

Proposed Historic District Ordinance

Ordinance No. _____

AN ORDINANCE TO CREATE THE KELLOGG PARK HISTORIC DISTRICT

**THE CITY OF PLYMOUTH ORDAINS:
KELLOGG PARK
HISTORIC DISTRICT ORDINANCE**

Section 1 Statement of Purpose.

- A. The purpose of this Article of the Ordinance is to:
1. safeguard the heritage of the City of Plymouth by preserving one or more historic districts in the City which reflect[s] elements of its cultural, social, economic, political or architectural history;
 2. stabilize and improve property values in such district and the surrounding areas;
 3. foster civic beauty;
 4. strengthen the local economy; and
 5. promote the use of historic districts for the education, pleasure and welfare of the citizens of the city.
 6. to assist property owners in recognizing and protecting their historic resources.
- B. The following terms are hereby defined to mean:
1. "alter" or "alteration" means work that changes the detail of the resource but does not change the basic size or shape.
 2. "certificate of appropriateness" means the written approval of a permit application for work that is appropriate and that does not adversely affect a resource.
 3. "committee" means a historic district study committee appointed by the City Commission.
 4. "demolition" means the razing or destruction, whether entirely or in part, of a resource and includes, but is not limited to demolition by neglect.
 5. "demolition by neglect" means neglect in maintaining, repairing, or securing a resource that results in deterioration of an exterior feature of the resource or the loss of structural integrity of the resource.
 6. "denial" means the written rejection of a permit application for work that is inappropriate and that adversely affects a resource.
 7. "historic district" means an area, or group of areas not necessarily having contiguous boundaries, that contains one resource or a group of resources that are related by history, architecture, archeology, engineering or culture.

7. "historic district" means an area, or group of areas not necessarily having contiguous boundaries, that contains one resource or a group of resources that are related by history, architecture, archeology, engineering or culture.
8. "Historic District Commission" (HDC) means the City of Plymouth Historic District Commission.
9. "historic preservation" means the identification, evaluation, establishment, and protection of resources significant in history, architecture, archeology, engineering or culture.
10. "historic resource" means a publicly or privately owned building, structure, site, object, feature or open space that is significant in the history, architecture, archeology, engineering or culture of the City of Plymouth.
11. "notice to proceed" means the written permission issued by the HDC for work to be performed within a historic district when the HDC has found the proposed work to be necessary, pursuant to a finding under Section 5(f)(1-4).
12. "open space" means undeveloped land, a naturally landscaped area, or a formal or man-made landscape area that provides a connective link or a buffer between resources.
13. "ordinary maintenance" means keeping a resource unimpaired and in good condition through ongoing minor intervention, undertaken from time to time, in its exterior condition. Ordinary maintenance does not change the external appearance of the resource except through the elimination of the usual and expected effects of weathering, age and use. Ordinary maintenance does not constitute "work" for the purposes of this act.
14. "proposed historic district" means an area, or group of areas not necessarily having contiguous boundaries, that has delineated boundaries and that is under review by a committee or a standing committee for the purpose of making a recommendation as to whether it should be established as a historic district or added to an established historic district.
15. "repair" means to restore a decayed or damaged resource to a good or sound condition by any process. A repair that changes the external appearance of a resource constitutes work for the purpose of this Ordinance.
16. "resource" means one or more publicly or privately owned historic or non-historic buildings, structures, site, objects, features or open spaces located within a historic district.
17. "standing committee" means a permanent body established by the legislative body of a local unit to conduct the activities of a historic district study committee on a continuing basis.
18. "work" means construction, addition, alteration, repair, moving, excavation or demolition of a resource located within a historic district.

Section 2 Boundaries of District.

The City of Plymouth Historic District shall be that area shown and bounded as such on the City Zoning Map.

Section 3 Regulation of Structures.

There shall be no construction, addition, alteration, repair, moving, excavation, or demolition of a resource within any designated historic districts within the City of Plymouth, such as the City of Plymouth Historic District, unless such action complies with the requirements set forth in this Ordinance.

