

**CHAPTER 1210  
HISTORIC PRESERVATION**

**1210.01 PURPOSE AND INTENT**

City Council hereby declares as a matter of public policy that the protection, enhancement, and perpetuation of Landmarks and Historic Districts is necessary to promote the economic, cultural, educational and general welfare of the public. Inasmuch as the identity of a people is founded on its past, and inasmuch as the City of Middletown has many significant historic, architectural, and cultural resources which reflects its heritage, this act is intended to:

- (a) Protect and enhance the Historic Landmarks and Historic Districts which represent distinctive elements of Middletown's historic, architectural, and cultural heritage;
- (b) Foster civic pride in the accomplishments of the community in the past;
- (c) Stabilize and improve property values of designated Landmarks and Districts;
- (d) Protect and enhance Middletown's attractiveness to visitors and the support and stimulus to the economy thereby provided;
- (e) Insure the harmonious, orderly, and efficient growth and development of Middletown;  
and
- (f) Provide a review process for the continued preservation and protection of Middletown's historic resources.

**1210.02 DEFINITIONS**

- (a) Alteration – Any act or process that changes one or more of the exterior architectural features of a building or structure, including, but not limited to the erection, construction, reconstruction, or removal of the building or structure.
- (b) Addition – Any act or process that changes one or more of the exterior architectural features of a building or structure by adding to, joining with or increasing the size or capacity of the building or structure.
- (c) Applicant – Any person, association, partnership or corporation who or which applies for a Certificate of Appropriateness in order to undertake the erection, construction, reconstruction, or removal of the building or structure.
- (d) Building – For purposes of this chapter, any structure created for the support, shelter, or enclosure of persons, animals, or property of any kind and which is permanently affixed to the land.

(e) Certificate of Appropriateness – A certificate issued by the Historic Commission indicating that a proposed change, alteration, addition or demolition of a historic building or structure within a Historic Landmark or Historic District is in accordance with the provisions of this chapter and the adopted design guidelines.

(f) Change – Any alteration, addition, demolition, removal or construction involving any property subject to the provisions of this chapter.

(g) Construction – The act of constructing an addition to an existing structure or the erection of a new principal or accessory structure on a lot or property subject to the provisions of this chapter.

(h) Demolition – Any act or process that destroys in part or in whole any building or structure.

(i) Historic Commission – The board or commission established under the provisions of this chapter.

(j) Historic District – Any area designated by ordinance of the city which may contain within definable geographical boundaries, buildings, structures, or sites of historic, architectural or archaeological significance.

(k) Historic Landmark – Any individual site designated by ordinance which contains within definable geographical boundaries, buildings, structures, or sites of historic, architectural or archaeological significance.

(l) Historic Structure – Any building or structure which has historic, architectural, or archaeological significance and has been designated according to the provision of this chapter. This designation is based on the significance of a property to the history, architectural, archaeology or culture of the community, state or nation. It may be achieved in several ways:

- (1) Association with broad patterns of our history, events, or activities
- (2) Association with important persons
- (3) Distinctive physical characteristics of design, construction, workmanship or form
- (4) Potential to yield information important in history or pre-history.

(m) Owner – the owner or owners of record of a Historic Landmark or property contained within a Historic District.

(n) Preservation – The act or process of applying measures necessary to sustain and retain the original historic form, integrity and materials of a historic property.

(o) Preservation Guidelines – Those standards found in the current issue of the publication “Historic Preservation Plan” of the City of Middletown as adopted by the Historic Commission.

(p) Reconstruction – the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

(q) Rehabilitation – The act or process of making possible a compatible use for a property through repair, alteration, and addition while preserving those portions or features which convey its historic, cultural, or architectural values.

(r) Restoration – The act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and the reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-related work to make properties functional is appropriate within a restoration project.

### **1210.03 HISTORIC COMMISSION**

(a) Establishment and Composition.

(1) In order to execute the purposes declared in this chapter, there is hereby created a commission to be known as the Historic Commission for the City of Middletown.

(A) The Historic Commission shall consist of a minimum of eight members, all residents of the City, and every attempt shall be made to include the following areas of expertise:

- (i) A registered architect;
- (ii) A professional landscape architect, historian, archaeologist, or city planner;
- (iii) A person whose education and experience qualify him or her in building construction;
- (iv) A member of the Middletown Historical Society.
- (v) An attorney;
- (vi) Electors of the City: (a) one elector who neither resides nor owns property in a designated historic district or a zoning district which requires approval of the Council for alterations and/or modifications; and, (b) one elector from each historic district or zoning district which requires approval of this Council for alterations and/or modifications, who shall reside or own property in such district.
- (vii) A member of the Planning Commission.

