

## SECTION IV

### HISTORIC PRESERVATION LAWS AND POLICIES

#### FEDERAL LAWS

##### **National Historic Preservation Act**

The National Historic Preservation Act, first passed in 1996 and amended twice since then, establishes general procedures and policies concerning historic preservation. Except in instances where federal monies are involved in construction or rehabilitation, the National Act does not specifically affect local properties.

##### **Section 4(f) of the Transportation Act and National Environmental Policy Act**

Other federal laws related to historic properties include Section 4(f) of the Department of Transportation Act and the National Environmental Policy Act, all of which require that consideration must be given in the planning of any federally funded project to the effects that project may have on nearby historic resources.

##### **Archaeological Resources Protective Act and Native American Graves Protection and Repatriation Act**

The Archaeological Resources Protection Act and the Native American Graves and Repatriation Act (NAGPRA) protect archaeological and burial resources not only with policies and procedures, but also by imposing fines and penalties for violations of the law. NAGPRA establishes a process for protecting and returning Native American cultural items and outlines the process for placing ownership of these items with appropriate Indian Tribes.

##### **Penn Central Supreme Court Case**

Perhaps the best known and most important U.S. Supreme Court Case affecting Historic Preservation is the 1978 *Penn Central Transportation Company v. City of New York* case, which established several historic preservation tenets:

- Preservation is a legitimate governmental objective.
- Restricting changes to designated properties is an appropriate means for historic preservation.
- A regulatory “taking” of property is established only when all use of a property is denied.
- Property owners are not entitled to highest and best use of their property.

# Historic Preservation Laws and Policies

## WASHINGTON STATE LAWS

Provisions for the Washington State Historic Preservation Program, which was established in 1975, are found in the Revised Code of Washington (RCW) 27.34. Other relevant state regulations include:

### **Indian Graves and Records RCW 27.44**

This statute protects native Indian burial grounds, historic graves, cairns, and glyptic markings and imposes criminal and civil fines and penalties disturbing these sites and possession and sale of artifacts.

### **Archaeological Sites and Resources RCW 27.53**

This statute protects archaeological sites on both public and private lands in Washington State from unauthorized excavation or disturbance. A permit from the State Historic Preservation Officer is required to excavate or affect an archaeological site. The act requires the State Office of Archaeology and Historic Preservation to consult with the affected Indian Tribes prior to issuing an excavation permit, and also gives OAHHP the ability to issue civil penalties for violations. OAHHP can also deny a permit based on past performance.

### **Abandoned and Historic Cemeteries and Historic Graves Act RCW 68.60**

This statute protects historic graves and cemeteries from unlawful destruction, mutilation, injury or removal. Deliberate desecration of any historic grave, grave marker, tomb, monument, or cemetery is a Class C felony.

### **State Environmental Policy Act (SEPA) RCW 34.21**

SEPA requires government decision makers to consider likely environmental consequences of a proposal and require mitigation measures. Consideration of historic and cultural resources occurs in the SEPA checklist alongside other environmental elements including noise, air quality, traffic, water, environmental health, etc.

The Olympia Heritage Commission has adopted SEPA mitigation policies for effects to historic resources.

### **Shoreline Management Act RCW 90.58**

The Shoreline Management Act (SMA) contains archaeological protections. Local shoreline master programs must include policies and regulations to protect historic, archaeological, and cultural features. It requires that development permits issued by local governments in areas with archaeological sites require a site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes prior to issuing development permits. Jurisdiction under this law is within 200 feet from the shoreline.

# Historic Preservation Laws and Policies

## **Washington State Growth Management Act RCW 36.70A**

The Washington State Growth Management Act (WGMA), passed in 1990, establishes 14 goals for communities. One of the goals is to “Identify and encourage the preservation of lands, sites and structures that have historical, cultural and archaeological significance.” Although Historic Preservation is not a mandated part of the Comprehensive Plans that communities are required to produce under WGMA, Olympia has an Historic Preservation Chapter included its Comprehensive Plan.

