



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: September 8, 2010

TO: Councilmember Todd Gloria, District 3 and Members of the Land Use and Housing Committee

FROM: William A. Anderson, FAICP, Director, City Planning and Community Investment and Kelly Broughton, Director, Development Services

SUBJECT: Historical Resources Follow-up to "History Day" at LU&H

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This memo provides a status update in response to a number of actions requested of staff related to the permit review process for potentially historic properties. These actions were requested at the Land Use and Housing Committee meeting on September 23, 2009 and are provided in the attached memo from Councilmember Todd Gloria. In addition, the Committee requested staff to include, to the extent possible, the suggestions made by Uptown Planners and the Neighborhood Historic Preservation Coalition (see attachments) into the process, and to provide a response explaining how the suggestions will be incorporated and explaining the justification where the suggestions cannot be implemented. The requested actions and suggestions identified in the attached memos and the Departments' responses are provided below and in the attached table.

In summary, specific changes to the Historical Resources Guidelines related to the public input process have been drafted and are currently being implemented (drafted language is provided as an attachment). The suggestion to extend the preliminary review process from five to 10 business days, however, is not recommended. Policy language related to fines for unpermitted actions involving historical resources is expected to be available before the end of the calendar year. It should be noted that fines and penalties are currently being assessed when unpermitted work results in adverse alterations (demolitions and remodels) to historical resources. Expanded noticing to the public, review by the community planning groups and increased involvement of the Historical Resources Board in initial determinations for ministerial demolition and building permits is not being pursued. The community is significantly involved in the historical resource review process through the public input working group and staff has found this involvement to be beneficial in the determination of potentially historic buildings. Staff has also found there to be only minimal disagreements with community members over the significance of older buildings and when there is a disagreement, based on valid documentation, the property is taken forward to the Historical Resources Board for a designation hearing.

### LU&H Actions

As shown in the attached matrix, the first three actions relate to revisions in the Historical Resources Guidelines of the Land Development Manual. The requested revisions to these Guidelines have been drafted and will be posted for public review consistent with the adopted process for minor amendments. The language requested by LU&H has been incorporated into Section II (A)(1), as shown in the attached excerpt from the Guidelines.

The fourth action is a request to extend the current five-day, single-discipline preliminary historic review process to 10 days to allow input from local individuals and groups with expertise. This change would setup a separate process from other single discipline preliminary reviews and we do not agree that it is warranted. The preliminary review process, which is optional and at the applicant's discretion, is intentionally short as an incentive for an applicant to use this important early consultation tool. The historical resources public input working group is now being notified of preliminary reviews at the earliest possible time (usually within the first one to two days) and this input is being considered by staff in the historical determination. In addition, language is now provided to an applicant that a determination that a property is not historical may change if significant new information is made available during subsequent project review.

The fifth action requests development of policy language pertaining to fines for unpermitted destruction of potentially historic resources. Currently, the historical resources regulations do not include a fine for the illegal demolition of historical resources; however, the general code enforcement provisions of the Municipal Code provide penalties and fines for any violation of the code and have been used to fine property owners for violations of the historical resources regulations. Neighborhood Code Compliance staff has met with the public to discuss these issues in more detail; however, policy language has not yet been drafted, but is expected to be available by the end of the calendar year.

The sixth and seventh actions relate to noticing requirements. A request has been made to require demolition permits be posted and visible on all construction and demolition sites. This request is not consistent with noticing requirements of the Land Development Code for other ministerial actions and would set up a separate and new posting requirement that no other ministerial action requires. We do not agree that this level of noticing is warranted and a revision to the Code will not be pursued at this time. Daily reporting of permit applications has been requested by members of the public. We have researched this request and found that the initial cost for software and staff support for implementation is approximately \$2,500. This task is not in DSD's current budget and the City Council would have to allocate funds from the General Fund during the next budget cycle to implement this action.

### Uptown Planners

The first issue raised by Uptown Planners involves communication with stakeholders. Proposals include daily online listing of pending permits or delay of granting permits until applications are published and available to the public; processing of demolition permits, controversial projects and those with buildings 45 or more years old through the community planning groups; posting notices of pending permits on site; expanding information on permit notices; and implementing these changes immediately or with the next Code update. Some of these issues are addressed above in the response to the LU&H actions. Additionally, the Code does not make any provision for community planning groups to process or approve building or demolition permits. That is the responsibility of the City with the authority given to the Mayor or designee. We will not pursue changing that authority. Discretionary projects, including those involving buildings that are 45 or more years old, are reviewed by the planning groups.

The second point raised by Uptown Planners relates to legal issues. Proposals include requesting a legal opinion from the City Attorney's office regarding the current permit review process that treats building and demolition permits as ministerial actions; CEQA training for DSD staff; CEQA review for projects involving buildings 45 or more years old; applying the fair argument standard in CEQA when there is disagreement between staff and community stakeholders; and provision of a database system to address cumulative impacts. The CEQA issues raised by the public are being addressed by the City Attorney's office. Training of DSD staff is provided through attendance at professional conferences, workshops and focused training sessions. Cumulative impacts are addressed through review of discretionary actions.

The third issue raised by Uptown Planners relates to community plan historic surveys and EIRs. Proposals include requiring more intensive investigation of older properties after reconnaissance surveys are adopted; making survey data available to the public online; and preparing EIRs for community plan updates. All of these proposals are being implemented through the current community plan update and historic preservation programs. Reconnaissance surveys will not be used to "clear" properties that are 45 or more years old, as had been proposed in the past. The City has purchased a web based database that will be used to manage historic resource information from surveys and our Register of Designated Historical Resources. This database, known as CHRID, will be available to the public as soon as it has been customized for our use, which is anticipated to be within the next six months. An EIR is required when significant and unmitigated impacts are anticipated from implementation of a discretionary action taken by the City. Program EIRs are being prepared for all community plan updates that are currently underway. Future discretionary projects would still require project-level CEQA analysis, but may tier off the Program EIRs prepared for Community Plan updates.

