

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control 584 Department or Agency Committee on Alabama Monument Protection
Rule No. 584-X-1
Rule Title: General Rules
 New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? No

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? No

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule? No

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer Alyse M. Small
Date 02/18/2020

(DATE FILED)
REC'D & FILED (STAMP)
FEB 18 2020
LEGISLATIVE SVC AGENCY

COMMITTEE ON ALABAMA MONUMENT PROTECTION

NOTICE OF INTENDED ACTION

AGENCY NAME: Committee on Alabama Monument Protection

RULE NO. & TITLE:

584-X-1 General Rules

INTENDED ACTION:

The Committee on Alabama Monument Protection proposes to adopt general rules as required by the Alabama Memorial Preservation Act of 2017, Code of Ala. 1975, §41-9-237.

SUBSTANCE OF PROPOSED ACTION:

The proposed new rules will provide for the implementation of Code of Ala. 1975, §§41-9-230 through 41-9-237, by establishing definitions, specifying permissible and prohibited modifications to structures covered by the act, providing procedures for waivers, and specifying exemptions to the act.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

Comments should be submitted in writing and delivered by postal mail or by hand to:

Committee on Alabama Monument Protection
c/o Director's Office
Alabama Department of Archives & History
624 Washington Avenue
Montgomery, AL 36130

Comments may also be delivered verbally during a public-comment portion of the meeting of the Committee on Alabama Monument Protection at 11:00 AM on April 7, 2020, at the Alabama Department of Archives and History, 624 Washington Avenue, Montgomery.

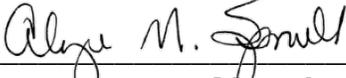
APA-2

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

April 7, 2020, at 11:00 AM

CONTACT PERSON AT AGENCY:

Steve Murray
Alabama Department of Archives & History
(334) 242-4441



Alyce M. Spruell, Chair

COMMITTEE ON ALABAMA MONUMENT PROTECTION

CHAPTER 584-X-1
GENERAL RULES

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584-X-1-.01 **Authority to Adopt Rules.** The Alabama Memorial Preservation Act of 2017, Code of Ala. 1975, §§41-9-230 through 41-9-237, provides for the appointment of the Committee on Alabama Monument Protection and authorizes the committee to adopt rules as necessary to provide for the implementation of the act.

Author: Alyce M. Spruell, Chair

Statutory Authority: Code of Ala. 1975, §41-9-237.

History: Original rule filed: February 18, 2020.

584-X-1-.02 **Definitions.**

(1) Alter. An action performed on a monument that includes any one of the following:

(a) Modification of a monument's structure or appearance from its existing condition through the physical removal or addition of material, text, or imagery.

(b) Installation, construction, or other action which obstructs the monument, restricts public access to the monument, or prevents the public's ability to perceive or view the monument.

(2) Architecturally Significant Building. A building located on public property that is listed in or eligible for the National Register of Historic Places based on its significance and its ability to meet the criterion requirements set by the National Park Service for eligibility based on the building's architectural

significance (criterion C). If a building is less than fifty (50) years old, it must also meet Criteria Consideration G to be considered eligible for the National Register of Historic Places. A building or structure's eligibility as an architecturally significant building shall be reviewed by a Technical Advisory Review Group appointed by the Committee on Alabama Monument Protection and in accordance with the National Park Service's federal guidelines regarding the National Register program.

(3) Committee. The Committee on Alabama Monument Protection as established by Act 2017-354.

(4) Controlling Entity. An agency, board, authority, or other organization that has legal control of the public property on which an architecturally significant building, memorial building, memorial school, memorial street, or monument is located.

(5) Memorial Building. A public building, structure, park, or other institution that is not a memorial school and that is located on public property and constructed for, named for, or dedicated in honor of an event, a person, a group, a movement, or military service as evidenced by an official action of the controlling entity, such as a resolution, statute, official dedication, or other public commemorative action clearly intended to create an association of the building's name with a specific event, person, group, movement, or military service.

(6) Memorial School. A public K-12 or two-year postsecondary institution or facility that is located on public property and constructed for, named for, or dedicated in honor of an event, a person, a group, a movement, or military service as evidenced by an official action of the controlling entity, such as a resolution, statute, official dedication, or other public commemorative action clearly intended to create an association of the building's name with a specific event, person, group, movement, or military service.

(7) Memorial Street. A street that is located on public property and constructed for, named for, or dedicated in honor of an event, a person, a group, a movement, or military service as evidenced by an official action of the controlling entity, such as a resolution,

statute, official dedication, or other public commemorative action intended to create an association of the street's name with a specific event, person, group, movement, or military service.

