



Protecting African American Historic Places in Texas:

A COMMUNITY LEGAL TOOLKIT | 2021

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Protecting African American Historic Places in Texas: A Community Legal Toolkit

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The photo on the cover is of the historic Jackson Ranch Church and Cemetery in the Rio Grande Valley.

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INTRODUCTION

In 1966, Congress passed the National Historic Preservation Act, recognizing that “the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people.”¹ In Texas, as in the rest of the nation, the systems for preserving these foundations often overlook the presence, impact, and stories of African Americans.

This guide provides community groups and individuals interested in the preservation of sites in Texas with ties to African American heritage with an overview of the legal tools available to help achieve their goals. By no means comprehensive, this toolkit focuses on the more common legal tools that are available to help preserve African American historic sites, rather than the technical expertise—for example, in genealogy or archaeology—needed for preservation.

An electronic copy of this toolkit is available at law.utexas.edu/clinics/ecdc/publications/#historic. We welcome suggestions for updates to the toolkit! Contact us at ecdc@law.utexas.edu.



Allen Chapel AME Church in Fort Worth, TX

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STATE AND FEDERAL HISTORIC DESIGNATIONS AND MARKERS

Public historic designations provide official government recognition of historic sites with a range of benefits for promoting preservation. A historic designation, depending on the type of designation, may help guide visitors and educate the public about places of historical significance, qualify property owners for grant funding or tax breaks, provide guidelines for renovations, or even limit or stop redevelopment of the site. At the same time, several of the designations are limited in scope or voluntary in that the property owner can choose to opt out of the designation or even choose to demolish a historic structure. A designation does not require a property owner to open up the site to the public.

There are four key types of government designations available at the federal and state level for historic sites in Texas (see the next section for information on local historic designations). A property may hold one or multiple designations:

- National Register of Historic Places
- National Historic Landmark
- Recorded Texas Historic Landmark
- State Antiquities Landmark

Sites available for historic designation include a wide range of properties, ranging from different types of buildings and other structures to parks and battlefields. To be eligible for listing, sites must meet certain statutory criteria generally based on the site's historical, architectural, archaeological, or cultural significance. The site must also go through a formal application process.

1 National Register of Historic Places

Overview: Overseen by the National Park Service, a listing in the National Register of Historic Places provides national recognition of a site's historical, architectural, cultural, or archaeological significance. Buildings and other structures, sites, objects, and districts are eligible for this designation. There are more than 95,000 properties listed in the National Register,² with more than 3,000 of these properties located in Texas.

For a property to qualify, it must meet at least one of the following four criteria:³

- **Event:** The property is associated with events that have made a significant contribution to the "broad patterns" of our history.
- **Person:** The property is associated with the lives of persons significant in our past.



- **Design/Construction:** The property embodies distinctive characteristics of a type, period, or method of construction; represents the work of a master; possesses high artistic values; or represents a significant and distinguishable entity whose components may lack individual distinction.
- **Information Potential:** The site has yielded, or may be likely to yield, information important in history or prehistory.

A property must also retain its integrity. For historic properties, that means the property conveys its historical significance through several or all of the following aspects of the property: location, setting, design, materials, workmanship, feeling, and association.⁴

Preservation benefits:

Listing a property on the National Register is primarily educational in nature — the listing does not restrict owners from demolishing or altering their property. However, if federal money or a federal permitting process is involved in a project impacting a property listed on the National Register, Section 106 of the National Historic Preservation Act of 1966 and other statutory protections may be triggered, which can lead to restrictions on demolitions or other changes to the property. The federal agency involved in the project impacting the historic site must also report to the Advisory Council on Historic Preservation, which then weighs in on whether the federal action will have an adverse effect on the historic site. A national register listing also opens up opportunities for heritage tourism, technical assistance with preservation, and federal and private preservation grants, and may qualify the property for federal historic preservation tax incentives (discussed further below).



Reedy Chapel AME Church, Galveston

BY JIM EVANS

How to apply: In Texas, nominations are made through the Texas Historical Commission, which will notify the affected property owners and local government and solicit public comments. Nominations are typically made with the help of a historic preservation consultant. Before submitting the nomination, an applicant should first contact the Texas Historical Commission to discuss the application process.

Examples: Examples of historic sites with ties to African American heritage in Texas that are listed on the National Register include the Reedy Chapel-AME Church in Galveston, Freedmen's Town Historic District in Houston, the Allen Chapel African Methodist Episcopal Church in Fort Worth, the Juanita J. Craft Civil Rights House in Dallas, the Booker T. Washington Emancipation Proclamation Park in Mexia, the Hopewell-Rosenwald School in Bastrop County, and the 10th Street Historic District in Dallas.

2 National Historic Landmarks

Overview: National Historic Landmarks (NHLs)—a much narrower group of properties than those on the National Register (2,600+ vs 95,000+ properties)—are properties with an exceptionally high historic significance. As with the National Register, the NHL designation is overseen by the National Park Service. Properties that have been designated as NHLs are automatically listed in the National Register of Historic Places, if not already listed.

To qualify as an NHL, a property must be of national significance, according to one or more of six criteria listed in the NHL regulations,⁵ and retain, to a high degree, the physical features that made up its historic character and appearance. The NHL program uses the same seven aspects of historical integrity as the National Register program to evaluate properties (location, setting, design, materials, workmanship, feeling, and association), but NHLs must retain them to a higher degree.⁶

Preservation benefits: Similar to a listing on the National Register of Historic Places, except that some sources of funding give higher priority for NHLs, and government agencies are more likely to prioritize the preservation of a site with an NHL designation, given the official recognition of its heightened national significance.

How to apply: Anyone may nominate a property for National Historic Landmark designation, beginning with a letter of inquiry to the National Park Service.⁷ Qualifying for an NHL designation is a high bar to meet, and a property must go through a lengthy nomination process, which typically takes two to six years.



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Edmund Pettus Bridge – National Historic Landmark



BY JET LOWE, PUBLIC DOMAIN

Bethel Baptist Church, Birmingham, Alabama

Examples: Texas is home to approximately 50 of the 2,600+ NHLs, including the Alamo, King Ranch in South Texas, and Fort Concho in San Angelo. The Black Past website maintains a list of NHL properties across the country with a strong connection to African American heritage.⁸ These sites include the Bethel Baptist Church in Birmingham, the Beale Street District in Memphis, and the John Coltrane House in Philadelphia.