The fourth issue raises several points related to the permit process. Each proposal and response is addressed separately here: 1) Review of all demolition permits by staff meeting the Secretary of the Interior's Qualifications. This is the current City practice. 2) Preliminary review should be part of the Community Planning Group meeting process to secure community input. The

Preliminary Review process is not discretionary, is at the applicant's option, and is not subject to review by planning groups. 3) Move projects and preliminary reviews out of a ministerial process when they involve potentially historic properties, controversial projects, or large projects. Projects that would adversely impact a designated historical resource require discretionary review as part of a noticed public hearing. These projects are reviewed by planning groups and are subject to CEQA. There is no provision in the Code to otherwise move a ministerial review into a discretionary process unless it is discovered during the ministerial review that a discretionary permit is required. 4) City staff should provide better oversight of historic reports. All historic reports are reviewed by qualified staff and if found inadequate, additional information and analysis is required. Staff does not always agree with the conclusions of the historical report and in those cases would take the property to the Historical Resources Board for a determination. 5) Provide a mechanism to remove consultants from the City's list when reports repeatedly leave out facts or conclusions are unjustified. Staff agrees that this may be a beneficial tool and will discuss further with the City Attorney's office. 6) When consultant reports are inadequate or conclusions unjustified, consider community input and require CEQA review before demolition permit is issued: Community input is considered in making the initial determination and in staff's concurrence with consultant reports. For ministerial projects, CEQA review is not required. 7) Promote adaptive reuse and enforce code compliance to improve communities. Adaptive reuse is an important tool used by City staff to preserve and protect historical resources. Enforcement of code compliance is at times limited by staffing levels. However, complaints are followed up with site visits and coordination with historical resources staff.

Issue five addresses CEQA and mitigation for non-compliance. Proposed solutions include tying demolition permits to proposed new construction in order to comprehensively evaluate impacts to the affected parcels; posting addresses and permits during review and construction to allow community oversight of work being done; maintaining a cumulative impacts database for better analysis of projects; and substantially increasing code enforcement and imposing meaningful fines to discourage illegal work. It is acknowledged that demolition without rebuilding can cause a negative impact on the neighborhood by keeping a site vacant, especially if it is not maintained. The current Code does not require tying new construction to demolition except in the case of demolition or removal of a designated historical resource. Additional posting requirements for ministerial demolition and building permits are not supportable at this time as ministerial permits must comply with existing zoning requirements and supplemental regulations found in the Land Development Code. Fines for illegal work are assessed based on the Code and degree of violation.

The sixth issue raises points related to other policy issues and impacts to older undesignated structures. Specific proposals include revising the definition of a remodel similar to the definition within the coastal zone; ongoing inspections during demolition and construction projects; fines and mitigation for projects not in compliance with the Code or a permit; need for Design Guidelines and implementation of Conservation Areas; subject ministerial projects to conformance with the community plan; limiting the number of introductions/adoptions of

community plan updates each year. Defining a remodel as change to a specific percentage of the existing building has proven to be difficult to enforce within the coastal zone and will not be pursued citywide. Changes that do not result in complete demolition are considered to be a remodel. The scope of the proposed work is required to be shown on approved plans and is described in the permit application. Remodels and demolitions proposed for buildings 45 or more years old are reviewed by qualified historical resources staff and input from the public is sought in making a determination of potential historical significance. Changing the definition of a remodel would not change or improve this review process.

Inspections are already conducted at various stages during demolition and construction projects and qualified historic staff participate in these inspections, as warranted. Projects found not to be in compliance with their permit during inspection are required to remedy or mitigate the unlawful actions. Design Guidelines and Conservation Areas are being considered as part of community plan updates and may be implemented through subsequent zoning controls. Ministerial projects are of a scope that would not adversely affect a community plan since, by definition, they are consistent with the community plan, and therefore findings for compliance are not required. The number of community plan updates are limited by funding and staffing levels, as part of the overall community planning work program.

#### Neighborhood Historic Preservation Coalition

In a letter dated September 23, 2009, the Neighborhood Historic Preservation Coalition put forward 10 recommendations to improve the review process for demolition of potentially historic resources. Recommendations 1, 2 and 5 propose increased time for determining the need for a site specific survey or issuance of a permit and substantially increased notification to surrounding properties. These recommendations will not be pursued at this time. The review time is sufficient to obtain input from the Public Input Working Group and for qualified staff to make a determination of the need for a site specific survey. Increasing the noticing requirements to 1,000 feet from a project site would unnecessarily burden a property owner. The Public Input Working Group is made up of knowledgeable individuals from each community planning area that wish to participate. Notifying substantially more neighboring properties would not result in better decision-making regarding historical resources.

Recommendations 3 and 4 related to amending the Historical Resources Guidelines have been drafted and are currently being implemented. Recommendations 6, 7 and 8 regarding qualified consultants and qualified staff are consistent with current practice, except that site specific reports for ministerial projects may be prepared by individuals not meeting the Secretary of the Interior's Qualifications. In these cases, however, qualified staff critically review the reports and make independent determinations based on the Standards and adopted designation criteria.

Recommendation 9 proposes that when there is disagreement between staff and the Public Input Working Group, the need for a site specific report should be referred to a subcommittee of the Historical Resources Board. This suggestion could extend the timeframe for making a

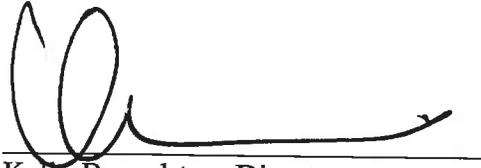
determination a considerable amount and is not recommended given staffing levels, limited Board meetings (i.e., once monthly) and already full agendas. The determination is currently made by qualified staff with input from knowledgeable individuals and a change to that process is not being pursued. Recommendation 10 proposes reviews be sent to community planning groups. This suggestion is not recommended for ministerial projects for the same reasons as stated for Recommendation 9. Discretionary projects are reviewed by community planning groups.

