

**Comparison of the Local Historic Districts Act, Clarkston’s Historic District Ordinance,
and the HDC Charter Proposal**

Charter Proposal Section	Local Historic Districts Act (Abbreviated “LHDA” Below)	Clarkston Ordinance	HDC Charter Proposal
Section 16.3 – Authority	State law	LHDA	LHDA; Article 7, Section 22 of Michigan Constitution (voters can adopt and amend charter); Home Rule City Act
Section 16.4 – Appointment of Commissioners	5 to 7 commissioners; must reside in city; must have a clearly demonstrated interest or knowledge of historic preservation; appointed by mayor unless another method is specified in the ordinance; 3-year term; eligible for reappointment; vacancies filled within 60 days; ordinance can allow for removal of members; prefers one member be an architect if available	Same as the LHDA except the number of commissioners is limited to five. Our ordinance allows appointments by city council.	Same as the Clarkston Ordinance but adds that vacancies must be publicized 35 days before appointment; 3 of 5 members must be able to demonstrate in writing that they have more than a general interest in historic preservation or they have had work done on their property; search must continue if the opening is for one of the three people who need to have more than general interest in preservation
Section 16.5 - Commission Policies and Procedures	HDC must adopt rules of procedure and design standards and guidelines	Allows the HDC to adopt rules of procedure but requires the HDC to adopt design review standards and guidelines	Requires the HDC work with the city council to adopt policies and procedures that must be submitted within 30 days after adoption of charter amendment and before matters can be acted upon; must be posted on the city’s website and made available in paper form on request.
Section 16.6 - Commission meetings	Must comply with the Michigan Open Meetings Act; public meeting notices must contain the time, date, place, and an agenda that lists each permit application to be considered	Same as the LHDA.	Same as the LHDA; eliminates Memoranda of Administrative Approval because they are used to violate the Open Meetings Act; meetings must be recorded and uploaded to the city’s website the next business day; meeting minutes must include the speaker, the substance, the decisions, and the reasons for the decisions; people may not be discouraged from attending meetings
Section 16.7 - Commission records	HDC must keep copies of resolutions, proceedings, and actions; records are subject to the Freedom of Information Act	Same as the LHDA.	Same as the LHDA. Defines what commission records are; requires the HDC provide records to the city clerk to be maintained in city files.

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Section 16.8(a) - Commission Authority – Actions Prohibited When Commission Has No Authority to Regulate	Defines the limits of the things the HDC can regulate	Same as the LHDA.	Same as the LHDA. If the LHDA doesn’t allow the HDC to regulate a matter, then the HDC is prohibited from regulating the matter. This means the HDC can’t demand property owners apply for a permit, can’t take enforcement action, and can’t demand the property owner justify the work on matters that the HDC isn’t authorized to regulate.
Section 16.8(b) - Commission Authority – No Authority Over Ordinary Maintenance	The HDC cannot regulate ordinary maintenance that doesn’t change the exterior appearance of a resource.	Same as the LHDA.	Same as the LHDA.
Section 16.8(c) - Commission Authority – Limitation of Authority Over Repairs	The HDC cannot regulate repairs that do not change the exterior appearance of a resource.	Same as the LHDA.	Same as the LHDA.
Section 16.8(d) - Commission Authority – Limitation of Authority Over the Exterior of Resources	HDC can only regulate matters that change the exterior of a resource and must follow the US secretary of the interior’s guidelines	Same as the LHDA.	Same as the LHDA. Further defines the “exterior of a resource” to mean what it has traditionally meant in the city – things that can be seen by a person of ordinary height from the public road or public sidewalk without the use of visual aids.

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Section 16.8(e) - Commission Authority – Limitation of Authority Over Open Spaces	“Open spaces” include undeveloped land, a naturally landscaped area, or a formal or manmade landscaped area that provides a connective link or buffer between other resources while also defining a historic resource as a publicly or privately owned building, structure, site, object, feature, or open space <i>that is significant in the history, architecture, archaeology, engineering, or culture of this state or a community within this state or the United States.</i>	Same as the LHDA.	Open spaces within the city are limited to a few privately owned lots and Depot Park. Clarkston is on the National Register of Historic Places because it was a mill town in the 1800s. Same as the LHDA but declares that Depot Park is the only “open space” that can be regulated <i>because the few privately owned vacant lots that exist are not significant in the history, architecture, archaeology, engineering, or culture of this state or a community within this state or of the United States.</i> Should someone wish to build on a vacant lot, then this section would not apply, and the proposed structure would need to receive all city approvals, including HDC approval if the structure is proposed within the historic district.
Section 16.8(f) - Commission Authority – Limitation of Authority over Plants, Trees, Landscaping, and Fences	Not specifically mentioned as a subject for HDC regulation.	Not specifically mentioned as a subject for HDC regulation.	In recognition of the fact that Clarkston’s claim to its spot on the National Register of Historic Places is because it was a mill town in the 1800s, the charter language declares that the <u>current</u> configuration of plants, trees, landscaping, and fences <i>are not significant in the history, architecture, archaeology, engineering, or culture of this state or a community within this state or of the United States.</i> Therefore, they are not subject to HDC regulation.
Section 16.8(g) - Commission Authority – Limitation of Authority Over Painting	Not specifically mentioned as a subject for HDC regulation.	Not specifically mentioned as a subject for HDC regulation.	Affirms the HDC cannot regulate painting, which is ordinary maintenance outside the HDC’s authority.

