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## PART ONE — ADMINISTRATIVE CODE

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### ARTICLE 131 Historic Landmarks Commission

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#### CROSS REFERENCES

Historic Landmark Commission—see WV Code 8-26A  
Planning Commission—see Ord. Art. 133

#### 131.01 Established; objectives.

- (a) There is hereby established, in the Corporation of Harpers Ferry, the Harpers Ferry Historic Landmarks Commission, hereafter referred to as the Historic Landmarks Commission, in order to preserve, protect and foster the rehabilitation and maintenance of its historic edifices and to insure that the growth of the community is commensurate with its historic significance and for such other objectives as set forth in West Virginia Code 8-26A.
- (b) In accomplishing these foregoing objectives, the Historic Landmarks Commission shall, to the extent authorized by the foregoing Code provisions, function as a regulatory agency with respect to construction, alteration, repair, enlargement, restoration or relocation of buildings or structures identified and classified by the Federal, State or local government as historic buildings or located within a historic district. The Historic Landmarks Commission shall be independent of the Planning Commission; provided that no rule or regulation of the Historic Landmarks Commission shall conflict with any plan of such Planning Commission. (Ord. 2014-06, passed 01-05-2015.)

#### 131.02 Membership and term of service.

- (a) The Historic Landmarks Commission shall have five members. The members of the Historic Landmarks Commission first selected shall serve respectively for one year, two years, three years, four years and five years. Thereafter, the members shall be selected for terms of five years each, with one new member being selected each year, commencing at the first regular meeting in calendar year 1981, and in like manner at the first regular meeting in each subsequent calendar year. Vacancies shall be filled

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#### HISTORY:

Ord. 2014-06 (passed 01-05-2015, effective 02-16-2015) superseded Ord. 80-1 (passed 02-21-1980, amended 07-09-2012) to bring the structure and function of the Historic Landmarks Commission into compliance with current WV Code.

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for the unexpired term only, in the same manner as original selections are made. All members shall be residents of the Corporation of Harpers Ferry and shall be nominated and confirmed by Town Council. Members shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties. (Ord. 2014-06, passed 01-05-2015.)

- (b) Members of the Historic Landmarks Commission may be removed in accordance with the provisions of Ordinance Article 130. (Ord. 2015-09, passed 11-09-2015.)

### **131.03 Regular and special meetings.**

- (a) The Historic Landmarks Commission may fix the time for holding regular meetings but until same is accomplished by unanimous vote of the Historic Landmarks Commission it shall meet at least once a month commencing in May 1980.
- (b) Special meetings of the Historic Landmarks Commission may be called by the Chairman or by at least two members upon written request to the Secretary-Treasurer. Whether called by the chairman or by two or more members, the Secretary-Treasurer shall send to all of the members, at least two days in advance of a special meeting, written notice fixing the date, time and place of a the meeting, but written notice of a special meeting is not required if the date, time and place of a special meeting have been fixed in a regular meeting, or if all the members are present at a special meeting. (Ord. 2014-06, passed 01-05-2015.)

### **131.04 Quorum.**

A majority of the members of the Historic Landmarks Commission shall constitute a quorum. No action of the Historic Landmarks Commission shall be official unless authorized by a majority of all members of the Historic Landmarks Commission at a properly constituted regular or special meeting. (Ord. 2014-06, passed 01-05-2015.)

### **131.05 Offices and expenses; other appropriations.**

The Town Council shall provide the Historic Landmarks Commission with suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts, and shall provide for the operating expenses of the Historic Landmarks Commission by appropriating a sum sufficient to defray such expenses. Town Council shall have plenary power and authority to appropriate funds for expenditure by the Historic Landmarks Commission to accomplish the purposes of this article. (Ord. 2014-06, passed 01-05-2015.)

### **131.06 Election of officers.**

At its first regular meeting in each calendar year, the Historic Landmarks Commission shall elect from its members a chairman, vice-chairman and secretary-treasurer. The vice-chairman shall have the power and authority to act as the chairman of the Historic Landmarks Commission during the absence or disability of the chairman. (Ord. 2014-06, passed 01-05-2015.)

### **131.07 Assistants; professional services.**

- (a) The Historic Landmarks Commission may appoint and prescribe the duties and fix the compensation of a secretary and such employees or agents as are necessary for the discharge of the duties and responsibilities of the Historic Landmarks Commission.
- (b) The Historic Landmarks Commission may make contracts for special or temporary services, within the limits of funds available, for such employees, assistants, technical personnel and consultants as are necessary to discharge the duties and

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responsibilities of the Historic Landmarks Commission. (Ord. 2014-06, passed 01-05-2015.)