In conclusion, the current historical review process, including the changes noted above, has proven to be very effective in the identification and protection of San Diego's historical resources generally. Working with Council offices and community members over the past two years, the process has significantly improved through increased public involvement and the professionalism of qualified historic staff. We look forward to bring to you several historic preservation issues during the next few years including new historic districts, a programmatic approach to utilizing the historic preservation fund, completed surveys associated with ongoing community plan updates, conservation areas, and code revisions that provide incentives to historic property owners.

Respectfully submitted:



William A. Anderson, FAICP, Director  
City Planning and Community Investment



Kelly Broughton, Director  
Development Services

WA/KB/cw

Attachments:

Table of Recommendations, Issues and Resolutions  
Revised Historical Resources Guidelines Excerpt  
Memo from Councilmember Todd Gloria dated December 2, 2009  
Memo from Uptown Planners dated September 1, 2009  
Letter from the Neighborhood Historic Preservation Coalition dated September 23, 2009

cc: Uptown Planners  
Neighborhood Historic Preservation Coalition  
Mission Hills Heritage  
La Jolla Historical Society  
North Park Planning Committee

## Table of Requested Actions and Responses

| Requested Action (Issue footnoted by source)                                                                                                                                                                                                                                                                                              | Response                        |                            |                      |                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|----------------------------|----------------------|----------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                           | Implemented/<br>Current Process | Being reviewed<br>(timing) | Not being<br>pursued | Notes                                                    |
| Revise the Historical Resources Guidelines of the Land Development Manual to seek public input in determining the presence of a potential historical resource even when a site-specific survey has been submitted <sup>1,3</sup>                                                                                                          | X                               |                            |                      |                                                          |
| Revise the Historical Resources Guidelines of the Land Development Manual to clarify that the Preliminary Review Process for potentially historic resources includes the public input process <sup>1,3</sup>                                                                                                                              | X                               |                            |                      | Implemented following the LU&H meeting in September 2009 |
| Revise the Historical Resources Guidelines of the Land Development Manual to clarify that when there is disagreement between staff and the public as to whether a potentially historic resource exists, based on valid documentation, the decision should be forwarded to the historical Resources Board for determination <sup>1,3</sup> | X                               |                            |                      | Implemented following the LU&H meeting in September 2009 |
| Revise the process to allow 10 days for public input on a Preliminary Review for Historical Resources (current process allows for a five-day review period) <sup>1</sup>                                                                                                                                                                  |                                 |                            | X                    |                                                          |
| Develop policy language pertaining to fines for unpermitted destruction of potentially historic resources <sup>1</sup>                                                                                                                                                                                                                    |                                 | X<br>(short term)          |                      | Will require change to the current Code                  |
| Amend the Land Development Code to require posting of demolition permits on the project site <sup>1,2</sup>                                                                                                                                                                                                                               |                                 |                            | X                    |                                                          |
| Provide additional information about demolition permits to the public via the City's website <sup>1,2</sup>                                                                                                                                                                                                                               |                                 |                            | X                    |                                                          |
| Process demolitions and controversial projects with buildings 45 years or older through community planning groups to better address cumulative impacts <sup>2,3</sup>                                                                                                                                                                     |                                 |                            | X                    |                                                          |
| Request City Attorney opinion on Ministerial review process for potential historical resources <sup>2</sup>                                                                                                                                                                                                                               |                                 | X<br>(unknown)             |                      |                                                          |
| Arrange SOHO and City Attorney training for DSD staff on CEQA <sup>2</sup>                                                                                                                                                                                                                                                                |                                 |                            | X                    |                                                          |
| Comply with CEQA when buildings are over 45 years old, including cumulative analyses and fair argument rule <sup>2</sup>                                                                                                                                                                                                                  | X                               |                            |                      | For discretionary projects                               |
| More intensive investigation should be required for properties that are 65 years or older after reconnaissance surveys are adopted <sup>2</sup>                                                                                                                                                                                           |                                 |                            | X                    |                                                          |
| Provide survey data online for City Departments and the public <sup>2</sup>                                                                                                                                                                                                                                                               |                                 | X<br>(short term)          |                      |                                                          |
| Prepare EIRs for community plan updates <sup>2</sup>                                                                                                                                                                                                                                                                                      | X                               |                            |                      |                                                          |
| Review of all demolition permits by staff meeting Secretary of the Interior's Qualifications <sup>2</sup>                                                                                                                                                                                                                                 | X                               |                            |                      | For properties 45 years or older                         |
| Preliminary review should be part of Community Planning Group meeting process <sup>2,3</sup>                                                                                                                                                                                                                                              |                                 |                            | X                    |                                                          |

