

**CITY OF OAKLAND**  
**AGENDA REPORT**

2010 MAY 27 PM 5: 54

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Community and Economic Development Agency  
DATE: June 8, 2010

**RE: Report And Ordinance, Recommended By The Planning Commission, To (a) Amend Section 17.136.075 Of The Oakland Planning Code And Make Other Related Amendments To The Planning Code And Building And Construction Code (Chapter 15.36 Of The Oakland Municipal Code) Relating To Required Findings For The Demolition Of Historic Structures; And (b) Adopt Administrative Submittal Requirement For Applications To Demolish Historic Structures.**

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**SUMMARY**

On July 7, 2009, the City Council voted to adopt new zoning designations for the Central Business District and directed staff to develop findings necessary for the City to approve the demolition of a historic building. This request was made due to concerns that new height limits in Downtown would encourage the demolition of historic structures. This proposal implements City Council direction through: 1) new findings in the Planning and Municipal Codes required to be met to demolish a Historic Property; and 2) items required to be submitted with an application for the demolition of a historic property. The proposed findings and submittal requirements would apply Citywide and vary depending on the significance of the historic resource.

The proposal implements existing findings and policies contained in Historic Preservation Element (HPE) of the General Plan. In the past, determination on a project's consistency with the findings in the HPE was made on a case-by-case basis. This proposal streamlines the development review process by standardizing the City's requirements. The Oakland City Planning Commission and the Landmark's Preservation Advisory Board both recommended adoption of the ordinance.

**FISCAL IMPACT**

The City could have a minor increase in revenue due to the additional Design Review applications resulting from the ordinance. No new staff is required to implement the new regulations.

**BACKGROUND**

The Landmarks Preservation Advisory Board (LPAB) met six times since the July City Council meeting to discuss staff's recommended findings and submittal requirements. Historic

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Preservation and Strategic Planning Staff used these recommendations as a basis for new recommendations to the Zoning Update Committee on January 20, 2010. On April 7, 2010, the Planning Commission recommended adoption of the proposal to the City Council (see *Attachment A* for the City Planning Commission staff report).

As mentioned, the demolition findings developed through this process implements the policies contained in the Historic Preservation Element (HPE) of the General Plan. The following lists these demolition related policies:

**Policy 2.4 Landmark and Preservation District Regulations.**

Demolitions and removals involving Landmarks or Preservation Districts<sup>1</sup> will generally not be permitted or be subject to postponement unless certain findings are made. Demolition or removal of more important Landmarks and of most Preservation District properties will normally not be permitted without the required findings, while demolition or removal of less important Landmarks will be subject only to postponement.

- a) Demolitions and removals involving Landmarks or Preservation Districts will generally not be permitted or be subject to postponement unless certain findings are made. Demolition or removal of more important Landmarks and of most Preservation District properties will normally not be permitted without the required findings, while demolition or removal of less important Landmarks will be subject only to postponement.
- b) [Omitted because not related to demolition]
- c) Findings for approval of demolitions, removals, alterations, or new construction involving Landmarks or Preservation Districts will seek to balance preservation of these properties with other concerns.
- d) Specific regulatory provisions are set forth in the tables entitled "Demolition and Removal Regulations for Landmarks and Preservation Districts" and "Alteration and New Construction Regulations for Landmarks and Preservation Districts." (see *Attachment B*)

**Policy 3.5: Historic Preservation and Discretionary Permit Approvals.**

*(First paragraph of Policy omitted because it is not related to the demolition of historic resources)*

For any project involving complete demolition of Heritage Properties<sup>2</sup> or Potential Designated Historic Properties<sup>3</sup> requiring discretionary City permits, the City will make a finding that: (1)

<sup>1</sup> Preservation Districts include the S-7 and S-20 historic district combining zones. These are zoning districts that are applied to historic neighborhoods such as Old Oakland and Oak Center and contain additional design review requirements.

<sup>2</sup> Heritage properties are properties that appear potentially eligible for Landmark or Preservation District designation.

<sup>3</sup> Potentially Designated Historic Properties include "A", "B" and "C" rated buildings and buildings that contribute to an Area of Secondary Importance (ASI). ASI is the designation for the City's lower rated historic neighborhoods. Examples of ASIs include parts of the Temescal and Fruitvale Commercial Districts and the Trestle Glen residential neighborhood.

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the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or (2) the public benefits of the proposed project outweigh the benefit of retaining the original structure; or (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

The Land Use and Transportation Element of the General Plan also refers to the HPE in the following policies of that document:

**Policy N6.2: Reusing Vacant or Underutilized Buildings.**

Existing vacant or underutilized buildings should be reused. Repair and rehabilitation, particularly of historic or architecturally significant structures, should be strongly encouraged. However, where reuse is not economically feasible, demolition and other measures should be considered. (Landmark and Preservation District properties must follow Policy 2.4 of the Historic Preservation Element).