(2) The Historic Preservation Administrator, appointed by the City Manager from the Planning Department, in addition to other duties, shall serve as Secretary to the Historic Commission.

(b) Additional qualifications: All members shall have, to the greatest extent practical, interest and proficiency in historic preservation, reconstruction, rehabilitation and restoration.

(c) Appointment and Terms. Historic Commission members shall serve for a term of four years. Terms shall be staggered with at least two members having expiring terms each year. Historic Commission members shall serve without compensation.

(d) Organization. The Historic Commission chair and vice-chair shall be elected from and by the members at the first meeting of each calendar year. A simple majority of members shall constitute a quorum for all meetings.

(e) General Powers and Duties. The Historic Commission shall have the following powers and duties, in addition to those otherwise specified:

(1) The Historic Commission shall conduct a continuous survey of all areas, places, structures, works of art, or similar objects in the City which the Commission has reason to believe are or will be eligible for designation as historic sites, landmarks or districts.

(2) The Commission shall work for the continuing education of the residents of the City in regard to the archaeological, historical, and architectural heritage of the City and the historic sites and historic districts designated under the provisions of this chapter. It shall keep a register of all historic sites and historic districts.

(3) The Commission shall provide a public forum for the review of nominations of areas, places, structures, works of art, landmarks or similar objects within the City to the National Register of Historic Places of the U.S. Department of the Interior. Review shall include the relationship of the proposed nomination to the Historic Preservation Plan of the City and any other consideration which may be relevant to the proposed nomination. Such nominations may be generated from the Commission or from any other source.

(4) Approve or disapprove Certificates of Appropriateness in accordance with the provisions of this ordinance.

(5) Adopt and periodically modify the Historic Preservation Plan as the general policy for designation of Historic Landmarks and Historic Districts and for the issuance or denial of Certificates of Appropriateness.

#### **1210.04 HISTORIC PRESERVATION ADMINISTRATOR**

(a) The City Manager shall appoint a Historic Preservation Administrator from within the Planning Department to serve in addition to other duties.

(b) The Administrator shall enforce the regulations of this chapter in accordance with the administrative provisions herein.

(c) The Administrator shall issue Certificates of Appropriateness in accordance with requirements set forth in this chapter and shall take any other action authorized by this chapter to insure compliance with, or prevent violation of, its provisions.

## **1210.05 DESIGNATION OF A HISTORIC LANDMARK OR HISTORIC DISTRICT**

(a) Criteria. In considering any area, place, structure, work of art or similar object in the City as a historic site or historic district, the Historic Commission shall apply the following criteria:

- (1) The structure or site's character, value or significance as part of the development of the City, the State or the United States;
- (2) Its location as a site of a significant historic event;
- (3) Its identification with a person who significantly contributed to the development of the City;
- (4) Its embodiment of distinguishing characteristics of an architectural style or type;
- (5) Its exemplification of the cultural, economic, social or political heritage of the City;
- (6) Its relationship to other distinctive areas or structures designated for preservation;
- (7) Its unique location or singular physical characteristic representing an established and familiar feature of the City; and
- (8) Its inclusion of prehistoric and/or historic archaeological sites or other important representations of previous cultures.

## **1210.06 PROCEDURES FOR DESIGNATING HISTORIC LANDMARKS AND HISTORIC DISTRICTS**

The Historic Commission shall propose designations of any area, place, structure, work of art or similar object in the City as a historic site or historic district, and shall thereupon take the following actions:

(a) Recommendations Required. The Historic Commission shall advise the Planning Director of the proposed designation and secure from the Director a recommendation with respect to the relationship of the proposed designation to the Master Plan of the City and the Historic Preservation Plan. The Planning Director shall give an opinion as to the effect of the proposed designation upon the surrounding neighborhood and an opinion and recommendation as to any other planning consideration which may be relevant to the proposed designation, together with a recommendation of approval, rejection or modification of the proposed designation. Such recommendation shall be submitted in written form by the Historic Commission, along with its recommendation concerning the proposed designation.

(b) Notification of Owner and Notice of Public Hearing.

(1) The Historic Commission shall then notify the owner of such property of the proposed designation. Whenever possible, the Commission shall secure the owner's written consent for submittal of the proposed designation, together with its recommendation of findings of fact.

(2) In the event that such owner refuses or declines to give his written consent to the proposed designation, the Historic Commission shall schedule a public hearing on the proposed designation, setting forth a date, time and place and causing written notice to be given by certified mail to the owner or any person having a legal interest of record in such property being proposed for designation. The Commission shall cause a legal notice to be published in a newspaper of general circulation in the City ten days prior to the hearing, setting forth the nature of the hearing, the property involved, and the date, time and place of the scheduled public hearing.