| Requested Action (Issue footnoted by source)                                                                                                                                           | Response                        |                            |                      |                                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|----------------------------|----------------------|-----------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                        | Implemented/<br>Current Process | Being reviewed<br>(timing) | Not being<br>pursued | Notes                                                                                                                             |
| Provide better oversight by staff of consultant reports including reference and data checking with conclusions based on evidence or supportive documentation <sup>2</sup>              | X                               |                            |                      | Reports are not accepted by staff unless they meet the adopted Guidelines; additional research is conducted by staff as warranted |
| Remove consultants from the City's list when reports repeatedly leave out facts or conclusions are unjustified <sup>2</sup>                                                            |                                 | X<br>(long term)           |                      |                                                                                                                                   |
| Require environmental documents under CEQA fair argument rule before demolition permits are issued when consultant reports leave out facts or conclusions are unjustified <sup>2</sup> | X                               |                            |                      | For discretionary projects                                                                                                        |
| Promote adaptive reuse and enforce code compliance <sup>2</sup>                                                                                                                        | X                               |                            |                      | This is the basis for the Historical Resources Regulations and the Historic Preservation Element of the General Plan              |
| Demolition permits should not be issued without review of a new project including zoning and planning issues for all parcels involved in project <sup>2</sup>                          |                                 | X<br>(long term)           |                      |                                                                                                                                   |
| Create, maintain and make available to the public a database of cumulative impacts related to built, planned and future projects <sup>2</sup>                                          |                                 |                            | X                    |                                                                                                                                   |
| Implement a substantial and punitive interim penalty until all details of the revised code enforcement penalties are adopted <sup>2</sup>                                              |                                 |                            | X                    |                                                                                                                                   |
| Revise definition of remodel to removal of 25% or less of building similar to definition in Coastal Zone <sup>2</sup>                                                                  |                                 |                            | X                    |                                                                                                                                   |
| Perform ongoing inspection during project construction to ensure demolition of existing resources is not excessive <sup>2</sup>                                                        | X                               |                            |                      |                                                                                                                                   |
| Issue fines and require mitigation for actions that exceed approved permit <sup>2</sup>                                                                                                | X                               |                            |                      |                                                                                                                                   |
| Implement Conservation Areas/Design Guidelines for older communities as part of community plan updates <sup>2</sup>                                                                    |                                 | X (short and long term)    |                      |                                                                                                                                   |
| Require ministerial projects to conform to community plans <sup>2</sup>                                                                                                                | X                               |                            |                      | Ministerial actions by definition conform to community plans                                                                      |
| Limit number of community plan updates each year <sup>2</sup>                                                                                                                          |                                 |                            | X                    |                                                                                                                                   |
| Amend the Land Development Code to increase the time to determine the need for a site-specific survey from 10 to 15 days after public notification of pending action <sup>3</sup>      |                                 |                            | X                    |                                                                                                                                   |

| Requested Action (Issue footnoted by source)                                                                                                                                                                                               | Response                        |                            |                      |                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|----------------------------|----------------------|-----------------------------------------------------------|
|                                                                                                                                                                                                                                            | Implemented/<br>Current Process | Being reviewed<br>(timing) | Not being<br>pursued | Notes                                                     |
| Amend the Land Development Code to extend notification distance from 300 feet to 1,000 feet around properties with pending land use projects <sup>3</sup>                                                                                  |                                 |                            | X                    |                                                           |
| Revise the approval process to delay issuance of demolition and ministerial construction permits until five working days after posting of notice of pending permit on City's website <sup>3</sup>                                          |                                 |                            | X                    |                                                           |
| Require any site specific survey submitted by a project applicant must be prepared by a consultant meeting Secretary of the Interior's Qualifications <sup>3</sup>                                                                         | X                               |                            |                      | For discretionary projects                                |
| Revise the Historical Resources Guidelines to require staff decisions made by individuals meeting Secretary of the Interior's Qualifications and staff decision cannot be overruled by management or other department members <sup>3</sup> | X                               |                            |                      | Historical Resources staff currently meet these Standards |
| Require any staff report submitted to the Historical Resources Board for use in considering historical designation be prepared by staff meeting Secretary of the Interior's Qualifications <sup>3</sup>                                    | X                               |                            |                      | Reports are reviewed by staff meeting Qualifications      |

Footnotes:

1 Office of Councilmember Todd Gloria Council District Three, Memorandum dated December 2, 2009

2 Uptown Planners Land Use and Housing Demolition Policy Concerns & Proposed Solutions dated September 1, 2009

3 Neighborhood Historic Preservation Coalition letter dated September 23, 2009

## Section II DEVELOPMENT REVIEW PROCESS

The development review process consists of two separate aspects: the implementation of the Historical Resources Regulations and the determination of impacts and mitigation under the California Environmental Quality Act (CEQA). This section establishes the baseline standards for the development review process in the City of San Diego.

### A. When Are Surveys Required?

#### 1. For Purposes of Obtaining a Permit

For premises not already determined to contain historically significant buildings, structures, or objects, the City Manager shall determine the need for a site specific survey for the purposes of obtaining a Construction Permit or Development Permit for a project proposed on any parcel containing a building, structure, or object that is more than 45 years old. Determination of the need for a site specific survey may be made as part of the Potential Historical Resource Review, or as part of the Preliminary Review process. The Potential Historical Resource Review process is designed to determine whether a building, structure or object that is historically significant under local, state or national eligibility criteria is present on the project site. As part of the review process, the City Manager should consult with and consider input from local individuals and groups with expertise in the built environment and local history of the San Diego area. These experts may include local historical organizations and designated community planning groups. Consultation with these or other individuals and groups should occur even when a site-specific survey has been submitted with a project and as early as possible so that their input can be considered during the time frame allotted for the review.

Based on the site specific survey and the best scientific information available, the City Manager shall determine whether a historical resource exists, whether a potential historical resource merits designation by the Historical Resources Board in accordance with Chapter 12, Article 3, Division 2 of the Land Development Code, and the precise location of the historical resource or potential historical resource. When there is disagreement between the City and the public as to whether a specific property is potentially historic, based on valid documentation, the decision should be forwarded to the Historical Resources Board for a determination. If the project site is designated as historic by the Historical Resources Board, it shall be listed on the register and regulated as a *historical resource*.