3 Recorded Texas Historic Landmarks

Overview: A Recorded Texas Historic Landmark (RTHL) is a designation conveyed to buildings, structures, and objects by the Texas Historical Commission for properties with both architectural and historical significance in Texas.⁹ To be eligible for an RTHL designation, the property owner must consent to the nomination, and the property must meet all of the following conditions:

- **Age:** The building or other structure must be at least 50 years old.
- **Historical Significance:** The property is associated with events that have made a significant contribution to history or with the lives of persons significant to our past.
- **Architectural Significance:** The property embodies distinctive characteristics of a type, period, or method of construction; represents the work of a master; possesses high artistic values; or represents a significant and distinguishable entity whose components may lack individual distinction.
- **Integrity:** A structure must be in a good repair and should maintain its appearance from the structure's period of historical significance. A structure is ineligible if it has been moved in the past 50 years or if artificial siding applied to its exterior within the preceding 50 years covers or alters the structure's historic architectural materials or features.

For burial grounds with historical significance, the Texas Historical Commission can issue a Historic Texas Cemetery designation. For more information on the preservation of African American cemeteries in Texas, see the publication, "Protecting and Preserving African American Cemeteries in Texas."¹⁰

Preservation benefits: Once a property is designated as an RTHL, the designation runs with the land and remains in effect for future owners. Anyone planning exterior alterations to the structure, other than normal maintenance, must notify the Texas Historical Commission at least 60 days in advance, which may require an additional 30-day waiting period before the alterations are made. The Texas Historical Commission has no review authority over most interior changes unless the proposed changes have the potential to affect the exterior of the structure. Notably, after these time limits have passed, a property with an RTHL designation can still be demolished or modified without the consent of the THC, with the risk of then losing its Historic Landmark status.

An RTHL designation comes with a number of additional preservation benefits, including a listing in the Texas Historic Sites Atlas and eligibility for state preservation grant funds and technical preservation assistance through the Texas Historical Commission.

How to apply: Applications to nominate a property for an RTHL designation are available from the Texas Historical Commission and must first be submitted for approval to the county historical commission where the structure is located.¹¹ The Texas Historical Commission will not accept an RTHL application without the approval of the county historical commission, except in rare cases of a direct appeal.¹²



BY CRISTIAN SORTO, LICENSED UNDER [CC BY-SA 4.0](#)

Antioch Missionary Baptist Church (Houston)

Examples: Examples of African American heritage sites with a Recorded Texas Historic Landmark include the Jamison Building in Texarkana, the Antioch Missionary Baptist Church in Houston, the Lockhart Vocational High School in Lockhart, and the Dr. A. H. A. and Ruby Jones House in Texarkana.

4 State Antiquities Landmarks

Overview: State Antiquities Landmarks (SALs) receive the highest level of state legal protection for historic sites in Texas. SAL designations are made by the Texas Historical Commission for sites with “sufficient archeological, scientific, or historical significance to scientific study, interest, or public representation of the aboriginal or historical past of Texas.”¹³ SALs are often, but not always, publicly-owned properties.

The criteria for historic buildings and sites to qualify as an SAL are similar to the criteria for Texas Recorded Historic Landmarks, except that buildings or other structure must also be listed on the National Register of Historic Places or be a contributing property within a national historic district.¹⁴ Archeological sites do not have this requirement. Once a site is designated as an SAL, the designation is recorded in the county deed records and continues with the property when it is sold.



BY NICOLAS HENDERSON, LICENSED UNDER [CC BY-NC-SA 4.0](#)

Freedman's Cemetery, Dallas, Texas Historical Marker

Preservation benefits: Sites with an SAL designation receive protection under the Texas Antiquities Code.¹⁵ The owner must receive permission from the THC, via a permit, before conducting work that could alter the site. Permit applications that are denied by the THC staff may be appealed to the Antiquities Advisory Board. Buildings designated as SALs are also listed in the Texas Historic Sites Atlas, although information about designated archeological sites is not available to the general public to protect the sites from vandalism and destruction.

How to apply: Public agencies or any group or individual may nominate public land for an SAL designation by first reaching out to the State Antiquities Landmark program contact with the Texas Historical Commission¹⁶ and then submitting a nomination to the Texas Historical Commission. Privately-owned property may only be nominated by the property owner.

Examples: Examples of State Antiquities Landmarks include the Caldwell County Courthouse, the Freedman's Cemetery in Dallas, and Woolridge Square in Austin.

5 Texas Historical Marker and Undertold Marker Programs

Overview: The Texas Historical Commission administers the Texas Historical Marker Program, which places a distinctive plaque or sign at eligible properties emblazoned with an image of the state of Texas, along with educational information about the site.¹⁷ The Marker Program includes three types of markers: (1) Recorded Texas Historic Landmarks (required for properties that are on the Recorded Texas Historic Landmark register), (2) subject matter markers; and (3) Historic Texas Cemetery markers (for sites with a Texas Historic Cemetery designation).

The Commission also offers an Undertold Marker program to address “historical gaps, promote diversity of topics, and proactively document significant underrepresented subjects of untold stories.” The Texas Historical Commission provides a list of topics that score well in the Undertold Program.¹⁸

Most sites with a subject marker are for historical events dating back at least 50 years, although historical events may be marked after 30 years, and individuals may be recognized in a marker if they have been deceased at least 10 years. The Texas Historical Commission may award a waiver of these time requirements for topics of overwhelming state or national importance.

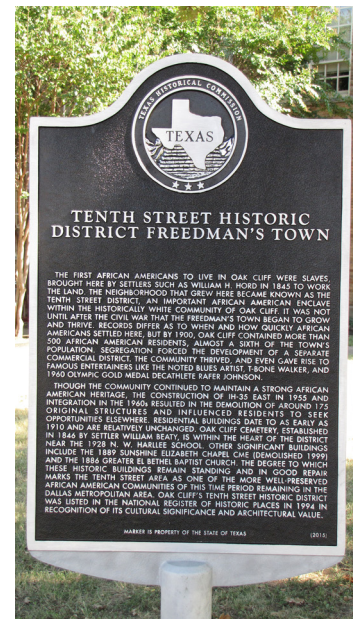
The purchase price for a new marker ranges from \$700 to \$1,875, depending on the size and type of marker,¹⁹ although funding may be available to offset the cost of the marker. For example, the Dallas County Historical Commission has funded several Undertold History Markers in the county.

