

North Dakota Certified Local Government Certification Procedures Manual



State Historical Society of North Dakota
Archaeology & Historic Preservation
612 East Boulevard Avenue
Bismarck, North Dakota 58505-0830

Revised: 2021

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State Historical Society Of North Dakota Procedures for Local Government Certification

Preservation through partnership is the goal of the Certified Local Government (CLG) program. The CLG program is designed to establish a working partnership between local, state, and federal government to help communities preserve, protect, and increase awareness of the unique cultural heritage found in the built environment in each community.

In order to become a CLG, a local government entity must be certified jointly by the National Park Service and the State Historical Society of North Dakota as eligible for assuming the important role in the National Historic Preservation Program that the National Historic Preservation Act specifies for local governments.

Why Participate in the Certified Local Government Program?

An active Certified Government within a community:

- Shows that the community values its heritage and the historic properties within its jurisdiction;
- Provides greater control over local preservation issues to the local government;
- Establishes an official partnership between the local historic preservation program and those of the state and federal governments and provides ready access to information among the partners.
- Provides local governments with greater opportunity to obtain federal funding for local preservation projects;
- Provides local governments the ability to actively participate in the National Register of Historic Places nomination process;
- Provides official recognition of the quality of the local historic preservation program;

Responsibilities of a CLG

To become and remain a CLG, the local government must...

- Enact an ordinance which establishes a historic preservation commission which is required, and empowered, to oversee an officially mandated program to identify, register and protect historic properties within its jurisdiction.
- Enforce the preservation ordinance and assist the State in enforcing North Dakota Historic Preservation statutes including North Dakota Century Code chapters: 55-02-07, 55-02-07.1, 55-03-01.1, 55-03-02, 55-03-06, 55-10-07, 55-10-08, 55-10-09, and 55-10-11. *See Appendix 1 and ND Century Code (<https://www.legis.nd.gov/general-information/north-dakota-century-code>) for more information.*
- Appoint and maintain a qualified historic preservation commission.
- Abide by the provisions of the certification agreement established among the CLG, the State Historical Society of North Dakota and the National Park Service.
- Maintain a system for the survey and inventory of historic properties located within the CLG's jurisdiction.
- Provide for adequate public participation in the local historic preservation program.
- Recommend properties for nomination to the National Register of Historic Places.
- Review National Register of Historic Places nominations that involve properties located within the local government's jurisdiction. [Nominations of Federal property are excluded.]
- Adhere to all federal and state requirements for the CLG Program.
- If awarded preservation funding, abide by all provisions of the grant agreement.

Qualifications to Become a CLG:

To qualify for CLG eligibility, an applicant government must be a general-purpose political subdivision of the state and must possess legal authority to create and enforce historic preservation ordinances.

Current examples:

- County governments
- City governments
- Townships
- Tribal governments which meet the definition of a local government as interpreted by the National Park Service and North Dakota.

How to Become a CLG:

Contact the State Historical Society Of North Dakota

The State Historical Society of North Dakota will be able to guide potential applicants through the certification process and identify contact persons from existing CLGs in North Dakota who will be able to provide further aid.

Contact person: Amy Munson
Certified Local Government Coordinator
Historic Preservation Division
State Historical Society of North Dakota
612 East Boulevard Avenue
Bismarck, North Dakota 58505
(701) 328-3573

Draft a Local Preservation Ordinance

The local preservation ordinance must contain, as a minimum, provisions for the following:

- Creation and appointment of an historic preservation commission;
- Empowerment of the commission to represent the local government and to act in its interest;
- Commission membership composition, method of appointment, and frequency of meetings (the State Historical Society of North Dakota requires at least four meetings per year, on a schedule to be established a year in advance);

- The commission must be comprised of at least five members each of whom must have a demonstrable interest, knowledge and/or competence in historic preservation. The majority of commission members must have professional qualification in the fields of history, architectural history, or prehistoric or historic archeology, architecture, folklore, cultural anthropology, curation, conservation, planning or other preservation-related fields. Professional qualifications are defined by the Secretary of Interior's Professional Qualification Standards cited in 36 CFR Part 61. **If individuals having these professional qualifications are not available for appointment to the commission, a waiver of this requirement must be obtained from the State Historical Society of North Dakota.**

- A program to identify, record, register and protect properties that meet standards established by the Secretary of the Interior's Standards for Identification and Registration of Historic Properties and by the National Register of Historic Places.
 - All archeological, architectural, and historical surveys undertaken, and inventories established and historic context studies undertaken by the certified local government shall be conducted according to State Historical Society of North Dakota's standards.

- Assurance that the local government will protect historic properties within its jurisdiction by reviewing all proposed changes to, and demolitions of, eligible or potentially eligible properties as defined in the National Historic Preservation Act.
 - This review shall be conducted by the appointed historic preservation commission. Results of every review must be forwarded to the State Historical Society of North Dakota. **This review is not to be confused with, and does Not take the place of, Section 106 reviews (reviews of changes to eligible properties when the changes are proposed by, or under the authority of, a federal agency).**

- Commit the local government to solicit and encourage public participation in all historic preservation decisions and program activities.

Submit the Draft Ordinance to the State Historical Society for Review

After the draft ordinance has been approved by the local government's attorney for legal sufficiency, the local government shall submit the draft to the State Historical Society of North Dakota for review. Within 45 working days, the Society shall respond with comments regarding recommended changes to, or approval of, the contents of the draft ordinance.