Section 4. Historic District Commission.

A. Creation of Historic District Commission (HDC).

In order to execute the purposes declared in this Ordinance, there is hereby created a commission to be called the City of Plymouth Historic District Commission (HDC).

B. Membership of the HDC.

The HDC shall consist of seven (7) members whose residence is located in the City of Plymouth. They shall be appointed by the Mayor for terms of office of three (3) years provided that two (2) of the initial members shall be appointed for one (1) year, two (2) for two(2) years, and three (3) for three(3) years. After the initial terms expire, each member shall be appointed for three (3) years. Members of the HDC may be re-appointed after their terms expire.

At least one (1) member of the HDC shall be appointed from a list of citizens submitted by a duly organized and existing preservation society of societies and at least one (1) member of the HDC shall be a graduate of an accredited school of architecture who has two (2) years of architectural experience or who is an architect duly registered in this State, if such person resides in the City and is available for appointment. A majority of the members of the HDC shall have a clearly demonstrated interest in or knowledge of historic preservation.

A vacancy occurring in the membership of the HDC for any cause shall be filled within 60 calendar days, by a person appointed by the Mayor for the un-expired term. The members of the HDC shall serve without compensation.

All Commissioners shall be governed by the City's Code of Ethics. Any member or members of the HDC may be removed by vote of the City Commission for inefficiency, neglect of duty, unresolved conflict of interest, or malfeasance in office, after due consideration by the City Commission. The City Commission shall issue its directive to any member being considered for removal indicating the time, date and place for consideration by the City Commission along with a specification of grounds upon which removal is being considered. At the time and place set, said member shall have an opportunity to be heard and may be represented by counsel. Decisions by the City Commission shall be final and shall be based upon the record of said show cause proceeding. The record of all such proceedings shall be taken and preserved for one (1) year unless a longer retention is requested by the member under consideration for removal.

Absence from three (3) consecutive regular meetings of the HDC shall automatically operate to vacate the seat of a member of the HDC, unless the absence is excused by the HDC by resolution setting forth such excuse.

C. Duties and Powers of the HDC.

1. It shall be the duty of the HDC to review all plans for the construction, addition, alteration, repair, moving, excavation or demolition of structures in the historic district and it shall have the power to pass upon such plans before a permit for such activity can be granted. In reviewing the plans, the commission shall follow the U.S.. Secretary of the Interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, as set forth in 36 CFR Part 67, or their equivalent as approved or established by the Michigan Bureau of History of the Department of State, and shall also give consideration and significance to:
 - a. the historical or architectural value and significance of the historic resource and its relationship to the historic value of the surrounding area;
 - b. the relationship of the exterior architectural features of such historic resource to the rest of the resources and to the surrounding area;
 - c. the general compatibility of the exterior design, arrangement, texture and materials proposed to be used;
 - d. to any other factor, including esthetics, which it deems pertinent;
 - e. the proposed major changes to open spaces in a historic district. The HDC shall review plans for major changes to these open spaces, such as the removal of large trees (over 12" in diameter as measured 4' above ground) or the making of major contour changes in terrain features. The HDC may use it discretion to decide if proposed changes are major in nature or not.
2. The HDC shall review and act upon exterior features of a resource, and shall not review and act upon interior arrangements unless interior work will cause visible changes to the exterior of the historic resource. The HDC shall not disapprove applications except in regard to considerations as set forth in the previous paragraph.
3. The HDC may delegate the issuance of certificates of appropriateness for specified minor classes of work to its staff, to the inspector of buildings, or to another delegated authority. The HDC shall provide to said delegated authorities specific written standards for issuing the certificates of appropriateness under this sub-section. Said delegated authorities shall come before the next regularly scheduled HDC meeting and the HDC shall review the certificates of appropriateness so issued. These reviews are to serve the purpose of keeping the HDC informed as to what certificates of appropriateness for minor work have been issued since the last HDC meeting. On a quarterly basis, the HDC shall review the certificates of appropriateness, if any, issued by the aforesaid delegated authority to determine whether or not the delegated responsibilities should be continued.