Benefits: Subject markers (when not coupled with a Recorded Texas Historic Landmark or State Antiquity Landmark designation) are primarily educational in nature, showcasing aspects of history (such as events or people) that are important to a community or region. A subject marker by itself does not impose any legal restrictions on the site where the marker is located.

How to apply: To apply for a subject matter marker, contact your county historical commission chair. An application must be approved by the property owner and then county historical commission. Applications for a subject marker cost \$100 and are available on the THC website for each type of marker.²⁰ The application process can take from 12-18 months from submission of the application to dedication of the marker.

Applications for an Undertold Marker are also available on the Texas Historical Commission website²¹ and may be submitted directly to the Texas Historical Commission at Markers@thc.texas.gov during the application period for the program, which typically runs from November 1 to December 15th. Check the THC’s website for the latest deadlines. There is no application fee for an Undertold Marker.

Examples: Examples of African American heritage sites with subject markers in Texas include: Emancipation Park in Houston, Lincoln Center in College Station, and Marian Anderson High School in Madisonville. Examples of African American heritage sites participating in the Undertold Marker Program include: Houston’s First Sit-in, 10th Street Historic District Freedman’s Town in Dallas, and The Drag: Huntsville’s African American Business District.



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Tenth Street Historic District
Freedmen's Town TxHM

LOCAL HISTORIC LANDMARKS AND DISTRICTS

1 Local historic landmarks

Many Texas cities across the state have adopted ordinances for local designations of historic landmarks. These designations typically involve the addition of a historic zoning overlay to the property, under Chapter 211 of the Texas Local Government Code. With the overlay, city approval is required for any demolition or exterior modifications to a historic landmark, with modifications reviewed to ensure they are appropriate for preserving the historical integrity of the building or site. Properties designated as a local historic landmark or located in a local historic district may also be eligible for discounts on building permit fees and city tax exemptions (see discussion below).

Cities may adopt their own local criteria for what qualifies as a historic landmark. To help guide cities in crafting their historic landmark ordinances, the Texas Historic Commission has created a model preservation ordinance, which is available on the Commission's website.²² The criteria that cities use when evaluating buildings are typically similar to the criteria utilized by the National Register of Historic Places, while also taking into consideration how the building or site exemplifies the cultural or historical heritage of the city or a particular community within the city.

How to apply: Either the property owner or a third party may apply with the city for a local historic landmark designation. Under state law, an owner's consent to the designation is not required, but if consent is not obtained, the designation must be approved by at least three-fourths of the city's zoning, planning, or historical commission, as well as three-fourths vote of the city council. Some cities, such as the City of Houston, require the consent of the property owner. Under state law, properties owned by religious organizations also require consent of the owner.

Examples: Local historic landmark sites with ties to African American heritage include: Rutherford B. H. Yates House in Houston, Juanita Craft House in Dallas, Connelly-Yerwood House in Austin, Old African American Baptist Church in San Marcos, and Mt. Olive Missionary Baptist Church in Galveston.



BY RUTHERFORD B. H. YATES MUSEUM
Rutherford B. H. Yates House, Houston

African American Cultural Heritage Councils

A number of counties in Texas have created special advisory councils—called African American Heritage Councils or Commissions—to support the county's historical commission in identifying, recognizing, and preserving African American cultural heritage in the county. Counties with an African American Heritage Council include:

- Travis County African American Cultural Heritage Commission
- Harris County African American Cultural Heritage Council
- San Jacinto County African American Heritage Council

In addition, the Prairie View African American Cultural Heritage Commission is the first city-sponsored commission created in the state to promote the protection of African American historical and cultural resources.

For information and support in starting up a local African American Heritage Council, contact info@preserveblacktexas.org.

2 Local historic districts

Cities in Texas also have the authority under Chapter 211 of the Texas Local Government Code to create local historic districts. A historic district is a collection of buildings or other historic resources within a definable geographic area (such as a block or entire neighborhood) that, as a whole, convey a sense of history. The properties in the district that contribute to the overall historic character of the district are classified as “contributing,” while the buildings that do not contribute to the historic character are considered to be “non-contributing.”

A local historic district is governed by preservation guidelines and design standards adopted by the city, which provide direction for property owners, architects, builders, and city officials in determining what types of changes to properties in the district are allowable. The standards also govern new construction in the district.

New construction, demolitions, and alterations to contributing structures in a local historic district are typically subject to review and approval by the city’s historic preservation office. Several cities also require approval from the historic preservation office for alterations to non-contributing structures in the district.

In order for a historic district to be created, the owners must consent to the designation or else the designation must be approved by (1) three-fourths vote of the city council; and (2) three-fourths vote of the zoning, planning, or historical commission for the municipality.²³ If a parcel in the proposed district is owned by a religious organization, the organization must consent to the designation.²⁴ The governing law also sets forth information that the municipality must provide to each property owner in the proposed district.

Examples: Local historic districts with ties to African American heritage include: Tenth Street Historic District (Dallas), Wheatley Place Historic District (Dallas), Starkweather Historic District



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The Sweet Home Baptist Church in the Clarksville Historic District of Austin, Texas

Governmental entities with oversight over historic preservation

National Park Service:

Administers the National Register of Historic Places and the National Historic Landmark designations. Provides technical assistance to properties with a national historic designation.

Texas Historical Commission:

Administers the designations for Recorded Texas Historic Landmarks, Texas Historic Cemeteries, and State Antiquities Landmarks, as well as the Texas Historical Marker Program and Undertold Marker Program.

City Historic Landmark

Commissions: A quasi-judicial body that makes decisions regarding application permits for the demolition or alterations to historic structures in the city. The commissions may also play an active role in reviewing applications for city preservation grants as well as promoting historic preservation activities in the city. The members of a city historical commission are appointed by the city council.