**Policy N9.8: Preserving History and Community.**

Locations that create a sense of history and community within the City should be identified and preserved where feasible (see the Historic Preservation Element for more information).

**KEY ISSUES AND IMPACTS**

The proposed findings and submittal requirements would provide the City with important information prior to making a decision regarding the demolition of historic resources. The proposed analysis required as part of the submittal requirements are more detailed than what the City currently requires for the demolition of a historic structure. Staff believes that this additional analysis is critical for the City to decide on the appropriateness of demolition applications. When necessary, the proposed submittal requirements could also be adjusted by staff on a case by case basis if they are not appropriate for a particular proposal. Finally, standardizing the findings and submittals will streamline the application process by making the City's requirements clear to developers, staff, and the public.

The City's current regulations regarding the demolition of these properties are in various places in the zoning ordinance and the HPE. This proposal will place the regulatory findings required to be met to demolish a historic structure in a single part of the zoning ordinance and standardize the submittals required for the City to make an assessment whether a project meets the findings.

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## PROJECT DESCRIPTION

### Proposed Findings

The proposed findings are grouped into three basic categories of historic resources: Category I includes properties that are on the Local Register of Historic Resources<sup>4</sup> but are outside a major historic district<sup>5</sup>; Category II are properties on the Local Register of Historic Resources because they contribute to a major historic district<sup>6</sup>; Category III includes "C" rated properties and properties that contribute to a secondary historic districts known as Areas of Secondary Importance.

Categories I and II are separated from Category III because the demolition of a Local Register Property will generally require the preparation of an Environmental Impact Report under the California Environmental Quality Act, while the demolition of ASI contributors and all "C" rated properties generally do not. The findings required for Category III are therefore less stringent than those for Categories I and II.

Each category of historic structures contains two requirements: findings in the Planning Code that need to be met in order to demolish the historic resource and corresponding submittals required to be included with the demolition application. The submittals specifically describe the type and content of studies necessary to determine whether a demolition finding can be met. The Planning Director could make adjustments to these submittal requirements if they are consistent with the intent of those contained in this proposal. This is similar to current administrative procedures that allow the Planning Director to determine what submittals are required with a development application.

The following summarizes staff's recommendations. The proposed Planning Code amendments are contained in *Exhibit A* of the ordinance, while the findings and submittal requirements are contained in *Exhibit B*.

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<sup>4</sup> The Local Register of Historic Resources include: Landmarks, buildings with an "A" or "B" historic rating, contributors or potential contributors to an Area of Primary Importance (API), and S-7 and contributors to the S-20 historic preservation combining zones. Footnote 5, below, provides a definition for APIs and the S-7 and S-20 combining zones. Local Register Properties are considered an historic resource under the California Environmental Quality Act and their demolition requires an Environmental Impact Report.

<sup>5</sup> These major historic districts include Areas of Primary Importance, and the S-7 and S-20 historic preservation combining zones. APIs are historically or visually cohesive areas that appear eligible for the National Register of Historic Places. Examples of APIs include Old Oakland, Mills College, Preservation Park, Oak Center, and Haddon Hill. The S-7 and S-20 historic district combining zones are zoning designations that are applied to historic neighborhoods such as Old Oakland and Oak Center and contain special design review requirements.

<sup>6</sup> These major historic districts include Areas of Primary Importance, and the S-7 and S-20 historic preservation combining zones. APIs are historically or visually cohesive areas that appear eligible for the National Register of Historic Places. Examples of APIs include Old Oakland, Mills College, Preservation Park, Oak Center, and Haddon Hill. The S-7 and S-20 historic district combining zones are zoning designations that are applied to historic neighborhoods such as Old Oakland and Oak Center and contain special design review requirements.

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**Category I: Findings for Individual Local Register Properties**

The following are recommendations for required findings and submittals for historic resources in Category I (see above for definition of Category I). Either Findings 1 or 2 and each of the remaining findings would need to be met by the City to approve demolition one of these structures.

*Findings 1-2: 1) The applicant demonstrates that the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return; or 2) The applicant demonstrates that the property constitutes a hazard and is economically infeasible to rehabilitate on its present site [see 17.136.075(B)(1) of **Exhibit A** of the ordinance].*

These findings directly implement HPE Policy 2.4 and are contained in Table 4-1, "Demolition and Removal Regulations for Landmarks and Preservation Districts" of the HPE (see **Attachment B**). The submittal requirements for Finding 1 would include studies regarding the economic viability of keeping the current building; the soundness of the building; the building maintenance history; the appraised value of the existing building; and public benefits. Finding 2 can be met if the Building Official determines that the building is an imminent hazard to public safety.

*Finding 3: The design quality of the replacement facility is equal/superior to that of the existing facility [see 17.136.075(B)(2) of **Exhibit A** of the ordinance].*

Like Findings 1 and 2, this finding directly implements HPE Policy 2.4 and is contained in Table 4-1 of the HPE (see **Attachment B**). The submittal requirements include an analysis, prepared by a historic architect or professional with equivalent experience, of the replacement facility in terms of design value, materials, visual interest, composition, detailing, and other items.