Pass the Historic Preservation Ordinance

The local governmental authority must pass the Society-approved ordinance and provide a properly certified copy to the State Historical Society of North Dakota before the certification process may continue.

Choose Candidates for the Historic Preservation Commission

An historic preservation commission must be appointed by the chief elected official of the local government to administer the requirements of this ordinance. Following requirements of the local historic preservation ordinance and requirements of the State Historical Society of North Dakota's Certification Procedures, the local government must choose candidates for the commission, obtain their resumes, and obtain assurances of each prospective member's interest in serving on the commission. Following this, the local government should send a letter of interest and resume to the State Historical Society for approval before the candidate is officially appointed. If an historian, architectural historian, and prehistoric or historic archeologist, professionally qualified according to the Secretary of the Interior's Standards, or professional members of any of the other applicable disciplines are not available in the community for appointment to the commission, a request for a waiver of professional membership must be provided to the State Historical Society of North Dakota. This request shall include a report describing the process used to identify and recruit qualified members and a plan for obtaining the expertise these professions would have provided had they been on the Commission.

Link to the Secretary of the Interior's Professional Qualification Standards:

https://www.nps.gov/history/local-law/arch_stnds_9.htm

Possible sources of qualified professional candidates include local school districts, area colleges and universities, professional consulting firms, area libraries and museums, government agencies, and professional associations.

Submit the List of Candidates to the State Historical Society of North Dakota for State Approval

The local government must submit resumes of candidates and evidence of their interest in, knowledge of, and experience with, historic preservation to the Society for approval. Within 45 working days, the Society will approve each candidate or offer comments on the qualifications of unapproved candidates for membership on the historic preservation commission. The same procedure shall be followed whenever a new member is appointed to the commission.

Sign a Certification Agreement with the State Historical Society of North Dakota

A certification agreement between the local government and the State Historical Society of North Dakota must be signed. This agreement will include the responsibilities of both parties and will describe penalties for noncompliance. (An example of a certification agreement is attached as Attachment 1.)

Application for Certification is Submitted to the National Park Service for Approval

After the State Historical Society of North Dakota determines that the certified local government's application meets all of the state's requirements and procedures, a copy of the signed certification agreement between the applicant certified local government and the State Historical Society of North Dakota and a signed review checklist from the State Historic Preservation Officer certifying that the candidate certified local government's application is complete and that the candidate local certified government meets the requirements for certified local government status, shall be submitted by the State Historical Society of North Dakota to the National Park Service.

Receive Approval from the National Park Service

After approval is received from the National Park Service, the State Historical Society of North Dakota will notify the local government. The local government may then:

- Proceed with appointing members of the historic preservation commission.
- The commission may begin to hold meetings and fulfill its responsibilities as outlined in the local ordinance and the signed certification agreement with the State Historical Society of North Dakota.

National Register Nomination Procedures

Between sixty (60) and one hundred and twenty (120) calendar days before a nomination of a property located within the certified local government's jurisdiction is considered by the North Dakota State Historic Preservation Review Board, the North Dakota State Historic Preservation Officer (SHPO) will notify the chief elected official of the certified local government and its historic preservation commission of the pending nomination review, except in those cases in which the nomination has been submitted by the certified local government or by a federal agency. [36 CFR 61, 36 CFR 60]

Upon receipt of the notice of a pending national register review, the historic preservation commission shall solicit public comment and after providing reasonable opportunity for receipt of comments from the public, the historic preservation commission shall review the nomination and prepare a report indicating its opinion of whether or not the property meets National Register criteria. This report shall be forwarded to the chief elected official of the certified local government who shall submit the report, along with his/her recommendation for the nomination, to the SHPO within sixty (60) calendar days of the Commission's initial receipt of the notice.

If the historic preservation commission does not have a member with professional qualifications in the disciplinary field appropriate to the nominated property, (e.g. an historic architect or architectural historian for an architectural nomination; a prehistoric archeologist for a nomination for a prehistoric archeological site), the CLG must obtain the expertise of an appropriate professional to participate in the final discussions pursuant to the deciding vote.

If both the commission and the chief elected local official recommend that the property not be nominated, the SHPO may not nominate the property unless an appeal is filed, by the property owner, with the SHPO within thirty (30) calendar days of the SHPO's receipt of the CLG's report. If either or both the commission or the chief elected local official recommend that the property should be nominated, the SHPO will present the nomination to the North Dakota State Historic Preservation Review Board. Any report and recommendation made by the CLG shall be included with the nomination when submitted by the State the North Dakota State Historic Preservation Review Board and to the Keeper of the National Register.

The SHPO may also delegate to a CLG other responsibilities pertaining to processing National Register nominations as agreed to through the Certification Agreement, including the notification of property owners pursuant to 36 CFR 60 and Section 101(d) of the Act.

Historic Preservation Grant Funds

All CLGs in good standing are eligible to apply for Historic Preservation Fund (HPF) grants. Each year, an announcement of the availability for grant funds, will be sent to the coordinator (the CLG's actual program manager) and the chair (the appointed chairperson of the historic preservation commission) of each CLG and the chief elected official of each certified local government.