County Historical Commissions

(CHCs): CHCs provide initial review of Recorded Texas Historic Landmark designations for the Texas Historical Commission. Many CHCs provide a broad range of additional services to support the preservation of historic and cultural resources in the county. The members of a CHC are appointed by the county commissioner’s court. The contact list for county historical commissions in Texas is available on the Texas Historical Commission website.⁴⁴

(Houston), and Clarksville Historic District (Austin).

CULTURAL AND HERITAGE DISTRICTS

Cultural and heritage districts are defined geographic areas to promote and preserve the cultural and historical resources of the area. The goals of these districts can be broad ranging and may be coupled with a focus on marketing local artists, attracting tourists, community revitalization, or community stabilization. Unlike local historic districts, a cultural or heritage district designation does not create any legal protections for the structures within the district.

1 City-designated cultural and heritage districts

City councils can adopt an ordinance creating a local cultural or heritage district designation along with the goals of the designation and procedures for qualifying for the designation.

In Houston, a heritage district is a new designation available to foster nonprofit organizations' ability to protect, restore, or install culturally and historically significant elements within the city's public right-of-way in the district, such as brick-paved streets, sidewalks, signage and markers, public art, and vegetation.²⁵ The designation does not apply to private property. To be eligible for the designation, an area must be distinguished by a unique community identity and history.

The City's first local heritage district, the Freedmen's Town Heritage District, was created in 2021. Within the district, the Freedmen's Town Conservancy plans to raise funds to repair and restore the brick roadways, which were originally laid by hand in the district when the city refused to pave the neighborhood's streets, and to line the streets with benches and public art, among other improvements in the city's right-of-way.



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Austin - East Austin: Charles E. Urdy Plaza

2 State-designated cultural districts

In 2005, the Texas Legislature gave the Texas Commission on the Arts (TCA) authority to designate cultural districts across the state.²⁶ As of 2021, more than 47 cultural districts had been designated by the TCA. A list and map of the districts is available on the TCA's [website](#). To qualify as a cultural district with the Commission, an organization or collaboration of organizations must first submit a letter of intent with a one-page description of the plans for the cultural district, followed by an orientation meeting with Commission staff. The staff will work closely with the applicant in developing the application. Recertification is required every ten years, along with an annual report.²⁷

TCA-designated cultural districts, along with arts organizations and agencies in the district, are eligible for the Commission's Arts Respond Cultural District Project grants of up to 50% of a project's budget, with grant amounts ranging from \$3,000 to \$250,000.²⁸ Grant applications are available on TCA's website.²⁹ The grant applicants are reviewed based on artistic quality (e.g., the quality of artists and works of art in the proposed district), capability (e.g., administrative capability, personnel, demonstrated history, budget, planning), and impact (e.g., audience, education, public service).³⁰

Examples of TCA-designated cultural districts

- **Six Square, Austin:** Six Square is a nonprofit organization and cultural district that celebrates and preserves the arts, culture, and history within a six-square mile area of Central East Austin that birthed the rich heritage and cultural contributions of Austin's African American community. Six Square was designated as a local cultural district by the City of Austin in 2007, followed by a designation from the Texas Commission on the Arts. Six Square receives funding through the City of Austin's Economic Development Department and the National Endowment for the Arts, among other funders.
- **Third Ward Cultural District (The Tre), Houston:** The district—located at the epicenter of Black art, culture, and history in Houston—was formed to preserve, protect, inspire, and share the artistic and cultural legacy of the historic Third Ward. The district, which is overseen by the nonprofit organization Project Row Houses, was designated as a cultural district by the Texas Commission on the Arts in 2020.
- **Fifth Ward Cultural Arts District, Houston:** The district, located in one of Houston's oldest Black neighborhoods, is overseen by the Fifth Ward Community Redevelopment Corporation, with the support of numerous community partners. The district is guided by a Cultural Arts District Plan and was designated as a cultural district by the Texas Commission on the Arts in 2020.

DEMOLITION DELAY ORDINANCES

Another preservation tool available to Texas cities is a demolition delay ordinance. With this legal tool, a city has the authority to delay the demolition of a building for a set number of days, in order to identify whether the building has historic significance, as well as to identify alternatives to demolition. The delay period depends on the city and typically ranges from 45 to 180 days. At the end of the delay period, the owner can typically still continue with the demolition unless, during the delay, the city decides the building should not be demolished and (1) the

building already has local historic landmark status, (2) the building is a contributing property in a local historic district, or (3) the city designates the building as a historic landmark.



City demolition delay ordinances in Texas range in coverage. The **City of San Antonio** applies its demolition delay ordinance to all buildings, regardless of historic status, with all demolition permits referred to the City's historic preservation officer to review. For properties that have not been designated as local historic landmarks or are not contributing properties in a historic landmark district, the preservation officer has up to 30 days to determine whether the building has historical, cultural, architectural, or archeological significance. If the officer finds that a building is significant, the city will follow its process of designating the property as a local historic landmark.³¹

For properties that have received a historic landmark designation or that are a contributing property in a historic district in San Antonio, the property goes through a 60-day administrative review.³² During that time period, the city's historic preservation office works with the property owner, the community, preservation organizations, and city agencies to identify alternatives to demolition, followed by a public hearing. In order for a demolition to proceed, the applicant must provide documentation of either unreasonable hardship or the structure's loss of historical significance.

Other cities, such as the **City of Dallas**, apply the city's demolition delay ordinance to properties in designated geographic areas called "Demolition Delay Overlay Districts." These are areas that have been identified as having a concentration of historic or likely historic properties, but typically exclude areas that have been designated as a historic landmark district by the city (In historic landmark districts, demolition requests follow a different process whereby cities typically have the authority to not only delay but also deny a demolition permit.).

The City of Dallas has four Demolition Delay Overlay Districts.³³ These districts cover all buildings in the district that are at least 50 years old and have been designated as a historic structure according to one of a variety of criteria set forth in the ordinance,³⁴ such as a listing on the National Register of Historic Places.