4. In case of an application for work affecting the appearance of a resource or for the alteration, moving or demolition of a resource which the commission deems so valuable to the City that the loss thereof will adversely affect the public purpose of the City, the HDC shall endeavor to work out with the owner an economically feasible plan for preservation of the historic resource.
5. If all efforts by the HDC to preserve a resource fail, or if it is determined by the City Commission that public ownership is most suitable, the City Commission, if considered to be in the public interest, may acquire the resource using public funds, public or private gifts, grants, or proceeds from the issuance of revenue bonds. Such an acquisition shall be based upon the recommendation of the HDC or standing committee. The HDC or standing committee is responsible for maintaining publicly owned resources using its own funds, if not specifically designated for other purposes, or public funds committed for that use by the City Commission. Upon recommendation of the HDC or standing committee, the City may sell resources acquired under this section with protective easements included in the property transfer documents, if appropriate.

D. Rules of the HDC.

The HDC shall elect from its membership a chairman and a vice-chairman whose terms of office shall be fixed by the HDC. The chairman shall preside over the HDC and shall have the right to vote. The vice-chairman shall, in the case of the absence or disability of the chairman, perform the duties of the chairman.

A secretary shall be appointed and shall keep a record of all resolutions, proceedings and actions of the HDC and report regularly to the City Commission.

At least four (4) members of the HDC shall constitute a quorum for the transaction of its business. The HDC shall adopt rules or By-Laws for the transaction of its business which shall provide for the time and place of holding regular meetings. They shall provide for the calling of special meetings by the chairman or by at least two members of the HDC. All meetings of the HDC shall be open to the public and any person or his duly constituted representative shall be entitled to appear and be heard on any matter before it reaches its decision.

Public notice of the time, date and place of meetings shall be given in the manner required by Act No. 267 of Public Acts of 1967, as amended. Each notice shall contain the name, address and telephone number of the City of Plymouth Historic District Commission. The notice must be posted at the principal office of the HDC, in addition to any other location deemed appropriate by the City Commission, including cable television. A meeting agenda shall be a part of the notice and shall include a listing of each permit application to be reviewed or considered by the HDC. The requirements of the aforementioned act include:

1. for regular meetings of a public body, there shall be posted within ten (10) days of the first meeting of the HDC in each calendar or fiscal year a public notice stating the dates, times and places of its regular meetings;
2. for a rescheduled regular meeting or special meeting of the HDC, a public notice stating the date, time and place of the meeting shall be posted at least eighteen (18) hours before the meeting;

3. for a change in the schedule of regular meetings of the HDC, a notice shall be posted within three (3) days after the meeting at which the change is made stating the new dates, times and places of its regular meetings;
4. nothing in this section shall bar the HDC from meeting in an emergency session should a severe and imminent threat to the health, safety or welfare of the public when 2/3 of the HDC members decide that delay would be detrimental to efforts to lessen or respond to the threat.

The HDC shall keep a record, which shall be open to public view, of its resolutions, proceedings and actions. The concurring affirmative vote of four (4) members shall constitute approval of plans before it for review or for adoption of any resolution, motion or other action of the HDC.

The HDC shall submit an annual report to the City Commission of the general activities of the HDC and shall submit such special reports as requested by the City Commission.

Section 5 Procedure for Review of Plans.

A. Filing of Application.

Application for a building permit to construct, alter, repair, move, add to, excavate or demolish any structure in a historic district, shall be made to the Building Department. The application shall state whether the property is in a historic district such as the City of Plymouth Historic District. Plans shall be submitted showing the structure in question and also showing its relation to adjacent structures.