*Finding 4: It is infeasible to incorporate the building into the proposed development [see 17.136.075(B)(3) of **Exhibit A** of the ordinance].*

This finding is not directly from the HPE, but staff believes that incorporating a historic building into a new development can provide opportunities for saving the historic resource as well as create interesting new architecture. Combining new and old buildings has been successfully done for developments such as the Altheim, the Fox Theater, and Whole Foods in Oakland and the Jewish Contemporary Museum in San Francisco.

**Category II: Findings for Local Register Properties that Contribute to a Historic District**

The following are recommendations for required findings and submittals for historic resources in Category II (see above for definition of Category II). These findings and submittals are distinguished from those for Category I because they include analysis of the compatibility of new projects in historic districts. Either Findings 1 or 2 and each of the remaining applicable findings would need to be met to demolish one of these structures.

The findings and submittal requirement are the same as those for Category I plus the following:

*Finding 3: For noncontributing properties, the existing facility is either:*

- a. Seriously deteriorated or a hazard, or*
- b. The existing design is undistinguished and does not warrant retention [see 17.136.075(C)(2) of **Exhibit A** of the ordinance].*

This finding also directly implements HPE Policy 2.4 and is contained in Table 4-1 of the HPE (see **Attachment B**). For (a), the submittal requirement includes a determination of an imminent hazard by the City. For (b), an application would require an analysis of whether a noncontributing property could feasibly become a contributor after damages to the building were reversed.

*Finding 5: For all properties in a district: the design of the replacement project is compatible with the character of the preservation district, and there is no erosion of design quality at the project site and in the surrounding area. This includes, but is not necessarily limited to, the following additional criteria:*

- a. The replacement project is compatible with the district in terms of massing, siting, rhythm, composition, patterns of openings, quality of material, and intensity of detailing;*
- b. New street frontage with forms that reflect the widths and rhythm of the facades on the street and entrances that reflect the patterns on the street;*
- c. The replacement project provides high visual interest that either reflects the level and quality of visual interest of the district contributors or otherwise enhances the visual interest of the district;*
- d. If the design contrasts the new to the historic character, the replacement project enriches the historic character of the district;*
- e. Is consistent with the visual cohesiveness of the district. For the purpose of this item, visual cohesiveness is the architectural character, the sum of all visual aspects, features, and materials that defines the district. A new structure contributes to the visual cohesiveness of a district if it relates to the design characteristics of a historic district. New construction may do so by drawing upon some basic building features, such as the way in*

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*which a building is located on its site, the manner in which it relates to the street, its basic mass, form, direction or orientation (horizontal vs. vertical), recesses and projections, quality of materials, patterns of openings and level of detailing. When a combination of some these design variables are arranged in a new building to relate to those seen traditionally in the area, but integral to the design and character of the proposed new construction, visual cohesiveness results; and*

- f. The project will not cause the district to lose its current historic status [see 17.136.075(C)(3) of **Exhibit A** of the ordinance].*

The first paragraph of this finding directly implements HPE Policy 2.4 and is contained in Table 4-1 of the HPE (see **Attachment B**). Criteria a) through f) refine the HPE policy by providing specific compatibility requirements. These criteria are consistent with the recently adopted requirements for new construction in an historic district located within the Central Business District. The submittal requirements include an analysis of compatibility, including:

- The replacement project's architectural compatibility with the district.
- The new building's contemporary interpretation of the demolished building's elements in terms of the cultural, historic, economic, or technological trends of its time.
- The preservation of the authenticity of the existing historic district with a replacement building that has an authenticity of its own time.
- The compatibility of the design of the replacement proposal with the district without being merely a compilation of façade features that are common to district or a caricature of the buildings in the district.

The findings and the submittals emphasize that a replacement project can be either imitative of buildings in the district or have a contemporary design as long as the building is compatible with the district.

### **Category III: Findings for "C" rated buildings and ASI contributors**

The following are recommendations for required findings and submittals for historic resources in Category III (see above for definition of Category III). An applicant would be required to meet only one of the following findings:

- Finding 1: The design quality of the proposed replacement project is at least equal to that of the original structure and the proposed replacement project is compatible with the character of the neighborhood [see 17.136.075(D)(1) of **Exhibit A** of the ordinance] and the public benefits of the proposed project outweigh the benefit of retaining the original structure [see 17.136.075(D)(2) of **Exhibit A** of the ordinance].*
- Finding 2: It is economically, architecturally, or structurally infeasible to incorporate the historic building into the proposed development and the public benefits of the*

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*proposed project outweigh the benefit of retaining the original structure [see 17.136.075(D)(3) of Exhibit A of the ordinance].*

*Finding 3: The existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood [see 17.136.075(D)(4) of Exhibit A of the ordinance].*

With the exception of the language regarding incorporating the existing structure into the project, these findings are directly from the HPE. Staff recommends the language regarding incorporation of the existing building into the project to encourage additions to existing historic buildings.

