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FUTURE

A SUPPLEMENTAL GUIDE TO
MODEL HISTORIC PRESERVATION LAW
FOR MUNICIPALITIES IN NEW YORK STATE

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A Guide to NYS's Model Historic Preservation Law for Local Municipalities

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This material serves as a reference guide to the updated and enhanced Model Historic Preservation Law jointly authored by the Preservation League of New York State and the State Historic Preservation Office and published in 2014. It provides an overview and explanation of each section of the Model Law, as well as supplemental information on additional resources to support adoption and implementation at the municipal level, as well as financial incentives, educational and outreach opportunities and training that can be accessed after adoption of such local historic preservation efforts.

Introduction

An array of federal, state and local historic preservation laws and designations offer varying degrees of protection and development opportunity for historic properties. The regulations and designations provided by the National and State Historic Preservation Acts, and incentives offered by other federal and state laws, can be helpful tools when evaluating opportunities or implementing programs for downtown or main street revitalization and renewal and reinvestment in historic neighborhoods. In New York State, local historic preservation law can also play a key regulatory and incentive role for historic properties, and represents the strongest legal protection against inappropriate exterior remodeling, new construction, or demolition within a historic neighborhood or commercial area.

A municipal preservation law (sometimes referred to as a local landmark law) is local legislation established to protect and enhance historic architecture and attributes of a community's historic downtown, industrial area, and residential neighborhoods. These laws protect individual properties and historic districts through a local designation and permitting process that requires advanced review of proposed projects to determine their impact on historically significant structural features and nearby historic properties.

Local landmark protection is now in place in several hundred communities across New York State and over two thousand communities nationwide. The legal status of such laws has a long history and the policy and economic benefits of local landmark designations are well established. Federal and state court decisions clearly support the authority of municipalities to regulate historic properties as a means of enhancing the quality of life and character in a community. The economic benefits are also extensively documented. Studies indicate that not only can local and national historic designation increase property values by 5 to 35% per decade, but the value of newer construction within those districts has also been shown to increase. And in New York State, such designations can lead to eligibility for possible tax abatement and rehabilitation tax credit incentives at the local, state and federal level.

To support local historic preservation initiatives in New York, the State Historic Preservation Office and the Preservation League of New York State published an updated model preservation law that serves as template for municipalities which seek to establish or enhance their local historic preservation law. First published in the late 1980s, the Model Law was substantially revised in 2014 to reflect legal

developments and approaches and over three decades of community-based experience with this form of municipal law.

This revised model law is included in this Guidebook and is available online from the State Historic Preservation Office and the Preservation League of New York State. While this baseline ordinance meets requirements that communities must have in place to qualify for the Certified Local Government program, advocates and municipal leaders should evaluate the model law to determine if enhancements or changes are needed to adapt the law for local needs and circumstances. Communities have different goals for their preservation programs, and the local law that will work best is one that is adapted to serve those local needs. Staff at both the agency and the League is available to answer questions and support your adoption and implementation of such a law.

Nonetheless, the model law contains core elements and components that every local law should integrate if it is to function productively. Incorporation of these essential components which conform with the structure of other local laws and government administrative processes makes the law more comprehensible to the general public, property owners, and government leaders and municipal staff.

Core Components of a Local Preservation Law

In New York State, a community's local preservation law is typically based on the Model Law, sometimes with revisions that serve local needs. However, a fully functional and effective preservation law has essential core components, described below.

Purpose of a Local Preservation Law

A purpose clause establishes the broad framework and goals for a local government enacting or enhancing local preservation law. This section should be carefully drafted; if the actions of a local historic preservation commission are ever challenged, a court may look back to this section of local law to determine whether the commission's actions fall within the law's broad framework. Community leaders will need to consider the following:

- Why preserve historic buildings?
- What does the community hope to accomplish through such regulation?
- Should the focus be on individual landmarks or include larger historic districts, such as commercial structures along a main street or downtown business district?

Purpose clauses should be firmly grounded in "public welfare" considerations, such as protection of community heritage and character, orderly and efficient growth, quality of life, protection of property values, and associated economic benefits. In Section 2, the Model Law proposes a comprehensive set of purposes in concise, language.

Enabling Authority

Section 3 of the Model Law identifies the legal authority by which the municipality is able to define and regulate historic buildings and districts. Section 10 of New York's Municipal Home Rule Law grants such power to local governments and specifically provides that these powers can provide for the protection and enhancement of the physical and visual environment. The statutory framework in New York makes clear that planning regulations such as historic preservation laws are authorized under the public welfare component of municipal police powers and thus serve a valid public purpose and a legitimate function of local government.

