic Preservation Commission of South Bend and St. Joseph County has designated a historic landmark in St. Joseph County, and the real estate on which the landmark is situated or comprised is subsequently annexed to and brought within the boundaries of the city, such landmark shall upon annexation to the city, continue its local historic district status within the city subject to regulation under this article. Development standards and other restrictions as may be included within the previously adopted ordinance shall be continued unless otherwise amended by the provisions of this article.
- (b) For the purpose of this article, the word "landmark" shall also signify the word "district."

(Ord. No. 4987, §§ 1, 2, 10-17-2005)

Secs. 125-98—125-122. - Reserved.

ARTICLE V. - ENFORCEMENT

Sec. 125-123. - Interested parties.

- (a) An interested party means one of the following:
 - (1) The mayor of the city.
 - (2) The common council.
 - (3) The historic preservation commission of the city.
 - (4) A neighborhood association, whether incorporated or unincorporated, a majority of whose members are residents of a historic district under this chapter.
 - (5) An owner or occupant owning or occupying property in an historic district or conservation district established by an ordinance adopted under this chapter.
 - (6) Historic Landmarks Foundation of Indiana, Inc., or any of its successors.
 - (7) The state historic preservation officer designated under IC 14-21-1, as may be amended from time to time.
- (b) Every interested party has a private right of action to enforce and prevent violation of a provision of this chapter or an ordinance adopted by a unit under this chapter, and with respect to any building, structure or site within an historic district, has the right to restrain, enjoin, or enforce by restraining order of injunction, temporarily or permanently, any person from violating a provision of this chapter or an ordinance adopted by a unit under this chapter.
- (c) The interested party does not have to allege or prove irreparable harm or injury to any person or property to obtain relief under this section.
- (d) The interested party bringing an action under this section does not have to post bond unless the court, after a hearing, determines that a bond should be required in the interest of justice.
- (e) The interested party that brings an action under this section is not liable to any person for damages resulting from bringing or prosecuting the action unless the action was brought without good faith or without a reasonable belief that a provision of this chapter, or an ordinance adopted by a unit under this chapter, had been, or was about to be violated or breached.
- (f) An interested party who obtains a favorable judgment in an action under this section may recover reasonable attorneys' fees and court costs from the person against whom judgment was rendered.
- (g) An action arising under this section must be brought in the circuit or superior court of the county in which the historic district lies and no change of venue from the county shall be allowed in the action.
- (h) The remedy provided in this section is in addition to other remedies that may be available at law or in equity.

(Code 1985, § 160.30; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-124. - City may institute suit for injunction for violation.

- (a) The erection, construction, enlargement, alteration, repair, demolition, color change, moving or maintenance of a building, structure, site or appurtenance which is begun, continued or maintained contrary to any provisions of this chapter is hereby declared a nuisance and in violation of this chapter. The city may institute a suit for injunction in the circuit court or superior court of the county to restrain

any person or governmental unit from violating any provisions of this chapter and to cause such violation to be prevented, abated or removed. Such action may also be instituted by any property owner who is adversely affected by the violation of any provision of this chapter.

- (b) The remedies provided for in this subchapter shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

(Code 1985, § 160.31; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993)

Sec. 125-125. - Judicial review.

Any person or party aggrieved by a decision or action taken by the commission shall be entitled to a judicial review thereof in accordance with IC 4-21.5.

(Code 1985, § 160.32; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-126. - Removal of classifications.

Regardless of any other provision, in the case of a building or structure owned by the city that is classified by the city historic preservation commission as historic and for which the classification is approved by the common council, the commission may remove the historic classification of the building or structure without the adoption of an ordinance by the common council if the commission determines that removal of the classification is in the best interest of the city and any affected political subdivision.

Footnotes:

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State Law reference— Historic preservation generally, IC 36-7-11-1 et seq.