The submittal requirements for Findings 1 and 2 include an analysis of equal quality and compatibility by a historic architect. The submittal requirements emphasize that replacement projects should be compatible with the district without being a caricature of its historic buildings. The submittal requirements for 3 and 4 include analyses by qualified experts.

### **Other Proposed Code Amendments**

Staff proposes the following other significant changes to the Planning or Municipal Code to accommodate the proposed findings:

- The required design review process for several zones was modified to require a design review process for alterations to all historic properties. These sections currently only require a design review process for Local Register Properties. This change assures that the proposed demolition findings will be required for properties in Category III.
- Section 17.136.025(B)(1)(c) of the Planning Code and Section 15.36.080(B) of the Municipal Code are proposed to be amended to no longer exempt the demolition of “nuisance” historic resources without first gaining design review approval. This change assures that a historic property can only be demolished without design review approval if its structural integrity is so compromised that it poses an immediate threat to health and safety per the Building Official. Demolition of historic nuisance structures would require design review, whereas non-historic structures could be abated without design review.

### **Proposed changes since the April 7, 2010 Planning Commission meeting.**

Staff proposes the following minor text changes since the April 7, 2010 Planning Commission meeting. These changes are highlighted in *Attachment C*. None of the changes diminish the protections afforded the affected Historic Resources under the proposal and were requested by the Building Official.

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- Section 17.136.075A exempts a nuisance property from submitting a replacement project at the time of the application for the demolition. This change accommodates the demolition of properties that are posing a nuisance to the public, but still requires that an eventual replacement meet all the required findings regarding the quality of a replacement project and compatibility of the replacement project with a historic district.
- OMC Section 15.36.085 (the Demolition Permit chapter of the Building and Construction code) has been added to reference the demolition regulations in the Planning Code, so that applicants and Building Services staff are informed that all demolitions should be referred to the Planning Department to assure that all Planning Code requirements are met even if a proposal does not require a building permit.
- Staff proposes to remove a change to the text of Section 15.36.080 of the Demolition Permit chapter of the Building and Construction code that was proposed to the Planning Commission. The previously proposed change would have not allowed a vacant lot or surface parking lot after demolition of a building without first obtaining a building permit for a replacement project. This revision was requested by Building Department staff. Staff does not see this as a significant change because, under the proposal, demolition of historic structures would require plans and design review approval for a replacement structure unless the historic structure is unsafe or a nuisance per the Building Official. A nuisance structure would still need to submit for design review of the demolition. Thus, any demolition would still be required to meet the requirements of the Design Review chapter even if it resulted in a vacant lot and did not require a building permit.

The above changes are considered minor and thus expressly authorized by the City Planning Commission. Moreover, the Planning Commission Agenda Report also stated that it was necessary to gain approval of the Building Official of the proposed text changes.

### **Environmental Determination**

The proposal relies on the previously certified Final Environmental Impact Report (EIR) for the Land Use and Transportation Element of the General Plan (1998); the Final Environmental Report for the 1998 Amendment to the Historic Preservation Element of the General Plan; and the Housing Element Update Initial Study/Mitigated Negative Declaration (2004). As a separate and independent basis, the proposal is also exempt from CEQA pursuant to CEQA Guidelines Section 15183 "Projects Consistent with a Community Plan, General Plan or Zoning" and/or 15061(b)(3)(General Rule—no possibility of significant environmental impact).

### Reliance on Existing Environmental Documents

1) *Environmental Impact Report (EIR) for the LUTE*

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The EIR for the LUTE evaluated the environmental impacts of the proposal and anticipated future reliance on it for actions that were consistent with it and intended to implement it. Reliance on the LUTE EIR is appropriate as stated on page I-4 of that document:

The EIR may also be used at a future date by the Planning Commission and City Council to evaluate the environmental impacts of subsequent actions that are consistent with the Land Use and Transportation Element or are intended to implement the Land Use and Transportation Element.

Further, the changes to the ordinance being proposed were evaluated by the LUTE EIR. The LUTE EIR specifically states that the document may be used to evaluate the environmental impacts of "amendments of the Zoning Ordinance and Zoning Map for General Plan consistency". Page III.G-13 of the LUTE EIR states that LUTE policies regarding high density construction could result in the demolition of historic structures. The LUTE incorporates the 24 policies and 66 actions contained in the HPE designed to protect historic buildings.

The EIR identifies the following mitigation measures:

1. Mitigation Measure G.3a: Amend the Zoning Regulations text to incorporate the new preservation regulations and Districts (page III.G.16); and
2. Mitigation Measure G3b: Develop and adopt design guidelines for Landmarks and Preservation Districts (page III.G.16).