Nonetheless, the ability to regulate historic resources is still subject to prohibitions against the taking of private property for public use without compensation as well as the guarantee of due process. These issues are addressed in later sections of the Model Law.

Establishment of a Preservation Commission

The law must identify the local entity charged with administering and enforcing the law and identify that entity's specific responsibilities. Among the questions a community needs to ask itself are:

- Should the municipality require professional qualifications of some or all of its commission members, and what types of qualifications are appropriate?
- Will the commission have autonomous decision-making authority or serve in an advisory capacity to a municipality's legislative body, such as the village, town or city council? (The Model Law provides language for either option, but the Preservation League of New York State favors the autonomous commission model, as it allocates full authority for the designation process to the expertise of the commission.)
- How will the administration of the commission be organized and what reporting obligations must it fulfill?
- How will vacancies be filled, should members have term limits, and what are appropriate training and attendance requirements to assure the smooth functioning of the commission?

The scope of powers and organization of the commission are laid out in Sections 4 and 5 of the Model Law, which also details rules for quorum, the procedure for calling meetings, and establishes training and attendance requirements for commission members. Sections 6 and 7 establish that the commission's meetings are subject to requirements of the Open Meetings Law and require an annual report of the commission's activities to the village/town/city executive. Section 8 allows for the establishment of committees among commission appointees.

Scope of Powers and Duties

At the core of any commission's role is the ability to identify historic properties and the power to review, and if found necessary, to deny an application to alter or demolish historic resources, as well as the ability to enforce such decisions. It is important that this section of the law detail the scope and power

of specific authorities and actions that can be undertaken by the commission, even if duplicative of other sections of the law. Core powers and duties of a commission include:

- Survey and identification of historically and architecturally significant buildings and structures (and possibly landscapes and/or interiors);
- Maintenance of an inventory of such designated resources;
- Establishment of standards and procedures for review and designation of historic resources;
- Creation of a defined process for the review of applications for alteration or demolition of historic resources, as well as new construction within historic districts;
- Enforcement of affirmative maintenance requirements for designated resources.

The above powers and additional advisory and educational roles for the commission are addressed in Section 9 of the Model Law. This section also notes what language is needed to establish an autonomous commission that self-designates landmarks and historic districts or an advisory commission that merely recommends such designations for action by a village, town or city board.

The model law notes in Section 9 (c) - and it is worth added emphasis – that designation of a historic district under a local preservation law is not to be construed as a zoning district under municipal law. The work of the local historic preservation commission is focused on aesthetics, not land use. Only village/town/city boards have the authority to determine land use.

Criteria and Procedures for Designating Historical Resources

Designation criteria are standards for determining which buildings qualify as individual local landmarks or could be included in a local historic district. Community leaders will need to consider:

- What types of historic resources should be designated? Typically, commercial, residential, industrial and public buildings are focal points for such laws.
- Does the community want to consider designation of important landscapes, such as parks and cemeteries? Is the community interested in protecting publically accessible interiors, such as theater lobbies and performance spaces?
- What criteria should be used for designation?
- Should the local law consider only individual buildings and structures or allow the designation of historic districts as well?

The designation criteria and process should be carefully specified so that if a designation is ever challenged, the court will have a set of clear standards against which to measure actions taken to designate a property or district. Section 11 details criteria for listing individual structures or historic districts, as well as providing optional language regarding potential designation of interior or scenic landmarks.

Such designations should be based on thorough, methodical and professionally conducted “cultural resource surveys.” Such surveys can provide the basis for clear criteria for which a property may be designated. Funding for cultural resource surveys is available through the Certified Local Government

program, administered by the New York State Historic Preservation Office. The Preservation League of New York State also offers funds for cultural resource surveys through the Preserve New York grant program, a partnership with the NYS Council on the Arts.

Public Notice and Hearing Requirements

Designation of local landmarks should not only follow strict criteria for substantiating a designation, but should also establish consistent criteria for how the designation process proceeds, including notification of property owners and the public at large of proposed designations and a timeline for review and input.

- Who should receive notice of proposed designations and in what format?
- How should the notification and review requirements differ between individual property designation and those of proposed historic districts?
- What should constitute the public record of such deliberations?
- How should property owners be informed of the decisions of the commission?

Note that Section 12 of the Model Law details separate public notice requirements for proposed individual and historic district designations. Whether a municipality chooses an autonomous or advisory commission structure for the model law, the commission must comply with public notification and public hearing guidelines.