### **131.08 Powers and authority.**

The Historic Landmarks Commission shall have the power and duty to:

- (a) Make a survey of, and designate as historic landmarks, buildings, structures and sites which constitute the principal historical and architectural sites of local, regional, statewide or national, significance. No building, structure, or site shall be designated a historic one unless it has been prominently identified with, or best represents, some major aspect of cultural, political, economic, military or social history of the locality, region, State or nation, or has had a major relationship with the life of a historic personage, or event representing some major aspect of, or ideals related to, history of the locality, region, State or nation. In the case of buildings or structures which are to be so designated, they shall embody the principal or unique features of an architectural type or demonstrate the style of a period of our history or method of construction, or serve as an illustration of the work of a master builder, designer or architect whose genius influenced the period in which he worked or has significance in current times;
- (b) Prepare a register of buildings, structures and sites which meet the requirements of subsection (a) hereof, publish lists of such properties and, with the consent of the property owners, inspect such properties from time to time and publish a register thereof from time to time, setting forth the appropriate information concerning the registered buildings, structures and sites;
- (c) Review applications for certificates of appropriateness and grant or deny the same in accordance with Section 131.09 hereof and West Virginia law;
- (d) With the consent of the property owners, certify and mark the appropriately designated markers, buildings, structures and sites which it has registered;
- (e) Establish standards for care and management of certified landmarks and withdraws such certification for failure to maintain the standards so prescribed;
- (f) Acquire by purchase, gift, or lease and administer registered landmarks and easements and interests therein, both real and personal;
- (g) Lease or sell property so acquired under terms and conditions designated to insure the proper preservation of the landmark in question;
- (h) Establish historic districts for registered landmarks utilizing the same guidelines set forth in subsection (a) hereof, and designate the area thereof by appropriate markers;
- (i) Identify a historic district or districts for registered landmarks and aid and encourage the Town to adopt rules and regulations for the preservation of historical and architectural value;
- (j) Prepare and place historical markers on or along a highway or street closest to the location which is intended to be identified by such marker;
- (k) Seek the advice and assistance of individuals, groups and departments and agencies of government who or which are conducting historical preservation programs and coordinate the same insofar as possible;
- (l) Seek and accept gifts, bequest, endowments and funds from any and all sources for the accomplishments of the functions of the Historic Landmarks Commission;
- (m) Adopt rules and regulations concerning the operation of the Historic Landmarks Commission, the functions and responsibilities of its officers, employees, assistants and other personnel and such other matters as may be necessary to carry out the purposes of this article; and
- (n) Adopt such other rules and regulations as are necessary to effectuate the purposes of

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this article, but no such rules and regulations shall be inconsistent with the provisions of this article or with any plan of the Planning Commission, or with the provisions of West Virginia Code 8-26A. (Ord. 2014-06, passed 01-05-2015.)

### **131.09 Certificates of Appropriateness.**

The Historic Landmarks Commission may exercise authority to issue certificates of appropriateness to regulate new construction, alteration, removal or demolition of buildings, sites or structures within a historic district or individually designated as a historic landmark or site according to the following provisions:

- (a) No private building, site or structure shall be erected, altered, restored, moved or demolished until after an application for a certificate of appropriateness as to exterior architectural features has been submitted to and approved by the commission in accordance with Design Standards as the Historic Landmarks Commission adopts them from time to time, except as otherwise provided by the Town Council or as provided by rules, regulations, policies, procedures and standards adopted and published by the commission. For the purposes of this section, "exterior architectural features" shall include such portion of the exterior of a structure as is open to view from a public street, way or place.
- (b) Similarly, if earthworks of historical or archaeological importance exist in the historic district there shall be no excavating or moving of earth, rock or subsoil or any development upon or around earthworks without a certificate of appropriateness.
- (c) The style, material, size and location of outdoor advertising signs and bill posters shall be under the control of the Commission.
- (d) The Commission may request such plans, elevations, specifications, drawings, photographs and other information as may be reasonably deemed necessary to enable it to make a determination on the application for a certificate of appropriateness.
- (e) The Commission shall hold a public hearing upon each application for a certificate of appropriateness. Notice of the time and place of said hearing shall be given by publication in a newspaper having general circulation in the city at least seven days before such hearing, and by posting such notice on or near the main entrance of any hall or room where the Commission usually meets. The Commission shall take such action as required to inform the owners of any property likely to be affected by the application and shall give the applicant and such owners an opportunity to be heard.
- (f) The Commission shall consider an application for a certificate of appropriateness within 45 days after the filing thereof by the owner or occupant of a historic property or a building, site or structure located within a historic district. Evidence of approval shall be by a certificate of appropriateness issued by the Commission.
- (g) In passing upon the appropriateness of proposed action, the Commission shall consider, in addition to any other pertinent factors, the historical and architectural integrity and significance; architectural style; design, arrangement, texture and materials of exterior architectural features; and the relationship and general compatibility thereof to the historical value and exterior architectural style and pertinent features of other structures in the surrounding area.
- (h) The Commission shall approve the application and issue a certificate of appropriateness if it finds that the proposed action would be appropriate. In the event an application is rejected, the Commission shall put the rejection and the reasons therefor in writing, and shall transmit such written record to the applicant. The written record may include recommendations relative to design, arrangement, texture, material and similar features. The applicant may make modifications to the plans and resubmit