(c) Conduct of Hearing and Notification of Decision. The Historic Commission shall conduct the public hearing as provided and shall provide an opportunity for all interested parties to express their opinions under such rules as the Commission shall adopt for the purpose of governing the proceedings of the hearings. The Commission shall determine if any or all of the criteria listed in Section 1210.05 have been met. The Commission shall then make a decision regarding the proposed designation, in writing, within thirty days after the initial hearing date and shall notify the owner or any person having a legal interest in such property, as well as other interested parties who request a copy. The Commission shall state in its recommendation findings of fact that constitute the basis for its decision and shall transmit such recommendation concerning the proposed designation to the Middletown City Council.

(d) Action of City Council. The City Council shall give due consideration to the findings and recommendations of the Historic Commission, as well as such views as may have been expressed by persons participating in the public hearing before the Commission, in addition to the recommendation of the Planning Department, in making its determination with respect to the proposed designation of any areas, places, structures, works of art or similar objects as historic sites or historic districts. The City Council may, at its discretion, hold public hearings on any such proposed designation, whether such designation is proposed with the consent of the owner or after public hearings before the Commission. The City Council may then designate by ordinance areas, places, structures, works of art or similar objects as historic sites or historic districts.

(e) Notification of Designation. As soon as is reasonably possible, the Historic Commission shall notify the Chief Building Official of the official designation. The Commission shall also send by certified mail a certified copy of the designation ordinance to the owner and any person having a legal interest in such property.

(f) Record of Designation. The Historic Commission shall direct the Law Director to cause a record of such designation to be filed with the County Recorder.

## **1210.07 CERTIFICATE OF APPROPRIATENESS**

(a) Certificate of Appropriateness Required. No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a Historic Landmark or property within a Historic District, nor shall any person make any material change in appearance of such property, its light fixtures, signs, awnings, windows, siding, roof, doors, shutters, sidewalks, fences, walls, retaining walls, steps, paving, or other exterior elements which affect the appearance and cohesiveness of the Historic Landmark or Historic District, without first obtaining a Certificate of Appropriateness from the Historic Commission. No permits for zoning, building or demolition shall be issued without first obtaining a Certificate of Appropriateness.

Ordinary repair and maintenance of a building or structure which does not change or alter the appearance of the building or structure will not require a Certificate of Appropriateness. A Certificate of Appropriateness is not required for interior modifications to a building or structure that are not visible from the exterior of the building or structure unless otherwise prohibited in section 1210.10(a)(6).

(b) Criteria for approval of a Certificate of Appropriateness. In considering an application for a Certificate of Appropriateness the Historic Commission shall apply the following criteria:

- (1) Properties which contribute to the character of the Historic District shall be retained, with their historic architectural features intact and altered as little as possible;
- (2) Any alteration of an existing property shall be compatible with its historic character, as well as with the surrounding district;
- (3) New construction shall be compatible with the district in which it is located. In determining compatibility the Historic Commission shall consider the following:
  - (4) The general design, character, and appropriateness to the property of the proposed alteration or new construction;
  - (5) The scale of the proposed alteration of new construction in relation to the property itself, surrounding properties, and the neighborhood;
  - (6) The texture, materials, and color and their relation to similar features of other properties in the neighborhood;

(7) The visual compatibility with surrounding properties, including proportion of the properties façade, roof shape, and the rhythm of spacing of properties on streets, including setback; and

(8) The importance of historic, architectural, or other features to the significance of the property.

#### **1210.08 CERTIFICATE OF APPROPRIATENESS APPLICATION PROCEDURE**

(a) **Submission of Application.** Applications for a Certificate of Appropriateness shall be submitted to the Historic Preservation Administrator in a form specified by the Administrator. Plans shall include detailed and accurate designs, elevations, photos of the property, material samples, specifications and other related material.

(b) **Review of Application.** Upon receiving a complete application for a Certificate of Appropriateness, the Historic Preservation Administrator shall transmit copies of the application to the Historic Commission and to abutting property owners. Within 14 days of receipt of the application by the Commission, the Commission shall convene to consider the approval of the request. Abutting property owners will also be notified regarding the time and place of the meeting.

(c) **Action by Historic Commission.**

(1) The Historic Commission shall take action to approve, deny, or approve with modifications within 45 days of receiving the application. The Commission may hold a public hearing regarding the application if adjoining properties are affected by the proposed alterations. All decisions of the Commission shall be in writing and the findings and determinations of the Commission to approve, deny or approve with modifications along with the reasons for said decision shall be reflected in the minutes of the meeting. Meeting minutes shall be filed with the Clerk of City Council. Notice shall be sent to the applicant also outlining the basis for the decision.