Procedures and Criteria for Actions Subject to Review

Designation of historic properties is only one aspect of a commission's responsibilities. Another significant responsibility is review of proposed work or alterations to designated historic properties.

Review of proposed alterations can be the most challenging component of a commission's work. Of equal importance is the ability to define routine or preventative maintenance that a property owner may undertake without seeking the approval of the commission. These terms and others used throughout the model law are defined in Section 25, and such definitions should be directly incorporated into a local preservation law.

A commission must evaluate issuance of a Certificate of Appropriateness for any proposed exterior alteration, restoration, reconstruction, demolition, new construction, or move of a designated landmark or property within a designated historic district, as outlined in Section 13 of the Model Law. This documentation represents review and approval by the commission of alterations proposed by the property owner to a structure landmarked by the commission. This will require close coordination and cooperation with the municipal building department, which will often be the first point of contact for a property owner seeking municipal permits.

Sections 14 and 15 detail the process and criteria by which a commission may approve, approve with modifications, or deny a Certificate of Appropriateness (also known as a "C of A"), as well as the commission's authority to approve outright work that is considered ordinary maintenance or replacement in kind. For more significant work, Sections 16 – 18 lay out the public hearing and notice

requirements for consideration of a certificate, as well as a timeline for rendering decisions regarding proposed work, as well as extensions and expirations of such certificates.

An applicant may contest the denial of a certificate of appropriateness based on economic hardship. Section 19 lays out the process, criteria and timeline for seeking relief from a commission's determination.

Consideration of Economic Impacts and Findings of Hardship

Some members of the community may be apprehensive about the economic impacts of a local preservation law. Owners want to know if they will be forced to "pay more" for work they want to accomplish, subject to the requirements of the commission. Usually the cost of meeting the requirements of a preservation law does not cause owners to spend unreasonable amounts of money. In fact, an owner required to repair rather than remove and replace building elements may find the preservation option less costly. And historic designation at the local, state and federal level can sometimes open the door to incentives that reward in-kind replacement and replication of historic features. Such incentives available in New York State are referenced later in this document.

However, compliance with state and federal constitutional requirements requires that a local law include a procedure to allow an owner of locally designated property to make the case that enforcement of the law may cause unusual and extreme economic hardship to the property owner. While economic considerations should not play a role in designation of a property, economic hardship can play a role in how a property owner responds if a proposal to alter a landmarked property is denied.

Communities should establish an administrative procedure within the law to bring out certain facts that courts have held relevant in determining if such regulation is overly burdensome. Section 19 details specific criteria, process and timelines for determining economic hardship in instances where the property owner feels he or she cannot realize a reasonable return on the investment required by the Certificate of Appropriateness. The review includes a public hearing component, and specifies that no other permits or land use approvals shall be issued until the hardship matter is resolved in the prescribed manner.

Proposed demolition of landmarked structures is addressed in Sections 20 and 21, and the Model Law permits it only in instances where hardship has been determined by the commission and where a replacement project has been approved, unless there is an express written finding from the municipality that the structure presents a threat to public health and safety. Once again, a specific set of findings and hearings is required to make a determination of hardship.

Maintenance Requirements

Effective laws generally contain an affirmative maintenance clause requiring owners of locally designated properties to keep their property in good repair. The Model Law provides specific examples of prohibited disrepair in Section 22. Without such a clause, a municipality may not be able to prevent demolition by neglect or deterioration of a building's historic fabric. Some municipalities in New York

State have passed stand-alone demolition-by-neglect laws in order to emphasize this requirement in local law.

Enforcement and Penalties

A local landmark law should contain a process (and identify municipal staff) to enforce its provisions, as well as specify penalties for non-compliance or related violations, such as work beginning before a Certificate of Appropriateness has been issued. Section 23 specifies the procedures for enforcing a Certificate of Appropriateness and the consequences of non-compliance. Among the more effective penalties is the requirement that violators be required to restore the property to its condition prior to the violation. Enforcement matters should be brought to the attention of the municipal governing board and municipal attorney as soon as possible when a violation has occurred.

Appeals

A defined appeals process provides a local commission with a way to resolve disagreements between the commission and the property owner. What procedures should the law establish for allowing appeals of the commission's decisions? Does the local village/town/city council want to hear such appeals, or should aggrieved parties be directed to apply to the Supreme Court for review under Article 78 of the Civil Practice Law and Rules? While an Article 78 proceeding is always an option for an aggrieved party, Section 24 of the Model Law provides for the municipal board to hear appeals, subject to the same record and criteria as in the local law.

