

Fall River Historical Commission

PRESERVATION RESTRICTION POLICY

The preservation restriction program administered by the Fall River Historical Commission provides an advantageous means by which an owner may voluntarily protect an architecturally or historically-significant property.

A preservation restriction is a "non-possessory right to control what happens to buildings or land owned by others". It is voluntarily conveyed by the property owner to a qualified body such as the Fall River Historical Commission, which holds the right and enforces the terms. A preservation restriction protects the publicly visible features of the property from unauthorized alterations, demolition, or new construction. A preservation restriction may also allow specific development opportunities to take place, or to protect significant interior features. Restrictions need not freeze a building in its present appearance. The property's use is not affected.

A. Goals

The Fall River Historical Commission encourages the donation of preservation restrictions as a means of protecting architecturally, culturally, and historically significant properties in the city. Preservation restrictions will be accepted when required as a condition of private sale or action by another public agency.

B. Legal Authority

The legal authorities which empower the Fall River Historical Commission to hold preservation restriction are:

1. Massachusetts General Laws, Ch. 184 § 31-33

This legislation defines a preservation restriction as "a right ... in an instrument executed by or on behalf of the owner of the land ... appropriate to preservation of a structure or site historically significant for its architecture, archeology or associations, to forbid or limit any or all (a) alterations in exterior or interior features of the structure, (b) changes in appearance or condition of the site, (c) uses not historically appropriate, ... , or (e) other acts or uses detrimental to appropriate preservation of the structure or site."

Ch. 184 § 32 authorizes government bodies [such as the Fall River Historical Commission] to acquire preservation restrictions.

2. Massachusetts General Laws, Ch. 40C
This legislation authorizes cities and towns to create historic districts and appoint commissions to exercise jurisdiction over them. Ch. 40C § 10(h) provides that, "The [Fall River Historic District] Commission may administer, on behalf of the city or town, any properties or preservation restrictions, restrictions or other interests in real property which the city may have or may accept as gifts or otherwise and which the city may designate the Commission as the administrator thereof."
3. Massachusetts General Laws, Ch. 40 § 8D
This section authorizes municipalities to create advisory bodies with responsibility for the entire city or town. "The [Historical] Commission may hold hearings, may enter into contracts with individuals, organizations and institutions for services furthering the objectives of the Commission's program; may enter into contracts with local or regional associations for cooperative endeavors furthering the Commission's program; may accept gifts, contributions and bequests of funds from individuals, foundations and from Federal, state or other governmental bodies for the purpose of furthering the Commission's program; may make and sign any agreements and may do and perform any agreements and may do and perform any and all acts which may be necessary or desirable to carry out the purposes of this section" (i.e., the preservation, protection and development of the historical or architectural assets of the city or town).
4. Fall River Historical Commission Ordinance

The Fall River City Code endows the Fall River Historical Commission with the authority of an historic district commission under MGL Ch. 40C and an historical commission under Ch. 40 § 8D. Section 2.78.020 specifies that the Commission may "accept money, gifts, and expend the same".

C. Eligibility

A property is considered for acceptance of a preservation restriction if it falls in one of the following categories:

1. National Register Properties. Any building, structure, or site that is individually listed on the National Register for Historic Places or that is determined to be a contributing property in a National Register district.
2. Potential National Register Properties. Buildings, structures, or sites considered eligible for the National Register by the Fall River Historical Commission. The Commission can assist the owner in pursuing National Register status, but cannot guarantee that the Massachusetts Historical Commission or the National Park Service will approve it.
3. Locally Designated Properties listed on the "Fall River Register of Significant Structures". Preservation restrictions will also be accepted on landmarks or properties in historic districts only when features not already protected are involved. These could include interiors or features not visible from a public way.

4. Properties Receiving Preservation Grants. Individual owner-occupants may be required to offer preservation restrictions as a condition of receiving Preservation Grants totaling \$30,000 or more. Non-profit owners may be required to offer preservation restrictions as a condition of receiving Institutional Preservation Grants totaling \$50,000 or more.
5. Other Properties. Buildings, structures, or sites can be considered for preservation restriction donations if considered to be of local architectural or historical significance by the Fall River Historical Commission.

The Commission determines the eligibility of a property or structure for the preservation restriction program by applying the National Register Criteria for Evaluation, of which the following is an excerpt:

The quality of significance in American history, architecture, archaeology, 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 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*
- c. that are associated with the lives of persons significant in our past; or*
- d. that have yielded, or may be likely to yield, information important in pre-history or history. (36 C.F.R. 60.6)*

The eligibility of a structure or property for the preservation restriction program will be based on its significance to the City of Cambridge, rather than its significance at the state or national level. In adopting the National Register guidelines, the Commission reserves its discretion to accept or reject prospective preservation restrictions regardless of official National Register status.