(8) Monument. A statue, portrait, or marker intended at the time of dedication to be a permanent memorial to an event, person, group, movement, or military service that is part of the history of the people or geography now comprising the State of Alabama. Intent is evidenced by an official action of the controlling entity such as a resolution, statute, official dedication, or other public commemorative action intended to associate the monument with a specific event, person, group, movement, or military service. The term does not include signage bearing historical or interpretive text, commonly known as a historical marker or wayside exhibit, or portraits or plaques installed by temporary means and not intended to be permanent at the time of installation.

(9) Otherwise Disturb. Any action that specifically and purposefully intends to diminish the public's ability to view or interpret the architecturally significant building, memorial building, memorial street, or monument, or to diminish the memorial intent expressed at the time of dedication. The term does not include the installation of adjacent signage providing contextualization or other interpretive text approved by the controlling entity and related to the architecturally significant building, memorial building, memorial street, or monument.

(10) Public Property: All property owned or leased by the State of Alabama; any county, municipal, or metropolitan government in the state; or any other entity created by act of the Legislature to perform any public function.

(11) Relocate. The act of physically moving a building, structure, facility, park, institution, street, or monument from its original installation to any other location regardless of whether the new location is on public property.

(12) Remove. The act of permanently and physically eliminating or taking away a building,

structure, facility, park, institution, street, or monument from its existing location.

(13) Rename. Changing the name of an architecturally significant building, memorial school, memorial building, or memorial street to the extent that it no longer honors the event, person, group, movement, or military service to which it was originally dedicated.

Author: Alyce M. Spruell, Chair

Statutory Authority: Code of Ala. 1975, §§41-9-231, 41-9-237.

History: Original rule filed: February 18, 2020.

584-X-1-.03 Permissible and Prohibited Modifications.

(1) Responsibility for Preservation and Protection. Pursuant to Code of Ala. 1975, §41-9-233, the governmental entity responsible for an architecturally significant building, memorial building, memorial school, memorial street, or monument may take proper and appropriate measures and exercise proper and appropriate means for the protection, preservation, care, repair, or restoration of those monuments, streets, or buildings.

(2) Permissible Modifications, Architecturally Significant Buildings. Permissible modifications, which include actions to the extent necessary for protection, preservation, care, repair, or restoration, include the following:

(a) Routine preventive maintenance of the structure, building systems, roof, or other building components that are necessary to maintain the building's integrity, appearance, or function and extend the life of the building without affecting its listing in or eligibility for the National Register of Historic Places. This work typically includes routine cleaning, replacement of filters, sealing, painting, or other periodic and repetitive work required to maintain the building. All work should follow the Secretary of the Interior's Standards for Rehabilitation.

(b) Repair work is work that is required to repair broken or worn out components that are necessary to maintain the building's integrity, appearance, or function

and extend the life of the building without affecting its listing in or eligibility for the National Register of Historic Places. This work typically includes the removal of broken, missing, or worn-out building components and repairing them or replacing them in kind. Examples include the repair of rotten wood, replacement of a worn-out compressor, or the repair of a broken fixture. All work should follow the Secretary of the Interior's Standards for Rehabilitation.

(c) Replacement of systems beyond their useful life, but which are required to maintain the use of the building. This work typically includes the replacement or upgrade of a building system, such as an electrical system; heating, ventilation and air conditioning (HVAC) system; roofing system; or other major building components that are required to extend the useful life of the historic building. All replacement work must not affect a building's listing in or eligibility for the National Register of Historic Places. All work should follow the Secretary of the Interior's Standards for Rehabilitation.

(d) Additions to architecturally significant buildings are permitted when the additions do not affect the building's listing in or eligibility for the National Register of Historic Places. All work should follow the Secretary of the Interior's Standards for Rehabilitation. Proposed additions to architecturally significant buildings shall be reviewed in accordance with the Secretary of the Interior's Standards for Rehabilitation.

(3) Permissible Modifications, Memorial Buildings. Permissible modifications, which include actions necessary for protection, preservation, care, repair, or restoration, include the following:

(a) Routine preventive maintenance, repair work, replacement of systems, changes or upgrades to the building to mitigate further physical damage, replacement of outdated building systems, and other minor changes that are compatible with the architecture and style of the building at the time of its dedication or commemoration.

(b) Renovations and additions that allow for the continued use of the building or increase its functionality without detracting from the original memorial building.

(4) Permissible Modifications, Names of Architecturally Significant Buildings, Memorial Buildings, and Memorial Schools.

(a) The name of an architecturally significant building, memorial building, or memorial school may be transferred from one facility to another comparable facility with a similar function if the originally dedicated facility is closed or ceases to function. If the function of the facility ceases, the name is not transferred to a different facility, and the first facility is repurposed for another public use, the memorial name shall be retained and modified to reflect the new use of the facility if the new use of the facility is comparable to its prior use as a public facility (e.g. Jane Smith Middle School to Jane Smith Community Center).