The proposal implements the first mitigation measure through new findings in the Planning Code and submittal requirements relating to the demolition of historic resources.

2) *EIR for Amendments to the Historic Preservation Element of the General Plan*

In 1998, the City certified an EIR to evaluate the impacts of four new policies proposed for the Historic Preservation Element. The proposed amendments affected Policy 3.2, which delineates the process that city-owned and controlled properties are considered for historic designation; Policy 3.3, which delineates a process that requires property owners to apply for historic designation as a condition of receiving City financial assistance; Policy 3.5, which addresses design review requirement for Potentially Designated Historic Properties; and Policy 3.8, which addresses the City's thresholds for environmental significance for historic properties. This EIR contains several mitigation measures regarding demolition impacts on historic properties to less than significant and identifies others as unavoidable or irreversible. Staff has incorporated the following mitigation into the proposal: Mitigation Measure B.1 Adoption and implementation of the proposed language of Policy 3.5 of the Historic Preservation Element.

3) *Initial Study/Mitigated Negative Declaration for the 2004 Housing Element Update*

In 2004, The City certified an Initial Study/Mitigated Negative Declaration for an update to the Housing Element. The element was based on eight goals that provide direction and guidance for meeting the City's housing needs through 2006:

- Provide adequate sites suitable for all income groups;
- Promote the development of adequate housing for low- and moderate-income households;
- Remove constraints to the availability and affordability of housing for all income groups;
- Conserve and improve older housing and neighborhoods;
- Preserve affordable rental housing;
- Promote equal housing opportunity;
- Promote sustainable development and smart growth; and
- Increase public access to information through technology.

The Initial Study/Mitigated Negative Declaration (IS/MND) for the element contains several mitigation measures that reduce the impacts of the actions directed by the Housing Element to less than significant. Staff has considered and incorporated the mitigations into the proposal. The IS/MND largely depends on the analysis contained in the LUTE EIR regarding the preservation of historic structures (see above).

Based upon the foregoing, further environmental review is not required as none of the requirements of CEQA Guidelines section 15162 and/or 15163 have been met.

CEQA Guidelines Section 15183

As a separate and independent basis, the proposal is exempt from CEQA under CEQA Guidelines section 15183, which provides that projects that are consistent with the development density established by existing general plan policies for which an EIR was certified shall not require additional environmental review, except to examine project-specific significant effects that are peculiar to the project. This allowed exemption streamlines the review of projects.

1. As discussed in the "Background" section of this document, the project is consistent with the LUTE, for which an EIR was certified in March 1998, and the Historic Preservation Element (HPE) of the General Plan, for which an EIR was certified in 1998.
2. Feasible mitigation measures identified in the LUTE and HPE EIRs were adopted and have been, or will be, undertaken;

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3. The LUTE and HPE EIRs and this environmental review evaluated impacts peculiar to the project and/or project site, as well as off-site and cumulative impacts, and found them to be adequately addressed. The project is an implementation of the LUTE and the HPE and, therefore, no new impact should result from the project not anticipated by the EIRs for those plans.
4. Uniformly applied development policies and/or standards (imposed as Standard Conditions of Approval) have previously been adopted by the City Council on November 8, 2008. These conditions will substantially mitigate the impacts of future projects.
5. Substantial new information does not exist to show that these Standard Conditions of Approval and mitigations identified above will not substantially mitigate the project and cumulative impacts.

CEQA Guidelines Section 15061(b)(3)

As a further separate and independent basis, the proposal is also exempt from CEQA under CEQA Guidelines section 15061(b)(3), which provides that where it can be seen with certainty that a project will not have significant impacts, no environmental review is required. Here, the proposed demolition findings and submittal requirements are more restrictive than the current regulations regarding historic resources.

**SUSTAINABLE OPPORTUNITIES**

**Economic:** The City's historic neighborhoods are some of the most desirable areas of the City to live and locate a business. The proposal will increase property and sales tax by preserving the quality of these neighborhoods.

**Environmental:** Preserving historic resources reduces the waste stream and preserves natural resources.

**Social Equity:** There are no social equity opportunities identified.

**DISABILITY AND SENIOR CITIZEN ACCESS**

All new development accommodated by this ordinance will be required to comply with the Americans with Disabilities Act.

## RECOMMENDATIONS AND RATIONALE

Staff and the Planning Commission recommend the proposed:

- Amendments to the Planning Code and Building and Construction Code relating to required findings for the Demolition of historic structures; and
- Administrative submittal requirements for applications to demolish historic structures.

The proposal implements existing findings and policies contained in Historic Preservation Element (HPE) of the General Plan and will standardize the City's requirements for the demolition of historic structures. The proposed submittal requirements will provide the City the material required to make informed decisions regarding whether a proposed demolition meets the findings in the Planning Code and the HPE.

## ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt the ordinance that contains code changes and the administrative submittal requirements related to the demolition of historic structures.

