



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: June 14, 2006 REPORT NO. 06-073

ATTENTION: Land use and Housing Committee
Agenda of June 21, 2006

SUBJECT: Revisions to the Historical Resource Designation Appeal Process

REFERENCE: Municipal Code Sections 123.0203 and 123.0205

REQUESTED ACTION:

Should the current findings on which an appeal can be granted by the City Council be revised to increase the City Council's discretion in overturning a historical resource designation?

STAFF RECOMMENDATION:

Maintain the current appeal process with limited City Council authority to overturn a historical resource designation. Make minor changes to the existing code language for clarification.

SUMMARY:

BACKGROUND

The City Council referred this issue to Land Use and Housing after discussion about the current limited circumstances under which the City Council may overturn the action of the Historical Resources Board (HRB) to designate a historical resource. These circumstances relate to factual errors in materials or information, violations of HRB bylaws or hearing procedures, or presentation of new information. The authority to designate a historical resource in the City of San Diego has been with the HRB ever since it was established in 1965. This is, in large part, due to the composition of the HRB, including required historic preservation professionals. The decision whether or not a building, site, structure, object, landscape, or other resource should be designated a historical resource is based solely on its historical significance. An appeal is a later step in the historical resources designation process.

The Land Development Code (LDC) allows nomination of a property for historical designation by the HRB, Mayor, City Council, or any member of the public, including the property owner. A research report is required for the submittal of a nomination for historical designation. This report is relied on by the HRB in deciding whether or not the property meets one or more of the adopted criteria for historical designation. The designation occurs at a noticed public hearing and the affirmative vote of eight members of the 15-member HRB is required to designate a historical resource. In relatively few instances, a property owner does not want designation

because of perceived or real constraints to redevelopment or use of the property and an appeal is filed with the City Clerk following the HRB hearing.

If an appeal is filed and the designation of a historical resource is overturned by the City Council, the property is no longer a designated historical resource. The development regulations contained in Chapter 14 of the LDC governing historical resources no longer pertain to the property and a Site Development Permit for historical resources would not be required for development of that property. If no other discretionary action is required by the City, then California Environmental Quality Act (CEQA) review would also not be required. If another discretionary action, such as a Coastal Development Permit, Site Development Permit (other than for historical resources), variance, etc, is required for development of the property, then CEQA review would be required. It is determined on a case-by-case basis whether a resource, once designated by the HRB and overturned by the City Council, would be considered a historical resource under CEQA. There is language in CEQA that allows the lead agency to determine whether or not the building or structure is a historical resource and whether the demolition of it is a significant environmental impact.

In 2000, when the LDC went into effect, the citizen-based Preservation Ordinance Review Committee, Historic Sites Board, City Manager, Planning Commission, Mayor, and City Council all supported the current appeal process in which the City Council may reject designation based on limited written findings in support of its decision. This process and the LDC language clearly distinguish the decision of designation of a resource (an issue of historicity) from the regulation of that resource (an issue of land use control).

There are currently ten appeals of historical designation pending with the City Clerk. Of these, seven are residential and commercial properties located in the Centre City community. One is a warehouse located in Centre City, one is a multifamily residential property located in La Jolla, and one is a single-family residence located in Point Loma. All Centre City appellants have been asked whether they want to have their appeal held until the issue of appeal findings is heard at Land Use and Housing.

DISCUSSION

Currently, the LDC limits the City Council's discretion in overturning a historical resource designation to written findings stating that there were factual errors in materials or information presented to the HRB, a violation of bylaws or hearing procedures by the HRB or an individual member, or the presentation of new information. The LDC does not provide for a finding to be made by the City Council that the decision by the HRB to designate a historical resource was not supported by the evidence presented to it. This is a finding common to all discretionary permit appeals (designation is not a discretionary permit process). This limitation places the authority to designate a property as a historical resource, based on adopted historical criteria, with the HRB and provides oversight of procedural issues associated with the designation process with the City Council.

Staff believes that the current level of review by the City Council of a decision by the HRB to designate a historical resource is appropriate, given the technical expertise of the HRB, the high public satisfaction with the current designation and appeal process, and the distinction between a designation decision that is used to identify significant historical resources in the City of San Diego and a permitting decision that is used to regulate land uses.