Upon the filing of such application, the Building Department shall immediately determine the zoning classification of the parcel and if it is determined to be located within a residential zoning district and for work on a new or existing residence or a new or existing residential accessory structure. The Building Department shall immediately notify the HDC of the receipt of such application and shall transmit it together with accompanying plans and other information to the HDC. If the parcel is determined to be within any zoning classification other than residential or for consideration of any kind of request other than work on a new or existing residence or new or existing residential accessory structure, then Processing Requirements for site Plan Review as set forth in Section 5.209 of the Zoning Ordinance must be completed and approved prior to review by the HDC. The Planning Commission may, however, at any time during its review refer such application to the HDC for the HDC's preliminary review. Upon approval of the required site plan in accordance with Section 5.209 of the Zoning Ordinance, the Building Department shall immediately notify the HDC of the application and shall transmit the application to the HDC for its review.

The Building Department shall not issue a permit and no proposed work shall proceed until the HDC has acted on the application by issuing a certificate of approval or a notice to proceed except as provided for in Section 4.C.3.

B. Action Upon Application.

The HDC shall meet within thirty-five (35) days after a complete application has been received by the Building Department, and shall review the plans according to the duties and powers specified herein. In reviewing the plans the HDC must make

every effort to confer with the applicant for the building or demolition permits. No fees shall be charged to process a permit application through the HDC beyond the existing Building Department fees.

The failure of the HDC to approve or disapprove of such plans within sixty (60) days from the date of a completed application for permit, unless otherwise mutually agreed upon by the applicant and the HDC in writing, shall be deemed to constitute approval and the Building Department shall proceed to process the application without regard to a Certificate of Appropriateness.

C. Approval of Application.

If the HDC approves such plans, it shall issue a Certificate of Appropriateness which is to be signed by the chairman, attached to the application for a building permit and immediately transmitted to the Building Department. The chairman shall also stamp all prints submitted to the HDC signifying its approval.

After the Certificate of Appropriateness has been issued and the building permit granted to the applicant, the Building Department shall, from time to time, inspect the work approved by such certificate and shall take such action as is necessary to force compliance with the approved plan.

D. Denial of Application.

If the HDC disapproves of such plans, it shall state its reasons for doing so and shall transmit a record of such action and reasons therefore in writing to the Building Department and to the applicant. The HDC may advise what it thinks is proper if it disapproves of the plan submitted. The applicant, if he or she so desires, may make modifications to his or her plan and shall have the right to resubmit the application at any time after so doing.

A denial of a permit application shall be binding on the Building Department, building inspector or any such other relevant authority.

The denial of the plan shall also include a notice to the applicant of his or her rights of appeal to the State Historic Preservation Review Board and to the circuit court.

E. Ordinary Maintenance and Prior Permit Work.

Nothing in this Ordinance shall be construed to prevent ordinary maintenance of a resource within the historic district, or to prevent work on any resource under a permit issued by the building inspector or another duly delegated authority before this Ordinance was enacted.

F. Notice to Proceed.

Under special conditions and emergencies, work within a historic district shall be permitted through the issuance of a **notice to proceed** by the HDC if any of the following conditions prevail and if the proposed work can be demonstrated by a finding of the HDC to be necessary to substantially improve or correct any of the following:

1. the resource constitutes a hazard to the safety of the public or the occupancy of a structure;

2. the resource is a deterrent to a major improvement program which will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approval, financing and environmental clearances;
3. retention of the resource would cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district have been attempted and exhausted by the owner; or
4. retention of the resource would not be in the interests of the majority of the community.

Section 6 Appeals.

Any permit applicant aggrieved by a decision of the HDC may file an appeal with the State Historic Preservation Review Board of the Michigan Historical Commission within the Department of State. The appeal shall be filed within sixty (60) days after the decision is furnished to the applicant.

A permit applicant aggrieved by the decision of the State Historic Preservation Review Board may appeal the decision to the circuit court having jurisdiction over the HDC whose decision was appealed to the State Historic Preservation Review Board. Said applicant may only appeal to the circuit court after appealing to the State Historic Preservation Review Board.

In addition, any citizen or duly organized historic preservation organization in the City, other than the resource property owner, jointly or severally aggrieved by a decision of the HDC may appeal the decision to the circuit court.

Section 7 Demolition by Neglect.