The State Historical Society of North Dakota is required to grant at least 10% of its annual apportionment from the National Park Service available for grants to CLGs. This announcement of grants available will normally be distributed in December of each year. The grant year for CLGs runs from March 1 through the following February 28. The granted funds may be used to further any of the purposes and responsibilities of the CLGs which are listed in the Local Government Certification Agreement or the state's annual grant agreement. Grants will be awarded based on the quality of the application, viability and value of work proposed, the amount of match offered, and the past performance of the CLG.

If awarded an HPF grant, the CLG must:

- Maintain adequate financial management systems;
- Adhere to all requirements of the *Historic Preservation Fund Manual*
- Adhere to any requirements mandated by Congress regarding use of federal historic preservation funds.

Performance Auditing and Monitoring

CLG performance will be monitored by the State Historical Society of North Dakota on an on-going basis. At least once every four years, the performance of each CLG will be audited by the State Historical Society of North Dakota in accordance with written criteria to be supplied to the certified local government at least 90 calendar days prior to the audit. (Available on request).

Audits will examine and review

- Annual grant projects and records
- Meeting agenda
- Meeting minutes
- CLG activities
- Commission membership

Decertification

If the certified local government or its historic preservation commission begins to demonstrate a pattern of failure to comply with the provisions of its preservation ordinance, the requirements of the certification agreement or inadequate performance, the State Historical Society of North Dakota will provide written notice to the local government of these failures along with a set of remedial performance conditions and suggestions for ways performance may be improved. The certified local government shall have ninety (90) calendar days to demonstrate satisfactorily improved performance. If performance has not improved satisfactorily after the ninety-calendar day (90) period, the State Historical Society of North Dakota may recommend to the National Park Service that the local government be decertified.

Contact

For further information about the Certified Local Government program:

Amy Munson
Grants & Contracts Officer
Historic Preservation Division
State Historical Society of North Dakota
612 East Boulevard Avenue
Bismarck, North Dakota 58505
(701) 328-3573

North Dakota Historic Preservation Laws

State preservation laws address private actions affecting historic resources. This is done primarily through laws that enable local governments to pass ordinances for the protection and preservation of historic sites.

Local laws may also exist and vary by jurisdiction. These include but are not limited to local preservation ordinances and local historic overlays.

For the full definition regarding specific laws please consult Century Code, Title 55
<https://www.legis.nd.gov/cencode/t55.html>

North Dakota Century Code 55-02-07 - Protection of historical or archaeological artifacts or sites.

PROTECTION OF HISTORIC AND PREHISTORIC SITES that are found or located upon any land owned by the state or its political subdivision and are significant in understanding and interpreting the history and prehistory of the state a subject to review by the State Historical Society.

North Dakota Century Code 55-02-07.1 - Protection of prehistoric or historic site locational data.

PROTECTION OF PREHISTORIC OR HISTORIC SITE LOCATIONAL DATA enables limited access to and release of information from files of the State Historical Society of North Dakota until the director is satisfied that the applicant has a reasonable need for the information and is assured that the release of the information will not result in unnecessary destruction of the resource.

North Dakota Century Code 55-03-01.1 - Permit required to investigate, excavate, or otherwise record cultural resources on land owned by an instrumentality of the state and to excavate cultural resources on private land.

PERMITS are required to investigate, excavate, or otherwise record cultural resources on land owned by an instrumentality of the state of North Dakota and to excavate cultural resources on private land. The permit is obtained from the Director of the State Historical Society of North Dakota.

North Dakota Century Code 55-03-02 - Contents of permit.

A permit issued pursuant to an application made under section 55-03-01 or 55-03-01.1 must clearly describe the purpose of the permit and must be in the form prescribed by the director. A permit may not be granted until the director is satisfied that the applicant is professionally qualified to conduct that work for which the permit is required.

North Dakota Century Code 55-03-06 - Archaeological or paleontological materials retained upon sale of land by state or municipality.

Archaeological or paleontological materials retained upon sale of land by state or municipality. When land is sold, conveyed, transferred, or leased by the state of North Dakota, or by any department or agency thereof, or by any municipal subdivision thereof, the title to any and all archaeological or paleontological materials, whether such materials are found upon the surface or below the surface of such land, must be retained by the state or by the municipal subdivision thereof, as the case may be.

North Dakota Century Code 55-03-07 - Violation of chapter – Penalty.

Any person violating any provision of this chapter is guilty of a class A misdemeanor and shall forfeit to

the state all archaeological or historical articles and materials discovered by the violator. Any such violation must be held to be committed in the county where the exploration or excavation for archaeological or historical material was undertaken.

North Dakota Century Code 55-10-08 - Duties of the state and political subdivisions in regard to state historic sites - Historic easements - Prohibitions.