D. Conditions

The Commission may agree to accept a preservation restriction on the condition that certain work is carried out to rehabilitate or restore a property, and may impose other conditions as to use or future appearance as may be necessary to preserve its significant features. Such matters are determined on a case by case basis, and are based on the unique characteristics of each structure or property. The concerns and goals of property owners are considered when establishing these restrictions. The Commission avoids accepting preservation restrictions on buildings where there has been irreversible damage to the building fabric or site, where unsympathetic, irreversible alterations have taken place, and where serious and continuing maintenance problems can be expected to develop over time.

E. Possible Tax Benefits

Under Internal Revenue Service regulations, the value of a preservation restriction on a property listed on the National Register of Historic Places may be taken as a charitable deduction. The value of a preservation restriction is calculated as the difference between "before" and "after" appraisals of the property. The "before" appraisal takes into account the suitability of the property for more profitable as well as continuing uses (the "highest and best use" under zoning), while the "after" appraisal takes into account the reduced value of the property encumbered by a preservation restriction. The value of the preservation restriction will tend to be greatest when there is a large difference between the current and "highest and best" uses of the property or when there are no other restrictive measures limiting the use of the property, such as zoning to current density or an historic district.

The rules for charitable contribution deductions for preservation restrictions are very technical. Any property owner considering the tax benefits of donating a preservation restriction is strongly encouraged to consult a qualified advisor. The Fall River Historical Commission is not responsible for assuring any tax benefits.

Some properties, especially commercial properties in areas experiencing strong development pressures, might be reassessed by the local tax assessor if encumbered with a preservation restriction. Potential donors are encouraged to contact the Fall River assessor's office to determine if a preservation restriction donation would result in a change in local property tax assessments.

F. Rights and Responsibilities of a Donor

The donor of a preservation restriction relinquishes the right to alter a structure or property in a manner that would constitute inappropriate changes to the architectural or visual elements that contribute to the property's significance. These elements are unique for each property and each preservation restriction specifies the structural and visual elements that are to be protected. Any proposed repairs or alterations that could affect the portion of the property protected by the restriction must be approved by the Fall River Historical Commission. The donor retains all other property rights. Preservation restrictions are recorded at the registry of deeds and run with the land either for thirty years or in perpetuity, in accordance with MGL Ch. 184.

Preservation restrictions will not be accepted on mortgaged properties unless the mortgagee consents to the terms of the preservation restriction by signing a subordination agreement. The property owner is responsible for informing the mortgagee of the preservation restriction proceedings.

It is the responsibility of the donor to obtain an appraisal of the value of the donation for income tax purposes. Acceptance of a preservation restriction by the Fall River Historical Commission does not ensure a tax deduction.

The Fall River Historical Commission will photograph the property to document existing conditions, and some or all of these images may be attached to the preservation restriction document. The preservation restriction may also incorporate architectural drawings to document existing conditions or approved future alterations, but these must be prepared by the Owner.

G. Preservation Administration Fund

The Commission may require a donor of a preservation restriction to contribute to a trust fund established by the City to support administration of the preservation restriction program. The Commission will waive the contribution in the event that a preservation restriction is executed during a landmark designation study of the subject property.

- Owners of residential properties (as so classified for property tax purposes) will be required to contribute one-tenth of one percent (0.001) of the total assessed value of the property.
- Owners of commercial properties will be required to contribute one-tenth of one percent (0.001) of the total assessed value of the property, but no more than \$10,000.
- No contributions will be required from non-profit institutions.
- No contributions will be required from affordable housing agencies or owners receiving affordable housing assistance.

Grants are placed in a trust fund administered by the City Treasurer. This fund is available to the Commission in the event that legal defense is necessary to protect any property (not just the subject property) on which a preservation restriction is held by the Commission.

H. Administration

Preservation restrictions are typically administered in the same manner as properties in historic districts established under MGL Ch. 40C. Applications for Certificates of Appropriateness, Hardship or Non-applicability for alterations, demolition, or new construction must be made on a form provided by the Commission. Following a staff review, the Fall River Historical Commission may convene a public hearing to consider the application. Decisions will be based on the specific criteria set forth in the preservation restriction, but procedural aspects of the review will follow the provisions of MGL Ch. 40C and City of Fall River Ordinance, Chapter 38 of the City Code.

I. Enforcement

The Fall River Historical Commission inspects each property at least annually. Whenever permission is granted for alterations on a preservation restriction property, the alterations are monitored and a final inspection is undertaken upon completion of the alterations. Alterations are recorded photographically. The Commission will allow an owner a reasonable time to cure a violation, but may, in accordance with the provisions M.G.L. Chapter 184, Sections 31-33, file an action with the Massachusetts Superior Court in Bristol County for resolution of any dispute.

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