- A. Upon a finding by the HDC that a historic resource either in the historic district or in a proposed historic district, which is subject to HDC review pursuant to the terms under Section 10 of this Ordinance, is threatened by demolition by neglect, the HDC may do either of the following:
 1. require the owner of the resource to repair all conditions contributing to demolition by neglect, or
 2. if the owner does not make the repairs within a reasonable time, the HDC or its agents may enter the property and make such repairs as are necessary to prevent demolition by neglect.
- B. The costs of the work shall be charged to the owner, and may be levied by the City of Plymouth as a special assessment against the property. The HDC or its agents may enter the property for purposes of this section upon obtaining an order from the circuit court.

Section 8 Failure to Obtain a Permit.

When work has been done upon a historic resource without a permit, and the HDC finds that the work does not qualify for a Certificate of Appropriateness, the HDC may require an owner to restore the resource to the condition the resource was in before the inappropriate work was conducted or modify the work so that it qualifies for a Certificate of Appropriateness.

If the owner does not comply with the restoration or modification requirement within a reasonable time, the HDC may seek an order from the circuit court to require the owner to restore the resource to its former condition or to modify the work so that it qualifies for a Certificate of Appropriateness.

If the owner does not comply or cannot comply with the order of the court, the HDC or its agents may enter the property and conduct work necessary to restore the resource to its former condition or modify the work so that it qualifies for a Certificate of Appropriateness in accordance with the court's order. The cost of the work shall be charged to the owner, and may be levied by the City of Plymouth as a special assessment against the property. When acting pursuant to said order of the circuit court, the HDC or its agents may enter a property for purposes of this section.

Section 9 Establishment, Amendment or Elimination of a Historic District.

A. Establishment of Historic District Study Committee.

Before establishing, amending, adding to, removing properties from or eliminating any historic district, the City Commission shall appoint a Historic District Study Committee. The Committee shall contain a majority of persons who have a clearly demonstrated interest or knowledge of historic preservation, and shall contain representation from one or more duly organized local historic preservation organizations.

B. Duties of the Historic District Study Committee.

1. The Historic District Study Committee, or consultants employed by the Committee, shall do all of the following:
 - a. Conduct a photographic inventory of resources within each proposed historic district following procedures established or approved by the Michigan Historic Bureau;
 - b. Conduct basic research of each proposed historic district and the historic resources located within that district;
 - c. Determine the total number of historic and non-historic resources within the proposed historic district and the percentage of historic resources of that total. In evaluating the significance of the historic resources, the Committee shall be guided by the selection criteria for evaluation issued by the Secretary of the Interior for inclusion of resources in the national register of historic places, as set forth in 36 CFR Part 60 below:

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, materials, workmanship, feeling, and association and

- (a) that are associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) that are associated with the lives of persons significant in our past; or
- (c) that embody the distinctive characteristics of a type, period, or method of construction, 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 may be likely to yield, information important in prehistory or history.

and criteria established or approved by the Michigan Historic Bureau, if any;

- d. Prepare a preliminary historic district study committee report that addresses at a minimum all of the following:
 - i. the charge of the Committee;
 - ii. the composition of the Committee membership;
 - iii. the historic district or district study;
 - iv. the boundaries for each proposed historic district in writing and on maps;
 - v. the history of each proposed historic district;
 - vi. the significance of each district as a whole, as well as a sufficient number of individual resources to fully represent the variety of resources found within the district, relative to the evaluation criteria.
- 2. Not less than sixty (60) calendar days after the transmittal of the preliminary report, the Committee shall hold a public hearing. Notice will be published of the time, date and place of hearing. Written notice shall be mailed by first class mail not less than fourteen (14) calendar days before the hearing to the owners of properties within the proposed historic district, as listed on the tax rolls of the City of Plymouth.