1. The state, its departments and agencies, and each political subdivision are by this chapter notified of the existence of state historic sites on land and water areas in North Dakota listed in the state historic sites registry.
2. The state or a political subdivision may not demolish or cause to alter the physical features or historic character of any site listed in the state historic sites registry as a state historic site without first obtaining the prior approval from the director of the state historical society upon authorization of the state historical board, unless section 55-02-07.2 applies to the site. The state and political subdivisions shall cooperate with Page No. 1 the director of the state historical society in identifying and implementing any reasonable alternative to demolition or alteration of any state historic site before the board approves the demolition or alteration.
3. The state or a political subdivision may acquire fee title to a state historic site, or property listed in the national register of historic places, or may acquire a historic easement with respect to a privately owned state historic site, or property listed in the national register of historic places, and buildings and structures thereon when restored, reconstructed, or improved in accordance with plans approved by the director of the state historical society. A historic easement is:
 - a. A nonpossessory interest in the real property, imposing limitations or affirmative obligations the purposes of which include preserving the historic aspects of the property as so restored, reconstructed, or improved;
 - b. Created and capable of being conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, except as otherwise provided in this subsection; provided, that no right or duty in favor of or against a holder or another party having a right of enforcement arises under a historic easement before it is accepted by the holder and the acceptance is recorded;
 - c. Held by the grantee for the benefit of its citizens and the people of the state generally;
 - d. Specifically enforceable by the grantee or, if so provided by the grant, by the state or a political subdivision;
 - e. Binding upon the holder of the servient tenement and that person's successors and assigns;
 - f. Limited to a term of years provided in the grant and approved by the director of the state historical society, not exceeding the estimated useful life of the real property as restored, reconstructed, or improved, and not less than the term of any loan made by the holder to finance in whole or in part the cost of the restoration, reconstruction, or improvement;
 - g. Subject to no other legal limitation upon the duration of estates or of restraint on the alienation thereof, except the limitation contained in section 47-05-02.1; and
 - h. Subordinate to any interest existing when the easement is created, in the real property affected thereby, unless the owner of the interest is the grantor of the easement or consents to it.
4. A historic easement is valid even though:
 - a. It is not appurtenant to an interest in real property;
 - b. It can be or has been assigned to another holder;

- c. It is not of a character that has been recognized traditionally at common law;
- d. It imposes a negative burden;
- e. It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- f. The benefit does not touch or concern real property; or g. There is no privity of estate or of contract.

5. A project comprising the acquisition of a state historic site or of a historic easement with reference thereto, and the restoration, reconstruction, and improvement of the site and buildings and structures thereon to preserve physical characteristics of historic importance, is declared to be a proper and necessary purpose for the expenditure of public funds. The proceeds of tax increments or bonds or both may be expended by a city for such a project within an urban renewal area when determined by the governing body to be desirable for the redevelopment, rehabilitation, and conservation of the area in accordance with chapter 40-58.

6. If any state agency or department or a political subdivision objects to any decision of the state historical board to disallow alteration or demolition of a site listed on the state historic sites registry, the objecting party may submit the objection to arbitration. Arbitration may also be demanded by either the board or the objecting party if the board or the objecting party determines that the other has failed to cooperate in Page No. 2 identifying or implementing reasonable alternatives to demolition or alteration. The party desiring arbitration shall make a written demand therefor of the other and in the demand shall name three arbitrators. The demand must also set forth the objections that the party desires to submit to arbitration, with reference to the particular state historic site. The demand must be made within ninety days of a decision by the board. The demand must be served upon the other party, which, within ten days, shall name in writing three arbitrators, and set forth in writing its response to the objections set forth in the demand served upon it and any additional objections that it desires to submit to arbitration on its part. The six arbitrators selected shall name a seventh arbitrator. If the party proceeded against fails or refuses to name three arbitrators, the moving party may apply ex parte to the judge of the district court of the county in which the state historical site in question, or any part thereof, is located, for the appointment of the unnamed arbitrators. If upon the appointment of three arbitrators by each of the parties, the six have been unable to agree upon a seventh arbitrator within five days, either party, upon five days' notice may apply to the district court for the appointment of the seventh arbitrator. The political subdivision may select its arbitrators from among the governing board of the affected political subdivision, from any regular or special committee appointed by the governing board, whether serving on such governing board or not, or from any combination thereof. A state agency may select its arbitrators from its officers or employees. The state historical board may select its arbitrators from among the board itself, from an executive committee of the board, or from any combination thereof. When a panel of arbitrators has been appointed, a submission in writing must be acknowledged by the parties in the same manner as a conveyance of real property and may fix the time on or before which the award must be made. The submission must provide for the entry of judgment upon the award by the district court of the county within which the state historical site or some part thereof is located. The submission must also provide that each party shall bear its own arbitration costs and expenses, however, the costs and expenses relating to the seventh arbitrator must be borne equally by both parties to the dispute. The seven arbitrators shall proceed to resolve the controversies brought before them, and the decision of the arbitrators, or a majority of them, must be given in writing to the parties concerned and is binding upon both parties. Thereafter, the arbitration must proceed in accordance with chapter 32-29.2.

North Dakota Century Code 55-10-09 - Cooperation.

The state and its political subdivisions shall cooperate with the director of the state historical society in safeguarding state historic sites and in the preservation of historic and archaeological sites.

North Dakota Century Code 55-10-11 - Recognition of federal historical preservation law.

HISTORIC PRESERVATION SECTION creates the State Historic Preservation Office within the State Historical Society of North Dakota and grants to it a number of duties, including the ability to locate, survey, investigate, register, identify, preserve and protect historic, architectural, archaeological and cultural sites, structures and objects worthy of preservation. It also gives the SHPO the ability to review all federal undertakings permitted, funded, licensed or otherwise assisted.

LOCAL LAWS may also exist and vary by jurisdiction. These include but are not limited to local preservation ordinances and local historic overlays.