Definitions

A concise set of definitions helps the commission and public understand clearly understand the scope of regulation. Section 25 provides a comprehensive set of definitions of key terminology used in the various sections of the Model Law, which should be adopted as a component of the local municipal law.

Support for Implementation of a Local Historic Preservation Law

There are ample resources to support efforts to adopt and implement a local historic preservation law, as well as new financial incentives at the state level to assist property owners in stewarding their historic properties. The following section identifies key supplemental resources for municipal boards, advocates, and owners of historic properties.

Additional Resources to Support Adoption and Implementation of a Local Historic Preservation Law

Historic Preservation at the Municipal Level

The NYS Department of State (DOS) publishes a summary of the main legal components of municipal historic preservation efforts. [“Legal Aspects of Municipal Historic Preservation”](#) provides a useful overview of programs and practices that can support local historic preservation efforts. This and other publications in the Department of State’s *James A. Coon Local Government Technical Series* can serve as important resources in efforts to undertake the best approach to historic resource protection in your community. The National Park Service publishes [“Zoning and Historic Preservation”](#) as part of their *Cultural Resources Partnership Notes* series, which examines steps local municipalities can take to better match zoning language with historic resource protection goals.

Process for Adopting a Local Historic Preservation Law

In New York State, the process for adopting a local preservation law follows the requirements for any other type of local law. Regardless of who drafted the law (volunteer committee, business group, town official or attorney, etc.), the proposed law must be introduced by a member of the local governing body and is subject to a public hearing before a vote to adopt into law. Given the implications of the proposed law for local planning and zoning, advisory review by the municipal and county planning boards will also be required. Further details on the procedures required to adopt local laws in New York State can be reviewed in the DOS publication, [“Adopting Local Laws in New York State.”](#)

State Environmental Quality Review Act (SEQRA) and Local Historic Preservation Review

Under the authority of a local preservation law, historic preservation commissions have the duty of approving or disapproving applications to demolish, relocate, or alter designated historic properties. While the issuance of Certificates of Approval might appear to be an “action,” such approvals are not subject to State Environmental Quality Review (SEQR). Based on the controlling SEQRA statute, regulations and subsequent court decisions, a commission decision regarding a certificate is considered ministerial and non-discretionary and thus exempt from SEQR. Other state or local agencies may have a formal review role regarding the same project, however, and for their purposes, the proposed project could be considered an action that triggers SEQR. An informative overview of the relationship between local historic preservation review and SEQRA is available in an article in OPRHP’s [fall 2009 issue of *The Local Landmarker*](#).

Administering a Historic Preservation Commission – Other Requirements

The meetings and work of a commission are subject to open meeting, public notice, executive session, minutes and other record keeping and additional requirements of [New York State Open Meetings Law \(Public Officers Law, Article 7\)](#). Additionally, commission records are subject to public access under the provisions of the [New York State Freedom of Information Law \(Public Officers Law, Article 6\)](#). Finally, members of the commission and municipal staff working on behalf of the commission should be subject

to disclosure and other requirements of any ethics law passed by the municipality. ([NYS General Municipal Law, Sections 800-809](#))

The National Alliance of Preservation Commissions also [publishes a code of ethics specifically for commissioners and staff](#), as well as [a guide to parliamentary procedure](#) that commissions may choose to adopt.

Relationship between Local Preservation Commission and Other Municipal Departments

Whether through adoption in local law or by municipal resolution, a chain of clear communication among municipal departments should be established such that the work and purview of the historic preservation commission, village, town or city board, planning and zoning boards, and municipal building department and utility operations are clearly understood in relation to one another, and that municipal leadership expects clear coordination and communication among these involved parties.

Certified Local Government Program

Among New York State municipalities with preservation laws, over 70 communities have qualified for [Certified Local Government \(CLG\) status](#). Becoming a CLG offers communities tangible financial and programmatic benefits. Jointly administered by the National Park Service (NPS) and the State Historic Preservation Office (SHPO) in each state, the program is a “preservation partnership between local, state and national governments focused on promoting historic preservation at the grass roots level.” Establishment of a local preservation law that meets CLG requirements is a fundamental component of establishing CLG status. The Model Law published by the NYS SHPO and Preservation League is CLG compliant.