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PLANNING DIRECTOR



**OFFICE OF COUNCILMEMBER TODD GLORIA  
COUNCIL DISTRICT THREE**

**M E M O R A N D U M**

**DATE:** December 2, 2009

**TO:** Honorable Mayor Jerry Sanders

**FROM:** Councilmember Todd Gloria

**SUBJECT:** Historical Resources

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On September 23, 2009, the Land Use and Housing Committee considered a report from the City Planning and Community Investment Department regarding the Permit Review Process for Potentially Historic Properties. The Committee unanimously requested that staff take the following actions:

- Amend the Historic Resources Guide (HRG) Section II (A)(1) to require the City to seek input from local individuals and groups with expertise for use in determining whether a potential historic resource exists, even in situations where a site-specific survey has been submitted by a project applicant, not just to help determine if a site-specific survey will be required;
- Clarify in the HRG that no process, such as the "Preliminary Review" process, can be used to bypass input by individuals and community groups into the existence of potential historical resources;
- Clarify the process so that if there is a disagreement between staff and the public as to whether a specific property is potentially historic, based on valid documentation, the decision should be forwarded to the full Historic Resources Board for determination;
- Revise the process to allow ten days for review by local individuals and groups with expertise;
- Request that the Neighborhood Code Compliance Department develop, with input from stakeholders, potential policy language pertaining to fines for the unpermitted destruction of potentially historic resources;

- Bring forward an amendment to the Land Development Code to require that demolition permits be posted and visible on all construction and demolition sites, and that permits provide consistent information regarding all of the addresses and parcels involved in the application;
- Report back to the Committee about how relevant information about permit applications can be included on the Development Services Department website in a timely manner, and direct staff to work with stakeholders to determine what information is necessary; and
- Include, to the extent possible, the suggestions contained in the memos from the Uptown Planners and the Neighborhood Historic Preservation Coalition into the formal process.
- Prepare a response to these memos within 90 days, describing how these suggestions will be incorporated, and explaining the justification in the instances where the suggestions cannot be implemented.

Please provide the Committee with a detailed status update and timeline describing how these requested actions will be implemented. Thank you for your prompt attention to this matter.

CC: William Anderson, City Planning and Community Investment Department Director  
Cathy Winterrowd, City Planning and Community Investment Department

## Land Use and Housing Demolition Policy Concerns & Proposed Solutions

Recently, there has been considerable effort by City Staff and neighborhood groups to support historic review of applicant projects in the older areas of San Diego. The most successful results of the process have been with applicants who are working in good faith. However, lax enforcement and some processes that obscure public involvement have pointed to a variety of process issues. The results have been shocking because those who seemingly intend to bypass the system or use political influence to bend the rules in favor of their own interests and are granted demolition permits. Examples of abuses in the system continue and much can be achieved by correcting deficiencies in these systems through often-simple process changes, by adjusting regulations and adjusting policies. When the system supports more transparency it seems that it will be easier to identify those who do not intend to comply to regulations before there is actual demolition.

Results of the changes to the current codes, regulations and policies would have the overall positives effects:

- Preserving San Diego’s historic architecture and cultural heritage
- Providing applicants a clear path to navigate the process
- Decreasing landfill waste and discarding quality materials such as old growth lumber
- Enable more cost effective reinvestment into the established communities and maintaining the rhythm and scale of the streetscape, which invites aesthetic upgrades and staves off blight.
- Complying with CEQA and reducing the city’s liability exposure.

Specific actions that Land Use & Housing can take to address the issues concerning demolitions are listed as proposed solutions in the below table.

### Open Issues

| Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Proposed Solutions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Communication with Stakeholders</b>                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>Proposals</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>A. Community Member/Stakeholders are not given timely or accurate notice of pending demolition permits, which inhibits action at the time an actual permit is issued.</p> <p>B. Community Stakeholders have trouble verifying when permitted work or unpermitted work is being done and often only have access to information after the fact. Permits are not on buildings and building addresses are not required to be visible during construction/demolition</p> | <ul style="list-style-type: none"> <li>• Provide on-line notices of pending and issued permits in real time, or delay granting the applicants permit until the actual notice is published and available to the public.</li> <li>• An option immediately available for implementation is to process demolitions and upcoming controversial projects or those sites with buildings 45 years or older through the community-planning groups since they may be in a better position to understand the cumulative impacts.</li> <li>• Require permit notices and addresses to be posted and visible on any construction/demolition site.</li> </ul> |

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| <p>C. Permits are issued for properties but notices are delayed and verification is difficult.</p> <p>D. Permit notices are inconsistent and don't provide the planning area or current zoning. Also permits don't list all of the properties involved in the project. Demolition permits don't provide information connecting it to current or future projects.</p> <p>E. The Code Monitoring Team and the Technical Advisory Team have not undertaken these issues. Yet unpermitted work goes on all of the time and is pervasive in our older communities. The unpermitted work eliminates the ability for the process to work as it was intended and ultimately affects our quality of life.</p>                                                                                                                                                                                                                                                                                                                      | <ul style="list-style-type: none"> <li>• Permits provide consistent information regarding all of the addresses/parcels involved in the application, the planning area and zoning information on the permit notice.</li> <li>• Put forward language for these proposals to coincide with the next Land Development Manual "LDM") or Code or otherwise request staff to make policy and regulation changes effective immediately. Additionally, include community member oversight of the legislative process and changes in the LDM or LDC as they affect demolition policies and historic preservation.</li> </ul> <p><b>Results:</b> Opens up the process to the stakeholders in the community and makes the process more transparent. Also makes code enforcement easier.</p>                                                                                                                          |
| <p><b>2 Legal Issues</b></p> <p>A. The City's process of taking permit applications out of the Ministerial process to review it for the 45-Year analysis should in and of itself require it to be moved into a Discretionary process. Ministerial projects are for straightforward projects that don't require intervention/evaluation by staff. Once pulled out of the Ministerial track the project is inherently Discretionary. The city does not abide by this and routinely pulls and reinserts applications returning them back on the Ministerial track. This opens the city to unnecessary liability.</p> <p>B. Buildings must be considered historic under CEQA if there is a fair argument that they are eligible for the California register even if they are not already designated. If there is simply a fair argument that the structure is eligible the impacts must be assessed and an environmental document is required. Also the current and foreseeable new project needs analysis because of the</p> | <p><b>Proposals</b></p> <ul style="list-style-type: none"> <li>• Request an evaluation and opinion from the City Attorney on current practices for project applications that are presented as Ministerial but require extra handling during processing. Including how the current handling of applications conforms/does not conform with CEQA and the LDC, and practical recommendations in processing applications to reduce liability.</li> <li>• Arrange SOHO and City Attorney co-sponsored training for DSD Staff on interpretation of CEQA law.</li> <li>• Adhere to the environmental review and analysis required by CEQA when buildings are over 45 years old and analyze the foreseeable future projects cumulative impacts when stakeholders, consultants and/or City Staff raise concerns about historical resources (CEQA fair argument). Compliance with CEQA is not optional.</li> </ul> |