LOCAL GOVERNMENT CERTIFICATION AGREEMENT
BETWEEN
THE STATE HISTORICAL SOCIETY OF NORTH DAKOTA
and

(NAME OF LOCAL GOVERNMENT)

Pursuant to the provisions of the National Historic Preservation Act, as amended, to applicable federal regulations (36 CFR 61), and to North Dakota's Certified Local Government Certification Procedures Manual, (the name of the local government) agrees to:

- (1) Enforce appropriate Federal, State, and local legislation for the designation and protection of prehistoric and historic properties.
- (2) Maintain an adequate and qualified historic preservation review commission comprised of professional and lay members as outlined in North Dakota's Certified Local Government Certification Procedures Manual. All appointees to the Commission must be approved, in advance, by the State Historical Society of North Dakota.
- (3) Maintain a system for the survey and inventory of archeological and historical properties according to the Secretary of Interior's Standards for Archeology and Historic Preservation, guidelines of the National Register of Historic Places, the North Dakota's Certified Local Government Certification Procedures Manual, and the standards for surveys and inventories established by the Historic Preservation Division of the State Historical Society of North Dakota. These requirements shall also apply to preparation of historical contexts, historical planning, and, as appropriate, all other products produced by the CLG. Copies of all site forms generated by the CLG must be submitted to the State Historical Society of North Dakota for review and inclusion in the State's site form collection.
- (4) Review the National Register of Historic Places nominations for properties located within the local government's jurisdiction following the review guidelines referenced in the North Dakota's Certified Local Government Certification Procedures Manual.
- (5) Provide for adequate public participation in the historic preservation program, including the process of recommending properties to the National Register. The CLG must publish a meeting notice which includes the meeting agenda in a local newspaper at least ten (10) calendar days prior to the meeting. The meetings must be held in a facility that is accessible to the disabled.

- (6) Abide by the State’s open meeting and open records requirements.
- (7) Adhere to all Federal requirements for the Certified Local Government Program.
- (8) Adhere to requirements outlined or referenced in the North Dakota’s Certified Local Government Certification Procedures Manual, a guidance document issued by the State Historical Society of North Dakota.
- (9) Cooperate with, and assist, the State Historical Society of North Dakota comply with State statutes and regulations relating to historic preservation, including North Dakota Century Code chapters: 55-02-07, 55-02-07.1, 55-03-01.1, 55-03- 02, 55- 03-06, 55-10-07, 55-10-02(4), 55-10-08, and 55-10-09.

The State Historical Society of North Dakota will provide guidance and technical assistance to the CLG upon request.

Upon its designation as a Certified Local Government, (the local government) shall be eligible for all rights and privileges of a Certified Local Government (CLG) specified in the National Historic Preservation Act, Federal procedures, and the procedures of the State of North Dakota. These rights include eligibility to apply for available CLG grant funds in competition only with other certified local governments.

STATE:

LOCAL GOVERNMENT:

SHPO or Designee

Chief Elected Local Officer

Typed Name and Title

Typed Name and Title

Date

Date

STATE OF NORTH DAKOTA)

) ss.

COUNTY OF BURLEIGH)

On this _____ day of _____, in the year of _____ before me personally appeared _____ known to me to be the person who is described in and who executed the written instrument and acknowledged to me that the State Historical Society of North Dakota executed the same.

(SEAL)

Notary Public

My Commission Expires _____

STATE OF NORTH DAKOTA)

) ss

COUNTY OF _____)

On this _____ day of _____, in the year of _____ personally appeared _____ known to me to be the person who is described in and who executed the written instrument and acknowledged to me that the executed the same.

(SEAL)

Notary Public

My Commission Expires: _____

CLG CERTIFICATION APPLICATION CHECKLIST

State: North Dakota

Jurisdiction: _____

Date submitted to State: _____

Date approved by State: _____

(1) Applicant meets the Federal definition of local government and has authority to enforce acceptable legislation for the designation and protection of historic properties. _____

(2) Applicant has established a historic preservation review commission consisting of _____ members. This meets State procedure requirements for number of members. _____

There are _____ lay members.

There are _____ professional members qualified in the fields of

_____, _____, _____,
_____, _____, _____,
_____, _____, _____.

This meets State procedure requirements for professional membership. _____

(3) All commission members have a demonstrated, positive interest, competence, or knowledge in historic preservation. _____

(4) Professional members of the commission have been appointed to the extent available in the community and we have reviewed resumes that a document professional qualification acceptable under the Secretary of the Interior's Historic Preservation Professional Qualification Standards. If not, the applicant satisfactorily documented an adequate search for the requisite professional members and how it will obtain access to expertise when needed. _____

(5) The role and responsibilities of the local government have been specified in detail in the enclosed agreement, including:

A. The four basic responsibilities:

1. Enforcing State or local legislation for the designation and protection of historic resources. _____
2. Maintaining a system for survey and inventory of historic properties. _____
3. Providing for adequate public participation in the historic preservation program.

4. Reviewing National Register nominations through a qualified local commission.

B. Additional Responsibilities:

1. Required of all CLGs in North Dakota
 - a. Maintain adequate financial management systems. _____
 - b. Adhere to all requirements of the *Historic Preservation Fund Grants Manual*. _____
 - c. Adhere to any requirements mandated by Congress regarding use of federal historic preservation funds. _____
 - d. Adhere to requirements outlined in the State of North Dakota's Local Government Participation Procedures issued by the State Historic Preservation Office. _____
2. Requirements specific to this CLG:

(6) The CLG contact person, including title/position, mailing address and telephone number. _____

(7) The Certification Agreement has been signed by SHPO and Chief Elected Local Official. _____

(8) Other: _____

STATE REVIEWER

Signature

Name and Title

Date

Model CLG Ordinance

ORDINANCE NO.