(b) Name changes that only affect the portions of the name that relate to the purpose, function, or use and that do not include changes to the name of the event, person, group, movement, or military service for which originally dedicated are permissible as long as the change in purpose, function, or use remains consistent with the purpose for which originally dedicated (e.g. John Doe Elementary School to John Doe Middle School).

(5) Permissible Modifications, Memorial Streets.

(a) Any work that is intended to be for the protection, preservation, care, repair, or restoration of the memorial street, including expansions.

(b) Name changes that only affect the portions of the name that relate to the purpose, function, or use and that do not include changes to the name of the event, person, group, movement, or military service for which originally dedicated are permissible as long as the change in purpose, function, or use remains consistent with the purpose for which originally dedicated (e.g. Jane Smith Avenue to Jane Smith Boulevard).

(6) Permissible Modifications, Monuments.

(a) Any work that is intended to be for the protection, preservation, care, repair or restoration of the monument including cleaning, restoration, and repairs,

and which does not substantively affect the content or existing appearance of the monument.

(b) Portraits and other interior monuments may be placed in a new location as long as the new location is in the same building, is equally visible, and of equal prominence as the original location at the time of the portrait's or monument's original dedication or commemoration.

Author: Alyce M. Spruell, Chair

Statutory Authority: Code of Ala. 1975, §§41-9-233, 41-9-237.

History: Original rule filed: February 18, 2020.

584-X-1-.04 Applications for Waiver.

(1) No Waiver for Memorials or Monuments in Place for 40 or More Years. Except as provided in these rules, a controlling entity that is responsible for an architecturally significant building, memorial building, memorial street, or monument that is located on public property and has been in that location for 40 or more years may not relocate, remove, alter, rename, or otherwise disturb the architecturally significant building, memorial building, memorial street, or monument, nor permit such action by any other party.

(2) Requests for Waiver for Memorials or Monuments in Place for at Least 20 Years and Less than 40 Years. A controlling entity that is responsible for an architecturally significant building, memorial building, memorial street, or monument that is located on public property and has been in that location for at least 20 years but less than 40 years may request a waiver for relocation, removal, alteration, renaming or other form of disturbance.

(3) Requests for Waiver for Memorial Schools in Place at Least 20 Years. A controlling entity that is responsible for a memorial school that is located on public property and has been so situated for 20 or more years may request a waiver for renaming.

(4) Entity Submitting Application for Waiver. The application for a waiver must be submitted by the

controlling entity. If a second entity has control or custody of the memorial or monument but not the public property on which it sits, the second entity may endorse the controlling entity's application for waiver but may not initiate the application.

(5) Application for Waiver. The committee shall adopt guidelines for the application for waiver. The guidelines shall be made available to the public and shall require, at a minimum, the following:

(a) A standard cover form identifying the controlling entity and enumerating the required attachments.

(b) A formal resolution by the controlling entity seeking a waiver.

1. The formal resolution adopted by the controlling entity must have been presented for public input prior to adoption by the controlling entity.

2. Public notice of the intent to adopt the resolution must be published in the same manner used by the controlling entity for notification of other public actions. The public notice must be published no less than 30 days before consideration of the resolution for adoption by the controlling entity.

3. A public hearing must be held by the controlling entity before final consideration and adoption of the formal resolution. Evidence of the public hearing and consideration of the public's input must be included with a copy of the final, formal resolution adopted by the controlling entity.

(c) A written statement of purpose for the proposed relocation, removal, alteration, renaming, or other disturbance. The statement shall include photographs, maps, and other documentation as necessary to convey a clear articulation of the controlling entity's purpose in seeking a waiver.

(d) Written documentation of the original dedication or designation of the architecturally significant building, memorial building, memorial school, memorial street, or monument; the intent of the sponsoring

entity at the time of dedication; and any subsequent alteration, renaming, or other disturbance of the architecturally significant building, memorial building, memorial school, memorial street, or monument.

(e) Written commentary from any heritage, historical, genealogical, or preservation organizations with interest in the decision of the controlling entity, and from the general public. Letters of support or disagreement from interested organizations or the general public shall include supporting documentation, references, photographs, or other credible materials.

(f) A written statement of any pertinent facts that were not known at the time of the origin of the architecturally significant building, memorial building, memorial school, memorial street, or monument, but are known now, that the committee should consider.