New York is required to allocate ten percent of its annual federal historic preservation appropriation to CLG activities. In recent years, New York State has used CLG monies to fund architectural and historical surveys; nominations to the National Register of Historic Places; staff work for historic preservation commissions; community design guidelines and preservation plans; public outreach materials such as publications, videos, exhibits, and brochures; training for commission members and staff; and rehabilitation or restoration of National Register-listed properties.

Local, State and Federal Financial Incentives for Landmarked Structures

The ability to access federal grant funds for the above purposes is one of the benefits of participation in the CLG program. Another benefit of local landmark capability is the ability of taxing jurisdictions to abate taxes on improvements to locally designated historic properties for a ten-year period under [Section 444-a of New York's Real Property Tax Law](#). The law does not reduce taxes on a property, but defers a possible increase in assessed value and resulting taxes for ten years, in order not to penalize reinvestment in historic properties.

The financial incentives for rehabilitation provided by the state and federal rehabilitation tax credit program apply to commercial properties listed on the National Register of Historic Places and to owner-occupied residential properties listed on the State Register of Historic Places. Local landmark status

alone does not qualify a property to use either of these state and federal rehabilitation credits. A property owner undertaking rehabilitation work incentivized by the state or federal credit must also secure approval for such work from a local historic preservation commission if the property is locally designated.

The New York State Historic Preservation Office website provides information on [both the federal and state rehabilitation tax credit incentives](#).

Grant Funding Sources for Historic Resource Survey Work

In New York State, there are two sources of funding for historic resource survey work. Commissions are encouraged to pursue this funding to underwrite costs of a local historic resources survey. Preserve New York is a grant program of the Preservation League of New York State and the New York State Council on the Arts, and provides support for three types of projects: cultural resource surveys, historic structure reports, and historic landscape reports.

An applicant must be a not-for-profit group with tax-exempt status or a unit of local government. State agencies and religious institutions are not eligible to apply. The program generally provides only partial support on a competitive basis, and grants are likely to range between \$3,000 and \$10,000. For more information or to discuss your project funding needs, please contact the League's regional directors of Technical and Grant Programs:

Eastern New York, including NYC and Long Island - Erin Tobin: 518-462-5658 x12

Central and Western New York, including Southern Tier - Tania Werbizky: 607-272-6510

Additionally, [the Hudson River Valley Greenway](#) provides access to grant funding to 264 "partner" communities within 13 counties that border the Hudson River. The Greenway Communities Grant Program helps communities develop and implement a vision for their future that balances Greenway criteria of economic development considerations with resource protection and promotion objectives. This program has been used to fund historic resource survey grants in a number of communities. Typical grants under the "[Greenway Communities Grant Program](#)" range from \$5,000 - \$10,000, with greater financial assistance available for projects involving two or more municipalities.

Conclusion

Passage of a local preservation law based on the well-established components of the Model Law can provide important benefits and encourage the rehabilitation of our state's underutilized commercial buildings. The National Trust for Historic Preservation summarizes an extensive list of attributes for communities that undertake local landmark protection:

- Local historic preservation laws can be tailored to the specific needs and distinct identity of the community, and helps to protect and preserve local resources, even while the community is changing.

- Local districts protect the investments of owners and residents. Buyers know that the aspects that make a particular area attractive will be protected over a period of time. Real estate agents in many cities use historic district status as a marketing tool to sell properties.
- Local districts encourage better design. It has been shown through comparative studies that there is a greater sense of relatedness, more innovative use of materials, and greater public appeal within historic districts than in areas without historic designations.
- Local districts help the environment. Renovating an existing building is almost always more environmentally beneficial than demolishing an existing structure and building a more energy-efficient one. Historic district revitalization can, and should, be part of a comprehensive environmental policy.
- The educational benefits of creating local districts are the same as those derived from any historic preservation effort. Districts can help explain the development of a place, the source of community inspiration, and technological advances in building design and building materials.
- A local district can result in a positive economic impact from tourism. A historic district that is aesthetically cohesive and well promoted can be a community's most important attraction. The retention of historic areas as a way to attract tourist dollars makes good economic sense.
- The protection of local historic districts can enhance business recruitment potential. Companies continually re-locate to communities that offer their workers a higher quality of life, which is greatly enhanced by successful local preservation programs and stable historic districts.

While a local preservation law is a powerful tool for protecting historic resources, it should be one component of a larger program that seeks to identify and protect a community's historic resources. Both regulatory and incentive programs have a place in the mix, along with other local laws which together demonstrate that a municipality has recognized the value of historic preservation as part of an overall effort to promote community well-being and economic development.

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