

OFFICIAL CODE OF GEORGIA

TITLE 44. PROPERTY CHAPTER 10. HISTORIC PRESERVATION ARTICLE 1. UNIFORM CONSERVATION EASEMENTS

§ 44-10-1. Short title

This article shall be known and may be cited as the "Georgia Uniform Conservation Easement Act."

HISTORY: Code 1981, § 44-10-1, enacted by Ga. L. 1992, p. 2227, § 1.

§ 44-10-2. Definitions

As used in this article, the term:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic, or open-space values of real property; assuring its availability for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property.

(2) "Holder" means:

(A) A governmental body empowered to hold an interest in real property under the laws of this state or the United States; or

(B) A charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property; assuring the availability of real property for agricultural, forest, recreational, or open-space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving the historical, architectural, archeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

HISTORY: Code 1981, § 44-10-2, enacted by Ga. L. 1992, p. 2227, § 1.

§ 44-10-3. Creation or alteration of conservation easements; acceptance; duration; effect on existing rights and duties; limitation of liability

(a) Except as otherwise provided in this article, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, except that a conservation easement may not be created or expanded by the exercise of the power of eminent domain.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(c) Except as provided in subsection (c) of Code Section 44-10-4, a conservation easement is

unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

(e) The ownership or attempted enforcement of rights held by the holder of an easement shall not subject such holder to any liability for any damage or injury that may be suffered by any person on the property or as a result of the condition of such property encumbered by a conservation easement.

HISTORY: Code 1981, § 44-10-3, enacted by Ga. L. 1992, p. 2227, § 1; Ga. L. 1993, p. 91, § 44; Ga. L. 1993, p. 794, § 1.

§ 44-10-4. Actions affecting easements; parties; power of court to modify or terminate easement

(a) An action affecting a conservation easement may be brought by:

- (1) An owner of an interest in the real property burdened by the easement;
- (2) A holder of the easement;
- (3) A person having a third-party right of enforcement; or
- (4) A person authorized by other law.

(b) The easement holder shall be a necessary party in any proceeding of or before any governmental agency which may result in a license, permit, or order for any demolition, alteration, or construction on the property.

(c) This article does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

HISTORY: Code 1981, § 44-10-4, enacted by Ga. L. 1992, p. 2227, § 1.

§ 44-10-5. Validity of easement

A conservation easement is valid even though:

- (1) It is not appurtenant to an interest in real property;
- (2) It can be or has been assigned to another holder;
- (3) It is not of a character that has been recognized traditionally at common law;
- (4) It imposes a negative burden;
- (5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- (6) The benefit does not touch or concern real property; or
- (7) There is no privity of estate or of contract.

HISTORY: Code 1981, § 44-10-5, enacted by Ga. L. 1992, p. 2227, § 1.

§ 44-10-6. Interests covered by article; interests not invalidated by article

(a) This article applies to any interest created after July 1, 1992, which complies with this article, whether designated as a conservation or facade easement, or as a covenant, protective covenant, equitable servitude, restriction, easement, or otherwise.

(b) This article applies to any interest created before July 1, 1992, if such interest would have been enforceable had such interest been created after July 1, 1992, unless retroactive application contravenes the Constitution or laws of this state or the United States.

(c) This article does not invalidate any interest, whether designated as a conservation or preservation or facade easement or as a covenant, protective covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.

HISTORY: Code 1981, § 44-10-6, enacted by Ga. L. 1992, p. 2227, § 1.

§ 44-10-7. Construction and application of article to effect uniformity of laws

This article shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of this article among states enacting it.

HISTORY: Code 1981, § 44-10-7, enacted by Ga. L. 1992, p. 2227, § 1.

§ 44-10-8. Recordation of easements; revaluation of encumbered property; appeals

A conservation easement may be recorded in the office of the clerk of the superior court of the county where the land is located. Such recording shall be notice to the board of tax assessors of such county of the conveyance of the conservation easement and shall entitle the owner to a revaluation of the encumbered real property so as to reflect the existence of the encumbrance on the next succeeding tax digest of the county. Any owner who records a conservation easement and who is aggrieved by a revaluation or lack thereof under this Code section may appeal to the board of equalization and may appeal from the decision of the board of equalization in accordance with Code Section 48-5-311.