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Section 16.8(h) - Commission Authority – No Authority to Issue a Memorandum of Administrative Approval	Neither mentioned nor authorized.	Neither mentioned nor authorized.	The HDC implemented the Memorandum of Administrative Approval to evade the Open Meetings Act. They are prohibited.
Section 16.9(a) - Commission Conduct, Orders, and Enforcement - Standards and Guidelines	HDC must follow the United States secretary of the interior’s standards for rehabilitation of historic buildings as outlined in the Code of the Federal Regulations, 36 CFR 67 and must also consider historic or architectural value and significance of the resource and its relationship to the historic value of the surrounding area; the relationship of any architectural features of the resource to the rest of the resource and to the surrounding area; the general compatibility of the design, arrangement, texture, and materials proposed to be used; other factors, such as aesthetic value, that the commission finds relevant; and whether the applicant has certified there will be an adequate fire or smoke alarm system	Same as the LHDA.	Same as the LHDA and prohibits “borrowing” standards and guidelines that apply to other activities that do not involve rehabilitating historic buildings.
Section 16.9(b) - Commission Conduct, Orders, and Enforcement - Entry onto Private Property	Neither mentioned nor authorized.	Neither mentioned nor authorized.	In Michigan, trespassing onto private property after being forbidden to do so can result in a 30-day jail sentence and a \$250 fine. HDC commissioners are expressly forbidden from entering onto private property without the consent of the property owner or occupant – each time there is an entry onto private property.

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Section 16.9(c) - Commission Conduct, Orders, and Enforcement - Limitation on Enforcement Action	Encourages the HDC to work with owners to establish an economically feasible plan to preserve the resource when the proposed work would affect the exterior of a resource.	Same as the LHDA.	Does not limit HDC enforcement action but requires the HDC take steps <u>before</u> taking enforcement action. The HDC must send a written notice to the property owner explaining that the HDC is contemplating enforcement action and providing the owner with sufficient time to comply (no less than 35 days), engage in good faith negotiation to resolve any issues (discussion), and in the unlikely event the HDC and the property owner can’t agree, then the city will pay for mediation to resolve the issue. No enforcement action may be taken during the time the owner has been given to begin and finish repairs, while discussions are occurring, or during mediation. If these preliminary steps don’t resolve the HDC’s concerns, then the HDC can proceed to formal enforcement action which can include civil infractions and fines, Demolition by Neglect Orders, or Restoration or Modification Orders.
Section 16.9(d) - Commission Conduct, Orders, and Enforcement - Delegation of Authority	Allows the HDC to delegate the authority to issue Certificates of Appropriateness for specified minor classes of work that the full HDC reviews quarterly.	Same as the LHDA, but the HDC has not used this authority.	Same as the LHDA. Specifies that the authority can be delegated to the HDC chair, HDC secretary, and the city manager. Standards for delegation of authority must be reviewed and approved by the city council.

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Section 16.9(e) - Commission Conduct, Orders, and Enforcement - Civil Infractions	Allows for a civil violation and fine up to \$5,000 for violations but establishes no procedure for issuing citations.	Same as the LHDA.	Same as the LHDA but sets up a procedure that would allow the HDC to issue civil infractions. Requires the HDC establish a schedule of violations and maximum fines for each violation that must be approved by council and include an effective date; civil infractions must be approved by city council before issuance because of the extremely high risk that taxpayers will have to pay for legal expenses to defend civil infractions; only the city manager may issue an HDC civil infraction citation and s/he must follow the state law that governs civil infractions (found in MCL 600.8707). The HDC has never issued a civil infraction.