Respectfully submitted,



Walter S. Cohen, Director  
Community and Economic Development Agency

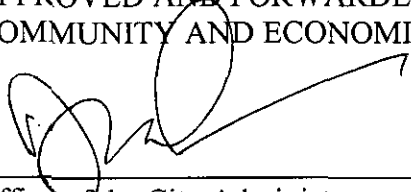
Reviewed by:

Eric Angstadt, Deputy Director

Prepared by:

Neil Gray, Planner III  
Planning and Zoning

APPROVED AND FORWARDED TO THE  
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:

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**Attachments:**

- A. April 7, 2010 Planning Commission staff report regarding demolition findings.
- B. Tables 4-1 and 4-2 of the Historic Preservation Element of the General Plan.
- C. Text changes proposed since the April 7, 2010 Planning Commission meeting.

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<b>Location:</b>	Citywide
<b>Proposal:</b>	Amend the Planning Code to establish findings and requirements for the demolition of historic resources.
<b>Applicant:</b>	City Planning Commission
<b>General Plan:</b>	All General Plan designations
<b>Existing Zoning:</b>	All zoning designations
<b>Environmental Determination:</b>	The proposal relies on the previously certified Final Environmental Impact Report (EIR) for the Land Use and Transportation Element of the General Plan (1998); the Final Environmental Report for the 1998 Amendment to the Historic Preservation Element of the General Plan; and the Housing Element Update Initial Study/Mitigated Negative Declaration (2004). As a separate and independent basis, the proposal is also exempt from CEQA pursuant to CEQA Guidelines Section 15183 "Projects Consistent with a Community Plan, General Plan or Zoning" and/or 15061(b)(3)(General Rule—no possibility of significant environmental impact.
<b>Case File Number:</b>	ZT09251
<b>Action to be taken:</b>	Discuss and make recommendation to the City Council.
<b>For further information:</b>	Contact: <b>Neil Gray</b> at 238-3878 or email <a href="mailto:ngray@oaklandnet.com">ngray@oaklandnet.com</a>

### SUMMARY

On July 7, 2009, the City Council voted to adopt new zoning designations for the Central Business District. At the meeting, the City Council also directed staff to develop findings required to be met for the City to approve the demolition of a historic building. The current proposal reflects this direction.

Staff recommends that the Planning Commission review staff's proposal and make recommendations to the City Council.

Attachment A

#4

## BACKGROUND

On July 7, 2009, the City Council voted to adopt new zoning designations for the Central Business District and directed staff to develop required findings necessary for the City to approve the demolition of a historic building. The Landmarks Preservation Advisory Board (LPAB) met six times to develop citywide requirements for the demolition of Designated or Potentially Designated Historic Properties<sup>1</sup>. Historic Preservation and Strategic Planning Staff used these recommendations as a basis for new recommendations to the Zoning Update Committee on January 20, 2010. Attachment A contains a summary of the current recommendations for amendments to the Planning Code and required material to be submitted with an application for demolition. Attachment B contains the recommended additions and deletions from the Planning Code. These attachments reflect changes proposed by the Zoning Update Committee (see Zoning Update Committee Recommendations section, below, for a description of these changes). The staff report for Zoning Update Committee is contained in Attachment C.

## REGULATORY FRAMEWORK

The Historic Preservation Element (HPE) of the General Plan, adopted in 1994 (amended in 1998), provides a strategy to preserve the City's historic resources and establishes a rating system for historic neighborhoods and individual buildings. The HPE establishes a rating system for individual historic buildings of "A" (highest importance) to "E" (no particular interest)<sup>2</sup>. The element also establishes the criteria and process to establish a landmark property. The HPE separates historic neighborhoods into two categories: Areas of Primary Importance (API's) and Areas of Secondary Importance (ASIs). APIs are historically or visually cohesive areas that appear eligible for the National Register of Historic Places. These areas contain a high proportion of individual properties rated "C" or greater; at least two-thirds of the properties in an API must contribute to its principal historical or architectural theme. Examples of APIs include Old Oakland, Mills College, Preservation Park, Oak Center, and Haddon Hill. ASIs are similar to APIs except they do not appear eligible to be on the National Register and they require two-thirds of the properties to be either *potential* contributors or contributors to the historic district. Examples of ASIs include the Rockridge and Fruitvale commercial districts, Jingletown, and the Clinton residential neighborhood.

The HPE also contains goals, policies and actions that govern how the City will treat historic and neighborhoods and properties, including their demolition. The demolition policies in the HPE provide the foundation for developing demolition findings in the Planning Code. The following lists these demolition related policies:

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<sup>1</sup> Designated Historic properties include Landmarks, potential or potential contributors to Preservation Districts (S-7 and S-20 zones and Areas of Primary Importance). Potentially Designated Historic Properties include "A", "B" and "C" rated buildings and buildings that contribute to an Area of Secondary Importance (ASI).