HISTORY: Code 1981, § 44-10-8, enacted by Ga. L. 1992, p. 2227, § 1.

TITLE 44. PROPERTY
CHAPTER 10. HISTORIC PRESERVATION
ARTICLE 2. ORDINANCES PROVIDING FOR HISTORICAL PRESERVATION

§ 44-10-20. Short title

This article shall be known and may be cited as the "Georgia Historic Preservation Act."

HISTORY: Ga. L. 1980, p. 1723, § 1.

§ 44-10-21. Legislative purpose; intent

The General Assembly finds that the historical, cultural, and esthetic heritage of this state is among its most valued and important assets and that the preservation of this heritage is essential to the promotion of the health, prosperity, and general welfare of the people. Therefore, in order to stimulate the revitalization of central business districts in this state's municipalities, to protect and enhance this state's historical and esthetic attractions to tourists and visitors and thereby promote and stimulate business in this state's cities and counties, to encourage the acquisition by cities and counties of conservation easements pursuant to Code Sections 44-10-1 through 44-10-8, and to enhance the opportunities for federal tax relief of this state's property owners under the relevant provisions of the Tax Reform Act of 1976 allowing tax deductions for rehabilitation of certified historic structures, the General Assembly establishes a uniform procedure for use by each county and municipality in the state in enacting ordinances providing for the protection, enhancement, perpetuation, and use of places, districts, sites, buildings, structures, and works of art having a special historical, cultural, or esthetic interest or value.

HISTORY: Ga. L. 1980, p. 1723, § 2; Ga. L. 1993, p. 91, § 44.

§ 44-10-22. Definitions

As used in this article, the term:

(1) "Certificate of appropriateness" means a document approving a proposal to make a material change in the appearance of a designated historic property or of a structure, site, or work of art located within a designated historic district, which document must be obtained from a historic preservation commission before such material change may be undertaken.

(2) "Commission" means a historic preservation commission created or established pursuant to Code Section 44-10-24.

(3) "Designation" means a decision by the local governing body of a municipality or county wherein a property or district proposed for preservation is located to designate such property or district as a "historic property" or as a "historic district" and thereafter to prohibit all material changes in appearance of such property or within such district prior to the issuance of a certificate of appropriateness by the historic preservation commission.

(4) "Exterior architectural features" means the architectural style, general design, and general arrangement of the exterior of a building or other structure, including, but not limited to, the kind or texture of the building material; the type and style of all windows, doors, and signs; and other appurtenant architectural fixtures, features, details, or elements relative to the foregoing.

(5) "Historic district" means a geographically definable area, urban or rural, which contains structures, sites, works of art, or a combination thereof which:

(A) Have special character or special historical or esthetic interest or value;

(B) Represent one or more periods or styles of architecture typical of one or more eras in the history of the municipality, county, state, or region; and

(C) Cause such area, by reason of such factors, to constitute a visibly perceptible section of the municipality or county.

(6) "Historic preservation jurisdiction," in the case of a county, means the unincorporated area of the county; and, in the case of a municipality, such term means the area within the corporate limits of the municipality.

(7) "Historic property" means a structure, site, or work of art, including the adjacent area necessary for the proper appreciation or use thereof, deemed worthy of preservation by reason of its value to the municipality, county, state, or region for one or more of the following reasons:

(A) It is an outstanding example of a structure representative of its era;

(B) It is one of the few remaining examples of a past architectural style;

(C) It is a place or structure associated with an event or person of historic or cultural significance to the municipality, county, state, or region; or

(D) It is a site of natural or esthetic interest that is continuing to contribute to the cultural or historical development and heritage of the municipality, county, state, or region.

(8) "Local governing body" means the elected governing body or governing authority of any municipality or county of this state.

