



**City Planning and Development Department
Development Management Division**

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STAFF REPORT **January 7, 2014** **(14)**

Re: **Case No. 254-S-286**

Request: Amending Sections 88-580 Historic Designation and 88-585 Certificates of Appropriateness of the Zoning and Development Code regarding application filings and hearing and recommendation of the Historic Preservation Commission; and amending Section 88-810 Definitions to add a definition for “administrative official”

Applicant: City Planning & Development Department

Prior Action:

This text amendment was reviewed by and recommended for approval by City Plan Commission on October 1, 2013. The case was then scheduled for Planning, Zoning, & Economic Development Committee. However staff and board members of the Historic Preservation Commission requested that case be held off the docket to allow additional revision of text.

Report:

It has been determined by staff that certain clarifications should be made to the text of Sections 88-580 Historic Designations, 88-585 Certificates of Appropriateness, and that a definition should be added to Section 88-810.

- 1) For an application for historic designation that is denied and subsequently appealed, current text does not specify who would hear the appeal to the decision of the historic preservation commission.
- 2) Adds that **all** applications for historic designation, regardless of the decision of the Historic Preservation Commission, must be forwarded to the City Plan Commission and City Council for review. Under current practice, designations that are not recommended for approval by the Historic Preservation Commission are **not** subsequently forwarded to CPC and Council. Similarly, proposed text states that if a request for rehearing is

granted, the recommendation of the Historic Preservation Commission after the rehearing, regardless of the recommendation, must be forwarded to the City Plan Commission and Council for review.

- 3) Definition of “Administrative Official” added.
- 4) Consistent with other procedures, text revised to specify that mailed notice must be sent at least 13 days before the scheduled hearing.
- 5) Other minor clarifications.

Proposed Revised Text:

(revisions in red, yellow highlighted font; deletions are struck-through; additions are underlined)

88-580 HISTORIC DESIGNATIONS

88-580-01 DESIGNATION

88-580-01-A. APPLICATION FILING

1. Applications for designation of historic districts, landmarks, or overlay zoning districts (collectively referenced as H/O districts) may be made by the owner(s) of record of the subject property, any other person or organization with the full consent and written approval of the owner(s) of record of a subject property, a member of the historic preservation commission, a member of the city council, the neighborhood association for the area in which that property is located, a historic preservation organization, or any other person or organization where at least 51% of the owners of the affected parcels in a proposed district do not object to the nomination (exclusive of all publicly owned property, streets, and alleys).
2. Complete applications for designation of H/O districts must be filed in the office of the historic preservation commission. Applications must contain a legal description of the property and a statement describing its historic, cultural, aesthetic, or architectural significance.
3. The city planning and development director shall notify the owner of any property within a proposed H/O district application, if such person is different than the applicant. This notification shall be done within 14 calendar days of the application date for the H/O district nomination. The notification of the property owner shall include the following:
 - a. a copy of the application that was made for the nomination;
 - b. an explanation of the nomination procedure for H/O district and the consequential property restrictions;

- c. an explanation stating that the property owner has the right to appear at the scheduled public hearing at which the nomination will be considered and the date of the hearing; and
- d. an explanation stating that the property owner has the right to submit documentation either for or against the nomination.

4. Interim Control

Once an application has been filed, no building permit for alteration, construction, demolition, or removal of a property being considered for designation under an application for an H/O district may be issued until the historic preservation commission has dismissed or denied the application for designation, or until the city council has denied designation in accordance with the procedures established in 88-580-01-C. and 88-580-01-E., though no stay on the issuance of a permit may be for more than six months from the filing of the application. No permit may be stayed in the following circumstances:

- a. The building has been declared dangerous according to the procedures established in Chapter 56, Article V.
- b. The director of city planning and development determines that the property does not meet the minimum requirements for historic designation under 88-580-01-F. and under the rules and regulations of the historic preservation commission. An applicant or owner may appeal the director's determination to the historic preservation commission at the next regular or special meeting. If the commission determines that there is merit to the application by a majority vote of those present, then the application will proceed under the procedures set in 88-580-01.

During this period, the applicant for the permit or property owner shall have the opportunity to explain to the historic preservation commission the reasons why a building permit should be issued promptly, and the commission may grant approval for a building permit in this interim period. Additionally, the city council may authorize such alteration, construction, demolition, or removal by ~~adopting a formal resolution declaring~~ ordinance, which ordinance includes a declaration that the proposed work is necessary for the public health, welfare, or safety.

5. Consideration of Application

The historic preservation commission must hold a public hearing on the proposed nomination within 45 days of receipt of the application and must render a decision concerning the merits of the application within 90 days of the receipt of the application, which may be extended with the agreement of the owner of the property.