<sup>2</sup> A = Highest Importance, B = Major Importance, C = Secondary Importance, D = Minor Importance, E = No particular interest.



**Policy 2.4 Landmark and Preservation District Regulations.**

Demolitions and removals involving Landmarks or Preservation Districts will generally not be permitted or be subject to postponement unless certain findings are made. Demolition or removal of more important Landmarks and of most Preservation District properties will normally not be permitted without the required findings, while demolition or removal of less important Landmarks will be subject only to postponement.

- a) Demolitions and removals involving Landmarks or Preservation Districts will generally not be permitted or be subject to postponement unless certain findings are made. Demolition or removal of more important Landmarks and of most Preservation District properties will normally not be permitted without the required findings, while demolition or removal of less important Landmarks will be subject only to postponement.
- c) Findings for approval of demolitions, removals, alterations, or new construction involving Landmarks or Preservation Districts will seek to balance preservation of these properties with other concerns.
- d) Specific regulatory provisions are set forth in the tables entitled "Demolition and Removal Regulations for Landmarks and Preservation Districts" (see Attachment B) and "Alteration and New Construction Regulations for Landmarks and Preservation Districts."

**Policy 3.5: Historic Preservation and Discretionary Permit Approvals.**

*(First paragraph of Policy omitted because it is not related to the demolition of historic resources)*

For any project involving complete demolition of Heritage Properties or Potential Designated Historic Properties requiring discretionary City permits, the City will make a finding that: (1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or (2) the public benefits of the proposed project outweigh the benefit of retaining the original structure; or (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

**3.7: Property Relocation Rather than Demolition as Part of Discretionary Projects**

As a condition of approval for all discretionary projects involving demolition of existing or Potential Designated Historic Properties, the City will normally require that reasonable efforts be made to relocate the properties to an acceptable site.

*Action 3.7.1: Property Relocation Procedures and Design Guidelines for All Discretionary Projects.*

Prepare property relocation procedures and design guidelines to be adopted by the LPAB and City Planning Commission for existing or Potential Designated Historic Properties required to be relocated pursuant to discretionary City Approvals.

## **EXISTING DEMOLITION REGULATIONS**

The Planning Code contains two Preservation District zoning designations: the S-7 Preservation Combining Zone and the S-20 Historic Preservation District Combining Zone. Both these zones contain provisions that allow for the postponement of – and require special criteria for – the demolition of historic structures. The S-7 district is designated in various areas, including the 7<sup>th</sup> Street Commercial District, the Belleview-Staton Apartment District, Old Oakland, and Preservation Park in Downtown. Sheffield Village in the North Hills and Oak Center in West Oakland have an S-20 designation.

Subsections 17.136.070(C-D) of the Planning Code (see Attachment C) require a design review process and contain required criteria to demolish Landmarks. Section 17.136.075 contains regulations allowing the Planning Director to postpone the demolition of a Local Register property<sup>1</sup>.

## **PROPOSAL**

### **Proposed Findings**

The proposed findings are grouped into two basic categories of historic resources: 1) Local Register Properties<sup>1</sup> and 2) contributors to ASIs and “C” rated properties that do not contribute to a historic district. These categories were chosen because the demolition of a Local Register Property will generally require the preparation of an Environmental Impact Report under the California Environmental Quality Act, while the demolition of ASI contributors or noncontributing “C” rated properties generally do not. Local Register properties also have two subcategories of findings under the proposal: properties that are within a major historic district (an S-7 Combining Zone, S-20 Combining Zone, or an API) and those that are outside a major historic district. These subcategories were chosen so that the impacts of demolitions on historic districts could be specifically addressed with new findings.

Each category of historic structures contains two requirements: findings in the Planning Code that need to be met in order to demolish the historic resource and corresponding submittals required to be included with the demolition application. The submittals specifically describe the type and content of studies required to determine whether a demolition finding can be met. The Planning Director could make adjustments to these submittal requirements if they are consistent with the intent of those contained in this proposal. This is similar to current administrative procedures that allow the Planning Director to determine what submittals are required with a development application.

The following summarizes staff’s recommendations. The complete proposal is contained in Attachment A and the actual Planning Code amendments are contained in Attachment B.

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<sup>1</sup> Local Register properties include: Landmarks, contributors to S-7 and S-20 preservation districts, contributors to APIs, Heritage Properties (properties that appear potentially eligible for landmark or Preservation District designation), properties on the Study List, and properties with an “A” or “B” historic rating.

### Findings for Individual Local Register Properties

The following are recommendations for required findings and submittals to demolish individual properties on the local register (Landmarks, "A" and "B" rated buildings, and Heritage Properties) that are outside an S-7 zone, S-20 zone, or an API. Either Findings 1 or 2 and each of the remaining findings would need to be met to demolish one of these structures.