When a demolition permit is submitted to the City of Dallas for a building in a Demolition Delay Overlay District, the city building official is required to refer the application to the city's historic preservation officer, who must determine within 10 days whether the building is covered under the demolition delay ordinance.³⁵ If the building is covered, then within 45 days of the determination, the historic preservation officer will schedule a meeting with the building's owner and appropriate city officials to discuss alternatives to demolition and tools to promote preservation of the property. The meeting may include representatives from historic preservation organizations and similar groups. The city must also post a notice of the meeting on the city's website, along with a sign on the property. After the 45 days have passed, if the property owner declines to enter into an agreement to preserve the building and the property has not been designated as a local historic landmark, the city will issue a permit allowing the owner to move forward with the demolition.³⁶

Local Advocacy Checklist

- ☐ Does your city have a historic zoning overlay ordinance?
 - ☐ Do the overlays created by the city protect buildings and areas of the city with historical significance to African Americans?
- ☐ Does your city have a demolition delay overlay ordinance to review demolition applications for buildings that might have historical significance?
- ☐ Do the overlays protect areas with historical significance to African Americans?

HISTORIC PRESERVATION EASEMENTS

A historic preservation easement, also called a preservation covenant, is a voluntary legal agreement that can be used to protect the historical, architectural, archaeological, or cultural aspects of historic properties, either permanently or for a number of years.³⁷ A preservation easement typically prohibits the property owner from demolishing or making alterations that would be inconsistent with the historic character of the property and often requires advanced approval of the easement holder before certain alterations are made. An easement, depending on how it is structured, can also protect against deterioration of the structure by imposing maintenance obligations.



The Oddfellows Building, Atlanta

BY WARREN LEMAY

A preservation easement is a flexible tool that can be crafted in a number of different ways to address the unique interests of the parties and characteristics of the property. For example, an easement may restrict changes to the entire property or just a portion of the premises, such as a particular structure or only the exterior front of a building.

A preservation easement gives a designated third party the right to monitor and enforce the easement. This third party is called the easement holder and is typically an organization with a mission of historic preservation or conservation, such as a governmental historical preservation entity, charitable organization, or trust. For an easement to be effective, the easement holder should have the resources and commitment to be a long-term steward in monitoring and enforcing the restrictions contained in the easement. The Texas Historical Commission is the holder of multiple preservation easements in Texas.

Preservation easements require the consent of the current owner but, once created, also bind the future owners of the property. Preservation easements are recorded with the deed records of the county where the property is located and become part of the chain of title. In this way, preservation easements can provide protection in perpetuity.

When creating an easement, a best practice is to retain an attorney who specializes in historic preservation law as well as an accountant to assist with the process. The Texas Historical Commission may be able to assist as well. The National Trust for Historic Preservation can provide a sample preservation easement upon request by contacting law@savingplaces.org.

In some instances, a preservation easement may provide important federal tax benefits, depending on the change in property value resulting from the easement. Contact a tax advisor for more information. The Texas Historical Commission does not accept donations of easements for tax purposes.

Examples

Preservation easements are in place on thousands of historic properties across the United States, including a number of properties with ties to African American heritage, including:

- **The Joshua Houston, Jr. House, Huntsville, Texas:** The home was constructed in 1898 by Joshua Houston, a member of one of Huntsville's most prominent African American families. In 2003, the owner of the house granted a preservation easement to the Walker County Heritage Foundation, which sponsored restoration of the house. In addition to restricting redevelopment, the easement requires that the house be made available to the public for at least 12 days each year.
- **Nina Simone Childhood Home, Tryon, North Carolina:** In 2020, the owners of Nina Simone's childhood home granted a preservation easement to Preservation North Carolina. The easement allows for rehabilitation of the home as long as the home's historic character is maintained.
- **The Oddfellows Building, Atlanta, Georgia:** This building is located in what was once the hub of African American commercial life in Atlanta. Easements Atlanta, a 501(c)(3) nonprofit organization with a mission of accepting historic preservation easements of certified historic properties in Atlanta, holds a preservation easement on a portion of the complex.

CONSERVANCIES

A conservancy is a nonprofit organization with a mission of protecting public assets. Conservancies are often thought of as organizations focused on the preservation of plants, animals, or other natural resources, but a conservancy can also be formed to focus on the preservation of historic and cultural sites. A conservancy may own the sites it seeks to preserve, hold and enforce conservation easements issued by property owners (like those discussed above), or enter into contractual agreements with property owners to support the preservation of the site. For example, a number of conservancies have been set up across the country to support cities with improvements, maintenance, and programming at city parks. In these instances, the relationship between the conservancy and the city is typically a contractual one.

In Texas, a conservancy is typically set up as a nonprofit corporation through the Texas Secretary of State's office, with a 501(c)(3) tax exemption from the Internal Revenue Service to facilitate charitable donations. Organizationally, what distinguishes a conservancy from other nonprofit organizations is the conservancy's purpose clause in its Certificate of Formation or bylaws, which includes a focus on preserving sites with historical, architectural, archaeological, or cultural significance.

An important aspect of the conservancy model is long-term stewardship. This organizational model requires financial resources or strong community backing in order to be seen as a reliable entity that can be counted on in the future to carry forth its mission.

Examples of Conservancies in Texas

Conservancies focused on historic or cultural preservation have been organized around a broad range of goals with varying geographic scope. Examples include:

- **Emancipation Park Conservancy, Houston, Texas:** A Texas nonprofit organization responsible for the management, restoration, and enhancement of Emancipation Park, located in a historic African American neighborhood.
- **Los Angeles Conservancy, Los Angeles, California:** Nonprofit membership organization focused on recognizing, preserving, and revitalizing the historic and cultural resources of Los Angeles County.
- **The Plano Conservancy, Plano, Texas:** A Texas nonprofit organization that provides financial assistance to preserve heritage resources in Plano.

Emancipation Park – Houston, TX

The parcel of land that became known as Emancipation Park was purchased by formerly enslaved persons in 1872 as home for their Juneteenth celebration. In 1916, the land was donated to the City of Houston and, for almost two decades, was the only municipal park in Houston that African Americans were allowed to use. The park has remained a city park since that time.

In 2014, the Emancipation Park Conservancy was created as a 501(c)(3) tax-exempt nonprofit corporation to restore, manage, and enhance Emancipation Park while preserving the integrity and historical roots of the park, through a 30-year contract with the City of Houston. The Conservancy also plays an active role in fundraising and putting on programs and events at the park. The City retains overall control and responsibility for the park, including approval of improvements proposed by the Conservancy.

Emancipation Park was designated as a local historic landmark by the Houston City Council in 2007 and was more recently listed as a UNESCO Site of Memory associated with UNESCO's Slave Route project. The park is also included in the proposed Emancipation National Historic Trail under consideration by the federal government.

TAX BENEFITS

Historic properties may be eligible for a range of federal, state, and local tax benefits.

1 Federal 20% historic rehabilitation tax credit

The federal government provides a 20% income tax credit for the substantial rehabilitation of a historic building that will be used primarily for a business or other income-producing purposes (a previously available 10% rehabilitation credit was eliminated in 2017). The credit is for 20% of qualified expenses spent on the rehab of the historic building. To qualify for the credit, the rehabilitation must meet the Secretary of the Interior's Standards for Rehabilitation.³⁸ The credit is not available for owner-occupied residences.

The application for the credit is available through the National Park Service and must be submitted before the rehab work is completed.³⁹ To qualify for the 20% credit, a building must be certified as a historic structure by the National Park Service. Eligible properties include properties listed on the National Register of Historic Places and contributing properties in a National Register Historic District. Other historic properties, such as those in a state or city historic district, may also qualify through the application process. The rehabilitation and other work associated with the project is overseen by the Texas Historical Commission and National Park Service.

2 Federal income tax deduction for easements

An owner of a historic property who donates an easement to a qualified nonprofit organization or governmental entity to promote the preservation of the property may be eligible for a federal income tax deduction and should consult with their accountant for more information. The amount of the deduction is generally the fair market value of the easement, which is based on the difference in the fair market value of the property before and after the easement is granted, using a qualified appraiser.

3 Texas Historic Preservation Tax Credit Program

Texas offers a tax credit from state franchise taxes that is worth 25% of eligible rehabilitation costs. The eligibility requirements and overall tax credit program is similar in scope to the federal historic rehabilitation tax credit.⁴⁰ Applications are made through the Texas Historical Commission and require a fee of \$300 to \$18,000, depending on the size of the rehab project. See this [handy chart](#) for comparing the Texas and federal tax credit programs.

4 Local historic tax exemptions

Many local taxing entities in Texas offer local exemptions from property taxes to encourage the preservation, rehabilitation, and restoration of historic landmark properties. The exemption is provided either in the form of a tax freeze—which typically freezes the assessed valuations of the land and improvements at the pre-renovation values for the purposes of assessing city taxes—or a traditional exemption, which exempts the entire land and structure from all or a portion of property taxes assessed by the particular local taxing jurisdiction.

To qualify for a local historic tax exemption, which requires an application, cities typically require a property to be formally designated as a local historic landmark or be a contributing property in a landmark district. Local historic tax exemption programs often, but not always, require properties to undergo substantial rehabilitation in order to qualify for the exemption.

The following are examples of the types of local property tax exemption programs offered in Texas:

Dallas: The City of Dallas provides a ten-year historic tax exemption, with the amount of property taxes exempted based on the type of local historic district the property is located in, if any. Properties located in certain types of local historic districts have a lower renovation threshold to qualify. The exemption is applied to either the entire property or the added value of the renovations, depending on where the property is located. Historic properties owned by nonprofits that are open to the public are eligible for a 100% exemption.⁴¹

Fort Worth: Fort Worth offers a 10-year tax freeze for historic properties that undergo substantial renovation (typically 20% of the assessed valuation of the structure must be spent on rehabilitation). Approval for the exemption must be obtained from the City's Historic Preservation Office, followed by an application each year to the local appraisal district.⁴²

San Antonio: San Antonio offers a property tax exemption for substantial renovation of historic properties: residences are eligible for a 10-year tax freeze, while commercial properties are eligible for a 100% exemption on all city taxes for the first 5 years and then a 50% exemption for next 5 years. The city also offers a 20% exemption from city taxes for 10 years for all residential properties in a newly designated local historic district, with an option for a 5-year extension if the owners remain in the home.⁴³

RESOURCES

State and Local Organizations Dedicated to African American Historic Preservation

Here are some projects and organizations in Texas as well as other states focused on strengthening African American historic preservation in their communities.

- **Texas projects and organizations:**
 - [Texas African American Heritage Council](#): Statewide organization with a mission of promoting the protection of African American cultural and historical resources in Texas.
 - Local African American heritage councils: Texas has a growing number of county- and city-sponsored councils dedicated to identifying, documenting, and protecting African American heritage.
 - [Prairie View African American Cultural Heritage Commission](#)
 - [Travis County African American Heritage Council](#)
 - [San Jacinto County African American Heritage Council](#)
 - [Harris County African American Cultural Heritage Council](#)
 - [Texas Freedom Colonies Project](#): Educational and social justice initiative dedicated to supporting the preservation of Black settlement landscapes, heritage, and grassroots preservation practices through research.
 - [Texas Freedom Colonies Project Atlas](#): Interactive mapping project that documents the location and stories of freedom colonies in Texas. Contributions to the Atlas are encouraged.
- **Other state organizations:**
 - [Black Heritage Council, Alabama](#): The Black Heritage Council was created in 1984 by the Alabama Historical Commission and the State Historic Preservation Office to advocate for the preservation of African American historic places in Alabama. The Council runs a historical plaque program and assists groups and individuals with the documentation and preservation of historic African American sites and districts.
 - [Georgia African American Preservation Network \(GAAPN\)](#): The GAAPN is overseen by an all-volunteer steering committee that focuses on preserving African American sites across the state. The Network receives staffing support from the African American Programs Coordinator in the state's historical commission office.
 - [Kentucky African American Heritage Commission \(KAAHC\)](#): The KAAHC is a state-created entity with 19 members appointed by the Governor and includes representatives from the state's major universities, state agencies, community preservation organizations, and interested citizens. The Commission identifies and promotes awareness of significant African American influences on the history and culture of Kentucky and encourages the preservation of African American heritage and historic sites in the state. The commission is administratively attached to the state's Kentucky Heritage Council, with the Council providing staff assistance and program oversight.

- [Maryland Commission on African American History and Culture \(MCAAHC\)](#): The MCAAHC originated as the Maryland Commission on Negro History and Culture, which was created by the Maryland Legislature in 1969. The MCAAHC has a number of objectives relations to preserving and promoting the history and culture of African Americans in Maryland, including serving as an information clearinghouse about African Americans and disseminating African American historical and cultural materials into the mainstream of Maryland life and education.
- [North Carolina African American Heritage Commission \(AAHC\)](#): The North Carolina General Assembly created the AAHC in 2008, which in 2017 became a division within the North Carolina Department of Natural and Cultural Resources. The AAHC is focused on the preservation, interpretation, and promotion of African American history, arts, and culture in North Carolina by supporting two primary groups: (1) practitioners such as docents and museum educators who are African American or center their work on African American culture—through an array of resources including technical assistance; and (2) the broader community—through activities such as public programs, exhibits, digital resources, and workshops.
- [South Carolina African American Heritage Commission \(AAHC\)](#): The South Carolina General Assembly established the South Carolina African American Heritage Council in 1993, which transformed into a commission in 2001 by executive order of the governor. The mission of the AAHC is “to identify and promote the preservation of historic sites, structures, buildings, and culture of the African American experience in South Carolina, and to assist and enhance the efforts of the South Carolina Department of Archives and History.” The Commission partners closely with the WeGOJA Foundation, a private nonprofit entity that works to document and promote African American heritage sites in South Carolina.
- [Indiana’s African American Landmarks Committee](#): The African American Landmarks Committee, a committee of the nonprofit organization Indiana Landmarks, awards grants ranging from \$500 to \$2,500 to assist nonprofit organizations in the preservation and promotion of historic African American properties in Indiana. The grants are used for a variety of purposes including organizational development, architectural and engineering studies, and programs promoting the preservation, interpretation, or visitation of a historic African American place.

General Resources

- National Park Service: [Historic Preservation Website](#)
- Texas Historical Commission: [Website](#)
- Texas Bar Foundation and Historic Fort Worth: [Historic Preservation Handbook for Texans: Laws and Incentives at the Local, State and Federal Levels](#) (2017)
- Brent Leggs, et al, [Preserving African American Historic Places](#) (National Trust for Historic Preservation): A comprehensive brochure on national and statewide efforts to preserve African American historical sites.
- [African American Cultural Heritage Action Fund](#): National fund created by the National Trust of Historic Preservation that provides grants to local preservation organizations to support the preservation of sites and stories of Black history.
- Black Past: [Website of National African American Historic Landmarks by State](#)

Public Historic Designations and Markers

- National Register of Historic Places
 - National Park Service: [Information about the National Register](#)
 - [National Register Database](#)
 - Texas Historical Commission: [Links to publications and forms for qualifying for the National Register](#)
- Texas Historical Commission designations and marker programs
 - Texas Historic Sites Atlas: [Search for properties](#) in Texas with state designations, National Register listings, and subject markers.
 - [State Historical Markers](#): Information for new and current marker holders and the application for a marker.
 - [Recorded Historic Landmarks](#): Information on how to apply for a Texas Recorded Historic Landmark, with a link to the application.

Historic Preservation Easements

- National Park Service: [Easements to Protect Historic Properties Brochure](#)
- National Preservation Institute: [Model Covenant Language](#)
- National Trust for Historic Places: [Preservation Easements website page](#)

Cultural Districts

- Texas Commission for the Arts, Cultural Districts Program: [Website](#) with information on the program, application form, training videos, and other resources.

Tax Benefits

- Comparison of federal and state historic tax credit programs: [Chart by the Texas Historical Commission](#)
- Texas Historic Preservation Tax Credit Program
 - [Overview of the program and application materials](#)
 - [Application guide](#)
- Federal Historic Preservation Tax
 - [Overview of the program](#)
 - [Secretary of the Interior's Standards for Rehabilitation](#)

APPENDIX:

State of Texas Historical Designations and Markers (Texas Historical Commission, June 2018)

LEGEND

- = yes, comment applies to column heading
- = no, comment does not apply

Updated June 2018

		Preservation Easement or Covenant	Historical Designations & Markers				
			State Antiquities Landmark	National Register of Historic Places	Recorded Texas Historic Landmark	Educational Subject Markers	Historic Texas Cemetery*
			(SAL)	(NR)	(RTHL)		(HTC)
Comments							
Benefits the Citizens of Texas!		●	●	●	●	●	●
Applicability	Property must be historic	●	●	●	●	○	●
	Available to private owners	●	●	●	●	●	●
	Available to public owners	●	●	●	●	●	●
	Can apply to archeological sites	●	●	●	○	●	●
	Can apply to buildings and structures	●	●	●	●	○	○
	Can apply to historic landscapes or sites	●	●	●	depends	●	●
	Requires owner consent for implementation	●	depends	depends	●	●	○
Ownership	Owner retains use of the property	●	●	●	●	●	restricted use
	Must provide limited public access or public benefit	depends	○	○	○	○	●
	Property can be sold	●	●	●	●	●	●
	Conveys with property	●	●	●	●	●	●
	May be revoked at owner's request	○	○	○	○	○	depends
Protection	Alterations require notification to THC	●	●	○	●	○	○
	Prevents demolition of historic property	●	●	○	○	○	●
	Requires maintenance by the owner	●	○	○	●	○	○
	Federal agencies must consider impacts to these historic properties	●	●	●	●	depends	depends
Fiscal Matters	Potential federal tax benefits for historic rehabs	○	○	●	○	○	○
	Potential state tax benefits for historic rehabs	○	●	●	●	○	○
	Potential to reduce property taxes	○	●	○	●	○	●
	Ability to exempt labor from state sales tax	○	○	●	○	○	depends
	Fees Required	●	depends	○	●	●	●
Notes	1. Local designations are awarded and administered by the local governing body; the Texas Historical Commission has no role in administering local designations and local markers. 2. Above matrix provides typical application of subject matter; however, please consult with Texas Historical Commission staff because each property is handled individually. 3. Visit www.thc.texas.gov and use its search box (top, right corner) to learn more about easements, designations, markers, cemeteries, and other preservation matters.						



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* Protections and benefits described in this handout apply to all cemeteries, regardless of designation status.

The HTC designation is primarily honorary and does not trigger a higher degree of protection or benefits than those afforded to all cemeteries by other Texas laws.

