

Local Preservation Ordinances One Size Does Not Fit All

Lucinda Woodward
Local Government Unit
Office of Historic Preservation



19 April 2011
Napa, California

Comprehensive Preservation Program



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

Early Historic Preservation Programs

- Informal
 - Honorary designations
 - Administered by community historical organizations
 - Focus on great (white) men
 - 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.



-
- 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.
-

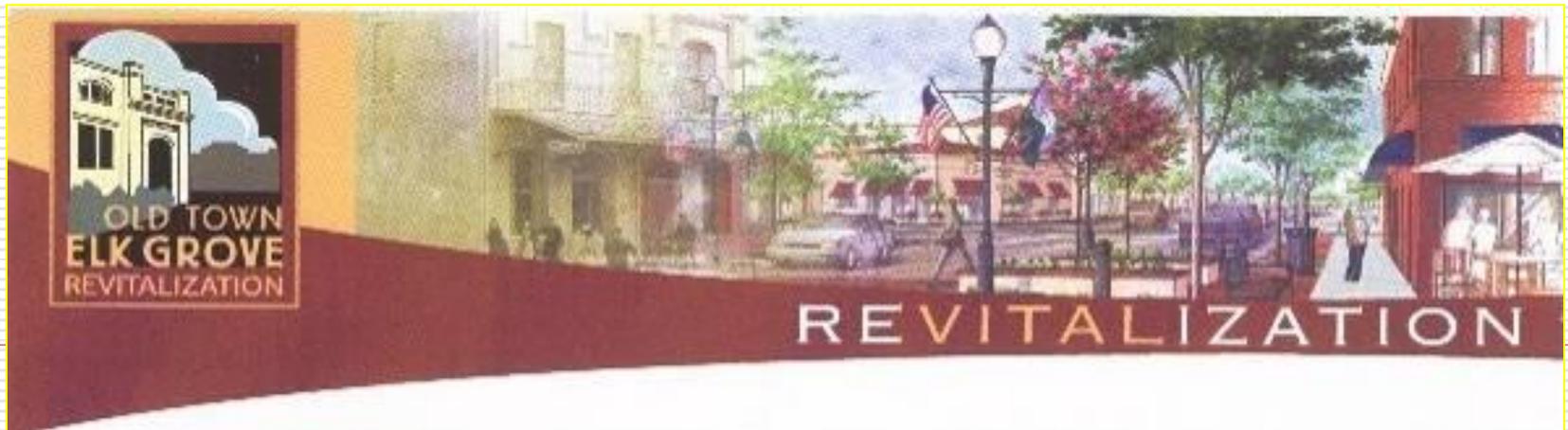
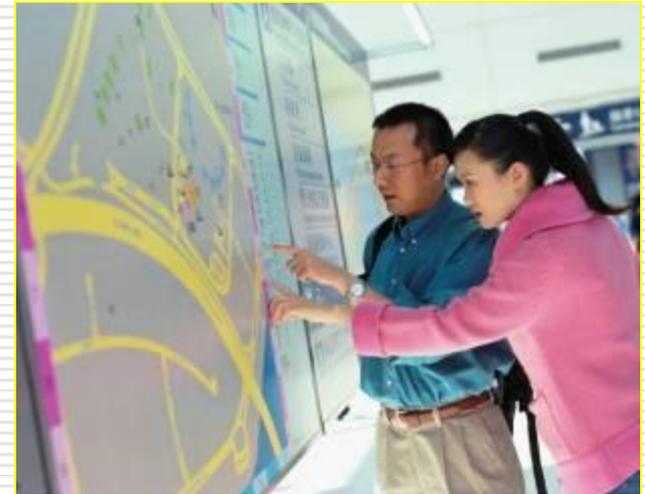
California Environmental Quality Act