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- the application at any time after doing so.
- (i) In cases where the application covers a material change in the appearance of a structure which would require the issuance of a Project Permit, the rejection of an application for a certificate of appropriateness by the Commission shall be binding upon the Ordinance Compliance Officer and / or other administrative office charged with issuing Project Permits.
  - (j) Where such action is reasonably necessary or appropriate for the preservation of a unique historic property, the Commission may enter into negotiations with the owner for the acquisition by gift, purchase, exchange or otherwise of the property or any interest therein.
  - (k) If the strict application of any provision of this section would result in exceptional practical difficulty or undue economic hardship upon any owner of any specific property, the Commission, in passing upon applications, shall have the power to vary or modify strict adherence to the provisions or to interpret the meaning of the provision so as to relieve such difficulty or hardship: provided, that such variance, modification or interpretation shall remain in harmony with the general purpose and intent of the provisions so that architectural or historical integrity or character of the property shall be conserved and substantial justice done. In granting variations, the Commission may impose such reasonable and additional stipulations and conditions as will in its judgment best fulfill the purpose of this section.
  - (l) The Commission shall keep a record of all applications for certificates of appropriateness and of all its proceedings.
  - (m) Any person adversely affected by any determinations made by the Commission relative to the issuance or denial of a certificate of appropriateness may appeal such determination to the Circuit Court of Jefferson County.
  - (n) Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in or on a historic property, which maintenance or repair does not involve a material change in design, material or outer appearance thereof, nor to prevent any property owner from making any use of his property not prohibited by other laws, ordinances or regulations.
  - (o) Undertakings permitted, funded, licensed or otherwise assisted by the state shall be reviewed in accordance with West Virginia Code 29-1-5e or a similar statute and shall be considered exempt from review for certification of appropriateness as described in this section. (Ord. 2014-06, passed 01-05-2015.)

### **131.10 Designation for review of Certificates of Appropriateness.**

- (a) Before the designation of a historic landmark or historic district that includes review of certificates of appropriateness by the Historic Landmarks Commission, the Commission shall make or cause to be made a report on the historical, cultural, architectural significance of each building, structure, site and district proposed for designation, based upon the following standards:
  - (1) No building, structure, site or district shall be deemed to be a historic one unless it has been prominently identified with or best represents, some major aspect of the cultural, political, economic, military or social history of the city, region, state or nation, or has had a major relationship with the life of a historic personage or event representing some major aspect of, or ideals related to, the history of the city, region, state or nation. In the case of buildings or structures which are to be so designated, they shall embody the principal or unique features of an architectural type or demonstrate the style of a period of our history or method of construction, or serve as an illustration of the work of a master builder,

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designer or architect whose genius influenced the period in which he worked or has significance in current times.

