



Informational Materials Series

“Key Elements of a Historic Preservation Ordinance” Excerpt California Office of Historic Preservation Technical Assistance Series, Manual 14

While each preservation ordinance should be unique and tailored to the needs of the individual community, there nevertheless are certain basic components found in most effective preservation ordinances throughout California (and the country). A capsule summary of each of these common elements is listed below. The sections listed below correspond to each of the subsequent sections of this manual.

SECTION 1: PURPOSE

Understanding local preservation goals is a crucial first step in the drafting process, and every preservation ordinance should begin with a clear and succinct purpose statement. Why preserve historic buildings? What does the community hope to accomplish by regulating the appearance of new construction in historic areas? This manual presents a set of questions that are designed to assist communities in defining their preservation goals.

SECTION 2: ENABLING AUTHORITY

The ordinance should identify the legal authority by which it is able to regulate historic buildings and historic areas. This manual discusses the state and federal legal framework for preservation in California.

SECTION 3: ESTABLISHMENT OF PRESERVATION COMMISSION

The ordinance must identify the local entity charged with administering and enforcing the ordinance and list their specific responsibilities. In many cases the preservation commission is a separate decision-making body within the local government. In other cases the city council or its equivalent may act in the capacity of a preservation commission. This manual reviews key issues to consider when drafting this crucial section. For example, should the community require professional qualifications of preservation commission members? What types of activities should fall under the preservation commission’s jurisdiction? Should the commission have decision-making authority, or merely be advisory to some other body, such as a planning commission?

SECTION 4: PROCEDURES AND CRITERIA FOR DESIGNATION OF HISTORICAL RESOURCES

What types of historical resources should be protected, and how? Should the ordinance consider both individual buildings and structures and also historic districts? What about archaeological resources? Clear criteria for the designation of historical resources are an essential feature of a preservation ordinance. This manual discusses the basic issues regarding designation procedures and criteria in detail. Other related topics that are covered include owner consent; designation of interiors; and alternatives to designation such as conservation districts.

SECTION 5: PROCEDURES AND CRITERIA FOR ACTIONS SUBJECT TO REVIEW

Once a resource is designated, what types of activities that affect it should be regulated by the community? Local preservation commissions typically are granted some authority over demolition or major alteration of designated properties, and also new construction in historic areas. Within these general categories, there are many questions to consider. For example, should the community be able to say “no” to demolitions of historic properties, rather than just delay them?

SECTION 6: CONSIDERATION OF ECONOMIC EFFECT OF DESIGNATION OR REVIEW OF ACTION

To ensure compliance with federal and state constitutional requirements, the ordinance should include a procedure allowing a property owner to make the case that, in some situations, enforcement of the ordinance will cause unusual and extreme economic hardship. This is analogous to the variance provisions of a standard zoning ordinance, which provide a “release-valve” in unusual cases where regulation of development and use of a property may potentially rise to the level of an unconstitutional “taking.” From a policy perspective, it may also be desirable to allow for some degree of flexibility within a preservation ordinance in order to encourage rehabilitation and economic use of the property, to avoid making “mothballing” of regulated properties the result of historic preservation efforts.

SECTION 7: APPEALS

How are decisions made under the ordinance appealed, and to whom? A defined appeal process provides a local administrative resolution to numerous claims that might otherwise spur litigation in the immediate aftermath of a decision by the preservation commission.

SECTION 8: ENFORCEMENT

The most well-crafted preservation ordinance may be rendered ineffectual with weak enforcement provisions. How can the community ensure compliance with the ordinance? The manual outlines enforcement issues that communities should keep in mind when drafting or revising their ordinance.

SECTION 9: DEFINITIONS

A concise set of definitions helps to clearly establish the scope of regulation, particularly the type of structures and other features subject to designation and review and the specific actions that trigger review.