

PROPERTY CODE

TITLE 11. RESTRICTIVE COVENANTS

CHAPTER 208. AMENDMENT AND TERMINATION OF RESTRICTIVE COVENANTS IN  
HISTORIC NEIGHBORHOODS

Sec. 208.001. DEFINITIONS. In this chapter:

(1) "Owner" and "real property records" have the meanings assigned by Section 201.003.

(2) "Dedictory instrument," "property owners' association," "petition," and "restrictive covenant" have the meanings assigned by Section 202.001.

(3) "Regular assessment" and "special assessment" have the meanings assigned by Section 204.001.

(4) "Apartment complex" has the meaning assigned by Section 204.002(c).

(5) "Historic neighborhood" means:

(A) an area incorporated as a separate municipality before 1900 and subsequently annexed into another municipality;

(B) an area described by a municipal map or subdivision plat filed in real property records of the county in which the area is located before 1900; or

(C) an area designated as a historic district or similar designation by the municipality in which the area is located, the Texas Historical Commission, or the National Register of Historic Places.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999.  
Renumbered from Sec. 207.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), eff. Sept. 1, 2001.

Sec. 208.002. APPLICABILITY. (a) This chapter applies only to a historic neighborhood that is located in whole or in part in a municipality with a population of 1.6 million or more located in a county with a population of 2.8 million or more.

(b) This chapter applies to a restrictive covenant regardless of the date on which it was created.

(c) This chapter applies to property in the area of a

historic neighborhood that is zoned for or that contains a commercial structure, an industrial structure, an apartment complex, or a condominium development covered by Title 7 only if the owner of the property signed a restrictive covenant that includes the property in a common scheme for preservation of historic property as described by Section 208.004.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 207.002 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), 21,002(17), eff. Sept. 1, 2001.

Sec. 208.003. HISTORIC NEIGHBORHOOD PRESERVATION ASSOCIATION. (a) A historic neighborhood preservation association must:

(1) be a Texas nonprofit corporation or limited liability company organized, in part, to encourage the preservation of property in a historic neighborhood; and

(2) open its membership to all owners of property in the historic neighborhood.

(b) A historic neighborhood preservation association may be composed of only a portion of the owners of property in the historic neighborhood.

(c) A historic neighborhood preservation association may be a property owners' association or an organization that is qualified as a charitable organization under Section 501(c)(3) of the Internal Revenue Code of 1986.

(d) A statement in the articles of incorporation or association, bylaws, regulations, or operating agreement of the historic neighborhood preservation association is prima facie evidence of compliance with Subsection (a).

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 207.003 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), eff. Sept. 1, 2001.

Sec. 208.004. COMMON SCHEME FOR PRESERVATION OF PROPERTY IN HISTORIC NEIGHBORHOOD. (a) A common scheme for preservation of historic property exists in a historic neighborhood if:

(1) the restrictive covenants were created by

individual dedicatory instruments signed by an owner of one or more separately owned parcels or tracts in the historic neighborhood; and

(2) the restrictive covenants authorize a historic neighborhood preservation association to enforce the restrictive covenants.

(b) A common scheme for preservation of historic property does not include property that is not subject to restrictive covenants that authorize a historic neighborhood preservation association to enforce the restrictive covenants.

(c) Restrictive covenants included in a common scheme for preservation of historic property exist for the benefit of all owners of property subject to the common scheme for preservation as if each owner were referenced in each dedicatory instrument.

(d) Each owner of property subject to a common scheme for preservation of historic property may enforce restrictive covenants on other property included in the common scheme for preservation.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 207.004 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), eff. Sept. 1, 2001.

Sec. 208.005. AMENDMENT OR TERMINATION OF RESTRICTIVE COVENANTS UNDER COMMON SCHEME FOR PRESERVATION. (a) A restrictive covenant applicable to property that is included in a common scheme for preservation of historic property may not be amended or terminated except as provided by this section.

(b) A historic neighborhood preservation association may approve and submit to a vote of the owners of property that is included in a common scheme for preservation of historic property an amendment of the restrictive covenants or the termination of all or part of the restrictive covenants included in the common scheme for preservation of historic property.

(c) The amendment or termination of a restrictive covenant is effective and applies to each separately owned parcel or tract subject to the common scheme for preservation of historic property if the owners of at least 75 percent of the parcels or tracts who

vote on the issue in accordance with Section 208.006 vote in favor of the amendment or termination of the restrictive covenant.

(d) A document certifying that 75 percent of the owners voting on the issue approved the amendment or termination of the restrictive covenant must be recorded by the historic neighborhood preservation association in the real property records of the county in which the historic neighborhood is located. The document is prima facie evidence that the requisite percentage of votes was attained and the required formalities for the action were taken.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999. Renumbered from Sec. 207.005 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), 21.002(18), eff. Sept. 1, 2001.

Sec. 208.006. METHOD OF VOTING. (a) An amendment or termination of a restrictive covenant must be voted on:

(1) by a written ballot that states the substance of the amendment or termination of the restrictive covenant and specifies the date by which the historic neighborhood preservation association must receive a ballot for the ballot to be counted;

(2) at a meeting of the historic neighborhood preservation association;

(3) by circulation of a petition by the historic neighborhood preservation association or a person authorized by the historic neighborhood preservation association; or

(4) by any combination of methods described by this subsection.

(b) If the vote occurs at a meeting of the historic neighborhood preservation association under Subsection (a)(2), the historic neighborhood preservation association shall:

(1) before the meeting, deliver written notice of the meeting stating the purpose of the meeting to each owner of property subject to the common scheme for preservation of historic property; and

(2) provide each owner of property subject to the common scheme for preservation with the opportunity to appear and vote at the meeting.

(c) The historic neighborhood preservation association

shall provide for the mailing to each owner, as applicable:

- (1) the ballot under Subsection (a)(1);
- (2) notice of the meeting under Subsection (a)(2); or
- (3) the petition under Subsection (a)(3).

(d) The vote of multiple owners of a property may be reflected by signature or vote of one of the owners.

(e) The historic neighborhood preservation association shall record a copy of the ballot or petition, as applicable, in the real property records of the county in which the historic neighborhood is located before the vote of the owners.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999.  
Renumbered from Sec. 207.006 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), eff. Sept. 1, 2001.

Sec. 208.007. REGULAR AND SPECIAL ASSESSMENTS. The procedure established by this chapter for the amendment of restrictive covenants may not be used to establish a regular or special assessment.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999.  
Renumbered from Sec. 207.007 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), eff. Sept. 1, 2001.

Sec. 208.008. BUILDING LINES. The procedure established by this chapter for the amendment of restrictive covenants may not be used to modify a building line established by a restrictive covenant, municipal map, or subdivision plat.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999.  
Renumbered from Sec. 207.008 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), eff. Sept. 1, 2001.

Sec. 208.009. DEFENSE TO ENFORCEMENT OF RESTRICTIVE COVENANT. An owner may not assert as a defense to the enforcement of a restrictive covenant that is part of a common scheme for preservation of historic property that the owner or a predecessor in title signed a blank signature page or similar procedural defect if the signature page was attached to a dedicatory instrument adopted by a historic neighborhood preservation association and:

(1) the dedicatory instrument has been recorded for more than two years; or

(2) the restrictive covenant is referenced in the owner's title insurance policy obtained by the owner when the property was purchased.

Added by Acts 1999, 76th Leg., ch. 871, Sec. 2, eff. June 18, 1999.

Renumbered from Sec. 207.009 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(98), eff. Sept. 1, 2001.