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| <p>cumulative impacts. Demolitions are granted for historic buildings when a fair argument has been made but the CEQA analysis is not provided for both the proposed new project/demolition. Therefore demolitions occur without full and complete analysis or mitigation.</p> <p><b>Effects:</b> These practices allow for substantial loss of historic buildings in our established communities and may put the City in a position of liability exposure.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <ul style="list-style-type: none"> <li>• When a disagreement occurs pertaining to the historic status of a building between staff and/or community stakeholders this triggers the fair argument standard of CEQA and the application should then follow a Discretionary process.</li> <li>• Provide a database system to ensure that cumulative impacts are properly monitored including air quality, water quality and waste.</li> </ul> <p><b>Results:</b> Enforcement of the CEQA, laws and regulations, increased staff and community input. Analysis of potential environmental impacts and alternatives and mitigation to the community through the process or by review of environmental documents (NMD, ND or EIR) when necessary.</p>                                                                                                                                                                                                                                                                |
| <p><b>3. Community Plan Historic Surveys and EIR</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>A. It is widely accepted that a reconnaissance windshield survey cannot reveal all of the character defining features or historic references related to a given property. The change in the 45-year review process is an example of what can be found while looking at properties more closely. In 2006, the draft Uptown Survey was submitted but not adopted. Concerns were raised at that time because of the potential elimination of further investigation on over half of the properties in Uptown. City Staff now plans to adhere to the State status codes and is working towards adoption of new Surveys in preparation of Community Plan Updates.</p> <p>The older communities become vulnerable if a more in-depth analysis for the oldest properties in our established San Diego communities is not required before demolition permits are issued.</p> <p>B. An EIR was not conducted before adoption of the General Plan but must be done as part of the Community Plan updates for North Park, Golden Hill and Uptown because these affect some of our oldest communities.</p> | <p>Not all properties can be given intensive study but further investigation should be warranted for the oldest properties, as has been the case citywide with the current 45-year process.</p> <ul style="list-style-type: none"> <li>• City staff should require more intense investigation such as when properties are 65 years or older after reconnaissance surveys are adopted.</li> <li>• Make survey data available on-line within City departments and to the public.</li> <li>• EIRs should be conducted during the Community Plan updates.</li> </ul> <p><b>Results:</b> Research of the oldest resources in San Diego's older communities relate to the historic context of the community and contribute to the story of San Diego's history. These older properties should be given more in-depth analysis before demolition permits are issued.</p> <p>An EIR for each community plan update will include alternatives and mitigation as part of the discussion and offer opportunities for</p> |

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| <b>4. Permit Process Aberrations</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>A. The Preliminary Review process bypasses the 45-year review (a 10 day review by the community) that also results in issuance of demolition permits. It is a loophole that results in land use decisions without adequate analysis or review. This process was used issuing one permit to demolish six houses on Centre Street and the resulting development of the site should not be Ministerial bypassing community input but because its scope should have triggered a CEQA review and Discretionary process.</p> <p>B. When inadequate research is presented by the applicant and there is not enough time for a community response then bad decisions are made simply because the time is up. Once the resource is demolished, the report, if inaccurate, is the only documentation left behind and it does not adequately represent the history or legacy.</p> <p>C. Those who profit from demolishing historic properties pay consultants who leave out facts or misinterpret analysis with apparent intent to bypass CEQA.</p> <p>D. Demolition by neglect is accepted as a persuasive argument to demolish historic buildings instead of promoting adaptive reuse.</p> <p><b>Effects:</b> Demolition of historic properties and changes to the historic context of our communities and the Preliminary Review process sidesteps the 45 year review and other community input processes. Often investors neglect or don't maintain the building or property to attempt to make a case that the building is not significant because they have not kept it up. Paid consultants with an agenda to suit their clients submit inadequate, and biased reports pertaining to applicants' projects and cause a loss of confidence and</p> | <ul style="list-style-type: none"> <li>• Review of all demolition permits by staff meeting the Secretary of Interior Standards qualifications.</li> <li>• Preliminary Review should not bypass securing community input so instead it should be part of the Community Planning Group meeting process.</li> <li>• Abide by CEQA and provide a mechanism to take projects out of the Ministerial or Preliminary Review process when they require more community input– Such as potentially historic properties, controversial projects or large projects such as the application to demolish six old houses on Centre Street.</li> <li>• City staff should provide better oversight of historic reports including reference and data checking with conclusions based on evidence or supportive documentation.</li> <li>• Provide community members and City Staff with a feedback mechanism to remove consultants from the city's consultant list when reports repeatedly leave out facts or conclusions are unjustified.</li> <li>• When consultant reports leave out facts or conclusions are unjustified consider community input under CEQA fair argument standards and require environmental documents as the next step, before any demolition permits are issued.</li> <li>• Promote adaptive reuse and enforce code compliance issues since it encourages improving communities.</li> </ul> <p><b>Results:</b> Reduce rushed demolitions of properties that are historic in nature, less vacant lots and reduced losses of the historic integrity of the</p> |