## **Special Property Tax Valuation RCW 84.26**

The State of Washington has authorized local governments to enact a Special Property Tax Valuation program which provides for a reduction in local property taxes to offset the cost of approved renovations to historic properties. In Olympia, properties must be listed on the Olympia Heritage Register to qualify for this program.

## **Americans with Disabilities Act (ADA)**

Public buildings or structures listed on either the National or local historic registers must comply with accessibility standards as outlined in the ADA. If, however, the State Historic Preservation Officer determines that compliance with the full accessibility requirements would “threaten or destroy” the significance of the designated historic property, alternative minimum requirements or methods of access may be used.

## **Procedural Requirements**

Procedurally, the Olympia Heritage Commission must also comply with The Washington State Open Public Meetings Act, Chapter 42.30 RCW in all of their deliberations and the Appearance of Fairness Doctrine Chapter RCW 42.36 when undertaking quasi-judicial actions.

## **CITY OF OLYMPIA LAWS AND POLICIES**

**The elements in this section reflect the current (2004) Historic Preservation Program which may be revised or updated.**

### **Certified Local Government**

Local governments with a historic preservation program that meets specific federal and state standards are eligible for a certification is known as a “Certified Local Government” or “CLG,” which is awarded by the National Park Service and the Washington State Office of Archaeology and Historic Preservation (OAHP). The City of Olympia has been a CLG since 1986.

Responsibilities of a CLG include maintaining a historic preservation commission, surveying local historic properties, enforcing state or local preservation laws, reviewing National Register Nominations, and providing for public participation.

# Historic Preservation Laws and Policies

Obtaining status as a CLG may help a local government encourage, develop, and maintain its local preservation efforts in coordination with its development plans. In addition, CLGs may apply for special grants from the State Historic Preservation Officer (SHPO); receive recognition for their preservation expertise by local, state, and federal agencies; obtain technical assistance and training from the SHPO; participate in the review of nominations to the National Register of Historic Places; participate in the national historic preservation assistance network; regularly exchange information with the SHPO; and participate in statewide preservation programs and planning.

## **Olympia’s Comprehensive Plan**

Chapter Nine of the City of Olympia Comprehensive Plan provides the basis for City ordinances relating to historic preservation. The Goals in the Historic Preservation Chapter of the Comprehensive Plan include:

GOAL HP1. To use historic resources as a key element in the overall design of the City.

GOAL HP2. To foster civic and neighborhood pride in the beauty and accomplishments of the past by establishing, preserving, and enhancing the City’s historic identity.

GOAL HP3. Establish programs which effectively identify, recognize, and encourage the preservation and continued use of historic buildings, districts, structures and sites which give physical evidence of the City’s history and development periods.

GOAL HP4. To integrate historic preservation objectives into City decision processes.

GOAL HP5. Provide for the continuing revitalization of deteriorating residential areas within the city.

GOAL HP6. Use historic resources to promote economic stability in the City.

GOAL HP7. Conserve the city’s (and the earth’s) valuable resources.

GOAL HP8. Preserve and enhance Downtown’s historic character and its significant historic buildings, structures, and sites.

An important goal is to integrate Historic Preservation into other areas of the city’s comprehensive plan including Economic Sustainability, Housing, Land Use, Transportation and Environment.

# Historic Preservation Laws and Policies

## The City of Olympia Historic Preservation Ordinance

The Olympia Historic Preservation program was authorized in 1983 and is outlined in OMC Chapter 18.12. The Heritage Commission's roles, responsibilities and procedures are identified in OMC Chapter 18.84.