(9) "Material change in appearance" means a change that will affect only the exterior architectural features of a historic property or of any structure, site, or work of art within a historic district and may include any one or more of the following:

(A) A reconstruction or alteration of the size, shape, or facade of a historic property, including relocation of any doors or windows or removal or alteration of any architectural features, details, or elements;

(B) Demolition of a historic property;

(C) Commencement of excavation;

(D) A change in the location of advertising visible from the public way on any historic property; or

(E) The erection, alteration, restoration, or removal of any building or other structures within a designated historic district, including walls, fences, steps, and pavements, or other appurtenant features, except exterior paint alterations.

(10) "Person" includes any natural person, corporation, or unincorporated association.

HISTORY: Ga. L. 1980, p. 1723, § 3.

§ 44-10-23. Exemptions

Cities or counties which have adopted ordinances relative to planning and zoning for historic purposes as of March 31, 1980, under authority granted by a local constitutional amendment or

by any other means, including cities or counties which have subsequently replaced or amended in whole or in part such ordinances, shall not be required to comply with this article and are authorized to create and regulate historic districts, zones, or sites pursuant to their existing local historic preservation ordinances.

HISTORY: Ga. L. 1980, p. 1723, § 12; Ga. L. 1989, p. 1160, § 1.

§ 44-10-24. Historic preservation commission -- Establishment or designation; number, eligibility, and terms of members

(a) The local governing body of a municipality or county electing to enact an ordinance to provide for the protection, enhancement, perpetuation, or use of historic properties or historic districts shall establish or designate a historic preservation commission. Such local governing body shall determine the number of members of the commission, which shall be at least three, and the length of their terms, which shall be no greater than three years. A majority of the members of any such commission shall have demonstrated special interest, experience, or education in history or architecture; all the members shall reside within the historic preservation jurisdiction of their respective municipality or county except as otherwise provided by subsection (b) of this Code section; and all shall serve without compensation. In establishing such a commission and making appointments to it, a local governing body may seek the advice of any state or local historical agency, society, or organization.

(b) The local governing body of a county and the local governing body or bodies of one or more municipalities lying wholly or partially within such county may establish or designate a joint historic preservation commission. If a joint commission is established, the local governing bodies of the county and the municipality or municipalities involved shall determine the residence requirements for members of the joint commission.

HISTORY: Ga. L. 1980, p. 1723, § 4.

§ 44-10-25. Historic preservation commission -- Powers and duties

Any municipal, county, or joint historic preservation commission appointed or designated pursuant to Code Section 44-10-24 shall be authorized to:

- (1) Prepare an inventory of all property within its respective historic preservation jurisdiction having the potential for designation as historic property;
- (2) Recommend to the municipal or county local governing body specific places, districts, sites, buildings, structures, or works of art to be designated by ordinance as historic properties or historic districts;
- (3) Review applications for certificates of appropriateness and grant or deny the same in accordance with Code Section 44-10-28;
- (4) Recommend to the municipal or county local governing body that the designation of any place, district, site, building, structure, or work of art as a historic property or as a historic district be revoked or removed;
- (5) Restore or preserve any historic properties acquired by the municipality or county;
- (6) Promote the acquisition by the city or county governing authority of conservation easements in accordance with Code Sections 44-10-1 through 44-10-8;
- (7) Conduct an educational program on historic properties located within its historic preservation jurisdiction;

(8) Make such investigations and studies of matters relating to historic preservation as the local governing body or the commission itself may from time to time deem necessary or appropriate for the purposes of this article;

(9) Seek out state and federal funds for historic preservation and make recommendations to the local governing body concerning the most appropriate use of any funds acquired;

(10) Consult with historic preservation experts in the Division of Historic Preservation of the Department of Natural Resources or its successor and the Georgia Trust for Historic Preservation, Inc.; and

(11) Submit to the Division of Historic Preservation of the Department of Natural Resources or its successor a list of historic properties or historic districts designated as such pursuant to Code Section 44-10-26.

HISTORY: Ga. L. 1980, p. 1723, § 5; Ga. L. 1993, p. 91, § 44; Ga. L. 1996, p. 6, § 44.

