

**APPENDIX B**

**HISTORIC PRESERVATION AT THE STATE AND LOCAL LEVEL**

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Establishing a local Historic District requires an assessment of the present status of the community's historic resources, knowledge of past historic preservation efforts, and a list of goals and objectives. Taking such an assessment enables the designating community to take advantage of historic preservation incentives available at the national, state, and local governmental levels, such as grants, income tax credits for historic rehabilitation, low-interest loans, and local tax abatements. A requirement of establishing a local district, provided it was created pursuant to Act 167, the Historic District Act, is the establishment of a Historic Architectural Review Board (HARB). The HARB reviews all proposed erection, reconstruction, alteration, restoration, or demolition of buildings within the district before the issuance of any municipal permits pursuant to these actions. HARB reviews and recommendations must be consistent with the design guidelines established at the enactment of the Historic District. The Borough Council and Township Supervisors have the right to incorporate any of the HARB's recommendations into the permit requirements, but they may also override those recommendations. Municipalities whose districts are not created under Act 167 are not required to have a HARB, but instead may appoint a Historic District Commission or Committee.

The Region contains one potential Historic District, the Waynesboro District, and the Monterey Historic District.

Two Pennsylvania laws provide the legal foundation for municipalities to adopt historic ordinances and regulatory measures.

#### **Act 247 – The Pennsylvania Municipalities Planning Code (MPC)**

Acts 67 and 68 of 2001 amended the MPC, strengthening the ability of local governments to protect historic resources through their Comprehensive Plans, Zoning Ordinances and Subdivision and Land Development Ordinances. The following passages and paraphrases from the MPC are the most critical sections regarding this power.

- §603(C)(7) – Zoning ordinances may promote and preserve prime agricultural land, environmentally sensitive areas, and areas of historic significance.
- §603(G)(2) - Zoning ordinances are required to protect natural and historic resources.
- §702(1)(ii) – The governing body of each municipality may enact, amend and repeal provisions of a zoning ordinance in order to fix standards and conditions for traditional neighborhood development. In the case of either an outgrowth or extension of existing development or urban infill, a traditional neighborhood

development designation may be either in the form of an overlay zone, or as an outright designation, whichever the municipality decides. Outgrowths or extensions of existing development may include development of a contiguous municipality.

- §1106(a)(6) – Multi-municipal Comprehensive Plans shall consider the conservation and enhancement of natural, scenic, historic, and aesthetic resources in their municipalities.

A Historic Overlay Zoning District, unlike the protection offered through the establishment of an Act 167 Historic District (discussed below), can include individual sites as well as clusters, as long as the resources are documented and identified on a historic resources map. A historic overlay district could require new buildings to be similar in type and scale to those already existing. Setbacks should be consistent with the common building setback. Requirements to replicate the existing building line, building height, and bulk could help to preserve the character of the neighborhood.

### **Act 167 - The Historic District Act (1961)**

Municipalities may create historic districts within their borders to protect the historic character through regulation of the erection, reconstruction, alteration, restoration, demolition, or razing of buildings in the district. The Pennsylvania Historical and Museum Commission must certify districts, including a *determination of eligibility* for the National Register of Historic Places. In this way, historic districts established pursuant to Act 167 have the same protection from federal projects as do National Register properties. Act 167 also requires appointment of a HARB.

### **Historical and Museum Commission Act 1945**

Act No. 446, approved June 6, 1945, created the Pennsylvania Historical and Museum Commission (PHMC) by consolidating the functions of the Pennsylvania Historical Commission, The State Museum, and the State Archives. The PHMC is an independent administrative board, consisting of 14 members: 9 citizens of the Commonwealth appointed by the Governor, the Secretary of Education (ex officio), 2 members of the Senate, and 2 members of the House of Representatives. The Executive Director is appointed by the Commission and is an ex officio member of three groups: the Environmental Quality Board, County Records Committee, and the Local Government Records Committee.

The PHMC is the official agency for the conservation of Pennsylvania's historic heritage. The powers and duties of the Commission fall into these principal fields: care of historical manuscripts, public records, and objects of historic interest; museums; archaeology; publications; historic sites and properties; historic preservation; geographic names; and the promotion of public interest in Pennsylvania history.

The PHMC is funded partially through an annual legislative appropriation, federal grants, and private donations. Officially recognized local historical organizations may benefit financially through the Commission's eligibility to receive matching funds from various federal programs. The PHMC is active in many phases of historic preservation. The PHMC also conducts a landmark identification program, presenting identification plaques to property owners for attachment on structures included in the Pennsylvania Inventory of Historical Places. The landmark identification program also includes the placement of roadside historical signs at various sites and locations having statewide and national historic significance. Today there are nearly 1,900 such markers across the state.

