

Getting the Most from Your Historic Preservation Ordinance

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Office of Historic Preservation

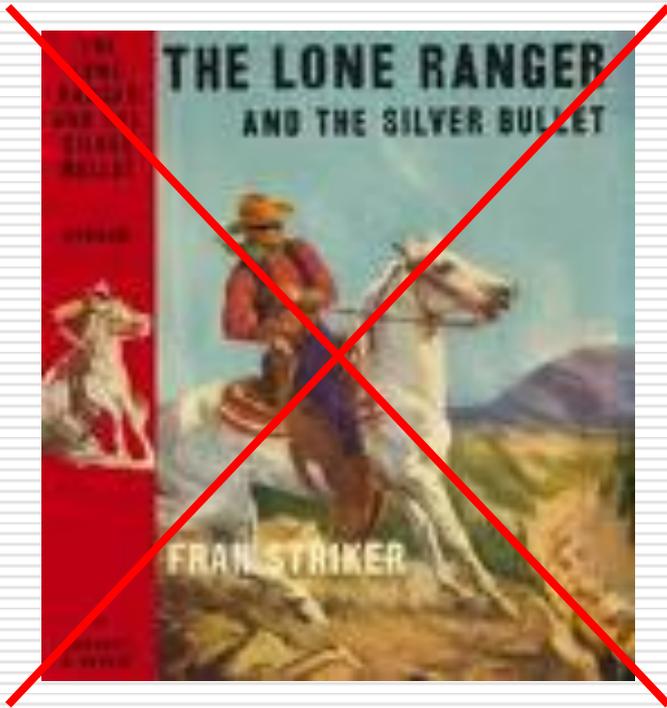


25 April 2011
Fresno, California

This question was posed to me.

How do other jurisdictions handle resources which may not reach the threshold for listing on a local (much less national) register? Does this necessarily condemn the building to the scrap heap, or can they condition a historic review to include recommendations for design issues or adaptive reuse even if the building is not a historic resource?

There are no silver bullets!



- Historic Preservation needs to be part of a comprehensive planning program.
- You need some mandate, some criteria, some law to give legitimacy for taking action.

Comprehensive Preservation Program



- Historic Preservation Element
- ✓ **Ordinance**
- Contexts and Surveys
- Economic Benefits & Incentives
- Education, Technical Assistance & Outreach Programs

Early Historic Preservation Programs

- ❑ Informal
- ❑ Honorary designations/Plaques programs
- ❑ Administered by community historical organizations or museums
- ❑ Focus on great leaders (often white males)
- ❑ Focus on great architecture

Early Preservation Efforts

House Museum Approach



Sutter's Fort

Historic Districts (the early years) **Architecturally** Significant Properties

- City of Charleston, "Old and Historic District," 1931
 - No changes could be made to exterior architectural features that were subject to view from a public street or way.



National Historic Preservation Act of 1966

- Nudged preservation programs into local land use planning programs
 - The Congress finds and declares that the historical and cultural foundations of the nation should be preserved as a living part of our community and development in order to give a sense of orientation to the American people.



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- Preservation should relate to the here and now.
 - The ordinance provides the regulatory and legal framework for protecting historic properties and integrating preservation with other decision making at the local level of government.