§ 44-10-26. Designation by ordinance of historic properties or districts; required provisions; investigation and report; submittal to Department of Natural Resources; notice and hearing; notification of owners

(a) Ordinances adopted by local governing bodies to designate historic properties or historic districts shall be subject to the following requirements:

(1) Any ordinance designating any property as a historic property or any district as a historic district shall require that the designated property or district be shown on the official zoning map of the county or municipality adopting such ordinance or that, in the absence of an official zoning map, the designated property or district be shown on a map of the county or municipality adopting such ordinance and kept by the county or municipality as a public record to provide notice of such designation in addition to other notice requirements specified by this Code section;

(2) Any ordinance designating any property as a historic property shall describe each property to be designated, shall set forth the name or names of the owner or owners of the property, and shall require that a certificate of appropriateness be obtained from the historic preservation commission prior to any material change in appearance of the designated property; and

(3) Any ordinance designating any district as a historic district shall include a description of the boundaries of the district, shall list each property located therein, shall set forth the name or names of the owner or owners of each property, and shall require that a certificate of appropriateness be obtained from the historic preservation commission prior to any material change in appearance of any structure, site, or work of art located within the designated historic district.

(b) No ordinance designating any property as a historic property and no ordinance designating any district as a historic district nor any amendments thereto may be adopted by the local governing body nor may any property be accepted or acquired as historic property by the local governing body until the following procedural steps have been taken:

(1) The commission shall make or cause to be made an investigation and shall report on the historic, cultural, architectural, or esthetic significance of each place, district, site, building, structure, or work of art proposed for designation or acquisition. This report shall be submitted to the Division of Historic Preservation of the Department of Natural Resources or its successor which will be allowed 30 days to prepare written comments concerning the report;

(2) The commission and the local governing body shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published at least three times in the principal newspaper of general circulation within the municipality or county in which the property or properties to be designated or acquired are located; and written notice of the hearing shall be mailed by the commission to all owners and occupants of such properties. All the notices shall be published or mailed not less than ten nor more than 20 days prior to the date set for the public hearing; and

(3) Following the public hearing, the local governing body may adopt the ordinance as prepared, adopt the ordinance with any amendments it deems necessary, or reject the proposal.

(c) Within 30 days immediately following the adoption of the ordinance, the owners and occupants of each designated historic property and the owners and occupants of each structure, site, or work of art located within a designated historic district shall be given written notification of such designation by the local governing body, which notice shall apprise said owners and occupants of the necessity for obtaining a certificate of appropriateness prior to undertaking any material change in the appearance of the historic property designated or within the historic district designated.

HISTORY: Ga. L. 1980, p. 1723, § 6; Ga. L. 1996, p. 6, § 44.

§ 44-10-27. Certificate of appropriateness -- When required; local or state actions

(a) After the designation by ordinance of a historic property or of a historic district, no material change in the appearance of the historic property or of a structure, site, or work of art within the historic district shall be made or be permitted to be made by the owner or occupant thereof unless and until application for a certificate of appropriateness has been submitted to and approved by the commission. Such application shall be accompanied by such drawings, photographs, or plans as may be required by the commission.

(b) The Department of Transportation and any contractors, including cities and counties, performing work funded by the Department of Transportation are exempt from this article. Local governments are exempt from the requirement of obtaining certificates of appropriateness; provided, however, that local governments shall notify the commission 45 days prior to beginning an undertaking that would otherwise require a certificate of appropriateness and allow the commission an opportunity to comment.

HISTORY: Ga. L. 1980, p. 1723, § 7.

§ 44-10-28. Certificate of appropriateness -- Review of applications; procedure; approval, modification, or rejection; negotiations for acquisitions; variances; appeals

(a) Prior to reviewing an application for a certificate of appropriateness, the commission shall take such action as may reasonably be required to inform the owners of any property likely to be affected materially by the application and shall give the applicant and such owners an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application.