In reviewing the current LDC, staff identified some appeals language that is vague or inconsistent. The proposed changes to Section 123.0203 are shown in Attachment 1. These changes include: clarification that the HRB action to designate a historical resource is appealable and a decision by the HRB to not designate a resource is not appealable; modification to restrict appeals of designations to the property owner; and added language that directs a referral to the HRB for reconsideration of the original designation if new information is presented.

Staff recommends minor revisions to the current findings. Experience with past appeals has shown that procedural errors by the HRB are infrequent. If there are procedural errors, the City Council could overturn the designation and direct a new hearing be held by the HRB utilizing proper procedures. The presentation of “new information” to the City Council, frequently submitted during, or just prior to, the hearing itself, is often a restatement of the same historical information, with the appellant rearguing the same position. It is a challenge to staff and the City Council to review technical material at a hearing and distinguish between new information and restated information. The HRB has more experience doing this and has professionally-trained members who can discern the new information and more easily make an appropriate historical determination. If there is new information to be provided in support of removing the designation, the LDC allows it to be submitted to the HRB staff for consideration. If the information is substantive the staff can schedule a new hearing to modify or revoke the designation. To implement this approach, staff recommends a minor revision to Section 123.0205 to clearly identify a City Council determination of procedural error to be a reason for the HRB to reconsider a City Council-overturned designation (see Attachment 1).

CONCLUSION

Expanding the circumstances that would allow the City Council broader discretion and the ability to overturn historical designation based on a new hearing on the issue of historicity is not recommended by staff. The current process provides an important distinction between determining historical significance based on established criteria and supported by a historical resources research report, and the granting an entitlement based on land use controls and adopted development regulations.

ALTERNATIVES

The alternative to a narrow appeal, and a possible referral back to the HRB for a rehearing, is to broaden the City Council’s discretion in overturning a historical designation. A finding could be added to allow the City Council to determine the decision by the HRB to designate a historical resource was not supported by the evidence presented to it (see Attachment 2, letter from Attorney Marie Burke Lia). This alternative would allow a new hearing before the City Council on the issue of historical designation. Including this finding for overturning a historical designation in the LDC would substantially increase the City Council’s discretion, resulting in review of not only procedural aspects of the designation but also a review of the historical significance of the resource being appealed. Staff believes this alternative would alter the current distinction between the determining of historical designation and the permitting of a development project, and would allow the City Council to grant an appeal under much broader circumstances.

In order to address this issue, staff reviewed the appeal process of several other Certified Local Governments in California and found that in other jurisdictions, as is the case in San Diego, the appeal process is inextricably linked to the entire designation process and has to be viewed as

part of the overall historic preservation program. It is, therefore, difficult to compare only appeal findings among jurisdictions. For example, some jurisdictions only allow a property owner to nominate a resource for designation, or require consent of the owner for nomination. These limitations on nomination would eliminate the need for an appeal process.

FISCAL CONSIDERATION:

None identified.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

This matter was referred by the City Council at its November 9, 2004 meeting to the Land Use and Housing Committee.

COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS:

This proposal was presented to the HRB Policy Subcommittee May 8, 2006. There was discussion of the issue by subcommittee members and public comment from several interested parties both in favor and opposed to the staff recommendation. No formal vote was taken, however there was consensus of the subcommittee members in support of retaining the current limited historical designation appeal findings.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

There are perceived impacts by owners of historical properties who are seeking to redevelop their properties. There are many examples, however, of successful incorporation of designated historical resources into new projects. In fact, several appeals have been withdrawn after the owner and design team worked with the HRB's Design Assistance Subcommittee to incorporate facades or portions of structures, consistent with the U.S. Secretary of the Interior's standards.

Potential consequences of broadening the appeals process include an increase in the number of designations that are appealed to the City Council, a reduction in the predictability of the entitlement process when a designation is uncertain, an increase in the timeframe necessary to process a discretionary approval when a designation is appealed and overturned, and an increase in the potential for court action following a successful appeal.

Respectfully submitted,

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Attachments: [1. Proposed Amendments to LDC Sections 123.0203 and 123.0205](#)
[2. Letter from the Law Office of Marie Burke Lia, dated 6/3/05.](#)