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Section 16.9(f) - Commission Conduct, Orders, and Enforcement - Demolition by Neglect	HDC can order a property owner to repair property when an exterior feature has been allowed to deteriorate or if there is a loss of structural integrity. If the property owner doesn’t perform the repairs within a reasonable period of time, the HDC can request a court order that allows the HDC or its agents to enter onto private property and forcefully make the necessary repairs, the cost of which can be charged to the property owner or levied as a special assessment on the property.	Same as the LHDA.	Same as the LHDA but requires a preliminary step before the formal processes are followed. The HDC must submit a proposed Demolition by Neglect Order to the city council for approval before issuing the order or asking for a court order to enforce compliance with the order. The litigation risk over an HDC order is high, and litigation is guaranteed if the HDC seeks a court order (because it requires that the HDC sue the property owner who will then have the right to defend against the lawsuit and countersue the HDC). Council approval is required because the legal fees for these actions are not covered by the city’s insurance and would need to be paid with taxpayer funds, and the city attorney attends all council meetings and can advise both the council and the HDC on the likelihood of success if the order is issued. Demolition by Neglect orders should be a rare occurrence, and we are unaware that the HDC has ever sought to enter onto private property and forcefully do repairs on an owner’s property since its creation.

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Section 16.9(g) - Commission Conduct, Orders, and Enforcement - Restoration or Modification	If a property owner has done work on property that affects the exterior of the property without receiving a Certificate of Appropriateness from the HDC, the HDC can order the property owner to restore the property to its original condition or to modify the work that has been done on the property so that it qualifies for a Certificate of Appropriateness. If the property owner doesn’t restore the property to its original condition or modify the work that has been done on the property so that it qualifies for a Certificate of Appropriateness within a reasonable time, the HDC can request a court order that allows the HDC or its agents to enter onto private property and forcefully restore or modify the property until the property can qualify for a Certificate of Appropriateness, the cost of which can be charged to the owner or levied as a special assessment on the property.	Same as the LHDA.	Same as the LHDA but requires a preliminary step before the formal processes are followed. The HDC must submit a proposed Restoration or Modification Order to the city council for approval before issuing the order or asking for a court order to enforce compliance with the order. The litigation risk over an HDC order is high, and litigation is guaranteed if the HDC seeks a court order (because it requires that the HDC sue the property owner who will then have the right to defend against the lawsuit and countersue the HDC). Council approval is required because the legal fees for these actions are not covered by the city’s insurance and would need to be paid with taxpayer funds, and the city attorney attends all council meetings and can advise both the council and the HDC on the likelihood of success if the order is issued. Restoration or Modification orders should be a rare occurrence, and we are unaware that the HDC has ever sought to enter onto private property and forcefully restore or modify the property until the property can qualify for a Certificate of Appropriateness.
Section 16.9(h) - Commission Conduct, Orders, and Enforcement - Stop Work Orders	Not mentioned.	Not mentioned.	Since there is no authority for the HDC to issue stop work orders in any city ordinance, stop work orders are prohibited.

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Section 16.9(i) - Commission Conduct, Orders, and Enforcement - Consultation with the City Attorney and City Contractors	Not mentioned.	Not mentioned.	No city official or appointee is authorized to incur unapproved and unbudgeted expenses, and this includes HDC commissioners. The city council must authorize all HDC consultation requests that would result in a fee and establish the maximum amount of the fees. All professional fees attributable to the HDC must be charged to the HDC’s general appropriation budget.
Section 16.9(j) - Commission Conduct, Orders, and Enforcement - Recording with the Register of Deeds	Not mentioned.	Not mentioned.	This prohibits the HDC from adding deed restrictions to property located within the historic district.
Section 16.9(k) - Commission Conduct, Orders, and Enforcement - Commission Brochure	Not mentioned.	Not mentioned.	The current brochure is inconsistent with the proposed charter amendment. If the HDC wishes to have a brochure, it needs to update it and submit it to the city council for approval.
Section 16.10 - Commission Expenditures	Not mentioned.	Not mentioned.	The HDC cannot spend money on litigation expenses related to anticipated or actual proceedings before the State Historic Preservation Review Board, state or federal courts, or any other tribunal without the preapproval of at least five city council members of a budget appropriation of a specific dollar amount (except for the mediation proceedings described in section 16.9(c)).

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Section 16.11 - Complaint Procedures and Removal of Commission Members	Allows the city to terminate an HDC commissioner's appointment due to acts or omissions.	Neither mentioned nor authorized.	Establishes a procedure for property owners to file a complaint against an HDC commissioner with the city council, requires due process for the accused HDC commissioner, and requires complaints be heard at a public meeting and appropriate action taken (which could include dismissal of the complaint). The city council may also remove an HDC commissioner for misconduct in office under the existing language in Section 4.21 of the city's charter. HDC commissioners may also be disciplined or removed by the city council for violating any provision of the city's charter or Michigan law.
Section 16.12 - Precedence of This Chapter and City charter	Not mentioned.	Not mentioned.	Standard language for new additions to a law. This is an instruction to a judge in the event of a court proceeding and advises the judge that if there is a conflict between the new language and the old language, then the new language should prevail.
Section 16.13 - Severability	Not mentioned.	Not mentioned.	Standard language for new additions to a law. This is an instruction to the judge that if the judge finds any part of the new charter language to be legally invalid, only the legally invalid language is removed, and other provisions remain in effect.