The Office of Historic Preservation is an arm of the PHMC responsible for assisting the public and private sectors in implementing the Commonwealth's policy to "protect and enhance our irreplaceable resources." To this end, the Office has implemented a five-point program:

- Registering historically and architecturally significant sites and structures on the National Register of Historic Places and on the Pennsylvania Inventory of Historic Places;
- Advising and guiding individuals and organizations regarding historic preservation and its funding;
- Reviewing applications for federal preservation grants;
- Working for legislation at the state level to provide effective tools for historic preservation; and
- Working with other governmental agencies to review the impact of projects, such as highways, on the Commonwealth's historic resources.

### **Pennsylvania Bureau for Historic Preservation**

The Bureau is an agency of the PHMC. The Executive Director of the Bureau is designated as the State Historic Preservation Officer (SHPO).

The Bureau provides technical assistance for the preservation, rehabilitation, and restoration of historic buildings. The Bureau reviews architectural plans and specifications and provides comments on historic building projects for state and federal compliance. They also assist in code-related issues and accessibility programs in the form of letters of support for variances for historic buildings. To inform the public, public agencies, local governments, and other stewards of historic properties, the Bureau assists in the development and distribution of materials on applying the Secretary of the Interior's *Standards for Rehabilitation* when repairing historic buildings.

The Bureau also administers the Federal Rehabilitation Investment Tax Credit (RITC) program in partnership with the National Park Service. The tax credit program is one of the most successful programs for encouraging private investment in the rehabilitation of historic properties. Since the establishment of the PHMC in 1976, Pennsylvania has been a national leader in certified tax credit projects, completing over 1,800 projects and generating over \$2.5 billion in qualified rehabilitation expenditures. The Bureau provides technical assistance throughout the application process.

The Bureau also administers the State's Historic Preservation Program as authorized by the Pennsylvania History Code and National Historic Preservation Act of 1966. The program is guided by advisory boards as well as the Pennsylvania Historic Preservation Plan.

The Pennsylvania General Assembly is considering legislation to establish a Historic Homesites Grant Program. Once established, this legislation will provide funds to the Pennsylvania Historical and Museum Commission to support rehabilitation grants (up to \$6,000) to individuals owning and residing in a historic residential building, as well as to individuals intending to purchase and reside in a historic residential building. Possible conditions for eligibility include the following:

- The building must serve as the owner's principal residence,
- The building must be listed in the National Register of Historic Places or be determined to be a contributing building in a listed National Register Historic District,
- The building must be located in an Act 167 historic district or be designated as a historic property under the local ordinance or city code in Pittsburgh and Philadelphia, and
- All rehabilitation work must conform to the U.S. Secretary of Interior's *Standards for the Treatment of Historic Properties*.

## **NATIONAL EFFORTS AND LEGISLATION FOR HISTORIC PRESERVATION**

Federal programs encouraging historic preservation include:

- the National Register of Historic Places,
- Historic Preservation Tax Credits on federal income tax for qualifying rehabilitation and adaptive reuse of historic buildings used for income-producing purposes,
- Section 106 Review of federally funded or assisted projects that impact historic resources, and
- the Certified Local Government Program, which facilitates historic preservation at the local level.

The earliest Federal preservation statute was the Antiquities Act of 1906, which authorized the President to set aside historic landmarks, structures, and objects located on lands controlled by the United States as national monuments. It required permits for archeological activities on Federal lands, and established criminal and civil penalties for violation of the act.

The Historic Sites Act of 1935 was the second major piece of Federal historic preservation legislation. This act declared it national policy to preserve for public use historic sites, buildings, and objects of national significance and directed the Secretary of the Interior to conduct various programs with respect to historic preservation.

In 1964, The United States Conference of Mayors undertook a study of historic preservation in the United States. The resulting report, "With Heritage So Rich," revealed a growing public interest in preservation and the need for a unified approach to the protection of historic resources. This report influenced the Congress to enact a strong new statute establishing a nationwide preservation policy: The National Historic Preservation Act of 1966.

### **National Historic Preservation Act of 1966 (NHPA)**

The National Historic Preservation Act of 1966 and its subsequent amendments established a legal basis for the protection and preservation of historic and cultural resources. Historic resources are defined as *"any prehistoric or historic district, site, building, structures or object included in, or eligible for inclusion in the National Register; the term includes artifacts, records, and remains which are related to such a district, site, building, structure or object"*.

The Act promoted the use of historic properties to meet the contemporary needs of society. It directed the Federal Government, in cooperation with State and local governments, Native Americans, and the public, to take a leadership role in preservation. First, the Act authorized the Secretary of the Interior to expand and maintain the National Register of Historic Places. This is an inventory of districts, sites, buildings, structures, and objects significant on a national, State, or local level in American history, architecture, archeology, engineering, and culture. Once a property is eligible to be placed on the list, the property, site, or object can be qualified for Federal grants, loans, and tax incentives. Second, the NHPA encourages State and local preservation programs. States may prepare and submit programs for historic preservation to the Secretary of the Interior for approval. Approval can be granted if they:

- designate a State Historic Preservation Officer (SHPO) to administer the State preservation program,
- establish a State historic preservation review board, and

- provide for adequate public participation in the State program.