(6) Technical Review of the Application for Waiver Form. The committee shall designate a Technical Advisory Review Group to perform the administrative and technical review of the Applications for Waiver. The Technical Advisory Review Group, at a minimum, shall include the Director of Alabama Historical Commission or designee, the Director of the Alabama Department of Archives and History or designee, and the Assistant Finance Director, Real Property Management or designee. The Technical Advisory Review Committee shall be responsible for reviewing Applications for Waiver to ensure the applications are complete and include the required information for consideration and that the information provided is consistent with the intention of the Act and applicable to the waiver request. The Technical Advisory Review Group shall provide comments and recommendations to the Committee. The review and recommendations of the Technical Advisory Review Group shall be limited to the historical and technical scope of the application.

(7) Schedule for Submittal and Review of Applications for Waiver. The committee shall annually establish a schedule for the deadlines for submitting and reviewing applications for waivers. The schedule established by the Committee shall provide for at least one quarterly meeting to consider the applications for waiver. The schedule shall include the deadline for submitting the applications for consideration at the quarterly meeting. To

provide adequate time for review of applications by the Technical Advisory Review Group, the schedule shall provide a minimum of 30 calendar days from the application deadline to the publication of the agenda for the committee meeting.

(8) Public Notice of Application for Waiver. The committee shall publish an agenda on the Alabama Open Meetings Act website at least 14 calendar days prior to the meeting to consider the applications for waiver. The agenda shall serve as notice to the public. The Committee shall allow the public the opportunity to review the application for waiver and Technical Advisory Review Group's recommendations 3 business days prior to the committee meeting.

(9) Public Comment on Applications for Waiver. The committee shall adopt rules that allow for public comment during the meeting in which the application for waiver is considered.

(10) Granting of Waiver. The committee shall provide formal notification of the granting or denial of a waiver to the controlling entity. If a waiver is granted, the notification shall include the limitations or extent of the waiver and any reasonable conditions or instructions to ensure restoration or preservation to the greatest extent possible. If a waiver is denied, the notification shall include reasons for denying the waiver.

(11) Failure of the Committee to Act. If the committee fails to act on a completed, eligible application for waiver within 90 days of the submittal deadline, the waiver shall be deemed granted.

(12) Resubmittal of Application for Waiver. If a waiver is denied by the committee, the controlling entity will be permitted to resubmit an application for waiver one time during a two-year period from the time of the committee's decision. The resubmittal of an application for waiver must include new information in order to be considered by the committee.

(13) Notice of Emergency Repairs or Construction. If a need exists for emergency repairs or construction at the site of or adjacent to the architecturally significant building, memorial building, memorial street, or monument, the controlling entity may temporarily relocate or

otherwise protect the memorial or monument without submitting an application for waiver but must comply with the following:

(a) The controlling entity must notify the Committee in writing as soon as discovering the need for repairs or construction but no more than ten (10) calendar days after discovering the need for emergency repairs or construction affecting the architecturally significant building, memorial building, memorial street, or monument.

(b) The controlling entity must include a written description of the actions taken to relocate or otherwise protect the architecturally significant building, memorial building, memorial street, or monument. This written description of action may be included in the emergency notification or may be submitted after evaluation of the emergency need but must be submitted a minimum of five (5) days prior to starting the emergency repairs or construction.

(c) The controlling entity must provide a timeline for completing the emergency repairs or construction including the date for returning a memorial or monument to its original location or removing any temporary protection of a memorial or monument. If the timeline for completing the emergency work and restoring the memorial or monument to its pre-emergency condition is more than one year from the discovery of the need for emergency repairs or construction, the controlling entity must submit an application for waiver for consideration of the Committee.

(d) The controlling entity must provide a notice of completion to the committee including the date when the monument is returned to its location.

Author: Alyce M. Spruell, Chair

Statutory Authority: Code of Ala. 1975, §§41-9-235, 41-9-237.

History: Original rule filed: February 18, 2020.

584-X-1-.05 **Exemptions from Applicability.** The provisions of the Alabama Memorial Preservation Act of 2017 and the administrative rules adopted hereto do not apply to any of the following:

(1) Art and artifacts in the collections of museums, archives, and libraries.

(2) Any architecturally significant building, memorial building, memorial street, or monument that is any of the following:

(a) Located on public property under the control of, or acquired by, the State Department of Transportation, which may interfere with the construction, maintenance, or operation of the public transportation system.

(b) Located on public property under the control of, or acquired by, a county or municipal body or a university, which may interfere with the construction, maintenance, or operation of the public transportation system.

(c) Located on public property operated or used by a utility, which may interfere with providing utility service.

(d) Located on public property under the control of, or acquired by, the Alabama State Port Authority, which may interfere with the construction, maintenance, or operation of the port infrastructure or port related activities.

Author: Alyce M. Spruell, Chair

Statutory Authority: Code of Ala. 1975, §§41-9-236, 41-9-237.

History: Original rule filed: February 18, 2020.