6. The director of city planning and development may extend any of the time limits in this section 88-580-01-A. for up to 90 additional days for good cause shown.

88-580-01-B. NOTICE OF HEARING

1. REQUIRED NEWSPAPER NOTICE

Notice of required public hearings on proposed designation of historic districts, landmarks, or overlay zoning districts (H/O districts) must be published in the newspaper at least 15 days before the date of the public hearing. See 88-505-07.

2. REQUIRED MAIL NOTICE

Notice of required public hearings must be mailed **at least 13 days before the scheduled hearing** to the subject property owner, any registered neighborhood organization, and/or registered civic organization whose boundaries include the subject property, and all owners of property within 300 feet of the subject property. See 88-505-07. The mailed notice shall provide contact information sufficient for those interested to determine when the city council will hold its hearing on the designation.

88-580-01-C. HEARING AND RECOMMENDATION—HISTORIC PRESERVATION COMMISSION

1. The historic preservation commission must hold at least one public hearing on the designation of historic districts, landmarks, or overlay zoning districts (H/O districts). Following the close of the hearing, the historic preservation commission must act to recommend that the proposed designation be approved, approved with modifications, or denied. Five affirmative votes are required to recommend approval or approval with modifications.
2. ~~The recommendation of the historic preservation commission, whether~~ **If the proposed designation is recommended** for approval, ~~or approval with modifications, or denial, the recommendation~~ must be forwarded to the city plan commission **and city council for review.**
3. ~~If the proposed designation is not recommended for approval or approval with modifications, the application will be considered to have been denied and the application will not be forwarded to the city plan commission or city council for further review. The decision of the historic preservation commission to deny will be considered the final administrative decision of the historic preservation commission city 30 days after the date of the historic preservation commissions' decision unless a request for rehearing is granted. If an application for a rehearing is denied or if, upon rehearing, the application is still not recommended for approval or approval with modifications, the decision to deny will be the final administrative decision on the date of the historic preservation commission's decision.~~
4. The historic preservation commission may grant a rehearing if the rehearing request includes new evidence to be presented that was not available at the time of the original hearing. The request for a rehearing must be made within 30 days of the date of the historic preservation commission's original action. No more than one rehearing

is permitted. If a request for a rehearing is granted, the recommendation of the historic preservation commission after the rehearing, whether for approval, approval with modifications, or denial, must be forwarded to the city plan commission and city council for review.

88-580-01-D. HEARING AND RECOMMENDATION—CITY PLAN COMMISSION

The city plan commission must hold at least one public hearing on all historic district, landmark, or overlay zoning district (H/O) designation applications forwarded by the historic preservation commission. Following the close of the hearing, the city plan commission must act by simple majority vote to recommend that the proposed designation be approved, approved with modifications, or denied. The city plan commission may also act to continue the matter for further deliberation.

88-580-01-E. HEARING AND FINAL ACTION—CITY COUNCIL

1. After receiving the recommendation of the historic preservation commission and the city plan commission, the city council may convene its own public hearing on the proposed historic district, landmark, or overlay zoning district (H/O) designation.
2. Following the close of the public hearing, the city council may act to approve the proposed designation, approve the designation with modifications, or deny the designation.
3. The city council may act by a simple majority vote, except when a valid protest petition of H/O zoning designation has been submitted in accordance with 88-515-09, approval or approval with modifications requires a 2/3 majority vote of the full membership of the city council.
4. Immediately upon passage of an ordinance designating a particular site as an historic landmark or historic district, notice of designation must be provided to the city planning and development director.
5. Once designated by city council, the historic district, landmark or overlay zoning district (H/O) designation will remain in place until such designation is officially revoked.

88-580-01-F. REVIEW CRITERIA

In reviewing and making decisions on proposed historic landmark and historic district designations, review and decision-making bodies must consider at least the following factors:

1. the criteria used in determining eligibility for listing on the U.S. Department of Interior's National Register of Historic Places, including the historic, cultural, aesthetic, or architectural significance of the building, structure, site, object, or district;
2. the economic impact of the designation on the subject property and the surrounding area; and
3. conformance with the city's adopted plans and planning policies.

88-580-02 REVOCATION OF HISTORIC LANDMARK OR HISTORIC DISTRICT DESIGNATION

88-580-02-A. APPLICATION FILING

Complete applications for official revocation of historic landmark or historic district designation must be filed with appropriate personnel in the office of the historic landmark commission. Applications must contain a legal description of the property and a statement describing why the historic designation should be revoked.