AN ORDINANCE ENACTING ARTICLE (ordinance number/identifier) OF THE (type of jurisdiction) CODE OF THE (type of jurisdiction) OF (name of applicant jurisdiction) , NORTH DAKOTA, RELATING TO THE HISTORIC PRESERVATION COMMISSION

BE IT ORDAINED BY THE (name of applicant governing body) OF THE (name of applicant jurisdiction), NORTH DAKOTA, AS FOLLOWS:

Section (#) : Article (number or other identifier) of the name of (name and type of jurisdiction) Code entitled "Historic Preservation Commission is hereby enacted as follows

Article (#) HISTORIC PRESERVATION COMMISSION:

Section (#) Purpose and Declaration of Public Policy.

- (a) The purpose of this ordinance is to establish a program for the designation, preservation, protection, renovation and use of historic properties within the City. The program shall:
- (1) Promote cultural stability and safeguard the heritage of the City.
 - (2) Stimulate the tourist industry by preserving the City's economic base.
 - (3) Stabilize and improve property values.
 - (4) Foster economic development through increased pride of place.
 - (5) Provide a mechanism to review and comment on proposed constructions, demolitions, alterations, and relocations within historic districts and with regard to historic properties both within and outside of historic districts.
 - (6) Promote knowledge and understanding of the City's heritage, its historic properties and the past endeavors of its residents.
- (b) This ordinance will enable the City to:
- (1) Retain and enhance historic properties within the City while allowing a property's adaptation for modern use by assuring that future construction, relocation, and alterations are compatible with the historic property's historic character.
 - (2) Assure that zoning ordinances, building permits, land subdivisions, construction, alteration, relocation, and demolition adjacent to historic properties or within historic districts are compatible with historic preservation principles and practices.
 - (3) Cooperate with and assist local, state, and federal agencies implement and enforce federal and state legislation to identify, evaluate, designate, record,

protect, and preserve historic properties.

Section (#) Creation of the Historic Preservation Commission.

The (*name of the commission*) Historic Preservation Commission (hereafter “the commission”) is hereby created.

Section (#) Members–Qualifications–Appointment–Terms– Compensation– Conflicts.

- (a) The commission shall consist of (*insert the written number, no fewer than five (insert the Arabic numeral)*) members who shall be residents of the (*jurisdiction*) or the area within its extraterritorial jurisdiction.
- (b) The commission shall be comprised of persons who evince a demonstrated knowledge of, or substantial interest in, history, architecture, archeology, historic preservation or related disciplines.
 - (1) The majority of the commission members must have professional qualifications in the fields of history, architectural history, prehistoric or historic archeology, architecture, folklore, cultural anthropology, curation, conservation, planning, landscape architecture or related disciplines.
 - (2) The requirement of this section may be waived, with the agreement of the North Dakota State Historic Preservation Office (NDSHPO), if individuals having appropriate professional qualifications are not available for appointment, and reasonable efforts, as defined by this section, have been made to fill the positions.
- (c) Applicants shall be solicited by requests for resumes and written assurance of willingness and interest in serving which solicitations shall be made:
 - (1) To local schools and colleges;
 - (2) To local architectural and engineering firms;
 - (3) To local historical societies;
 - (4) By recommendation of interested citizens of the jurisdiction;
 - (5) By public advertisement in a local newspaper of general circulation.
- (d) After the deadline for submission thereof and review of applicant resumes and written assurance of interest in, and willingness to serve, commission members shall be appointed by the (*chief elected official of the jurisdiction*), subject to approval of North Dakota State Historic Preservation Office (NDSHPO).
- (e) All terms shall commence on (*insert starting date*) of each year. Initially three members shall serve for a term of one year; two members shall serve for a term of two years; and two members shall serve for a term of three years, the allocation of terms to be determined by the appointing official. At the expiration of the initial terms, members shall be appointed for three years terms but the member may serve until a successor has been appointed and the successor’s appointment approved.

- (f) If a vacancy occurs other than by expiration of a term, it shall be filled by appointment for the unexpired portion of the term following the procedures set forth in this section. Notwithstanding the expiration of a member's term, such member may serve until a successor has been appointed and the successor's appointment approved.
- (g) No commission member shall be entitled to any compensation, except that necessary and reasonable expenses incurred in the performance of the members' duties may be reimbursed.
- (h) It is recognized that conflicts of interest for commission members may occur due to the possibility of direct or indirect personal financial gain or other business or personal reasons. Commission members in such positions shall declare the existence of such conflict of interest and remove themselves from the meeting room for the duration of the discussion on the conflicting matter and shall abstain from voting on all such matters.

Section (#). Chairman–Quorum.

- (a) The commission shall, at its first meeting following January 1 in each year, elect a chairperson, a vice chairperson, and a secretary to serve until their successors are elected.
- (b) A majority of the members of the commission shall constitute a quorum for the conduct of business.

Section (#). Meetings–Notice– Minutes.