- A. The major responsibilities of the Heritage Commission are to identify and actively encourage the preservation of the City's historic resources by initiating and maintaining a Heritage Register of Historic Places and reviewing proposed changes to register properties; to raise community awareness of the City's history and historic resources; and to serve as the City's primary resource in matters of history, historic planning and preservation.
- B. In carrying out these responsibilities the Heritage Commission shall engage in the following:
  1. Conduct a comprehensive inventory of historic properties within the boundaries of the City; publicize and periodically update inventory results.
  2. Initiate and maintain a City Heritage Register according to procedures stated in Sections 18.12.080 and 18.12.140. This official register shall list buildings, structures, districts, sites and objects identified by the Commission as having historic significance worthy of recognition by the City and encouragement of efforts by owners to maintain, rehabilitate and preserve the properties or objects.
  3. Review proposals to construct, change, alter, modify, remodel, remove or significantly affect properties or districts on the Heritage Register as provided in Section 18.12.120(A)(B)(C); adopt standards to be used to guide this review, also as provided in Sections 18.12.120(A)(B)(C).
  4. Provide for the review either by the Heritage Commission or its staff of all applications for approvals, permits, environmental assessments or impact statements, and other similar documents pertaining to identified historic resources or adjacent and facing properties. Such review shall be for the purpose of providing advisory comments on the impacts of the proposed action on the historic significance of the identified historic resource. The City agency or body charged with acting on such permit or document shall forward it to the Commission for review and comment before action is finalized. The Commission or its designee shall respond within time limits for City review of the permit or document.

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5. Participate in, promote and conduct public information, educational and interpretive programs pertaining to historic resources.
6. Provide information to the public on methods of maintaining and rehabilitating historic properties. This may take the form of pamphlets, newsletters, workshops or similar activities.
7. Officially recognize excellence in the rehabilitation of historic objects, buildings, structures, sites and districts, and new construction in historic areas; and encourage appropriate measures for such recognition.
8. Be informed about and provide information to the public on incentives for preservation of historic resources, including legislation, regulations and codes which encourage the use and adaptive reuse of historic properties.
9. Submit nominations to the State and National Registers of Historic Places.
10. Investigate and report to the City Council on the use of various federal, state, local or private funding sources available to promote historic resource preservation in the City.
11. Establish liaison support, communication and cooperation with federal, state and other local governmental entities which will further historic preservation objectives, including public education, within the Olympia area.
12. Review and comment to the City Council on the conduct of land use, housing and redevelopment, municipal improvement, and other types of planning and programs undertaken by any agency of the City, other neighboring cities and towns, the County, the state or federal governments, as they relate to historic resources of the City.
13. Advise the City Council generally on matters of City history and historic preservation.
14. Perform any other functions designated to the Commission by the City Council. (Ord. 5517 §1, 1995).

## **Archaeological and Historic Sites**

OMC 18.26, Archaeological and Historic Sites provides for more restrictive review of proposed developments which affect historic or archaeological resources within the City of Olympia at the discretion of the Environmental Review Officer of the City.

# Historic Preservation Laws and Policies

Permitting for changes that affect historic register and inventory properties requires additional considerations including design review and project review and may require mitigation. This is authorized by both part of the OMC and the State Environmental Policy Act. The City of Olympia has adopted mitigation guidelines for these effects which are available from Preservation Commission staff.

## Design Review Code

The City of Olympia’s Design Review Code at OMC18.50 provides for special design review criteria for remodels of buildings which are on the Historic Property Inventory or Heritage Register (OMC 18.110.220) or those buildings which are in a historic district or abutting or across the street from Heritage Register properties (OMC18.110.210).

OMC 18.130.050 provides for special design provisions referencing the historic building types in the High Density Corridor 1 and 2 areas. Design Review Board-level review required for historic properties is done by a Joint Review Committee consisting of four Design Review Board<sup>1</sup> members and three Heritage Commission members.

The Heritage Commission will be evaluating how to integrate design review and historic preservation concerns and processes as part of a future work program.

## Building Code

The City of Olympia’s Building Code additionally provides in OMC 16.04.015 -3403.5 Amendments for Historic Buildings, for latitude in the Uniform Building Code at the discretion of the Building Code Official for the City of Olympia.

## Procedures

Conduct of the Heritage Commission and Historic Preservation program must be consistent with the Due Process provisions of the Fifth and Fourteenth Amendments to the U.S. Constitution which require that there is a right to fair notice, ability to be heard and that there are stated procedures for conduct of meetings and written guidelines for decisions. The Commission should also be cognizant of the rights of religion and free speech in making decisions.

***Future Ordinance Revision Issues to be Addressed are Included in Section IX of this Document.***

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<sup>1</sup> The City of Olympia Design Review Board is a committee of citizens and design professionals who are appointed by the city council to review projects which require board level review under the city’s design review code.

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