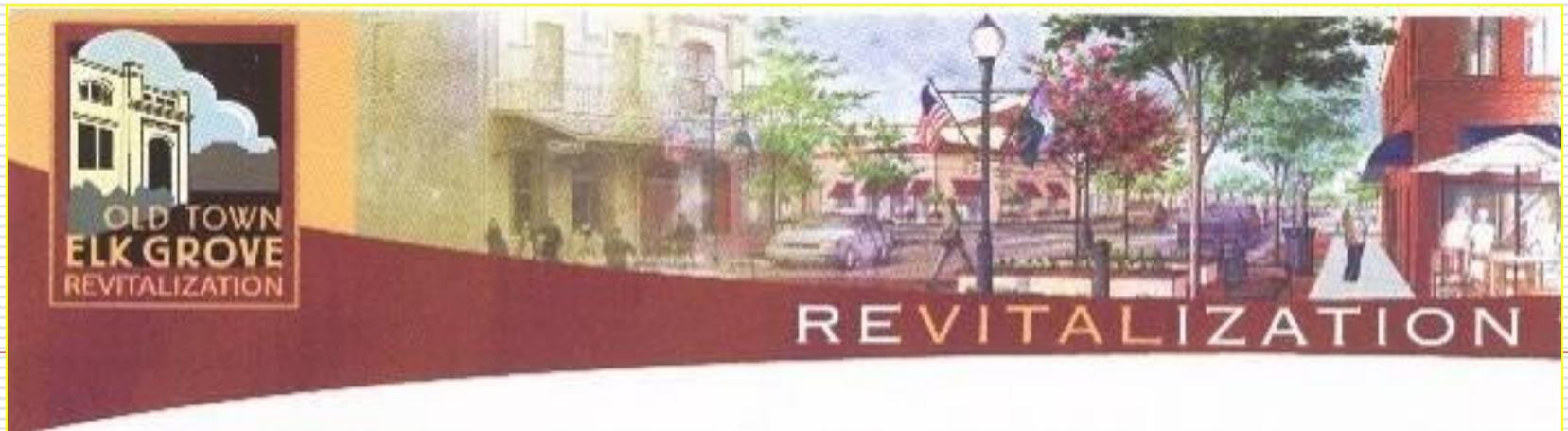
California Environmental Quality Act

A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. CEQA Guidelines Section 15064.5(b)



Changes in Preservation Direction

- ❑ Tied to land use planning
- ❑ Integration of historic preservation into city and county planning departments



Recent Preservation Direction

Commercial Districts/Main Streets

Architectural and Historical Significance



Grass Valley

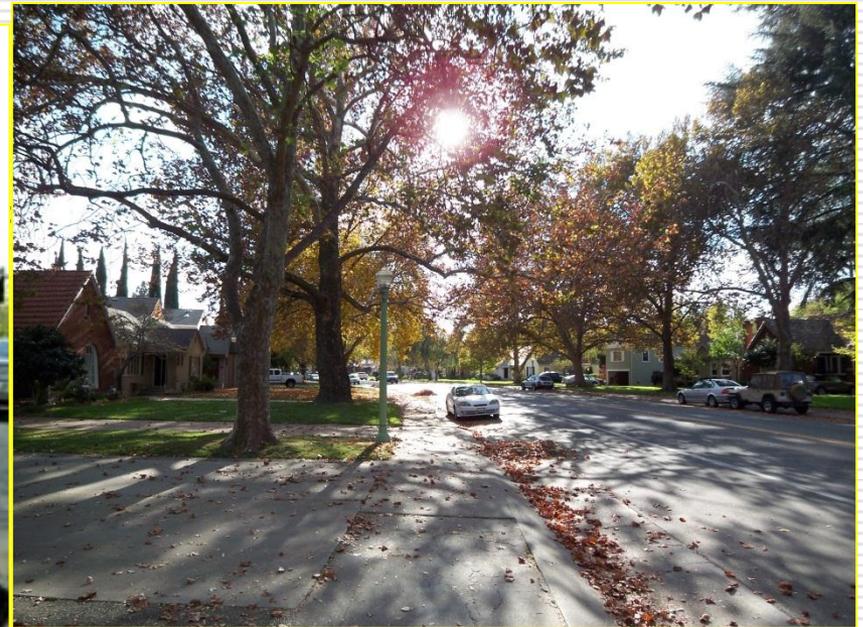
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Recent Preservation Direction

Neighborhoods with Architectural and Historical Significance



Pasadena, Bungalow Heaven



Sacramento

Traditional Historic Preservation Regulations

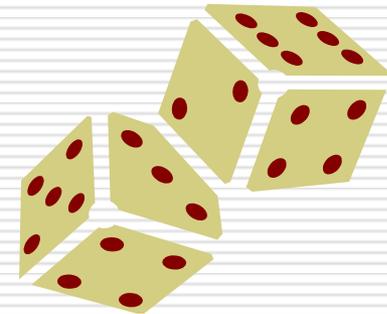
- May apply only to work affecting individually designated or contributing properties in a historic district
- May not be linked to or coordinated with zoning
- Owner consent may be required
- Sometimes do not extend to portions of property not visible from the street

You Know Its Time for an Ordinance Tune-Up When . . .





Vegas bookmakers
offer odds on
historic
property
designations





Planning staff calls
1-800-Psychic
for an
Interpretation
of the
Review Standards



Preservation
Commission
hearings are
broadcast on
Comedy Central

Things go
"BUMP" in the
night...
and nothing is
there in the
morning



• KEY ELEMENTS

- ✓ Purpose
- Enabling Authority
- ✓ Preservation Commission
- ✓ Designation Procedures & Criteria
- ✓ Actions subject to Review
- Economic Effects
- Appeals
- Enforcement
- Definitions
- Severability



Is There a Model Ordinance?

- ❑ Ordinance should meet community's need
- ❑ Don't force-fit a community into a model that doesn't work
- ❑ Each of California's 58 counties and 482 cities has its own culture and personality



Recommends options

Menu approach

http://www.ohp.parks.ca.gov/?page_id=1243

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*Drafting
Effective
Historic
Preservation
Ordinances*

REVIEW PURPOSE OF ORDINANCE

Community's Goals

- ❑ What are the community's preservation goals?
- ❑ What support for historic preservation already exists?



Community's Preservation Goals

City of San Jose

Section 13.48.010

A. The council of the city of San Jose hereby finds that in order to **promote the economic and general welfare** of the people of the city of San Jose, and to **ensure the harmonious, orderly and efficient growth and development of the municipality**, it is **deemed essential** by the council of the city of San Jose that the **qualities relating to the history of the city of San Jose and a harmonious outward appearance of structures which preserve property values and attract tourists and residents alike be preserved**; some of these qualities are the continued existence and preservation of historic districts and landmarks; **continued construction of structures in the historic styles** and a **general harmony as to style, form, color, proportion, texture and material** between buildings of historic design and those of more modern design; that such purpose is advanced through the preservation and protection of the old historic or architecturally worthy structures and neighborhoods which impart a **distinct aspect** to the city of San Jose and which serve as **visible reminders of the historical and cultural heritage** of the city of San Jose, the state, and the nation.

B. The purpose of this chapter is to **promote the public peace, health, safety and welfare** through the preservation of landmarks and districts and thereby stabilize neighborhoods and areas of the city; **enhance, preserve and increase property values**; carry out the **goals and policies of the city's general plan**, increase **cultural, economic and aesthetic benefits** to the city and its residents; **preserve, continue and encourage the development of the city** to reflect its historical, architectural, cultural, and aesthetic value or tradition; **protect and enhance the city's cultural and aesthetic heritage**; and **promote and encourage continued private ownership and utilization** of such structures.

Purpose of Ordinance

- ❑ What is the purpose of the ordinance?
- ❑ What resources should be protected?
- ❑ How best to protect them?
- ❑ How will ordinance be administered and enforced?



Purpose

City of Davis

Section 40.23.010 Purpose.

The **purpose** of this article is **to promote** the general welfare by providing for the identification, protection, enhancement, perpetuation, and use of improvements, buildings, structures, signs, features, sites, places, and areas within the city that reflect special elements of the city's historical, architectural, archaeological, cultural, or aesthetic heritage for the following reasons:

- A. **To encourage** public knowledge, understanding, appreciation, and use of the city's past;
- B. **To foster** civic pride in the beauty and character of the city and in the accomplishments of its past;
- C. **To enhance** the visual character of the city by encouraging new design and construction that complements the city's historical buildings;
- D. **To increase** the economic benefits of historic preservation to the city and its inhabitants;
- E. **To protect** property values within the city;
- F. **To identify** as early as possible and resolve conflicts between the preservation of historical resources/districts and alternative land uses; and
- G. **To conserve** valuable material and energy resources by ongoing use and maintenance of the existing built environment.

REVIEW COMMISSION'S SCOPE OF POWERS AND AUTHORITY

Preservation Commission Scope of Powers

- Maintain local inventory
- Designation
- Review and Comment
- Make recommendations
- Incentives
- Public education
- Maintain relationship with Planning Commission, City Council, and other agencies



Scope of Powers

City of Davis

The Commission shall take steps within the scope of its powers and duties as it determines are necessary for the **preservation of both designated and non-designated resources**. Such steps may include, but shall not be limited to, **consultation** with civic groups, public agencies, and interested citizens; **recommendations** for acquisition of the property by public or private bodies or agencies; and exploration of the possibility of moving potential historical resources.

Section 40.23.120(a)(4)

Scope of Powers

City of Glendale *Section 2.76.100 (Powers and duties generally).*

The historic preservation commission shall have the **power** and it shall be **its duty** to perform the following acts:

- A. **To consider and recommend** to the city council additions to and deletions from the register of historical resources;
- B. To keep current and **publish a register** of historical resources;
- C. **To make recommendations** to the planning commission, and the city council on amendments to the historic preservation element of the city general plan;
- D. **To grant or deny applications** for permits for demolition, or major alterations of historical resources;
- E. **To grant or deny appeals** from decisions of the director of planning and the permit services administrator as specified in Section 15.20.030 of this code;
- F. **To encourage public understanding** of and involvement in the unique historical, architectural and environmental heritage of the city through educational and interpretative programs;
- G. **To explore** means for the protection, retention and use of any historical resource, historic district, or potential historical resource or district;
- H. **To make recommendations** to the city council on applications for properties to be included in the property tax incentives program which may be subject to historic property contracts as set forth in Section 15.20.070 of this code;

Scope of Powers

County of San Diego

Make recommendations as needed to the Department of Planning and Land Use, the Planning Commission and/or the Board of Supervisors regarding historic resource issues and preservation implementation incentives relative to existing or proposed County plans and policies.

Section 396.5(m)(6)

Scope of Powers

City of La Quinta

Duties: It shall be the responsibility of the commission **to provide advice to the city council** on the following matters:

Reviewing the conduct of land use, housing and redevelopment, municipal improvement and other types of planning and programs undertaken by any agency of the city, the county or state, as they relate to the historic preservation of the community;

Section 7.04.030

Scope of Powers

City of Davis

(h) **Review** new construction, significant exterior renovations, and demolitions within the boundaries of designated Historic Districts;

(i) **Perform advisory review** of new construction, significant renovation projects, and demolitions within 300 feet of designated individual landmarks and merit resources;

(m) **Review and comment on the decisions and documents including environmental assessments** under the California Environmental Quality Act, the National Environmental Policy Act, Section 106 of the National Historic Preservation Act, environmental impact reports, and environmental impact statements of other public agencies and private projects when such decisions or documents may affect any type of designated historical resources or potential historical resources in the city;

(Section 40.23.050)

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Scope of Powers

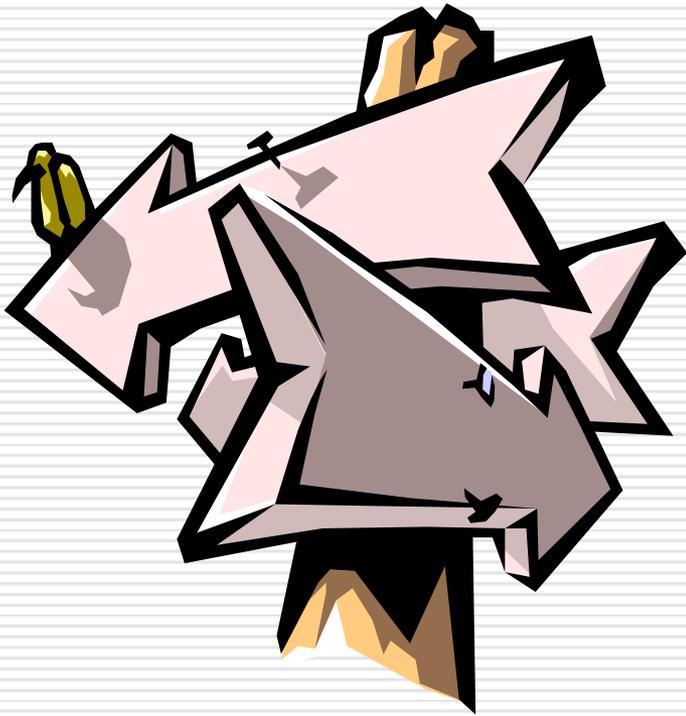
City of Sacramento

Evaluate and submit comments and recommendations on proposed plans, public and private development projects, and environmental reviews that are not subject to review under this chapter but that may potentially affect the physical development and historic preservation of the city involving landmarks, contributing resources, historic districts, nominated resources, or the historical value of any other building, structure or neighborhood, in coordination with review and action by the city council, planning commission, or other public agencies on the plan, project or environmental review;

Section 17.134.090.C

REVIEW DESIGNATION CRITERIA IN THE ORDINANCE

Preservation Commission Designating Historical Resources



- Provide clear designation criteria standards
- Define key terms
- Use criteria similar to National Register and California Register

Is your threshold for designation too high?

- The oldest. . .
- The first. . .
- The only remaining. . .
- The best representation of its style. . .

Are your designation criteria inclusive or exclusive?



McDonalds, Downey, CA

- Are your designation criteria weighted in favor architecturally significant properties?
- Do you overlook properties that have historical significance even if they aren't "pretty" to look at?

Develop Historic Context(s)

- Provides justification for significance
- Template
 - Major historical themes
 - Property types associated with those themes
 - Character defining features associated with those property types
 - Thresholds for significance

Designation Criteria

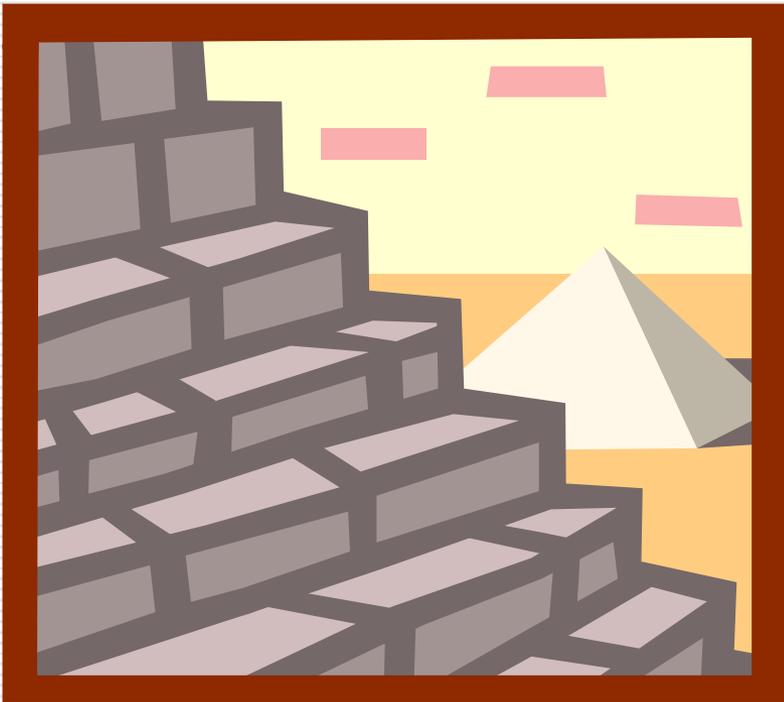
City of Redondo Beach

Section 10-4.201 (*Designation Criteria*).

For the purposes of this chapter, an **historic resource may be designated a landmark**, and an area may be designated an historic district pursuant to Article 3 of this chapter, **if it meets** one or more of the following **criteria**:

- A. It **exemplifies or reflects** special elements of the City's cultural, social, economic, political, aesthetic, engineering, or architectural history; or
- B. It is **identified with persons or events significant** in local, state or national history; or
- C. It **embodies distinctive characteristics** of a style, type, period, or method of construction, or is a valuable example of the use of indigenous materials or craftsmanship; or
- D. It is **representative of the notable work** of a builder, designer, or architect; or
- E. Its unique location or singular physical characteristic(s) **represents an established and familiar visual feature or landmark** of a neighborhood, community, or the City.

TIERS



- ❑ Some communities have tiers of designation
- ❑ Different levels of protection

Tiers

City of Davis

(q) "**Landmark**" means buildings structures, objects, signs, features, sites, places, areas, cultural landscapes or other improvements of the highest scientific, aesthetic, educational, cultural, archaeological, architectural, or historical value to the citizens of the City of Davis and designated as such by the City Council pursuant to the provisions of this article. **A landmark is deemed to be so important to the historical and architectural fabric of the community that its loss would be deemed a major loss to the community.** Once designated, Landmarks are included in the Davis Register of Historical Resources. Landmarks were formerly designated as "Outstanding Historical Resources."

Section 40.23.030(1)

Certificate of Appropriateness

(A)the proposed work **does not result in substantial adverse change** in the significance of the resource or its exterior character-defining features, and. . .

Section 40.23.090(1)

Tiers

City of Davis

(r) "**Merit Resource**" means buildings, structures, objects, signs, features, sites, places, areas, cultural landscapes or other improvements with scientific, aesthetic, educational, cultural, archaeological, architectural, or historical **value to the citizens of the City of Davis** and designated as such by the City Council pursuant to the provisions of the article. Once designated, Merit Resources are included in the Davis Register. Merit Resources were formerly designated as "Historical Resources."

Section 40.23.030

Certificate of Appropriateness

(B) The proposed project **generally complies** with the Secretary of the Interior's Standards for the Treatment of Historic Properties, and. . .

Section 40.23.090(2)

Owner's Consent

- Owner must agree to initiate nomination
- Only named parties may nominate, e.g., city council, historic preservation commission
- Anyone may nominate
- Owner may object to listing



Owner's Consent

City of Burbank

Section 31-928 (c) Procedure for Designation – Heritage Commission Review and Recommendation

...Prior to setting the item on its agenda, the City Planner shall obtain the **owner's written consent to the historic designation** of the property, structure, or improvement and his/her agreement to abide by the historic preservation regulations of this Division through the execution of a covenant in a recordable form....

City of Monterey

Section 38-75 H-1 Landmark Overlay Zoning

A. Description. H-1 zoning is intended to identify and protect the most important historical resources in the City, generally including properties with statewide, national, or international historic significance where that significance would be recognized outside of the City, and the City is steward of those resources are preserved for its citizens and a larger public. **The City recognizes its responsibility for preserving these resources for a national and international public, and the H-1 zone may be established without owner consent in order to fulfill that responsibility.** The H-1 zone includes a strong series of incentives to support and encourage preservation of the historical resources.

More Bang for your Buck

- If you are concerned with collections of modest appearing properties, especially in a neighborhood setting, think of designating groups of properties or whole neighborhoods
 - Historic Districts
 - Historic Preservation Overlay Zones
 - Conservation Districts

Conservation Districts

- ❑ Preserve "character" of existing neighborhoods
- ❑ Less stringent than historic district regulations
- ❑ Can serve as buffer or transition zones for historic districts



Conservation Districts

City of Davis

(h) **"Conservation Overlay Zoning District"** Conservation overlay districts support planning policy stipulating that new development and renovation of existing buildings should respect the traditional scale and character found within a defined area. Conservation Overlay Zoning Districts are designated under the Davis Zoning Code and are not included in the Davis Register of Historical Resources. However, individual buildings within a Conservation Overlay District may be designated Landmarks or Merit Resources. Conservation overlay districts support planning policy stipulating that new development and renovation of existing buildings should respect the traditional scale and character found within a defined area. Conservation Overlay Zoning Districts are designated under the Davis Zoning Code and are not included in the Davis Register of Historical Resources. However, individual buildings within a Conservation Overlay District may be designated Landmarks or Merit Resources

Coordination is essential between historic preservation and zoning



- **Use conflicts**
 - Commercial zoning in historic residential neighborhood
- **Bulk conflicts**
 - Zoning allows much larger buildings that currently exist in older commercial neighborhoods
- **Density conflicts**
 - Zoning allows smaller lot sizes in historic residential neighborhood with large lots

Overlay Zones

- Additional layer of regulations for a particular area or a specific resource on top of the underlying or base regulations
- Existing base zoning remains in place, but overlay trumps
- More flexibility for boundary changes, etc.
- Zoning may go forward with a hearing process without owner consent

Historic Preservation Overlay Zone

- Links historic preservation with land use planning and project review
- Historic designation clearly appears on zoning map
- Historic preservation commission administers the regulations contained in the historic overlay zone
 - Use, bulk, density
 - Design issues
- Vehicle to address activities other than rehabilitation of historic buildings, such as infill compatibility, height, setback, density, etc.
- In California, owner consent appears to be the norm

Historic Overlay District

City of Monterey

The purpose of historic zoning is to implement the Urban Design Overview, Historic Preservation Element and Economic Element of the General Plan; to implement historic preservation provisions of adopted neighborhood plans; to promote the preservation, rehabilitation, restoration, reconstruction, and protection of historic resources; to enhance and preserve the setting of historic resources so that surrounding land uses, including design and color, do not detract from the historic resources; to encourage and promote public knowledge, understanding, and appreciation of the city's history; to promote appreciation and use of historic resources; to encourage preservation of resources, which may potentially be considered eligible for Historic Zoning; to promote public awareness of the benefits of preservation; and to encourage public participation in identifying and preserving historical resources, thereby increasing community pride in the city's cultural heritage.

Section 38-72

Automatic Listing

- Some communities automatically include National Register or California Register properties in their local register
 - Due process issues



Automatic Listing

City of Ontario

Automatic designation. Any property listed in the National Register of Historic Places or the California Register of Historic Resources will automatically be designated as a Local Historic Landmark. Any neighborhood or area listed in the National Register of Historic Places or the California Register of Historic Resources will automatically be designated as a Local Historic District. Any property identified as a contributing structure to a District listed on the National Register of Historic Places or the California Register of Historic Resources will be considered a contributing structure in the Local Historic District.

Sec. 9-12615.(c)

Review Permit Procedures and Actions Subject to Review

Actions Subject to Review

Procedures & Criteria

What will be Reviewed and How?



- Demolitions
 - Relocations
 - Alterations
 - Infill in historic districts
-
- Advise?
 - Delay ?
 - Deny ?

What requires a permit?

- Ensure that proposed work that can impact a historic property requires a permit
- Sacramento
 - Only recently has window replacement required a permit

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OR GET A
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(Up to a *1,500.00 Value)
*100 Factory Rebate for Each New Window

Rebate Examples

5 Windows	\$500.00
10 Windows	\$1,500.00
15 Windows	\$2,000.00

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No Plastering
No Stucco Repair
Lowers Utility Bills
Reduces Noise
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Ask about our Exclusive
HIDEAWAY Screens

We Offer the BEST Warranty in the Business. 100% Lifetime Labor and Materials.

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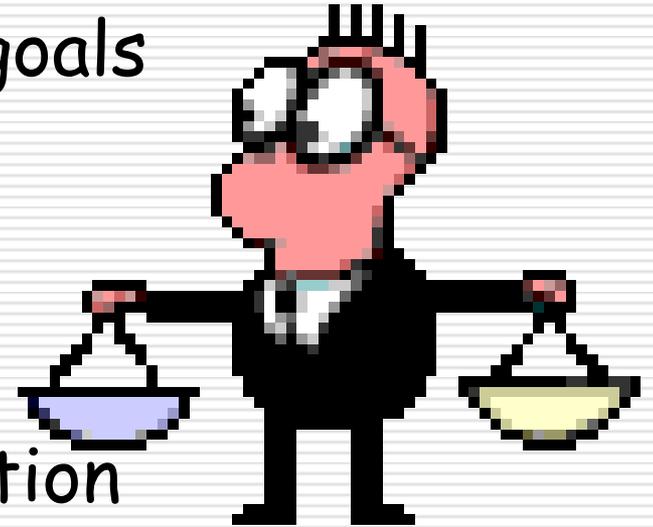
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Actions Subject to Review

Appropriate Review Standards

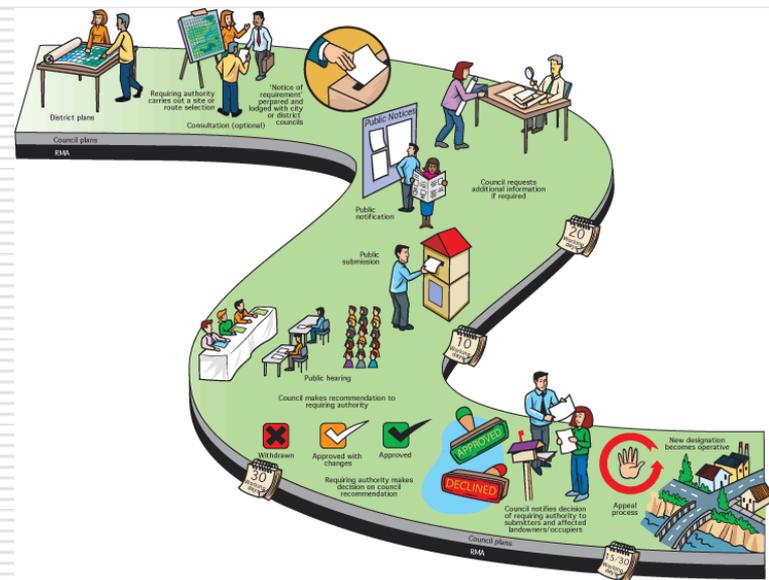
- Standards need to be
 - Defined
 - Reflect local preservation goals
 - Provide for due process
 - Efficient
 - Fair
 - Limit administrative discretion
 - Result in predictable decisions



Certificate of Appropriateness Procedures

Do your procedures look like this?

Or like this?



Standard Permit Review

City of Glendale

Code of Ordinances, § 15.20.080(A)

No person shall demolish, remove, or make major alterations to any designated historical resource without first obtaining a permit. An application for such permit shall be filed with the permit services administrator who shall thereupon transmit same to the historic preservation commission. The historic preservation commission may require that the application for permit be supplemented by such additional information or materials as may be necessary for a complete review by the historic preservation commission. The commission may impose such reasonable conditions or restrictions as it deems necessary or appropriate on a case-by-case basis to promote or achieve the purpose of this code.

Review of demolitions

- ❑ Only designated properties
- ❑ Properties of a certain age
 - “time out” to determine if they qualify as designated properties and local government agrees to list
- ❑ Deny demolitions



Demolition of Potential Historical Resources

City of Davis

The demolition of potential historical resources, those not previously designated as historical resources but identified in accordance with Article 8.19 of Chapter 8 (Building), shall not occur without review by Commission staff. Before a proposal to demolish such a structure is approved, Commission staff, utilizing expert resources as necessary, shall evaluate the resource for its potential to meet criteria for historic significance as defined in this article and by the California Environmental Quality Act. If Commission staff determines that further review by the Historical Resources Management Commission is warranted, then the Commission staff shall provide the appropriate State of California Department of Parks and Recreation (DPR) survey forms completed according to the State's instructions for recording historical resources; current and historical photographs of the resource(s) (if available); and the current owner and parcel number. The Commission will then consider the historical significance of the structure using the criteria for designation of historical resources as defined by this article.

Demolition of Potential Historical Resources

City of Sacramento

Article VIII. Proposed Demolition or Relocation of Building or Structure Fifty Years Old or Older.

17.134.430 Proposed demolition or relocation of buildings or structures that are fifty years old or older—Review for nomination for listing on Sacramento register.

A. If a permit is sought to demolish or relocate a building or structure that was constructed at least fifty (50) years prior to the date of application for demolition or relocation, and that building or structure is not currently on the official register, is not the subject of a pending nomination, has not been nominated for listing on the official register or reviewed pursuant to this section within the past three years, the permit application shall be referred to the preservation director to allow the director to make a preliminary determination whether the structure should be nominated for listing on the official register.

Deny Demolitions

City of Alameda

- a. Any building that was constructed prior to 1942 shall not be demolished or removed without the approval of a certificate of approval issued by the Historical Advisory Board. The age of the building shall be determined by a review of the City records.
- b. No protected structure shall be demolished or removed without the approval of a certificate of approval issued by the Historical Advisory Board. Protected structures shall mean non-building building resources listed on the Historical Building Study List.
- d. **Appeals.**
Any interested person may appeal a decision of the Board to issue or deny a certificate of approval by filing a written appeal within ten (10) days to the City Council.

Section 13-21.7

Demolition Delay

City of Campbell

Interim Measure. As an interim measure, the city council may designate properties of historic significance as historic resources for a period not to exceed one hundred twenty (120) days as an interim measure to protect those structures of architectural significance to allow for the formal designation to occur.

Section 21.33.060.G

Design Review & CEQA

Sacramento

- Review in design review districts is a discretionary action under CEQA
- Design review staff consults with historic preservation staff
 - Historical resource for purposes of CEQA?
Criteria for historical resource under CEQA may be broader than local designation
 - Secretary of the Interior's Standards

Office of Historic Preservation



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For more information...



www.ohp.parks.ca.gov

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