The commission shall solicit public participation in its discussions, decisions and activities. It shall conduct itself and its business in ways which encourage public participation. In furtherance of this goal:

- (a) The commission shall hold at least four (4) meetings annually. The dates for the four (4) required meetings and all other predictable meeting dates and events, except during the commission's first year of operation, shall be set at least a year in advance.
- (b) All meetings shall be open to the public; shall be held in a facility accessible to the disabled; and shall be upon such notice as required by law. Unless law shall provide greater notice, the notice of the meeting and its agenda shall be published prior to the meeting in a newspaper of general local circulation, shall be posted at the (jurisdiction's official place of business), and shall be sent to the North Dakota State Historic Preservation Office at least ten (10) business days prior to the meeting.
- (c) The commission's rules governing its own operation and minutes of all commission meetings shall be maintained at the (jurisdiction's official place of business) or the offices of the commission; shall be accessible during business hours to the public; and shall be filed at the State Historic Preservation Office within fourteen (14) calendar days following each commission meeting, or at such other times as may be directed.

Section (#). Powers of Commission.

Subject to the restrictions and limitations of this ordinance, the commission is hereby empowered to represent the (governing body of the local government) and to act in its interest. The following powers and duties are specifically conferred upon the commission:

- (a) Consistent with this ordinance, to promulgate rules governing its own operation.
- (b) To make recommendations to the (governing body of the local government);
 - (1) Concerning the acquisition of fee simple and less than fee simple rights in property within the (jurisdiction) for purposes of historic preservation;
 - (2) To identify and recommend, for historic preservation purposes, such persons or entities to which fee simple or less than fee simple rights should be granted;
 - (3) For any additional ordinances, resolutions, and/or administrative procedures required to implement this ordinance or to assure adherence to laws enacted and regulations promulgated by the federal or state government pertaining to the certified local government program;
 - (4) Regarding application for, and acceptance and utilization of, grants from federal, state, and local agencies or other entities and individuals;
 - (5) For budgetary appropriations to promote and advance historic preservation within the (jurisdiction) and to otherwise implement this ordinance;
 - (6) Concerning any historic preservation issues or concerns including, without limitation, its enforcement of federal, state, and local legislation and regulation for the designation and protection of historic properties;
 - (7) Concerning the need for protection of historic properties or historic districts within the impact area of any government approved, funded, assisted or licensed projects and proposed means of mitigating any adverse effects;
 - (8) To designate properties within the (jurisdiction) that meet the Secretary of the Interior's Standards for Identification and Registration of Historic Places, the Secretary of the Interior's Criteria for Significance, and the standards set by the National Register of Historic Places and/or the North Dakota Historic Sites Registry;
 - (9) To implement the program referred to in (e), below;
 - (10) To prepare and submit, in accordance with all applicable federal and state laws and regulations, property nominations to the National Register of Historic Places and the North Dakota Historic Sites Registry;
 - (11) To accept gifts or grants;
 - (12) To contract to obtain expertise from persons with profession qualifications in a discipline not represented by membership on the commission;
- (c) To make recommendations to administrative staff, (here should be listed all boards, commissions and other subdivisions of the applicant government to which this provision is intended to apply such as the following examples: the Planning and

Zoning Commission and Board of Adjustment of the (jurisdiction) and any Renaissance Zone Commission established within the (jurisdiction):

- (1) With respect to any building permits, zoning changes, or variances which are pending or issued by the (jurisdiction) which may affect a historic district or historic property. *(Please be advised that some applicant governments choose to include the following provision. Although we, at the current time, allow this provision to be included, we do not recommend it.)*The commission shall have no power to prohibit the issuance of any building permit;
 - (2) To review and comment on any issues concerning historic properties or historic preservation concerns, even if a building permit is not otherwise required by ordinances for its construction, alteration, demolition or relocation; and
 - (3) Concerning any historic preservation issues or concerns.
- (d) To prepare, or have prepared on its behalf, a comprehensive survey, in accordance with standards promulgated by the U.S. Secretary of the Interior and/or the State Historical Society of North Dakota, to assist the (jurisdiction) in designating properties within the (jurisdiction) that meet the Secretary of the Interior's Standards for Identification and Registration of Historic Properties, the Secretary of the Interior's Criteria for Significance, and the standards set by the National Register of Historic Places and/or the North Dakota Historic Sites Registry.
 - (e) To develop, or to have developed on its behalf, a program for the designation, protection, and recognition of historic properties within the (jurisdiction);
 - (f) To review property nominations to the National Register of Historic Places and the North Dakota State Historic Sites Registry according to appropriate standards and procedures promulgated by the U.S. Secretary of the Interior and/or North Dakota State Historic Preservation Office;
 - (g) To preserve records of surveys of historic and/or potentially historic properties and historic districts within the (jurisdiction) and to file such information with the State Historic Preservation Office;
 - (h) To review and comment upon plans, proposals, permits and applications which are developed or required by any federal, state, and local agencies or by other entities which may, in the opinion of the commission, either directly or indirectly effect any historic properties and historic districts;
 - (i) To review and comment upon all certifications of significance and certifications of rehabilitation as requested by the North Dakota State Historic Preservation Officer;
 - (j) To review and comment to federal, state, and local agencies regarding the presence of historic properties and historic districts within the impact area of any government funded, assisted or licensed project, to the extent of the project's effect on historic properties or historic districts, and proposed means of mitigating any adverse effect;
 - (k) To develop and participate in programs to increase public awareness of the value of historic preservation, and of historic properties and historic districts, and of the

- program established by this ordinance;
- (l) To perform any other functions which may be delegated to it by the (governing body of the applicant government.)

Section (#). Employment of Staff.