88-580-02-B. NOTICE OF HEARING

1. REQUIRED NEWSPAPER NOTICE

Notice of required public hearings on proposed revocation of historic landmark or historic district designations must be published in the newspaper at least 15 days before the date of the public hearing. See 88-505-07.

2. REQUIRED MAILED NOTICE

Notice of required public hearings must be mailed at least 13 days before the scheduled hearing. Mailed notice must be provided to the subject property owner, any registered neighborhood organization, and/or registered civic organization whose boundaries include the subject property, and to all owners of property within 300 feet of the subject property. See 88-505-07.

88-580-02-C. HEARING AND RECOMMENDATION — HISTORIC PRESERVATION COMMISSION

1. The historic preservation commission must hold at least one public hearing on the revocation of historic landmark or historic district designations. Following the close of the hearing, the historic preservation commission must act to recommend that the proposed designation be revoked or retained. Five affirmative votes are required to recommend revocation of an historic designation.
2. If a historic landmark or district designation application is recommended for revocation, the recommendation must be forwarded to the city plan commission.
3. If the historic landmark or historic district designation is not recommended for revocation, the application will be considered to have been denied. The decision to retain the historic landmark or historic district designation will be considered the final administrative decision of the historic preservation commission 30 days after the date of the historic preservation commissions' decision unless a request for rehearing is granted. If an application for a rehearing is denied or if, upon rehearing, the revocation is still not recommended for approval, the decision to retain the historic designation will be the final administrative decision on the date of the historic preservation commission's decision.

4. The historic preservation commission may grant a rehearing if the rehearing request includes new evidence to be presented that was not available at the time of the original hearing. The request for a rehearing must be made within 30 days of the date of the historic preservation commission's original action. No more than one rehearing is permitted.

88-580-02-D. HEARING AND RECOMMENDATION—CITY PLAN COMMISSION

The city plan commission must hold at least one public hearing on all historic landmark or historic district revocation applications forwarded by the historic preservation commission. Following the close of the hearing, the city plan commission must act by simple majority vote to recommend that the proposed historic landmark or historic district designation be revoked or retained. The city plan commission may also act to continue the matter for further deliberation.

88-580-02-E. HEARING AND FINAL ACTION—CITY COUNCIL

1. After receiving the recommendation of the historic preservation commission and the city plan commission, the city council may convene its own public hearing on the proposed historic landmark or historic district revocation.
2. Following the close of the public hearing, the city council may act to approve the proposed revocation or retain the historic landmark or historic district designation.
3. The city council may act by a simple majority vote, except when a valid protest petition of H/O zoning revocation has been submitted in accordance with 88-515-09, approval or approval with modifications requires a 2/3 majority vote of the full membership of the city council.

88-580-02-F. REVIEW CRITERIA

In reviewing and making decisions on proposed historic district, landmark and H/O designations, and proposed revocations of such designations, review and decision-making bodies must consider at least the following factors:

1. the criteria used in determining eligibility for listing on the U.S. Department of Interior's National Register of Historic Places, including the historic, cultural, aesthetic or architectural significance of the building, structure, site, object or district;
 2. whether the historic landmark or historic district has lost the historic, cultural, aesthetic or architectural significance that led to its initial designation as a historic landmark or historic district;
 3. the economic impact of the revocation on the subject property and the surrounding area; and conformance with the city's adopted plans and planning policies.
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88-585 CERTIFICATES OF APPROPRIATENESS

88-585-01 APPLICABILITY

88-585-01-A. For real property that is designated as an historic landmark or that is located within the boundaries of an historic district or an historic overlay district, certificates of appropriateness are required for exterior alterations or material changes visible from any public place **or right of way**. No building permit or other permit may be issued for real property that is designated as an historic landmark or that is located within the boundaries of an historic district until a certificate of appropriateness is approved in accordance with the procedures of this article.

88-585-01-B. For the purposes of this article, the terms "exterior alteration" and "material change" **may** include:

1. the construction, reconstruction, improvement, repair, removal, demolition or moving of any building, structure, or utility.
2. site work, substantial landscaping, substantial planting plan, paving, or any changes in the existing land surfaces of the property.
3. the erection or placement of any sign.

88-585-01-C. For the purposes of this article, the terms "exterior alteration" or "material change" does not include:

1. work with respect to utilities, to the extent that no material change results in appearance or to the extent that visibility from any public place is not affected; or
2. ordinary and necessary maintenance that results in no material change in appearance.

88-585-02 EMERGENCY REPAIRS

88-585-02-A. If any emergency situation exists, temporary repairs required to prevent imminent damage to a structure may be authorized by the city planning and development director, subject to review by the **landmarks commission/historic preservation commission**.

88-585-02-B. Within 48 hours after the repairs are made, the person making such authorized temporary repairs must notify the city planning and development director. If any work intended to be permanent was performed or is to be performed, a certificate of appropriateness must be obtained in accordance with the procedures of this article.

88-585-03 APPLICATION FILING

Complete applications for certificates appropriateness must be filed with appropriate personnel in the office of **the landmarks commission** city planning and development. .

88-585-04 STAFF REVIEW AND APPROVAL

88-585-04-A. APPLICABILITY

1. The city planning and development director is hereby authorized to issue certificates of appropriateness without review by the ~~landmarks commission~~ historic preservation commission if the certificate of appropriateness is for an insubstantial change, which is a change to a feature of a building, structure or site that is not historically significant, as defined in the rules and regulations of the ~~landmarks commission~~ historic preservation commission.
2. The city planning and development director may not approve any application for a substantial change, which is a change to a feature of a building, structure or site that is historically significant, as defined in the rules and regulations of the ~~landmarks commission~~ historic preservation commission.
3. The city planning and development director may refer any project to the ~~landmarks commission~~ historic preservation commission upon which it may otherwise act, due to the complexity of the project or uncertainty as to its consistency with the ~~landmarks commission~~ historic preservation commission's rules and policies.
4. The city planning and development director does not have final decision-making authority to deny a certificate of appropriateness. Any application that is not approved by the city planning and development director must be forwarded to the ~~landmarks commission~~ historic preservation commission for review in accordance with the procedures of 88-585-05.
5. The city planning and development director must notify the ~~landmarks commission~~ historic preservation commission of certificates of appropriateness administratively issued at the ~~landmarks commission~~ historic preservation commission's next regular meeting.

88-585-04-B. NOTICE

1. REQUIRED MAILED NOTICE

Notice of required public hearings must be mailed at least 13 days before the hearing to the subject property owner, any registered neighborhood organization and/or registered civic organization whose boundaries include the subject property, and all owners of property within 300 feet of the subject property.

2. NOTICE TO ~~LANDMARKS COMMISSION~~ HISTORIC PRESERVATION COMMISSION

The city planning and development director must mail provide notice to the ~~landmarks commission~~ historic preservation commission at least 7 days before of the issuance of a certificate of appropriateness. If any member of the ~~landmarks commission~~ historic preservation commission objects, in writing, to the city planning and development director's issuance of the certificate of appropriateness, then the application must be forwarded to the ~~landmarks~~

~~commission~~historic preservation commission for review in accordance with the procedures of 88-585-05.

88-585-05 ~~LANDMARKS – COMMISSION~~HISTORIC PRESERVATION COMMISSION REVIEW AND APPROVAL

88-585-05-A. NOTICE OF HEARING

1. REQUIRED NEWSPAPER NOTICE

Notice of required public hearings on applications for certificates of appropriateness must be published in the newspaper at least 7 days before the date of the public hearing. ~~See 88-505-07.~~

2. REQUIRED MAILED NOTICE

Mailed notice must be provided ~~at least 13 days before the hearing~~ to the subject property owner, any registered neighborhood organization, and/or registered civic organization whose boundaries include the subject property, and to all owners of property within 300 feet of the subject property.

3. COURTESY POSTED NOTICE

Applicants ~~are responsible for providing additional~~may provide additional courtesy notice to interested parties by posting a sign on the subject property visible from each abutting public right-of-way. ~~Signs must be posted by the applicant at least 157 days before the public hearing.~~

88-585-05-B. HEARING AND FINAL DECISION

1. The ~~landmarks commission~~historic preservation commission must hold at least one public hearing on all certificate of appropriateness requests that are not eligible for staff approval. Following the close of the hearing, the ~~landmarks commission~~historic preservation commission must act, by simple majority vote, to approve, ~~or deny,~~ ~~or continue the application for the~~ certificate of appropriateness.

2. In the event of a tie vote or the inability of the ~~landmarks commission~~historic preservation commission to act on an application under this section, the certificate of appropriateness application will be deemed to have been denied.

3. The ~~landmarks commission~~historic preservation commission must enter its order and record in writing its decision and the facts upon which its decision were based. An order of approval must describe in detail the work that was approved, the approved materials, and the approved manner of carrying out the work.

88-585-05-C. REHEARING

The ~~landmarks commission~~historic preservation commission may grant a rehearing if the rehearing request includes new evidence to be presented that was not available at the time of the original hearing. The request for a rehearing must be made within 30 days of the date of the

~~landmarks commission~~historic preservation commission's original action. No more than one rehearing is permitted.