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



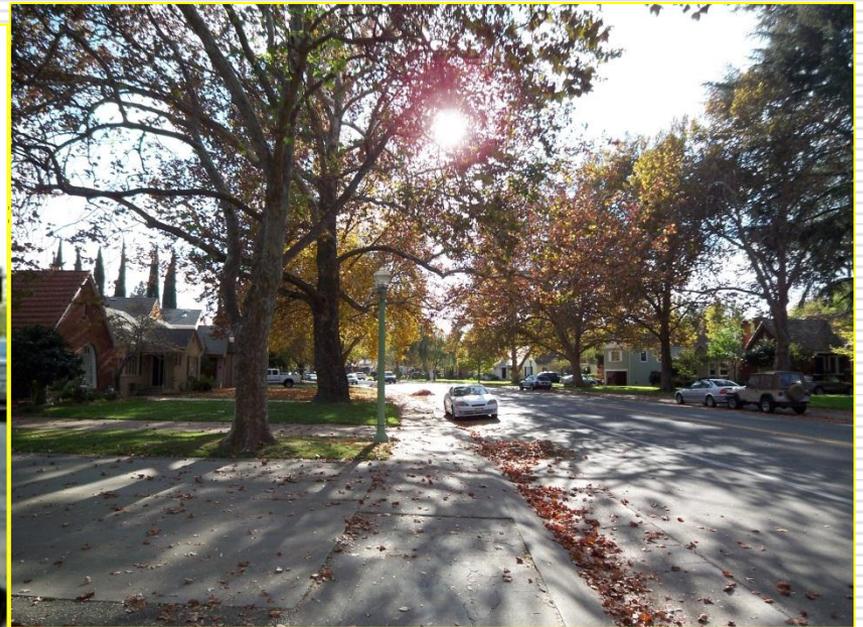
Grass Valley

Recent Preservation Direction

Neighborhoods with Architectural and Historical Significance



Pasadena, Bungalow Heaven



Sacramento

Changes in Preservation Direction



San Francisco City Hall

- Shift of program responsibility from historical societies and museums to local government
- Historical societies & other organizations remain strong & important advocates

Historic preservation programs aren't what they used to be.

And, neither are historic preservation
ordinances!

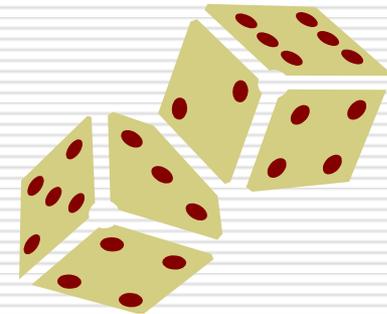


You Know Its Time for an Ordinance Tune-Up When . . .





Vegas bookmakers
offer odds on
historic
property
designations





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

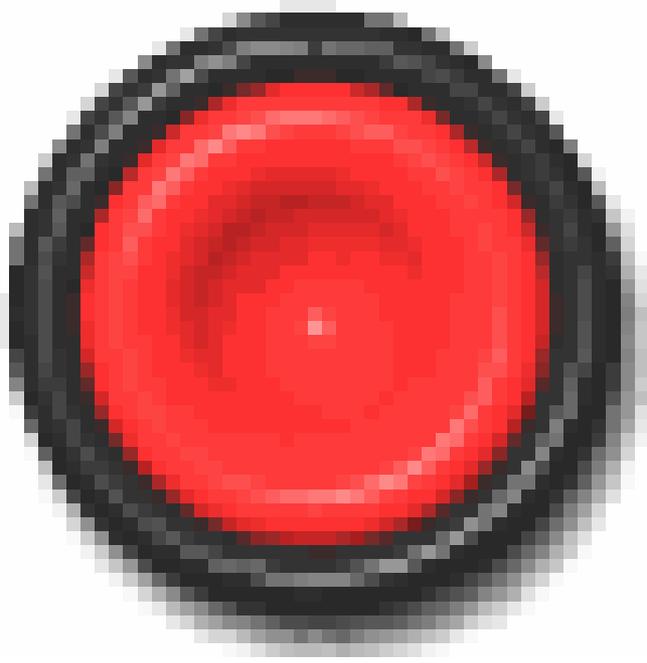


Preservation
Commission
hearings are
broadcast on
Comedy Central

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



HOT BUTTONS ... Still!!!



- Staff level reviews
 - Owner consent
 - Religious land uses
 - Denial vs Delay of demolition
 - Coordinating Ordinance and CEQA
 - Interiors
 - Infill
-

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

14

California Office of Historic Preservation
Department of Parks & Recreation
Technical Assistance Series

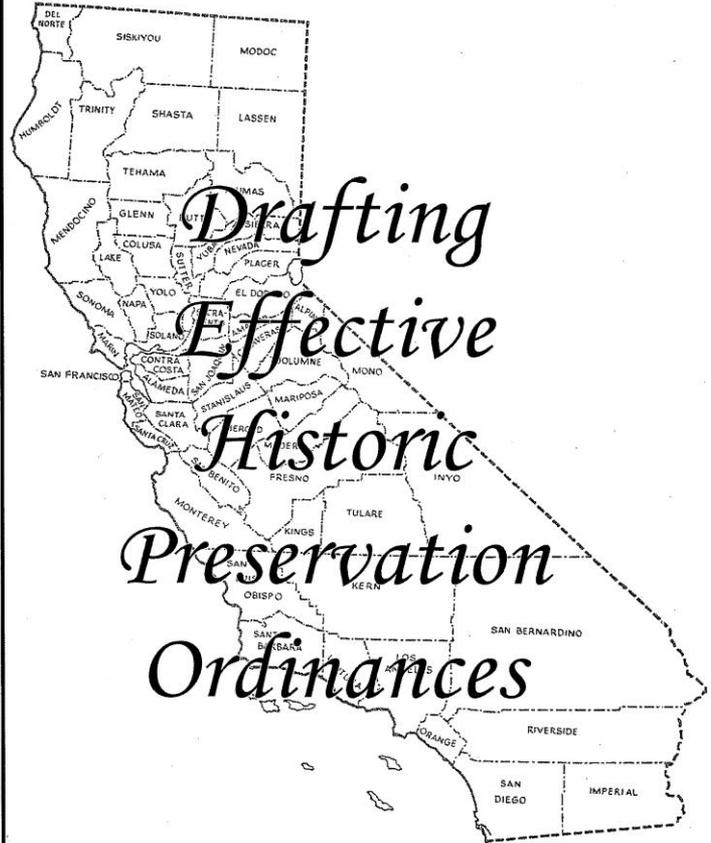


1416 9th St.
Rm 1442-7
Sacramento CA 95814

PO Box 942896
Sacramento CA
94296-0001

phone:
(916) 653-6624
fax:
(916) 653-9824

email:
calshpo@parks.ca.gov
website:
www.ohp.parks.ca.gov



• KEY ELEMENTS

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



- Appeals
 - ✓ Enforcement
 - Definitions
 - Severability
-

Establishment of the Preservation Commission



- Who administers and enforces preservation ordinance?
 - Composition of the Commission?
 - Who appoints?
 - Term?
 - Professional qualifications?
-

City of Colton

Section 15.40.050 Commission – Members

The following regulations shall apply to the membership and organization of the Historic Preservation Commission:

- a) The Historic Preservation commission **shall consist of seven members appointed** in accord with the provisions of Chapter 2.30 of the Colton Municipal Code.
- b) The Historic Preservation Commission shall be appointed by the City Council of city residents from among **professionals knowledgeable** in the disciplines of history, architecture, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation, and landscape architecture or related disciplines, such as urban planning, American studies, American civilization, or cultural geography, **to the extent that such professionals are available in the community.** Commission membership **may also include lay members** who have **demonstrated special interests, competence, experience, or knowledge in historic preservation.**

Establishment of the Preservation Commission

Scope of Powers

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

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

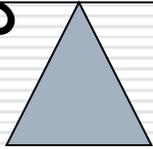
The historic preservation commission shall have the **power** and it shall be **its duty** to perform the following acts:

- 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;

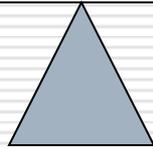
ESTABLISHMENT OF PRESERVATION COMMISSION

Final Review Authority Options

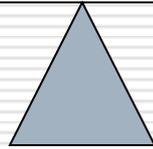
Assigned to other entities



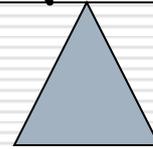
Advisory Only



Split Authority



Final Authority



ESTABLISHMENT OF PRESERVATION COMMISSION

Final Review Authority Options

- Review Authority **Assigned to Others**
(i.e., Design Review Commission,
Planning Commission)
-

Establishment of Preservation Commission

Final Review Authority Options

- ❑ Commission has **advisory authority only**, over designations and/or permits
 - ❑ May advise Planning Commission or legislative body
 - ❑ No absolute power to deny demolition permits by either the Commission or the legislative body
-

ESTABLISHMENT OF PRESERVATION COMMISSION

Final Review Authority Options

- **Split/Shared** between Commission and local legislative body
 - Advisory authority for designation—final authority for permit review with appeals
 - Final authority for designation—advisory authority for permit review
 - Balances conservation goals, property rights and political control
-

Establishment of Preservation Commission

Final Review Authority Options

- ❑ Commission has **final review authority** over designation and permit review, with appeal to legislative body
 - ❑ Removes preservation from political arena
 - ❑ Allows Commission to forbid demolitions based on prescribed standards and procedures
-

PRESERVATION COMMISSION

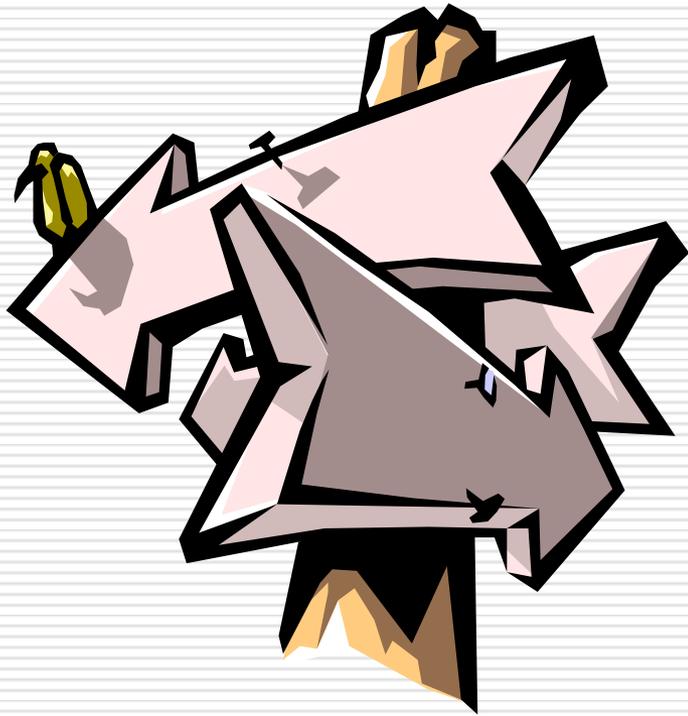
Disclosure of Pecuniary & Personal Interests

- ❑ Direct Interest - i.e. partnership with developer
- ❑ Indirect Interest - i.e. own nearby property
- ❑ Potential Conflict of Interest
 - Ability to make decision without bias
- ❑ Personal Knowledge or Expertise



Duties of Commission

Designating Historical Resources



- ❑ Provide clear designation criteria standards
 - ❑ Define key terms
 - ❑ Use criteria similar to National Register and California Register to facilitate CEQA and Section 106 reviews
 - ❑ Identify historic property categories
-

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**:

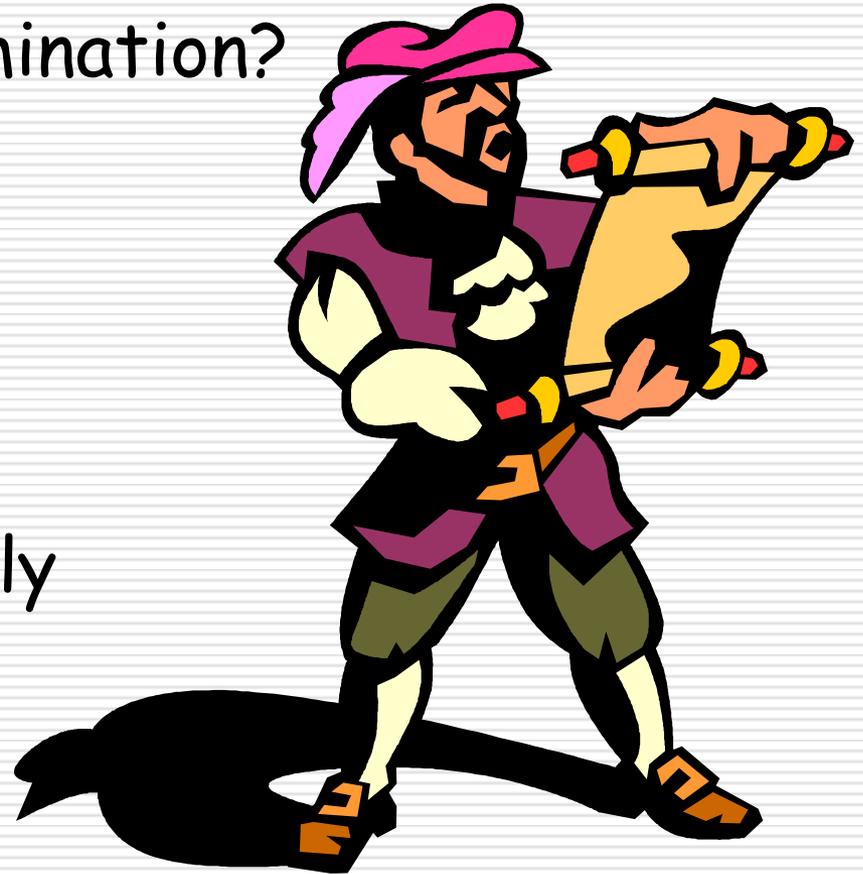
- A. It **exemplifies or reflects** special elements of the City's cultural, social, economic, political, aesthetic, engineering, or architectural history; or
 - B. It is **identified with persons or events significant** in local, state or national history; or
 - C. It **embodies distinctive characteristics** 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.
-

Identify Historic Property Categories

- Districts
 - Historic District Overlay Zones
 - Landmarks
 - Structures of Merit
 - Identify procedures for designation and review for each
 - Are they all treated the same or are there differences? Tiered approach?
-

Designating Historical Resources Procedures - Notice & Hearings

- Who can initiate nomination?
- Notice to owner and interested parties
- Public hearing
- Written findings
- Owner consent clearly addressed



Designation Procedures

City of Fresno

13-407.1 Historic Resources.

- a. **Requests for Designation:** Designation of an Historic Resource may be initiated by the Council, the Commission, the Secretary, the property owner, or an authorized representative of the owner. The application for designation consideration shall be filed with the Specialist, using a form approved by the Secretary and shall include the following information:
-

City of Fresno

b. Procedural requirements in advance of hearing:

1. The application and supporting information shall be reviewed by the Specialist for adequacy and completeness under the requirements of this section. A hearing on the application will be scheduled within 45 days of the date the Specialist determines that the application is adequate and complete or as soon thereafter as is practicable.

2. Notice of the time, place and purpose of such hearing will be mailed to the owner of the property proposed for designation at the address shown on the latest assessment roll and published once in a local newspaper of general circulation not less than ten (10) days prior to the date of the hearing. The Secretary may also give such additional notices as he or she deems desirable and practicable.

City of Fresno

c. Commission Hearing:

1. The Commission shall review all materials prepared and submitted and only members of the Commission who have physically visited and seen the proposed property may vote on the designation recommendation.
2. At the conclusion of the hearing, the Commission shall recommend to the Council approval, disapproval or modification of the proposal for designation and make findings in support of that recommendation; or the Commission may continue the hearing.
3. An affirmative roll call vote of a majority of the authorized membership of the Commission is required for a recommendation to the City Council.
4. Within ten (10) days of the final Commission action, the Secretary shall send a copy of the recommendation, findings and all submitted materials to the City Clerk. The City Clerk shall place on the agenda of the Council the Commission's recommendation for Council consideration. The owner of the property shall thereafter be given notice of the time and place of the Council hearing at least ten days prior to the hearing date, together with a copy of the Commission's recommendation, findings and submitted materials to the Council.

Noticing Procedures

City of Davis

Section 40.23.070 Designation Process.

E. **Notice.** In the case of a proposed designation of a historical resource or outstanding historical resource, notice of date, place, time, and purpose of the hearing shall be given **by first class mail** to the applicants, owners, and occupants of the property, and to property owners within three hundred feet of the property, at least **ten days prior** to the date of the public hearing, using the name and address of such owners as shown on the latest equalized assessment rolls or in other ownership records, and shall be advertised once in a daily newspaper of general circulation at least ten days in advance of the public hearing. The commission and city council may also give **other notice**, as they may deem desirable and practicable. In the case of a proposed historic district, notice of the date, place, time, and purpose of the hearing shall be given by first class mail to the applicants, owners, and occupants of all properties within the proposed district, and to all property owners within three hundred feet of the proposed boundary, at least ten days prior to the date of the public hearing, using the name and address of the owners as shown on the latest equalized assessment rolls or in other ownership records, and shall be **advertised five consecutive days** in a daily newspaper of general circulation at least ten days in advance of the public hearing.

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....

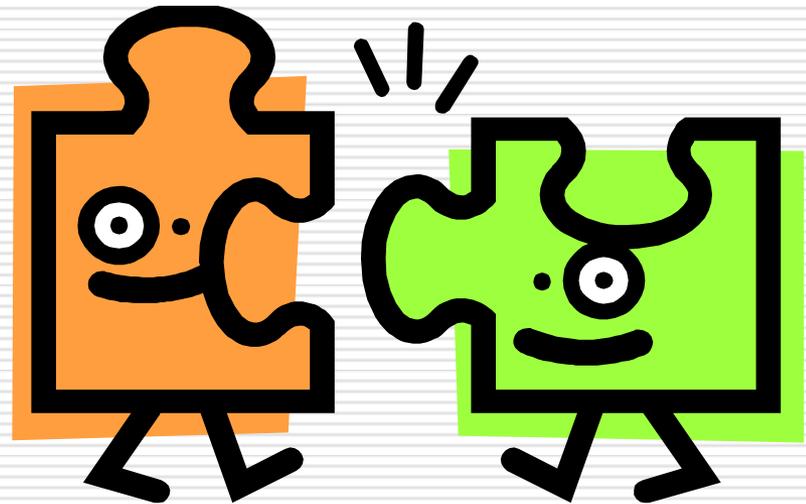
City of Monterey

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.

Integrating Historic Preservation into Land Use Planning

- ❑ HPOZs (Historic Preservation Overlay Zones)
- ❑ Special Considerations
 - Interiors
 - Publicly-Owned Properties
 - Religious Land Uses
 - Archeological Properties
- ❑ Conservation Districts
- ❑ Easements



Interiors

For the purpose of this chapter, any interior space regularly open to the public, but not limited to, a lobby area may be included in the landmark designation of a structure or structures if the Landmarks Commission, or the City Council upon appeal, finds that such public spaces meet one or more of the criteria listed under Section 9.36.100.

Santa Monica, Code of Ordinances, § 9.36.110.

No person shall do any work listed below without first obtaining a permit from the Heritage Preservation Committee.

- 1) Exterior alterations to a designated landmark.
- 2) Interior alterations that would affect the exterior of a designated landmark...

Colusa, Code of Ordinances, § 28.05

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

Archeology

City of Santa Cruz

24.12.430 Protection of Archaeological Resources.

Policy and Purpose. Existing in Santa Cruz are certain deposits and sites of cultural significance believed to have been left by Native Americans and other early inhabitants. These deposits and sites are unique and irreplaceable phenomena of significance in the history of the City and the understanding of the cultural heritage of our land and of all humankind. Such sites have a deep, spiritual significance to Native Americans, especially the native peoples of the State of California, and constitute a precious archaeological and historical heritage, which is fast disappearing as a result of public and private land development. Uncontrolled excavation or modification of these resources would destroy their cultural integrity. This loss would affect future generations and must be prevented in the public interest. Such cultural resources should be preserved in an undisturbed state wherever possible, for future generations who should be more skilled and have access to better methods of study. In order to promote the public welfare, it is necessary to provide regulations for the protection, enhancement, and perpetuation of such sites. This section therefore, is intended to provide a procedure for preserving the valuable cultural resources in the City of Santa Cruz.

Actions Subject to Review

Procedures & Criteria

What will be Reviewed and How?



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

City of Santa Cruz 24.08.1022 DEMOLITION OF DESIGNATED HISTORIC LANDMARKS – PROCEDURE.

1. Any person desiring to demolish a designated historic landmark shall first file an application for a historic demolition permit with the planning department. Demolition of any such building may be approved only in connection with an approval of a replacement, project. In case of residential use, Part 14 of this chapter (Residential Demolition/Conversion) shall also apply.
2. After giving notice to the applicant and to the public pursuant to the provisions of Chapter 24.04, the historic preservation commission shall hold a public hearing and shall take one of the following actions:
 - a. **Approve Permit.** The historic preservation commission may approve the historic demolition permit in conformance with the provisions of Part 14 of this chapter.
 - b. **Approve Permit, Subject to a Waiting Period of Up to One Hundred Twenty Days to Consider Relocation/Documentation.**
 - (1) During the waiting period, the applicant shall advertise the proposed demolition in a paper of general circulation in the city of Santa Cruz, at least twice during the first thirty days following the action by the historic preservation commission. Such advertisement shall include the address at which the structure proposed for demolition is located, information as to how arrangements can be made for relocation and the date after which a demolition permit may be issued. Evidence of this publication must be submitted to the zoning administrator prior to issuance of a demolition permit.
 - (2) During the waiting period, the historic preservation commission may investigate preservation alternatives such as photographing the building and gathering related historical data.
 - c. **Continue for Up to One Hundred Eighty Days to Consider Other Alternatives to Demolition.**
 - (1) During the continuance period, the historic preservation commission may investigate relocation of the building on site or modification of the building for future uses in a way which preserves the architectural and historical integrity of the building.
 - (2) This continuance may be appealed.
 - d. **Deny Permit.**

Actions Subject to Review

Procedures for Certificates of Appropriateness

- Applicability - Project type
- Basic Process
- Contents of Application
- Criteria
- Specific Powers
- Findings



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?



City of Davis

Zoning Code, § 29-145.13 (Alteration Permit Standards of Review).

In evaluating applications for alteration permits, the commission or the City Council upon appeal shall consider the architectural style, design, arrangement, texture, materials, color, and any other factors. The commission or the City Council upon appeal shall approve the issuance of an alteration permit for any proposed work only if it finds:

- a) With regard to a historical resources or outstanding historical resources, the proposed work will neither adversely affect the exterior architectural features of the resource nor adversely affect the character or historical, architectural, or aesthetic interest or value of such resource and its site.
 - b) With regard to any property located within a historic district, the proposed work conforms to the prescriptive standards for the district adopted by the commission and does not adversely affect the character of the district.
-

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.

Actions Subject to Review

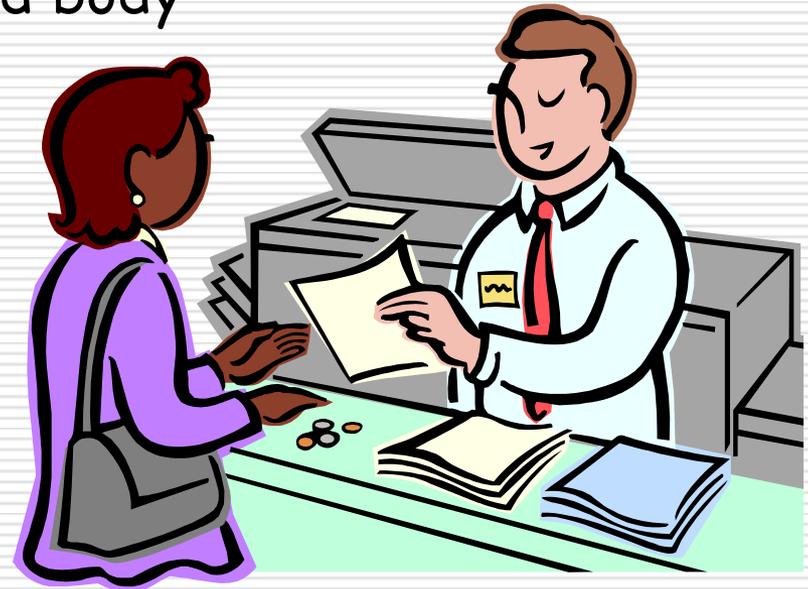
Level of Review - Delegated Authority

WHO?

- Administrative Staff
- Preservation Commission
- Other elected or appointed body

WHEN?

- Demolitions
- Relocations
- Alterations
 - Major
 - Minor



City of Danville

Code of Ordinances, § 32-72.16 (Review and determination)

1. The **Chief of Planning**, or his or her designee, shall review the completed application **within ten (10) working days** after receipt. If the proposed work meets the minimum design standards in subsection 32-72.15, the Chief of Planning shall approve the application and notify the Heritage Resource Commission of such action.
2. If, in the judgment of the Chief of Planning, the proposed work does not meet the standards, the Chief of Planning shall forward the application to the Heritage Resource Commission for its review and determination. The **Heritage Resource Commission** shall make its **decision within sixty (60) days** after receipt of the application.

City of Palo Alto

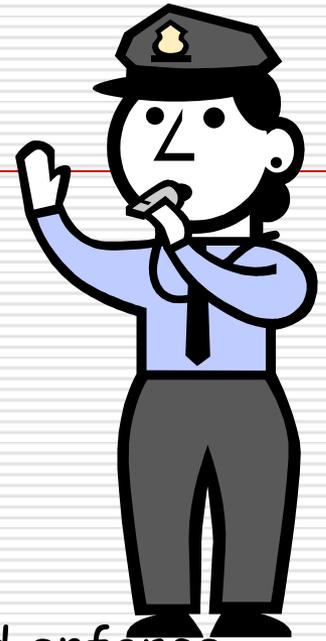
Code of Ordinances, § 16.49.134

A minor alteration shall be subject to review by the director for the purpose of providing cooperative and constructive information to the property owner about alternative methods of **substantially complying with the Secretary of the Interior's Standards...** A major alteration shall be reviewed by the historical resources board.

Enforcement

Primary Goal: **Compliance**

- Penalties for non-compliance need to outweigh the "benefits"
- Remedies for Non-compliance
 - Fines
 - Injunctive relief to stop illegal demolition and enforce ordinance
 - Receiverships & entry onto land to correct
 - Forcing reconstruction
 - Loss of further entitlement
- Be careful what you ask for! Ensure that you can live with the result



Enforcement: Fines

Fresno *Code of Ordinances § 13.423 (Civil and Criminal Penalties)*

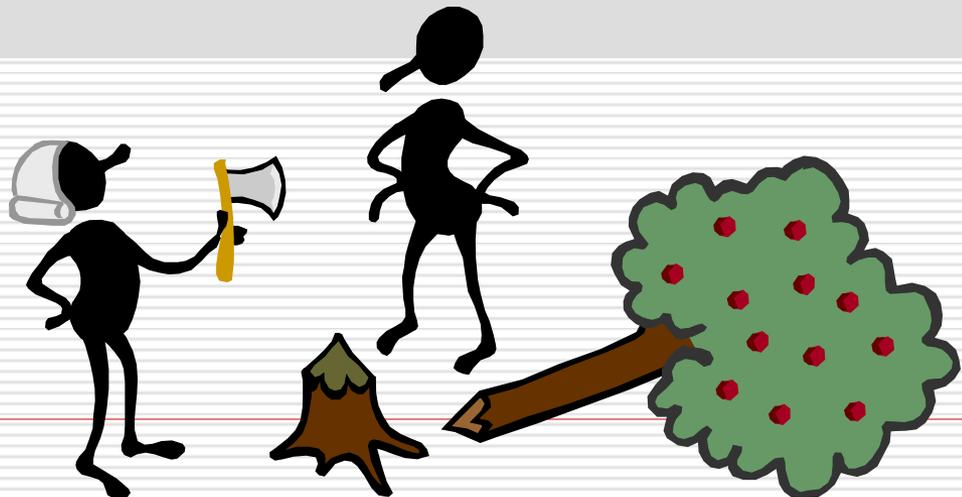
It shall be unlawful for any person to permit or maintain violations of any of the provisions of this article by undertaking the alteration, grading, removal, demolition or partial demolition of an Historic Resource or a building, structure, object or site within a Historic District without first obtaining the written approval of the Specialist, Commission or Council as provided in this article, or to defy any order or decision rendered by the Specialist, Commission or Council. Any violations of this article may be enforced as provided in this Code, except in the case of administrative citations issued pursuant to this Code, wherein the **administrative penalty imposed shall be up to \$10,000 for each violation**. As part of any enforcement proceeding, **violators may be required** to reasonably restore the building, structure, object, or site to its appearance or condition prior to the violation, under the guidance of the Development Department.

Enforcement: Loss of Further Entitlement

Palo Alto

Section 16.49.090(a)(4)

Alteration or demolition of a historic structure in violation of this chapter shall eliminate the eligibility of the structure's lot for any transfer of development rights, pursuant to the Palo Alto Comprehensive Plan, and such lot, if it is the site of an unlawfully demolished historic structure from which development rights have been transferred, shall not be developed in excess of the floor area ratio of the demolished structure for a period of twenty years from the unlawful demolition.



Enforcement

Maintenance & Upkeep of Historic Properties

- Administration should be uniform, efficient, practical
 - Avoid burdensome procedures
 - Don't make requirements you can't or unwilling to enforce
 - Maintenance Requirements
 - Demolition by Neglect
 - Public Safety Exclusion
- Affirmative maintenance requirements
 - State Historical Building Code



Enforcement: Demolition by Neglect

Fresno

Code of Ordinances, § 13.421 (Minimum Maintenance)

- a. All designated Historic Resources including Contributors to any Historic District shall be **preserved against decay and deterioration**, kept in a state of **good repair** and free from structural defects. The purpose of this section is to prevent an owner or other person having legal custody and control over a property from **facilitating demolition** of a Historic Resource by **neglecting** it and by **permitting damage** to it by weather and vandalism.
- c. If the Commission has reason to believe that a Resource is being neglected and subject to damage from weather or vandalism, the Commission shall direct staff to **meet with the owner** or other person having legal custody and control of the Resource and to **discuss** with them the **ways to improve the condition of the property**. If no attempt or insufficient effort is made to correct any noted conditions thereafter, **the Commission may**, at a noticed public hearing, make a formal request that the Development Department or other appropriate department or agency **take action** to require **corrections of defects** in the subject Resource in order that such **Resource may be preserved** in accordance with this article.

Office of Historic Preservation



□ For more information...



www.ohp.parks.ca.gov

Local Government Unit OHP

- Lucinda Woodward
lwoodward@parks.ca.gov
 - Shannon Lauchner
slauchner@parks.ca.gov
 - Marie Nelson
mnelson@parks.ca.gov
 - Ron Parsons
rparsons@parks.ca.gov
-