The (jurisdiction) may provide staff for the commission.

Section (#). Appropriations–Funding.

The (governing body of the applicant government) shall supply necessary fiscal support and may appropriate funds for the operation of the commission. The commission shall receive, hold, dispose of, and account for, assets of any nature or description and all funds received from any source. A special revenue fund known as the Historic Preservation Fund shall be created to receive all funds and account for all fund expenditures.

Section (#). Definition of Terms.

Alteration: Any change to an historic property or historic resource resulting from of construction, renovation, improvement, repair, maintenance or other actions.

Appurtenances: A feature related to a parcel of land or to a property including, but not limited to, buildings, objects, fences, signs, sidewalks, etc.

Building: A structure created to shelter any form of human activity, such as a house, garage, barn, church, hotel, or similar structure.

City/County/etc: *(Some applicant governments find it useful to define the term used as an adjective representing the legal jurisdiction. For example: City: Means the city of _____, North Dakota, and the area within its extra territorial jurisdiction.)*

Commission: The (jurisdiction) of (name the applicant jurisdiction) Historic Preservation Commission, a local historic preservation commission.

Construction: The addition or placement of any improvement onto any historic property or historic district including buildings, structures, infrastructure, objects, sites, or appurtenances or any portion thereof.

Criteria of Significance: The quality of significance in American history, architecture, archeology, engineering and culture is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, material, workmanship, feeling, and association and:

- A. That are associated with events that have made a significant contribution to the broad patterns of national, state, regional, county, or local history or prehistory; or,
- B. That are associated with the lives of persons significant in our past; or,
- C. That embody the distinctive characteristics of an architectural style, type, period, or method of construction, or use of indigenous materials or craftsmanship, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose

- components may lack individual distinction; or,
- D. That have yielded or maybe likely to yield information important in prehistory or history.

Demolition: The complete or partial removal of buildings, structures, infrastructure, objects, sites, or appurtenances.

Designation: The identification and registration of property for protection that meet criteria established or endorsed by the State Historic Preservation Office or the commission.

Eligibility: A determination by the commission or other legal authority that a property meets the criteria of significance.

Historic District: A geographically definable area, urban or rural, which contains a concentration of significant sites, buildings, structures, or objects united historically or aesthetically in concentration, linkage, or continuity by plan or physical development and which meets the criteria of significance. Districts may be contiguous or discontiguous and may contain properties that are individually eligible for the National Register of Historic Places and/or the North Dakota State Historic Sites Registry or that are designated as eligible by virtue of their ability to contribute to the significance of the concentration.

Historic Property: A building, structure, site, object, resource or district that meets the Criteria of Significance as promulgated by the Secretary of the Interior and endorsed, accepted or adopted by the North Dakota State Historic Preservation Office.

Improvement: An appurtenance developed by human design including, but not limited to, buildings, structures, infrastructure, objects and manufactured units such as mobile homes, carports, and storage buildings.

National Register of Historic Places: A federal list of cultural resources worthy of preservation, authorized under the National Historic Preservation Act of 1966 (as amended) as part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect the nation's historic, architectural and archeological resources. The National Register program is administered by the commission, by the State Historic Preservation Office and by the National Park Service under the Department of the Interior.

Significant federal benefits may accrue to owners of properties listed on, or determined eligible for listing in the National Register.

North Dakota State Historic Preservation Office: See State Historic Preservation Office.

North Dakota State Historic Sites Registry: A legislatively approved (North Dakota Century Code: Chapter 55-10) list of significant historic properties located in North Dakota, comparable to the National Register of Historic Places.

Object: An object is distinguishable from buildings and structures by being a construction that is primarily artistic in nature or relatively small in scale and simply constructed. Although it may be, by nature or design, movable, an object is associated with a specific setting or environment and may include monuments, fountains, statuary, mileposts, sculpture, etc.

Professional Qualifications: The professional qualifications necessary to comply with this section shall be those defined by the Secretary of the Interior’s Professional Qualification Standards.

Relocation: Any change in the location of a building, object, or structure in its present setting or to another setting.

Resource: Sites, buildings, structures and objects and all significant features within historic districts, together with the appurtenances thereon and improvements thereto, if any. The term “resource” includes, but is not limited to, separate districts, buildings, structures, sites, objects, landscape features, and related groups thereof.

Protection: The commission review process for proposed conservation, demolition, alteration, improvement, relocation or other action that may affect historic property or a historic district.

Site: A location of a significant event, designated by the commission or other legal authority that is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historic or archeological value regardless of the value of any existing buildings, structures, or objects.

State Historic Preservation Office (NDSHPO): The staff and facilities appointed and assigned by the State Historic Preservation Officer (SHPO) to administer and manage the North Dakota State Historic Preservation Program under the guidance of the SHPO.

State Historic Preservation Officer (SHPO): The person designated by the Governor to be the primary administrator and manager of the State Historic Preservation Program as sponsored by the National Park Service.

Structure: A constructed work of human origination created for purposes other than providing human shelter and may include constructions such as aircraft, automobiles, bridges, dams, earthworks, railroad facilities and equipment, *et al.* and *etc.*

Section 2: ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH ARE HEREBY REPEALED

Section 3: EFFECTIVE DATE: THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER FINAL PASSAGE.

Name
Title (ex. Mayor)

Name Witness

First Reading:
Second Reading:
Final Passage: