

MONUMENTS ORDINANCE ST. MAARTEN
AB2000, No.01

ISLAND ORDINANCE from December 21st 1999 regarding the execution of the National Monuments Ordinance 1989 and the amending of the Building and Housing Ordinance 1935 and of the St. Maarten Development Planning Ordinance (Monuments Island Ordinance).

THE ISLAND COUNCIL OF THE ISLAND TERRITORY OF SINT MAARTEN

Considering:

That in order to preserve historical, cultural and artistic monuments and cityscapes and townscapes it is necessary to set rules and regulations for the execution of the National Monuments Ordinance 1989, as well as to amend the Building and Housing Ordinance 1935 and of the St. Maarten Development Planning Ordinance.

Having regard to Articles 2, 3, 6 third paragraph and 8 third paragraph of the National Monuments Ordinance 1989¹,

Has decided:

To decree the following Island Ordinance:

SECTION I: GENERAL

ARTICLE 1

In this ordinance and the provisions based thereon, the following definitions apply:

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|-----------------------------|---|
| (a) monument: | a moveable or immovable object that was made at least fifty years ago and that is considered to be of general interest due to its beauty, artistic value, meaning for science, the nation's history or its value for cultural anthropology; |
| (b) protected monument: | a monument registered with the register meant in Article 7, first paragraph; |
| (c) cityscape or townscape: | a group of immovable objects including trees, roads, streets and squares, that form an image with one or more monuments belonging to the group, that are of general |

¹ National Ordinance of the 13th of September, 1989 (PB 1989, 55) as amended by means of the National Implementation Ordinance Code of Criminal Procedure (PB 1997, 237).

- (d) protected cityscape or townscape: interest due to the beauty or character of the totality;
a cityscape or townscape registered with the register meant in Article 14, first paragraph;
- (e) Monuments Council: the Monuments Council meant in Article 3, first paragraph;
- (f) interested person: the person whose interests are directly involved in a decision based on the National Monuments Ordinance 1989 or this Ordinance. Regarding legal entities, the general and collective interests that they serve in particular according to their purposes and their actual works are also considered to be their interests.

ARTICLE 2

At least once a year the Executive Committee presents the Island Council with a report concerning the presence of monuments and cityscapes and townscapes, as well as the condition of the protected monuments and protected cityscapes and townscapes.

ARTICLE 3

1. There is a Monuments Council. The Island Council appoints the members. The members are to be experts in the area of preserving monuments and are deemed to be knowledgeable about architecture, urban development, the arts, the island's history, the people of St. Maarten, archeology, tourism or the financial and legal aspects of the preservation of monuments.
2. The Monuments Council's task is to provide the Executive Committee and the Island Council with advice – as requested or on its own initiative – regarding aspects relating to the preservation of monuments and the work to be done in accordance with any Ordinance.
3. A General Island Resolution will determine the make-up and work methods of the Monuments Council.

SECTION II: PROTECTED MONUMENTS

1. Assignment as Protected Monument

ARTICLE 4

1. Monuments can be assigned as protected monuments by the Executive Committee, as per the request of an interested party or not.
2. A General Island Resolution indicates the criteria that in general are to be met for an assignment as protected monument.
3. A decision to assign the status of protected monument includes the reasons for the decision and in any case mentions the monumental value of the object and the general interest or interests on the basis whereof it was decided to assign it the status of protected monument.

4. If the Executive Committee does not decide on a request to assign a monument the status of protected monument within six months, the request is deemed to have been denied.

ARTICLE 5

1. A decision to assign the status of protected monument is made known as soon as possible in writing and by registered mail to the monument's owners and those entitled to a limited right, as well as to the requesting party if the decision is based on a request. In the case of an immovable object, the decision is made known in as far as is possible to those that are designated as such in the public registers. The decision will also mention the period of time of the public inspection mentioned in the second paragraph.
2. The decision to assign the status of protected monument is also made known to the public as soon as possible by the Executive Committee by indicating the public inspection thereof ahead of time in one or more local dailies and also in the usual manner for the publication of official notices. The decision is made available for public inspection for a period of thirty days at the Government Administration Offices.

ARTICLE 6

1. During the period of time of the public inspection as mentioned in Article 5, paragraph two as mentioned in the notification, all owners or entitled persons with a limited right regarding the monument and - if the assignment was requested - the party that made the request can submit an objection with the Island Council against the decision to assign. The date of the stamp of receipt that is placed on the objection is deemed to be the date of its submittal.
2. Within the period of thirty days mentioned in Article 5, paragraph two, interested parties that have not been notified can submit an objection to the Island Council, listing their grievances against the decision. The date of the stamp of receipt that is placed on the objection is deemed to be the date of its submittal.
3. Within a period of thirty days after the date of notification of the decision to reject a request to assign or after the period meant in Article 4, paragraph four, the party whose request for assignment as a protected monument was rejected can submit an objection to that decision to reject with the Island Council.
4. Before deciding with regards to an objection and within thirty days of receiving it, the Island Council requests the Monuments Council's written advice concerning the objection. The Island Council decides within six months after the date of receipt of the objection. The decision states the reasons for it and is made known in writing to the owners, those entitled to a limited right regarding the monument, the submitter of the objection as well as – if the assignment as protected monument was requested – the party requesting such. If a decision is not made within the abovementioned period of six months, the objection is deemed to have been rejected.

2. Register of Protected Monuments

ARTICLE 7

1. The Executive Committee keeps a public register of protected monuments. The Executive Committee notes the monuments that are assigned the status of protected monuments in the register, including the monumental value thereof and the general interest or interests on the basis of which the decision to protect the monument was based, making a distinction between moveable and immovable monuments. The registration takes place after the period of public inspection of the decision to assign the status of protected monument has expired. If an objection against such a decision has been lodged on time, the registration takes place after the objection is rejected.
2. The make-up and management of the register meant in the first paragraph are determined by means of a General Island Resolution. The register remains with the Executive Committee and is provided for inspection by the public at the Government Administration Office. Any person can get copies from the register there at their own expense.

ARTICLE 8

1. If it concerns an immoveable object, the Executive Committee notifies the Land Register of the registration as a protected monument within fourteen days of the registration meant in Article 7, paragraph one by means of providing a copy thereof.
2. The Executive Committee has the authority to officially or on the request of an interested party make changes regarding the registration or – having heard the Monuments Council – remove protected monuments from the register. The first paragraph applies. Articles 4, 5 and 6 apply unless the changes in the register do not affect the degree of protection or are of minimal significance, not affecting the monumental value of the protected monument.

3. Permit to Research, Renovate, Move, Change, Demolish or Remove

ARTICLE 9

1. If a permit is requested to demolish a protected monument in whole or in part without rebuilding it, the Executive Committee hears the Monuments Council as soon as possible.
2. The Executive Committee immediately makes its decision known in the manner provided in Article 5, paragraph two.
3. A permit to demolish a monument in whole or in part without rebuilding it can only be used after thirty days have passed since it was granted or deemed to be granted.

ARTICLE 10

1. A decision to grant a permit as meant in Article 5, paragraph two of the National Monuments Ordinance 1989 includes the reasons for the decision.
2. The Executive Committee can set conditions for a permit in the interests of the monument preservation. A permit can be granted for a fixed period of time.

ARTICLE 11

1. The Executive Committee can retract a permit in whole or in part by means of a decision, including the reasons for the decision, if it appears that:

- (a) The permit was granted on the basis of incorrect or incomplete information;
 - (b) The permit holder does not uphold the conditions on the basis of which it was granted or otherwise abuses the permit;
 - (c) The permit holder performs excavation work for the exploration or research of monuments in an unprofessional manner or performs renovation work to a protected monument in an unprofessional manner;
 - (d) Since the time the permit was granted the circumstances on the part of the permit holder have changed to an extent that, after taking all the involved interests into account in all reasonableness is must be determined that for the protection of the interests of the protected monument the permit can no longer stay in place.
2. The Executive Committee does not take a decision as meant in paragraph one without first hearing the permit holder, if his address is known, or at least giving him the opportunity to do such.
 3. If a protected monument belongs to a church organization or a religious community and is only or mostly used for the worship purposes, the Executive Committee does not make a decision as meant in paragraph one without the owner's consensus in as far as it concerns a decision whereby the real interests of the religious practices are at stake.

4. Ruinous Protected Monuments, Walls or Property Demarcations

ARTICLE 12

The owner of a protected monument or walls or property demarcations belonging to such that due to their ruinous or crumbling condition in part or in whole risk collapsing or present a danger, upon a written and motivated decision by the Executive Committee must see to it that the protected monument or the walls or property demarcations belonging to it are properly repaired, strengthened or, at the owner's discretion, demolished, within the period of time provided by the decision. If the permit required for the demolition required by Article 5 National Monuments Ordinance is not granted, the Executive Committee does not allow doe an option.

SECTION III: PROTECTED CITYSCAPES AND TOWNSCAPES

ARTICLE 13

1. With the determination of a development plan as meant in the St Maarten Development Planning Ordinance, zoning regulations can be included by means of which cityscapes and townscapes that in the opinion of the Island Council have a historical, developmental, tourist or cultural value to be protected can be assigned as protected cityscape or townscape. During the review of a development plan such an assignment can be retracted or the bordering of such amended.
2. Before a draft development plan with zoning regulations as means in the first paragraph is made available for public inspection in the basis of the St Maarten

Development Planning Ordinance, the Executive Committee asks the advice of the Monuments Council.

3. If an objection as meant in Article 5, fifth paragraph of the Island Ordinance Development Planning St. Maarten has been submitted, the Island Council within thirty days asks the Monuments Council for written advice regarding such, before that it decides regarding the adoption of the draft development plan.

ARTICLE 14

1. The Executive Committee keeps a public register of protected cityscapes and townscapes. The Executive Committee notes the cityscapes and townscapes that are assigned the status of protected cityscapes and townscapes in the register, including the monumental value thereof and the general interest or interests on the basis of which the decision to protect the monument was based; it also removes these from the register or changes the borders if no objection as meant in Article 7, third paragraph of the St Maarten Development Planning Ordinance against the zoning regulations or the development plan has been submitted to the Governor or, if an objection has been lodged, in as far as the Governor has maintained the assignment as protected cityscape or townscape.
2. The make-up and management of the register meant in the first paragraph are determined by means of a General Island Resolution. The register remains with the Executive Committee and is provided for inspection by the public at the Government Administration Office. Any person can get copies from the register there at their own expense.
3. A development plan with zoning regulations that can not be revoked whereby a cityscape or townscape is assigned as protected cityscape or townscape or that serves to protect a protected cityscape or townscape, as well as execution or amendment plans based on zoning regulations that can not be revoked and that apply to a protected cityscape or townscape, are also open for inspection by the public at the register meant in the first paragraph. Any person can get copies of the plans there at their own expense.

ARTICLE 15

1. The Executive Committee notifies the Land Register of the registration, removal of registration or changes as meant in Article 14, first paragraph within fourteen days by means of providing a copy thereof.
2. The Land Register notifies the Executive Committee within fourteen days of changes in the Land Registry or in its classification concerning a protected cityscape or townscape, which are then noted in the register meant in Article 14, paragraph one.

SECTION IV: COMPENSATION

ARTICLE 16

Regulations concerning the instances and manner in which persons as meant in Article 6, first paragraph of the National Monuments Ordinance 1989 can be accorded an amount in compensation towards the costs of maintenance and renovation are determined by means of a General Island Resolution.

ARTICLE 17

Regulations are determined by means of a General Island Resolution concerning the damages that can be accorded if a protected moveable monument is transferred to the Island Territory as a loan.

SECTION V: ADMINISTRATIVE APPEAL

ARTICLE 18

1. Interested parties can lodge a written appeal with the Island Council within thirty days after the date of notification against a decision by the Executive Committee on the basis of the National Monuments Ordinance 1989 or this Ordinance in as far as this is not provided for elsewhere in this Ordinance. The date of the placement for public inspection or, if earlier, the date that the decision was sent, is the date of notification.
2. If a permit is deemed to have been granted as per Article 5, paragraph two of the National Monuments Ordinance 1989, interested parties can lodge an appeal within thirty days after the date that the mentioned period of six months expires.
3. The appeal mentions the grounds on which it is based.
4. The appeal suspends the working of a permit as meant in Article 5, first paragraph or Article 7, first paragraph or a decision as meant in Article 7, second paragraph, first full sentence of the National Monuments Ordinance 1989.
5. Before deciding with regards to an appeal and within thirty days of receiving it, the Island Council requests the written advice of the Monuments Council. The Executive Committee decides within six months of the expiration of the period of time to lodge an appeal. The decision includes the reasons for it and is made known in writing to the party that lodged the appeal.

SECTION VI: AMENDMENTS TO ORDINANCES

ARTICLE 19

Three new paragraphs are added to Article 9 of the St Maarten Development Planning Ordinance², namely:

3. Without prejudice to the second paragraph, the zoning regulations regarding a protected cityscape or townscape can include restrictions concerning the building, demolishing and execution of other changes to the appearance of that cityscape or townscape as well as concerning the use of the respective structures.
4. Restrictions as meant in paragraph three regarding building can also include the use and constitution of the materials, the façade, the shape of the roof and the arrangement of the parcel.
5. Article 5 applies.

²Island Ordinance of October 13, 1993 (AB 1993, 13).

ARTICLE 20

The Building and Housing Ordinance 1935³ is amended as follows:

A.

The period at the conclusion of Article 22 is changed into a semi-colon and a new 8th is added to that Article:

8th. That for that building plan a permit as per the National Monuments Ordinance 1989 is required and has not been granted.

B.

Article 44, first paragraph, will read:

1. The owner of buildings, walls or property demarcations that due to their ruinous or crumbling condition in part or in whole risk collapsing or present a danger or seriously mar the general appearance of a protected cityscape or townscape as meant in the National Monuments Ordinance 1989 and which buildings, walls or property demarcations are not protected monuments as meant in the mentioned Ordinance must see to it that the building or the walls or property demarcations are properly repaired, strengthened or, at the owner's discretion, demolished, if so decided in by a written and motivated decision by the Island Council within the period of time provided by the decision. If the permit required for the demolition required by Article 9, third paragraph of the St Maarten Development Planning Ordinance is not granted, the Executive Committee does not allow an option.

C.

Article 45 will read:

Article 45

If no follow-up has been given in accordance with a decision as meant in Article 44, first paragraph within the period of time granted, the Executive Committee can - should it deem such necessary due to the treat of danger or the serious marring of the general appearance of the protected cityscape or townscape – at the owner's expense have the repairs carried out or the buildings, walls or property demarcations demolished, in as far as demolition is allowed.

D.

A new fourth paragraph is added to Article 59:

4. If the buildings meant in Article 22, 23 and 29, first paragraph are protected monuments, or are located within an area protected as a cityscape or townscape as meant in the Monuments Island Ordinance, the Island Council, before deciding on the appeal, within thirty days asks the written advice of the Monuments Council.

E.

A second full sentence is added to Article 60, paragraph two:

If the buildings, walls or property demarcations meant in Article 44, first paragraph are located within an area protected as a cityscape or townscape as meant in the Monuments Islands Ordinance, the Island Council within thirty days asks written advice from the Monuments Council before deciding on the appeal.

³ Ordinance of December 1, 1934 (PB 1935, 64) as last amended by means of the Island Ordinance Development Planning St. Maarten (AB 1993, 13).

SECTION VII: FINAL PROVISIONS

ARTICLE 21

This Ordinance is referred to as "Monuments Island Ordinance".

ARTICLE 22

This Ordinance comes into effect as per the date that the National Monuments Ordinance 1989 comes into effect for the Island Territory of St. Maarten.

As decided in the public meeting of December 21, 1999.

The Secretary,
(acting) R.A. Boasman

The Chairman,
(acting) D.L. Richardson

I proclaim this Island Ordinance on this day, January 5, 2000.

The Lieutenant Governor,
(acting) D.L. Richardson