

WHAT IS A LOCALLY DESIGNATED HISTORIC DISTRICT?

A local government in Indiana can adopt a historic preservation zoning ordinance that enables it to designate and protect properties of historical or architectural significance. Authority for such local legislation comes from state statute, often called an "enabling act." Indiana's enabling act was made law in 1967, under Indiana Code IC-36-7-11. Some forty cities, towns, and counties in Indiana have designated local historic districts and individual landmarks.

Inclusion in a local historic district signifies that a property contributes to an ensemble worth protecting by virtue of its historic importance or architectural quality. Historic preservation zoning stresses building appearance rather than use. A historic preservation zoning ordinance usually establishes a board of citizens to review proposed changes to locally designated historic properties. The ordinance protects historic properties by requiring board approval before property owners can build, demolish, or make alterations within designated areas.

WHAT IS A DISTRICT LISTED IN NATIONAL REGISTER OF HISTORIC PLACES?

The National Register is the nation's official list of historic, architectural, and archaeological resources worthy of preservation. Most *locally designated* districts happen to be listed in the National Register, but the two classifications are exclusive. In 1966, the National Historic Preservation Act created the National Register and established listing criteria. Each state and territory has a State Historic Preservation Officer who identifies eligible properties and, in conjunction with a State Board of Review, submits nominations to the Keeper of the National Register at the United States Department of the Interior. Listings can be made for individual properties and for districts of properties. Indiana has over 1,300 individual sites and 200 districts listed in the National Register.

Listing in the *National Register* does not mean that a house, neighborhood or city's main street will be protected. Many people think so, and this is a common misunderstanding. While National Register listing is a tremendous honor and carries some financial opportunities, owners of private property listed in the National Register are free to maintain, manage, or dispose of their property as they choose, provided that there is no Federal involvement.

WHEN DID LOCAL DESIGNATION OF HISTORIC DISTRICTS BEGIN?

Local historic districts are one of the oldest and strongest forms of protection for historic properties. The historic district movement began in the United States in 1931, when the City of Charleston, South Carolina, enacted a local ordinance designating an "Old and Historic District" administered by a Board of Architectural Review. This early ordinance said that no changes could be made to exterior architectural features that were subject to view from a public street or way.

Following a 1936 amendment to the Louisiana Constitution, the Vieux Carré Commission was created in 1937 to protect and preserve the French Quarter in New Orleans. The City passed a local ordinance that set standards to regulate changes within the established boundaries.

In 1939, San Antonio, Texas adopted an ordinance to protect La Villita, its original Mexican village marketplace. In 1950 the U.S. Congress enacted legislation to protect the Georgetown neighborhood in Washington, D.C. By 1965, 51 communities nationwide had enacted preservation ordinances. Today, some 60 years later, over 2,300 U.S. communities have adopted preservation ordinances and the list is growing. These are just a few of the earliest models for local protection of historic areas. They represent the activism of those pioneering preservationists who led a movement that is now mainstream.

"Experienced preservationists know that historic districts are preserved and enhanced through small steps, carefully taken. They know that the collective integrity of individual buildings imparts a distinct local identity, especially if they are complemented by street trees and landscaping, intact sidewalks, and flexible zoning that respects the historic geometry and function of existing neighborhoods... To achieve this goal, however, they must do more than rely on state and federal preservation laws... Historic district preservation usually occurs locally, beyond the scope of state and federal legislation."

WHAT IS THE LEGAL BASIS IN PRESERVATION LAND-USE REGULATIONS?

Because local historic districts have direct impacts on private property, the question of their legal basis and constitutionality often arises. Historic district controls exist within the broader context of land use regulations that have been extensively reviewed and examined by the courts. The basic origin for historic preservation controls lies with the development of municipal land use and zoning controls in the early twentieth century.

In 1926, the U.S. Supreme Court decision in *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365 (1926), upheld the constitutionality of local zoning ordinances and established the ability of municipalities to regulate land use through the exercise of their police powers.

As land use controls evolved, they eventually began to encompass aesthetic considerations and the desire of communities to protect and preserve the character of their historic and architectural resources. In 1954, the U.S. Supreme Court affirmed the constitutionality of "aesthetic" zoning in the case of *Berman v. Parker*, 348 U.S. 26 (1954) (USSC+). With the development of historic district controls, state judicial opinions supported the use of such regulation as a valid exercise of the state's power to promote the general welfare.

It was not until 1978, when the U.S. Supreme Court decided *Penn Central Transportation v. City of New York*, 438 U.S. 104 (1978), that the constitutionality of local controls to further historic preservation was affirmed. In this landmark case, the Court considered whether historic preservation controls constituted a taking in violation of the Constitution's Fifth Amendment, which provides that private property shall not be taken for public use without just compensation. The Court found that historic preservation is a valid public purpose, and that the City of New York's landmark restrictions on Grand Central Station did not constitute a "taking," because the controls did not prevent a reasonable economic use of the property.

Although the courts have recognized the basic constitutionality of local historic preservation controls, they are still subject to legal challenge, often involving the claim of a taking. However, unless the regulation is found not to advance a legitimate public interest or the restrictions on designated property are so severe as to deprive the owner of any reasonable economic use, historic preservation controls will remain solidly within the broad spectrum of constitutional land use controls.

HOW DOES LOCAL DESIGN REVIEW EMPOWER A COMMUNITY?

Many towns, cities, and counties nationwide have already said "yes" to local historic district designation. More than 2,300 districts have historic preservation commissions that conduct design review and many such commissions work with multiple districts in their local jurisdictions. Why is the number of historic districts growing yearly? Residents know that their historic districts are far more than attractive places for tourists to visit, shop, and perhaps have lunch. Residents know that one of the best ways to keep the look and feel of the place they call "home" is through a local design review process.

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. 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 help explain the development of a place, the source of inspiration, and technological advances. They are a record of ourselves and our communities.

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.

Local districts provide social and psychological benefits. A sense of empowerment and confidence develops when community decisions are made through a structured participatory process rather than behind closed doors or without public comment.

MAKE SURE TO KNOW...

Local Designation:

- Designates historic properties on the basis of local criteria and local procedures. Sets boundaries based on the distribution pattern of historic properties, and other community considerations.
- Provides recognition of a community's significant properties.
- Provides protection of character-defining exterior features of a property.
- May qualify a property for a form of financial assistance, such as a local tax incentive for historic preservation, if the local government has passed a tax incentives ordinance.
- Provides review of proposed demolitions within the district, and provides delay to allow for preservation alternatives to be considered.
- Requires approval for changes to the exterior appearance of historic properties and proposed new construction, such as infill and additions.

National Register Listing:

- Designates historic properties based on uniform national criteria and procedures. Sets boundaries for historic districts based on the actual distribution pattern of intact historic properties in the area.
- Provides recognition by the federal government that an area has historical or archeological significance.
- Requires the effects of federally assisted work projects (actions) on historic properties be considered prior to the commencement of work. Makes available federal tax incentives for qualified rehabilitation projects. Requires conformance to the Secretary of the Interior's Standards for Rehabilitation (36 CFR 67).
- Makes a property eligible for pre-development planning grants (such as plans and specs) and also "bricks and mortar" repair grants, if selected by the SHPO for grant assistance. Work projects require conformance to the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR 68).