(b) The commission shall approve the application and issue a certificate of appropriateness if it finds that the proposed material change in appearance would not have a substantial adverse effect on the esthetic, historical, or architectural significance and value of the historic property or the historic district. In making this determination, the commission shall consider, in addition to any other pertinent factors, the historical and architectural value and significance; architectural style; general design, arrangement, texture, and material of the architectural features involved; and the relationship thereof to the exterior architectural style and pertinent features of other structures in the immediate neighborhood.

(c) In its review of applications for certificates of appropriateness, the commission shall not consider interior arrangement or uses having no effect on exterior architectural features.

(d) The commission shall approve or reject an application for a certificate of appropriateness within 45 days after the filing thereof by the owner or occupant of a historic property or of a structure, site, or work of art located within a historic district. Evidence of approval shall be by a certificate of appropriateness issued by the commission. Failure of the commission to act within the 45 day period shall constitute approval, and no other evidence of approval shall be needed.

(e) In the event the commission rejects an application, it shall state its reasons for doing so and shall transmit a record of such action and the reasons therefor, in writing, to the applicant. The commission may suggest alternative courses of action it thinks proper if it disapproves of the application submitted. The applicant, if he so desires, may make modifications to the plans and may resubmit the application at any time after doing so.

(f) In cases where the application covers a material change in the appearance of a structure which would require the issuance of a building permit, the rejection of an application for a certificate of appropriateness by the commission shall be binding upon the building inspector or other administrative officer charged with issuing building permits; and, in such a case, no building permit shall be issued.

(g) Where such action is authorized by the local governing body and is reasonably necessary or appropriate for the preservation of a unique historic property, the commission may enter into negotiations with the owner for the acquisition by gift, purchase, exchange, or otherwise of the property or any interest therein.

(h) Where, by reason of unusual circumstances, the strict application of any provision of this article would result in exceptional practical difficulty or undue hardship upon any owner of any specific property, the commission, in passing upon applications, shall have the power to vary or modify strict adherence to the provisions or to interpret the meaning of the provision so as to relieve such difficulty or hardship; provided, however, that such variance, modification, or interpretation shall remain in harmony with the general purpose and intent of the provisions so that the architectural or historical integrity or character of the property shall be conserved and substantial justice done. In granting variations, the commission may impose such reasonable and additional stipulations and conditions as will in its judgment best fulfill the purpose of this article.

(i) The commission shall keep a record of all applications for certificates of appropriateness and of all its proceedings.

(j) Any person adversely affected by any determination made by the commission relative to the issuance or denial of a certificate of appropriateness may appeal such determination to the governing body of the county or municipality in whose historic preservation jurisdiction the property in question is located; and such governing body may approve, modify and approve, or reject the determination made by the commission if the governing body finds that the commission abused its discretion in reaching its decision. The ordinances adopted in conformity with Code Section 44-10-26 shall specify the procedures for the review of decisions of the commission by the governing body of the county or municipality involved. Appeals from decisions of the governing body made pursuant to this article may be taken to the superior court in the manner provided by law for appeals from a conviction for municipal or county ordinance violations.

HISTORY: Ga. L. 1980, p. 1723, § 8.

§ 44-10-29. Certain changes or uses not prohibited

Nothing in this article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in or on a historic property, which maintenance or repair does not involve a material change in design, material, or outer appearance thereof, nor to prevent any property owner from making any use of his property not prohibited by other laws, ordinances, or regulations.

HISTORY: Ga. L. 1980, p. 1723, § 9.

§ 44-10-30. Court action or proceedings to prevent improper changes or illegal acts or conduct

The municipal or county governing body or the historic preservation commission shall be authorized to institute any appropriate action or proceeding in a court of competent jurisdiction to prevent any material change in the appearance of a designated historic property or historic district, except those changes made in compliance with the provisions of an ordinance adopted in conformity with this article, or to prevent any illegal act or conduct with respect to such historic property or historic district.

HISTORY: Ga. L. 1980, p. 1723, § 11.

§ 44-10-31. Violations of this article; penalties

Violations of any ordinance adopted in conformity with this article shall be punished in the same manner as provided by charter or local law for the punishment of violations of other validly enacted municipal or county ordinances.

HISTORY: Ga. L. 1980, p. 1723, § 10.