88-585-05-D. DECISION-MAKING CRITERIA

1. The ~~landmarks commission~~historic preservation commission or its authorized staff may approve a certificate of appropriateness if they find that:

- a. the changes proposed are such as not to be visible from any public place;
- b. the changes are not detrimental to the architectural, cultural, historic or textural character of other improvements of the real property designated as historic landmarks or historic district; or
- c. the changes are necessary to prevent or relieve an economic hardship.

2. The ~~landmarks commission~~historic preservation commissioner or its authorized staff may deny a certificate of appropriateness if they find that proposed changes are detrimental to the architectural, cultural, historic, or textural character of the real property designated as an historic landmark or in an historic district.

3. Factors to be considered in review of applications for certificates of appropriateness are as follows:

a. In determining whether the changes proposed are detrimental to the architectural, cultural, historic, or textural character of the real property designated as historic landmarks or historic district, or of other improvements, the ~~landmarks commission~~historic preservation commission or the staff, as appropriate, must consider whether the proposed changes are in accordance with the U.S. Secretary of the Interior's standards for rehabilitation.

b. In considering whether the erection of any sign should be permitted, the ~~landmarks commission~~historic preservation commission or staff, as appropriate, must determine whether the placement, size, texture, style, and materials are compatible with the historic landmark or district.

c. In reviewing the application, the ~~landmarks commission~~historic preservation commission or staff, as appropriate, must determine whether the work proposed is visible from any public place or right of way. This determination may be implied from the evidence presented at the hearing.

d. The decision of the historic preservation commission will be considered the final administrative decision of the city 30 days after the date of the historic preservation commissions' decision unless a request for rehearing is granted. The decision of an application for a rehearing or the decision of a rehearing, if granted, will be the final administrative decision of the city on the date of the historic preservation commission's decision.

88-585-05-E. EFFECT OF DENIAL

If a certificate of appropriateness is denied, no building permit may be issued and no other work for which a certificate of appropriateness is required may be undertaken for a period of 36 months after the date that the application is denied.

88-585-05-F. CERTIFICATE OF ECONOMIC HARDSHIP

1. Consideration of an application for a certificate of economic hardship may be made only after a certificate of appropriateness has been denied. The ~~landmarks commission~~ historic preservation commission may review an application for a certificate of economic hardship at the same meeting in which the certificate of appropriateness has been denied if required notice has been given.

2. The ~~landmarks commission~~ historic preservation commission may solicit expert testimony or require that the applicant for a certificate of economic hardship make submissions concerning any or all of the following information before it makes a determination on the application or as defined in the rules and regulations of the ~~landmarks commission~~ historic preservation commission:

a. an estimate of the cost of the proposed construction, alteration, demolition or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the ~~landmarks commission~~ historic preservation commission for changes necessary for the issuance of a certificate of appropriateness;

b. a report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation;

c. the estimated market value of the property in its current condition; after completion of the proposed construction, alteration, demolition or removal; after any changes recommended by the ~~landmarks commission~~ historic preservation commission, and, in the case of a proposed demolition, after renovation of the existing property for continued use;

d. in the case of a proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility or rehabilitation or reuse of the existing structure.

3. Granting a certificate of economic hardship by city council.

The city council may grant a certificate of economic hardship denied by the historic preservation commission by passage of an ordinance declaring that the proposed work is necessary for the public health, welfare, or safety.

88-585-05-G. LAPSE OF APPROVAL

1. An approved certificate of appropriateness will lapse and have no further effect 2 years after its approval unless:

~~a. a building permit has been issued and construction diligently pursued;~~

~~ba.~~ a certificate of occupancy has been issued; or

~~eb.~~ the building or use is established; or

~~dc.~~ the ~~landmarks commission~~ historic preservation commission extends the expiration period by no more than one year upon the request of the applicant.

2. A certificate of appropriateness also lapses upon revocation of a building permit for violations of conditions of approval.

88-585-06 MAINTENANCE OF HISTORIC BUILDINGS AND SITES

Buildings and sites designated as historic landmarks or within historic districts must comply with the minimum requirements of the property maintenance code and any other regulatory codes of the city. The ~~landmarks commission~~ historic preservation commission may initiate complaints regarding violations of regulatory codes against a specific building that is in violation of the property maintenance code. The commission may seek to have any defects corrected or repairs made, so that such building is protected and preserved in conformance with the city code.

88-810-045 ADMINISTRATIVE OFFICIAL

The city planning and development director.

Recommendation:

Staff recommends approval of revisions to Sections 88-580, 88-585, and 88-810 as proposed.

Submitted,

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Planner