- (2) The Historic Landmarks Commission shall submit such report, including maps and photographs as necessary, to the State Historic Preservation Office and the West Virginia Division of Culture and History. In the case of a report for a proposed historic district, the Historic Landmarks Commission shall submit with the report a map showing boundaries of the proposed district.
- (b) In the event that a historic district or historic property is to be subject to review of certificates of appropriateness by the Historic Landmarks Commission, then upon a nomination by the Historic Landmarks Commission, the Town Council shall hold a public hearing on the proposed designation of the historic property or historic district, and any proposed regulations and requirements for the historic district. Notice of the hearing shall be published at least two times in the principal newspaper of general circulation within the city; and written notice of the hearing shall be mailed by certified mail with signed return receipt required by the Historic Landmarks Commission to all owners and occupants of such properties. All the notices shall be published or mailed not less than ten nor more than 20 days before the date set for the public hearing. Following the public hearing, unless the owner of a proposed property or 50 percent of the ownership interest in a proposed district objects in writing by a notarized letter to such designation or regulations and requirements within thirty days following the public hearing, the local governing body may designate the property or properties as historic, and approve, amend or reject the proposed regulations or requirements. The notarized letter must state the party is the sole or partial owner of the property.
- (c) Within 30 days following such designation or approval, the owners and occupants of each designated historic property shall be given written notification of such designation or approval by the Town Council, which notice shall apprise said owners and occupants of the necessity of obtaining a certificate of appropriateness before undertaking any material change in the appearance of the historic site, property or landmark designated or within a historic district.
- (d) Any such designated historic landmark or district designated under this division shall be shown on the official zoning map of the city and kept by the city as a public record to provide notice of such designation in addition to other such notification requirements of this section.
- (e) Any regulations of the Historic Landmarks Commission hereunder and enforcement actions of the Town are intended to identify, study, preserve and protect historic buildings, structures, sites and districts within the boundaries of a zoning district. Such properties also would be subject to the regulations for the base zoning district and the historic district or property. If there is a conflict between the requirements of the zoning district and the requirements of the historic district or property, the zoning district requirements prevail.
- (f) The Town and Historic Landmarks Commission shall be authorized to institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any material change in the appearance of a designated historic property or historic district, except those changes made in compliance with the provisions of this division or to prevent any illegal acts or conduct with respect to such historic property or historic district.
- (g) Violations of any such ordinance adopted in conformity with this section shall be punishable by a fine of not greater than \$500, or imprisoned in the county jail not more than six (6) months, or both fined and imprisoned. (Ord. 2014-06, passed 01-05-2015.)

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### **131.11 Voluntary restrictions on Historic Landmarks.**

Whenever the Historic Landmarks Commission, with the consent of the property owner, certifies a property as a registered landmark, it may obtain from such property owner an agreement as to the restrictions upon the use of property as the Historic Landmarks Commission finds reasonable and are calculated to perpetuate and preserve the features which lead it to designate such property as a historic landmark. All such agreements between such Historic Landmarks Commission and property owner shall be in writing and acknowledged, and shall be recorded in the office of the Clerk of the County Commission of Jefferson County, and when so recorded shall be notification to the Assessor of Jefferson County of the restrictions therein set forth. (Ord. 2014-06, passed 01-05-2015.)

### **131.12 Notice to County Assessor of designation of historic district.**

When the Historic Landmarks Commission establishes a historic district, it shall notify the Assessor of Jefferson County of the fact of such establishment and the boundaries of the historic district, together with the restrictions that are applicable to the properties located in the district. The agreement shall be recorded in the same manner as the recordation of agreements between the Historic Landmarks Commission and the owners of designated landmarks entered into under the provisions of Section 131.08. (Ord. 2014-06, passed 01-05-2015.)

### **131.13 Coordination.**

The Historic Landmarks Commission shall cooperate and coordinate its activities with public and private agencies or organizations, including, without limitation, the West Virginia Department of Archives and History, the West Virginia Historical Society and the State Historic Preservation Office of West Virginia, with a view toward enhancing its ability to identify, study, preserve and protect all historic buildings, structures and sites within the Town. (Ord. 2014-06, passed 01-05-2015.)

### **131.14 Notice and public hearing.**

- (a) Prior to the designation of a historic district or landmark, the Historic Landmarks Commission shall give notice, as hereinafter in this section specified, and hold a public meeting on the matter.
- (b) At least thirty days prior to the date set for the hearing, the Historic Landmarks Commission shall publish a notice of the date, time and place of the hearing as a class one legal advertisement in compliance with the applicable provisions of the West Virginia Code. (Ord. 2014-06, passed 01-05-2015.)

### **131.15 Priorities.**

In addition to such other matters as may be from time to time hereafter specifically requested by the Town Council, the Historic Landmarks Commission shall make and recommend to Town Council a comprehensive plan to protect and foster the preservation and rehabilitation of historic edifices, and to insure the growth of the community commensurate with its historic significance. (Ord. 2014-06, passed 01-05-2015.)

### **131.16 Parliamentary procedure.**

The Historic Landmarks Commission shall adopt such rules and hold such meetings as shall be necessary or convenient for the transaction of its business under established rules of parliamentary procedure. (Ord. 2014-06, passed 01-05-2015.)