(2) **Effect of Inaction.** If no action is taken by the Historic Commission on an application for a Certificate of Appropriateness within 60 days after receiving the application, the Certificate shall be deemed issued.

(d) **Validity of Certificate.** Certificates of Appropriateness shall be valid for one year after which time the owner must re-apply if he/she still wishes to undertake work on the property.

#### **1210.09 HARDSHIP CRITERIA AND PROCEDURE**

(a) **Application for Demolition.** An applicant whose Certificate of Appropriateness for a proposed demolition has been denied may apply for relief on the grounds of hardship. In order to prove the existence of hardship, the applicant must establish that:

- (1) The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible; and
- (2) The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
- (3) Efforts to find a purchaser interested in acquiring the property and preserving it have failed.

(b) Application for Alteration. An applicant whose Certificate of Appropriateness for a proposed alteration has been denied may apply for relief on the grounds of hardship. In order to prove the existence of hardship the applicant shall establish that the property is incapable of earning a reasonable return regardless of whether that return represents the most profitable return possible.

(c) Hardship Application Procedure.

(1) After receiving written notification for the Historic Commission of the denial of a Certificate of Appropriateness, an applicant may commence the hardship process. No building permit, demolition permit or zoning permit shall be issued unless the Commission makes a finding that a hardship exists.

(2) The applicant must file an application in writing to the Historic Preservation Administrator outlining the reasons for the hardship request.

(3) The Historic Commission may hold a public hearing on the hardship application at which an opportunity will be provided for proponents and opponents of the application to present their views.

(4) The applicant shall consult in good faith with the Historic Commission, local preservation groups, and interested parties in a diligent effort to seek an alternative that will result in preservation of the property. The Commission may impose a waiting period not to exceed sixty days in order to seek alternatives prior to making a decision regarding an application for alteration and not to exceed six months for an application for demolition. During the waiting period, the Commission and the applicant shall undertake continuing discussions for the purpose of finding a means to preserve the structure, site or area involved or explore other alternatives for requested alteration of structures.

(5) If the Historic Commission and the applicant cannot agree on a means of preserving the structure through a demolition hardship appeal, within ninety days after the start of the waiting period, the Historic Preservation Administrator shall request that the Planning Director obtain approval and the Director shall have the authority to order necessary appraisals of the market value of the land and structures, if any, comprising the real estate on which the proposed demolition is to be done. The appraisal shall then be referred to the City Manager who shall, within fifteen days after the designated six-month waiting period, transmit the application, the appraisals, his recommendation relative to

the advisability of immediately purchasing such real estate and the status of the fund from which the purchase money is to be appropriated, to the City Council.

(6) Within twenty days of the receipt of the application and the report of the City Manager, the City Council shall determine whether or not the immediate acquisition of such property is in the best interest of the public. In the event of an affirmative decision, the City Council shall direct the City Manager to take the necessary steps for immediate acquisition. In the event of a negative decision, the City Council shall either direct the Issuance of a Certificate of Appropriateness, in accordance with applicable law, or, on the basis of the public's best interest, deny the Certificate.

(7) All decisions of the Historic Commission shall be in writing. A copy shall be sent to the applicant and be filed with the Clerk of City Council. The Commission decision shall state the reasons for granting or denying the hardship application. If the application is granted, the Commission shall approve only such work as to alleviate the hardship.

#### **1210.10 MINIMUM MAINTENANCE STANDARDS**

(a) Maintenance. Nothing in this ordinance shall be construed to prevent the ordinary repair and maintenance of any exterior architectural feature of a Historic Landmark or Historic District property which does not involve a change in design, material, color, or outward appearance. No owner or person with an interest in real property designated as a Historic Landmark or property within a Historic District shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Historic Commission, produce a detrimental effect upon the character of the Historic Landmark or Historic District as a whole or the life or character of the property itself. Examples of such deterioration include:

- (1) Deterioration of exterior walls or other vertical supports;
- (2) Deterioration of roofs or other horizontal members;
- (3) Deterioration of exterior chimneys;
- (4) Deterioration of exterior stucco, siding, trim, brick, stone or mortar;
- (5) Ineffective waterproofing of exterior walls, roofs, roof drainage systems, foundations, including broken or damaged windows and doors;
- (6) The permanent removal of interior architectural features or fixtures to the extent that the value of the property is diminished to make rehabilitation or restoration financially infeasible;
- (7) The accumulation of rubbish and debris;

- (8) Any condition as to cause fire or explosion or to provide a ready source of fuel to augment the spread or intensity of fire or explosion arising from any cause;
- (9) Failure to adequately secure a building or structure to prevent vandalism or destruction of a property; and
- (10) Inadequate maintenance of yards and gardens as to detract from the aesthetic qualities of the area, site or structure and its adjacent surroundings.