ENDNOTES

- 1 National Historic Preservation Act of 1966, Public Law 89-665, §1 (b)(2), 50 Stat. 915 (1966).
- 2 National Park Service, *What is the National Register of Historic Places?*, <https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm>
- 3 National Park Service, *How to Apply the National Register Criteria for Evaluation*, National Register Bulletin, p. 2, https://www.nps.gov/subjects/nationalregister/upload/NRB-15_web508.pdf.
- 4 *Id.* at 44.
- 5 36 CFR § 65.4(a) (2020).
- 6 National Park Service, *Determining the Eligibility of a Property for National Historic Landmark Designation*, <https://www.nps.gov/subjects/nationalhistoriclandmarks/eligibility.htm>.
- 7 For more information on the nomination and application visit *National Historic Landmarks, Nomination Process*, at <https://www.nps.gov/subjects/nationalhistoriclandmarks/nomination-process.htm>.
- 8 *National African American Historic Landmarks by State*, Black Past website, <https://www.blackpast.org/special-features/national-african-american-historic-landmarks-state/>.
- 9 An overview of the Recorded Texas Historic Landmark program can be found on the Texas Historical Commission website at <https://www.thc.texas.gov/preserve/projects-and-programs/recorded-texas-historic-landmarks>.
- 10 Entrepreneurship and Community Development Clinic, The University of Texas School of Law, *Protecting and Preserving African-American Cemeteries in Texas* (2019), <https://law.utexas.edu/wp-content/uploads/sites/11/2020/01/2020-01-ECDC-African-American-Cemeteries.pdf>.
- 11 The application for a Recorded Texas Historic Landmark designation is available at <https://www.thc.texas.gov/preserve/projects-and-programs/state-historical-markers/apply-historical-marker>.
- 12 A detailed brochure of the Recorded Texas Historic Landmark requirements can be found at <https://www.thc.texas.gov/public/upload/forms/RTHLbrochure.pdf>
- 13 Texas Natural Resource Code, § 191.094 (2020).
- 14 Texas Historical Commission, *Designation Procedures for SALs*, <https://www.thc.texas.gov/preserve/projects-and-programs/state-antiquities-landmarks/designation-procedures-sals>.
- 15 Texas Natural Resources Code, Chapter 191, <https://statutes.capitol.texas.gov/Docs/NR/htm/NR.191.htm>
- 16 The Texas Historical Commission's contact list is available at https://www.thc.texas.gov/contact#contact_programs.
- 17 Information about the historical marker program is available at <https://www.thc.texas.gov/preserve/projects-and-programs/state-historical-markers>.
- 18 Texas Historical Commission, *Underrepresented Topics in the Historical Marker Program*, https://www.thc.texas.gov/public/upload/Underrepresented%20topics%20in%20the%20Marker%20Program_rev.%202020.docx.
- 19 Texas Historical Commission, *Official Texas Historical Marker Types*, <https://www.thc.texas.gov/public/upload/publications/Marker%20Types%20-%202021.pdf>
- 20 Texas Historical Commission, *Apply for a Historical Marker*, <https://www.thc.texas.gov/preserve/projects-and-programs/state-historical-markers/apply-historical-marker>
- 21 Undertold Marker application, https://www.thc.texas.gov/public/upload/MAF%20Undertold%20application%202020_SAMPLE.pdf.

- 22 Sample Historic Landmark Preservation Ordinance, <https://www.thc.texas.gov/public/upload/forms/Sample%20Historic%20Preservation%20Ordinance.pdf>
- 23 Texas Local Government Code, § 211.0165(a).
- 24 Texas Local Government Code, § 211.0165(b), Texas Local Government Code, § 211.0165(c).
- 25 City of Houston, *About the Heritage District*, <https://www.houstontx.gov/planning/HistoricPres/heritagedistrict.html>.
- 26 Texas H.B. 2208, 79th Regular Session, codified at Chapter 444 of the Government Code.
- 27 Texas Commission on the Arts, *Cultural Districts Designation Program*, <https://www2.arts.state.tx.us/tcagrnt/TXArtsPlan/CD.htm>.
- 28 *Id.*
- 29 Cultural Districts Program application, https://www.arts.texas.gov/wp-content/uploads/2018/02/CDD_Form_v2.pdf.
- 30 Texas Commission on the Arts, *General Guidelines and Policies*, <https://www2.arts.state.tx.us/tcagrnt/TXArtsPlan/Guidelines.htm#Ineligible>.
- 31 City of San Antonio, Demolition application, https://www.sanantonio.gov/Portals/0/Files/HistoricPreservation/Demo_Application_2014.pdf?ver=2014-09-09-120457-580.
- 32 City of San Antonio, Unified Development Code, § 35-455(d)(1).
- 33 City of Dallas, Office of Historic Preservation, *Demolition Delay Overlay Districts: Frequently Asked Questions*, <https://dallascityhall.com/departments/sustainabledevelopment/historicpreservation/Pages/Demolition-Delay-Overlay-Districts.aspx>
- 34 City of Dallas Code, § 51A-4.504.
- 35 *Id.* at (c)(1)(B).
- 36 *Id.* at (c)(2).
- 37 Texas Natural Resources Code, Chapter 183.
- 38 The Standards for Rehabilitation are available at <https://www.nps.gov/tps/standards/rehabilitation.htm>.
- 39 The application for the 20% historic tax credit is available at <https://www.nps.gov/tps/tax-incentives/application-process.htm>.
- 40 The Texas Historic Preservation Tax Credit Program regulations are available at [https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=13&pt=2&ch=13&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=13&pt=2&ch=13&rl=Y)
- 41 For more information about Dallas's historic tax exemption, see City of Dallas, Historic Preservation Tax Incentive Program, https://dallascityhall.com/departments/sustainabledevelopment/historicpreservation/HP%20Documents/Tax/0_Tax%20Incentives%20-%20Information%20Packet%20for%20applicants%20-%20rev%209-7-2016.pdf.
- 42 For more information on Fort Worth's historic site tax exemption, visit the City's website at <https://www.fortworthtexas.gov/departments/development-services/preservation-urban-design/historic-preservation/tax-exemption>
- 43 For more information on the City of San Antonio's local tax exemption for historic properties, visit the City's website at <https://www.sanantonio.gov/historic/About-Us/WhyPreserve/incentives>.
- 44 Texas Historical Commission, Contact Information for CHCs, <https://www.thc.texas.gov/preserve/projects-and-programs/county-historical-commission-outreach/what-are-county-historical>.