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| <p>integrity in the <b>process</b> because there is little City supervision or adjustment to mitigate the faulty or inadequate reports. Permits processed for the sake of a bonus instead of quality of the review perpetuates these problems and leads to unjustified demolition of historic properties.</p>                                                                                                                                                                                                                                                                                                                                                                 | <p>community. Beautify and improve the built environment. Improve integrity of the historic review process. Also provide incentives for quality historic research reports by enabling City Staff to raise the standards for submitted reports which may be the only documentation pertaining to the resource. Enforces CEQA and codes while protecting historic assets from reckless demolitions</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p><b>5. CEQA and Mitigation for Non-Compliance</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>A. Permits are issued after demolition takes effect.</p> <p>B. Demolition permits are separated from the foreseeable project and there is no analysis of the cumulative impacts.</p> <p>C. Simple permits are issued but are not relevant to the work being completed. (Permit for a water heater does not pertain to siding being removed/installed).</p> <p>D. Penalties are too low to discourage un-permitted demolitions.</p> <p>E. Errors in processing applications by staff or mis-information by applicants resulting in demolition of significant properties.</p> <p><b>Effects:</b><br/>Cumulative impacts are not addressed and are out of CEQA compliance</p> | <ul style="list-style-type: none"> <li>• Projects including demolitions on a particular site should not be partitioned. Thus permits for a demolition would not be issued as a bureaucratic process but in context with the proposed new project, zoning, site, planning area and all affected parcels.</li> <li>• Posted addresses and permits during notice and all phases of construction will help inspectors and community members verify the work that is being done matches the issued permit.</li> <li>• DSD should maintain and make a database available to the public that shows the cumulative impacts related to built, planned and future projects (per zoning) for better analysis as projects come forward.</li> <li>• Substantially increasing enforcement and meaningful fines are in the work plan and need to be completed. A substantial and punitive interim penalty should be established until all the details of the fine in the work plan are fully approved.</li> </ul> <p><b>Results:</b> Projects include the plan for the demolition so that it can be viewed thoughtfully and comprehensively in accordance with CEQA analysis of the whole record. Fines will deter those who wish to circumvent the system and could provide mitigation to the community by funding other preservation projects. Issues with projects would be discovered earlier when enforcement actions are more meaningful.</p> |

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| 6 | <p><b>Other Policy Issues and Impacts to Older Undesignated Structures</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|   | <p>A. Remodels and demolitions differ and need to be permitted differently. Demolitions disguised as remodels cheat the community out of input as well as review of parking requirements. Coastal Commission requirements are clear and could be the model for city codes.</p> <p>B. Applicants obtain legitimate permits for a minor item or partial permit but exceed and cheat the permit resulting in major demolition/losses. (i.e. kitchen remodel permit results in tear down)</p> <p>C. Zoning creates pressure on commercial historic resources in high-density zones and Conservation Areas need to be implemented. There is currently no mechanism to do so.</p> <p>D. Ministerial projects bypass the goals set out in the community plan and erode the unique character of San Diego communities over time.</p> <p>E. Spot planning by frequent community plan amendments undermines the community planning process.</p> | <ul style="list-style-type: none"> <li>• Revise the definition of a remodel so it is limited to 25% or less of the building and include language in requirements effecting remodels mirror the provisions enforced by the Coastal Commission.</li> <li>• An ongoing inspection at various thresholds to ensure that demolition of existing resources is not excessive.</li> <li>• Issue fines and provide mitigation measures for projects that exceed permitted actions.</li> <li>• LDC &amp; Procedures for Design Guidelines is missing from General Plan Actions – Implementation of Conservation Areas need to be established for older areas now because they are undergoing plan updates.</li> <li>• Ministerial projects need to show conformance and be subject to the Community Plan.</li> <li>• Limit the number of introductions/adoptions of Community Plan updates each year.</li> </ul> <p><b>Results:</b> The public would be clear on the project permitted when remodels and demolitions are clearly distinct. Conservation Areas with complementary zoning that recognizes the benefits of historic commercial areas reduces pressure to radically alter the established character of these areas.</p> <p>Ministerial projects that adhere to the community plan will appear complementary to the established streetscape.</p> |

Thank you for taking the time to address these topics. In order to make these proposals actionable we request that a motion is made to support proposals as presented including changes to the land development code, regulations and policies.

Save Our Heritage  
Organisation

Albatross  
Neighborhood  
Association

Between the Heights

Burlingame  
Homeowners  
Association

Golden Hill Community  
Development  
Corporation

Heart of Kensington

Hillcrest History Guild

La Jolla Historical  
Society

La Playa Heritage

Mission Hills Heritage

Normalitas for  
Normal Heights

North Park Community  
Planning Committee

University Heights  
Community  
Development Corp.

University Heights  
Historical Society

# NEIGHBORHOOD HISTORIC PRESERVATION COALITION

*Advocating for measures that preserve our established neighborhoods and historic resources for future generations*

September 23, 2009

Councilmember Todd Gloria, Chair  
Committee on Land Use and Housing  
City of San Diego  
202 C Street, 3rd Floor  
San Diego, CA 92101

Dear Chairman Gloria:

On behalf of the Neighborhood Historic Preservation Coalition, thank you for dedicating this Committee meeting to the recognition of San Diego's significant history. Preserving historic resources not only contributes to the vitality of neighborhoods, promotes heritage tourism, but also helps to distinguish a great city from a fine one.

A growing number of San Diegans share this vision for a great city that protects and preserves its precious historic resources not only for future San Diego generations, but also for the rest of the world to see and appreciate. Through short-sightedness and a focus on short-term gains, our city has already lost scores of homes, businesses, civic buildings, landmarks, and landscapes that have taken bits and pieces of our city's soul with them.

Many community members and groups have contributed countless hours over the years to improve our city's land use planning process for identifying and protecting historic resources. Just in the last two years, the community and the city have interacted numerous times in an effort to improve the city's review process for demolition of potentially historic resources, as outlined in the attached timeline.

Despite the significant investment of community and city time, energy, and input into improving this process, loopholes and weaknesses persist, which have allowed for the continuing destruction of historic and potentially historic properties.