(b) Inspection of and Notice to Repair Sub-standard Buildings or Structures. The Historic Commission shall direct the Historic Preservation Administrator, in conjunction with the Chief Building Official, to investigate and inspect, within thirty days after initial notification, any building which in its opinion may be a substandard historic building, and after inspection the Administrator shall relay his findings to the Commission. If after inspection it is found that such building is substandard, the Administrator shall give written notice to the Commission and owner of record or person responsible for the property, or if unable to effect such notice by posting on the premises, stating in what respects the building is substandard, and setting forth the repairs, alterations or improvements to such building required to correct such substandard conditions or preserve the building, and a reasonable period of time in which the required work shall be done. Such notices shall also inform the owner or person responsible that the Administrator's and Chief Building Official's findings will be subject to the review and hearing before the Commission at a time and place set by the Commission. The Commission shall give written notice to the owner of record or person responsible thereof of the time, date and place of such hearing and give public notice of the same. Such hearing shall be held not more than thirty days after the issuance of the Administrator's notice.

#### **1210.11 HEARING ON SUBSTANDARD BUILDINGS OR STRUCTURES**

At the hearing referred to in Section 1210.10(b), the Historic Commission shall review the findings and orders of the Historic Preservation Administrator and Chief Building Official and shall determine whether such findings are true and correct within the meaning of this chapter. If the Commission concurs with their findings that the affected structure is substandard, the Commission shall further determine whether the Administrator's orders for corrections are reasonable and necessary to accomplish the purposes of this chapter.

The Commission shall have the power in connection with such hearings to administer oaths and affirmations, examine witnesses and receive such evidence as may be presented on behalf of any party or interest. Based upon such evidence, the Commission shall issue its own order affirming, reversing or modifying the order of the Administrator.

#### **1210.12 EFFECT OF ORDER OF COMMISSION AND NOTIFICATION**

An order of the Historic Commission shall bear the same consequence as if issued by the Historic Preservation Administrator. The findings and orders of the Commission shall be transmitted to the owner or person responsible for the affected building not later than thirty days

following the date of the hearing and decision.

### **1210.13 REMEDIES OF THE HISTORIC COMMISSION UPON NON-COMPLIANCE AND ADDITIONAL POWERS**

(a) Failure to comply with order. If the owner or person responsible for the affected property fails to comply with a final order to repair, alter, preserve or improve property, the Historic Preservation Administrator and the Chief Building Official, by such means and with such assistance as may be available to them, are hereby authorized and directed to cause such property to be repaired, altered or improved, and the costs thereof shall be recovered by the City in a manner provided by law.

(b) Vacant or unoccupied structures. Regarding any property that is unoccupied or vacant, the Historic Commission, upon review may, where appropriate and necessary, order the following:

- (1) That service of water, gas or electricity be terminated;
- (2) That all accumulations of flammable or combustible rubbish or debris be removed from the premises by the owner or person responsible for the building;
- (3) That all windows, doors and other openings in such buildings be locked, barricaded or otherwise secured by the owner or person responsible for the building; materials and methods used for securing buildings and affecting the exterior appearance of the building shall require a Certificate of Appropriateness issued by the Commission. Costs incurred by the City where the owner or person responsible for the building fails to comply with such orders shall be due to and collectible by the City.

### **1210.14 SEPARABILITY**

If any section, subsection, paragraph, sentence, clause or phrase of this chapter is declared invalid by any court of competent jurisdiction, the decisions of the court shall not impair the remaining portions of this chapter, which shall continue in full force and effect.

### **1210.15 CONFLICTS OF LAW**

Where a provision of this chapter is found to be in conflict with a provision in any other law, the provision that establishes the higher standard shall prevail.

### **1210.16 PENALTIES AND EQUITABLE REMEDIES**

Whoever violates or fails to comply with any of the provisions of this chapter is guilty of a misdemeanor of the second degree and shall be fined not more than seven hundred fifty dollars (\$750.00) or imprisoned not more than ninety days, or both. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.

Notwithstanding the provisions of section 1210.10 hereof, in the event any alteration, change or permanent removal is made on any property that has been designated a Historic Landmark or Historic District, in violation of any of the provisions of this chapter, the City may institute appropriate proceedings to prevent such unlawful alteration, change or permanent removal.