C. Actions to be Taken by Study Committee.

After the date of the public hearing, the historic district study committee and the City Commission shall have not more than one (1) year, unless otherwise authorized by the City Commission, to take the following actions:

1. The Committee shall prepare and submit a final report with its recommendation and the recommendation, if any of the City Planning Commission to the City Commission. If the recommendation is to establish a historic district or districts, the final report shall include a draft of a proposed ordinance.
2. After receiving a final report that recommends the establishment of a historic district or districts, the City Commission, at its discretion, may introduce and pass or reject an ordinance. If the City Commission passes an ordinance establishing one or more historic districts, the City Commission shall file a copy of that ordinance, including a legal description of the property or properties located within the historic district or districts, with the Register of Deeds. The City Commission shall not pass an ordinance establishing a contiguous historic district less than sixty (60) days after a majority of the property owners within the proposed historic district, as listed on the City tax rolls, have approved the establishment of the historic district pursuant to a written petition.

D. Elimination of Districts.

If considering elimination of a historic district the Committee shall follow the procedures set forth above for issuing a preliminary report, holding a public hearing, and issuing a final report but with the intent of showing one or more of the following:

1. The historic district has lost those physical characteristics that enabled establishment of the district.
2. The historic district was not significant in the way previously defined.
3. The historic district was established pursuant to defective procedures.
4. All writings prepared, owned, used, in possession of, or retained by the Committee in the performance of any official function, shall be made available to the public.

Section 10 Proposed Historic District -- Powers of City Commission

Upon receipt of substantial evidence showing the presence of historic, architectural, archeological, engineering or cultural significance of a proposed historic district, the City Commission may adopt a resolution requiring that all applications for permits within the proposed historic district be referred to the HDC as prescribed in Sections 3 and 5. The HDC shall review permit applications with the same powers that would apply if the proposed historic district was an established historic district for not more than one (1) year, or until such time as the City Commission approves or rejects the establishment of the historic district by ordinance, whichever occurs first.

Section 11 Amendments.

Any amendment to this Ordinance may be made from time to time by the City Commission, provided that prior to the adoption of any amendments, a Study Committee, appointed pursuant to the provisions hereof, makes the study reports and recommendations required in Section 3 of Public Act 169 of 1971, as amended and meets the requirements for amending the City Zoning Ordinance if appropriate.

Effective date The provisions of this Ordinance are hereby ordered to take effect on _____, 1994.

Section 12 Acceptance of Gifts, Grants, or Bequests.

The City of Plymouth may accept gifts, grants or bequests from the state or federal government for historic restoration purposes or historic purposes; it may accept public or private gifts, grants or bequests for said purposes, provided, however, that such gifts, grants, or bequests are not prohibited by the Charter of the City of Plymouth; and are not used for the purpose of paying any fees or expenses arising out of any litigation; further, the City Commission may appoint the aforementioned HDC to administer on behalf of the City of Plymouth in said gifts, grant, or bequests for the purposes herein provided.

The City treasurer shall be custodian of funds of the HDC and authorized expenditures shall be certified by the City treasurer by the secretary or other officer designated by said HDC. The HDC shall annually report to the City Commission any money it shall receive or expend.

Section 13 Penalties.

A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this Ordinance is responsible for a civil violation and may be fined not more than \$100.00. An action taken under state law, P.A. 1992 No. 96, however, provides for a civil violation and a fine of not more than \$5,000.00

A person, individual, partnership, firm, corporation, organization, institution, or agency of government that violates this Ordinance and state law may be ordered by the court to pay the costs to restore or replicate a resource unlawfully constructed, added to, altered, repaired, moved, excavated, or demolished.

Section 14 Repeal.

All Ordinances or parts of Ordinances in conflict herewith are hereby expressly repealed.

Section 15 Severability.

No other portion, paragraph, or phrase of the Code of Ordinances of the City of Plymouth, Michigan shall be affected by this Ordinance except as to the above sections and in the event any portion, section, or sub-section of this Ordinance shall be held invalid for any reason, such invalidation shall not be construed to affect the validity of any other part or portion of this Ordinance or of the Code of Ordinances of the City of Plymouth, Michigan.

Section 16 Effect.

The Ordinance shall take effect immediately upon its passage, publication and record as required by law.

Introduced: _____
Published: _____
Enacted: _____
Effective: _____