Therefore, on this day, "History Day", we would like to take this opportunity to describe our concerns about the review process for demolition of potentially historic resources and make recommendations for improving it.

## **Community Concerns Regarding the Review Process for Demolition of Potentially Historic Resources**

The present review process of applications for demolition and other construction permits contains inadequacies which have allowed many potential historic resources to be demolished or inappropriately altered over the years. In a report to this committee in May 2008, the City Attorney's office identified the primary problem: The current review process for demolition permits and other ministerial projects does not include a CEQA level analysis (as required by State law) for potential historical resources

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In that report, the City Attorney recommended adopting a program of "advanced" ministerial review or true discretionary review for demolition and construction permits for all properties over 45 years old. The following measures were recommended by the City Attorney to bolster the review process:

- Review by planners who specialize in historical resources and architecture.
- Verification of photographs and building records provided by permit applicants.
- Providing more than ten (10) days to decide on a site-specific survey.
- Developing an efficient, reliable mechanism for public notice and comment.

Since May 2008, the City has implemented procedures that involve a "task force" of individuals and community groups that help review properties that are the subject of demolition or construction permits. However, loopholes still exist in the process. For example, not all properties that are older than 45 years are properly flagged for review and many properties that are flagged for review are still cleared without adequate analysis. These loopholes and weaknesses must be resolved. Part of the solution can be to increase input by public and community groups into the review process, especially in the determination of whether a potential historical resources exists on a property.

Additionally, the City has created an alternative review process known as "Preliminary Review" which is described in Bulletin 513. For a preliminary review, a project owner can pay a fee to have City staff answers specific questions about their property *before* a project is submitted, and receive a response within five (5) working days. The City allows a project owner to use the process to inquire as to whether their property contains any potentially historic resources. The City will then treat the staff response as binding once a permit application is submitted. This process completely circumvents the review by the "task force" described above.

### **Recommendations to Improve the Review Process for Demolition of Potentially Historic Resources**

We offer the following suggests for changes to strengthen the review process and comply with State CEQA requirements:

1. Amend the Land Development Code (LDC) at § 143.02129(c) to increase the time to determine the need for a site-specific survey from within 10 business days of application to within 15 business days from the point that notification is given to "local individuals and groups with expertise." *Reason: This will allow more opportunity for individuals and community groups to provide input as to whether a potential historical resource is present, as required by Historical Resources Guidelines (HRG), Section II(A)(1).*
2. Amend the Land Development Code to extend notification distance from 300-feet to 1,000-feet around properties with pending land use projects.
3. Amend the HRG Section II(A)(1) to require the City to seek input from "local individuals and groups with expertise" for use in determining whether a potential historic resource exists, even in situations where a site-specific survey has been submitted by a project applicant, not just to help determine if a site-specific survey will be required. *Reason: As it stands now, the HRG only requires input by "local individuals and groups with expertise" in order to determine whether a site-specific survey will be required. Therefore, a project will bypass public input when a "site-*

*specific survey" is supplied by the project owner at the time of project submittal. However, staff does not have time to verify all information and conduct its own intensive research when the survey states the opinion that no resource exists. Requiring that the City seek public input regardless of whether a site-specific survey has been submitted will improve the review process.*

4. Clarify in the LDC and/or HRG that no process, such as the "preliminary review" process [Info Bull. 513] can be used to bypass input from individuals and community groups regarding the existence of potential historical resources. *Reason: The preliminary review process should not be used to avoid the review process described in the HRG, including seeking input from "local individuals and groups with expertise."*
5. Revise the approval process for demolition and ministerial construction permits so that such permits are not final until the permit applications are published on the City's website and five (5) working days have passed from such publication. *Reason: Many project owners avoid historic review altogether by providing incomplete or incorrect information about the age of their property, whether intentionally or otherwise. By delaying approval of permits until after publication, the public will be able to identify potential historical resources that have not been flagged for review.*
6. Require that any site-specific survey submitted by a project applicant must be prepared by a qualified consultant meeting Secretary of Interior Standards for a historical or archeological consultant. *Reason: This will increase the likelihood that a historical report will be thorough and accurate.*
7. Amend the HRG to require that any staff person who makes decisions about the potential historicity of a property must meet Secretary of Interior Standards for a historical or archeological consultant, and that the staff person's decision cannot be overruled by management or other department members.
8. Require that any staff reports submitted to the HRB for use in considering historical designation of a property, must be prepared by staff who meet Secretary of Interior Standards for a historical or archeological consultant.
9. Amend the HRG to require that, when staff disagrees with public recommendations from "local individuals and groups with expertise" for a site-specific survey, the project must be forwarded to an appropriate HRB subcommittee [such as Design Assistance] for determination as to the need for a site-specific survey, and that the deadline for making the determination is suspended until the HRB subcommittee makes a decision.
10. Reviews to be sent to locally-designated Community Planning Groups.

### **Questions Regarding the Review Process for Demolition of Potentially Historic Resources**

In addition to the concerns and recommendations outlined above, we have the following questions regarding the review process for demolition of potentially historic resources:

1. How can DSD develop an efficient, more reliable mechanism for public notice and comment on proposed building applications, for example, posting permit applications on the city's web site?
2. How can projects with multiple addresses be required to include all addresses on permits that require review?
3. How can the DSD requirement that digital color photographs be included in permit applications be enforced?
4. How can permit applicants be penalized for submitting false information on applications?

As many of San Diego's older neighborhoods turn 100 or more years old, we believe it is vital to turn a critical eye to the processes designed to protect and preserve our city's irreplaceable historic assets.

We appreciate your consideration and respectfully request that these recommendations be docketed in the near future for formal review and adoption by the Land Use and Housing Committee.

Sincerely,



Ronald V. May, RPA, Chair  
Neighborhood Historic Preservation Coalition