Since 1966, the Congress has strengthened national preservation policy through other statutes, including the National Environmental Policy Act, several transportation acts, and statutes directed toward the protection and preservation of archeological resources. These laws all require Federal agencies to consider historic resources in their decision making and overlap with provisions of NHPA.

### **Section 106 Review**

Section 106 of the NHPA requires Federal agencies to consider the effects of their actions on historic properties and provide the Council an opportunity to comment on Federal projects prior to implementation. Section 106 review encourages, but does not mandate, preservation.

To successfully complete Section 106 review, Federal agencies must:

- determine if Section 106 of NHPA applies to a given project and, if so, initiate the review,
- gather information to determine which properties in the project area are listed on or are eligible for the National Register of Historic Places,
- determine how those historic properties might be affected by the project in question,
- explore alternatives to avoid or reduce any negative effect upon those historic properties, and
- reach agreement with the SHPO on specific measures to mitigate any adverse effects.

The Executive Branch has also expressed support for preservation through several Executive Orders. Examples include Executive Order No. 11593 of 1971, which instituted procedures for Federal agencies to follow in their property management activities. Executive Order No. 13006 encourages the location of Federal offices and facilities in historic districts and properties within the inner cities. Executive Order No. 13006 also directs Federal agencies to use and rehabilitate properties in such areas wherever feasible and reaffirms the commitment to Federal leadership in the preservation of historic properties set forth in NHPA. Executive Order, No. 13007, signed in 1996, expressed support for the protection of Native American sacred sites.

### **Federal Tax Incentives for Historic Buildings**

According to the Tax Reform Act of 1986, a property owner is eligible for a 20% tax credit, along with a 27.5 to 31.5% straight-line depreciation for the substantial rehabilitation of

historic buildings for commercial, industrial and rental residential purposes (not owner-occupied buildings). In addition, the Act allows a 10% tax credit for the substantial rehabilitation of nonresidential buildings built before 1936. The 10% tax credit is not available for rehabilitations of certified structures.

Two Federal Tax Incentive Programs currently apply to preservation activities in Pennsylvania: the rehabilitation investment tax credit and the charitable contribution deduction.

Rehabilitation investment tax credits are the most widely used incentive program. Certain expenses incurred in connection with the rehabilitation of an old building are eligible for a tax credit. Rehabilitation investment tax credits are available to owners and certain long-term leases of income-producing properties that are listed on the National Register of Historic Places. There are two rates: 20% for historic buildings and 10% for non-residential, non-historic buildings built before 1936.

The charitable contribution deduction is taken in the form of a conservation easement and enables the owner of a "certified historic structure" to receive a one-time tax deduction. A conservation easement usually involves the preservation of a building's facade by restricting the right to alter its appearance.

The Federal Tax Incentive Programs are coordinated through the State Historic Preservation Office, Bureau for Historic Preservation, Pennsylvania Historical and Museum Commission in conjunction with the National Park Service. Federal Historic Preservation Certification. Applications are available on-line.

### **The National Park Service "Certified Local Government" (CLG) Program**

This program was created in 1980 under the National Historic Preservation Act and is administered by the Pennsylvania Historical and Museum Commission. The Certified Local Government Program provides additional benefits to municipalities interested in historic preservation. Once certified, the local government is then eligible for:

- Direct participation in the federal historic preservation program,
- Greater access to historic preservation funds,
- Greater level of information exchange with the State Historic Preservation Office (SHPO),
- Access to technical assistance and training from the SHPO, and
- A higher degree of participation in statewide preservation programs and planning.



This program was established to allow local governments to participate directly in the national historic preservation program and to provide funding to local governments to carry out their historic preservation responsibilities (survey, inventory, designation and protection of their historic resources). To achieve CLG status in Pennsylvania, a municipality applies to the Bureau for Historic Preservation. All states are required to set aside 10% of their federal historic preservation grant funds to CLGs. These grants are presently offered as a ratio of 60% funding from the Pennsylvania Historical and Museum Commission (PHMC) and 40% match from the CLG.

Critical requirements for CLG designation are:

- adopt and enforce appropriate legislation for designation and protection of historic properties,
- establish a qualified historic preservation commission,
- enact a system for surveying historic properties,
- enact a public participation component as part of the local program,
- adequately perform duties and responsibilities delegated through the certification process,
- provide continuing in-service historic preservation training for HARB and Historical Commission members (8 hours training annually per member),
- a good faith effort to appoint HARB members with appropriate professional qualifications for historic preservation backgrounds,
- submit an annual report of the municipality's historic preservation activities, and
- enforce the historic district ordinance.