**Findings 1-2: 1) The applicant demonstrates that the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return; or 2) The applicant demonstrates that the property constitutes a hazard and is economically infeasible to rehabilitate on its present site [see 17.136.075(B)(1) of Attachment B].**

These findings directly implement HPE Policy 2.4 and are contained in Table 4-1, "Demolition and Removal Regulations for Landmarks and Preservation Districts" of the HPE (see Attachment C). The submittal findings for Finding 1 would include studies regarding the economic viability of keeping the current building; the soundness of the building; the building maintenance history; the appraised value of the existing building; and public benefits. Finding 2 can be met if the City determines that the building is an imminent hazard to public safety.

**Finding 3: The design quality of the replacement facility is equal/superior to that of the existing facility [see 17.136.075(B)(2) of Attachment B].**

Like Findings 1 and 2, this finding directly implements HPE Policy 2.4 and is contained in Table 4-1 of the HPE (see Attachment C). The submittal requirements include an analysis, prepared by a historic architect or professional with equivalent experience, of the replacement facility in terms of design value, materials, visual interest, composition, detailing, and other items.

**Finding 4: It is infeasible to incorporate the building into the proposed development [see 17.136.075(B)(3) of Attachment B].**

This finding is not directly from the HPE, but staff believes that incorporating a historic building into a new development can provide opportunities for saving the historic resource as well as create interesting new architecture. Combining new and old buildings has been successfully done for developments such as the Altheim, the Fox Theater, and Whole Foods in Oakland and the Jewish Contemporary Museum in San Francisco.

### Findings for Local Register Properties that Contribute to a Historic District

The following summarizes the findings and submittals required to demolish individual properties on the Local Register (Landmarks, "A" and "B" rated buildings, Preservation Study List Properties, and Heritage Properties) that are within an S-7 zone, S-20 zone, or an API. Either Findings 1 or 2 and each of the remaining applicable findings would need to be met to demolish one of these structures.

**Findings 1 - 2:** 1) The applicant demonstrates that the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return; or 2) the applicant demonstrates that the property constitutes a hazard and is economically infeasible to rehabilitate on its present site [see 17.136.075(C)(1) of Attachment B].

These are the same as Findings 1 and 2, above, for the demolition of an individual Local Register Property. The submittal requirements are also the same as those findings.

**Finding 3:** For noncontributing properties, the existing facility is either:

- a. Seriously deteriorated or a hazard, or
- b. The existing design is undistinguished and does not warrant retention [see 17.136.075(C)(2) of Attachment B].

This finding also directly implements HPE Policy 2.4 and is contained in Table 4.1 of the HPE (see Attachment C). For (a), the submittal requirement includes a determination of an imminent hazard by the City. For (b), an application for submittal would require an analysis of whether a noncontributing property could feasibly become a contributor after damages to the building were reversed.

**Finding 4:** For all properties in a district: The design quality of the replacement facility is superior to that of the existing facility [see 17.136.075(C)(3) of Attachment B].

This finding directly implements HPE Policy 2.4 and is contained in Table 4.1 of the HPE (see Attachment B). The submittal requirements include an analysis prepared by a historic architect or professional with equivalent experience of the replacement facility in terms of design value, materials, visual interest, composition, detailing, and other items.

**Finding 5:** For all properties in a district: the design of the replacement project is compatible with the character of the preservation district, and there is no erosion of design quality at the project site and in the surrounding area. This includes, but is not necessarily limited to, the following additional criteria:

- a. The replacement project is compatible with the district in terms of massing, siting, rhythm, composition, patterns of openings, quality of material, and intensity of detailing;
- b. New street frontage with forms that reflect the widths and rhythm of the facades on the street and entrances that reflect the patterns on the street;
- c. The replacement project provides high visual interest that either reflects the level and quality of visual interest of the district contributors or otherwise enhances the visual interest of the district;
- d. If the design contrasts the new to the historic character, the replacement project enriches the historic character of the district;
- e. Is consistent with the visual cohesiveness of the district. For the purpose of this item, visual cohesiveness is the architectural character, the sum of all visual aspects,

features, and materials that defines the district. A new structure contributes to the visual cohesiveness of a district if it relates to the design characteristics of a historic district while also conveying its own time. New construction may do so by drawing upon some basic building features, such as the way in which a building is located on its site, the manner in which it relates to the street, its basic mass, form, direction or orientation (horizontal vs. vertical), recesses and projections, quality of materials, patterns of openings and level of detailing. When a combination of some these design variables are arranged in a new building to relate to those seen traditionally in the area, but integral to the design and character of the proposed new construction, visual cohesiveness results; and

- f. **The project will not cause the district to lose its current historic status [see 17.136.075(C)(3) of Attachment B].**

The first paragraph of this finding directly implements HPE Policy 2.4 and is contained in Table 4.1 of the HPE (see Attachment C). Criteria a) through f) refine the HPE policy by providing specific compatibility requirements. These criteria are consistent with the recently adopted requirements for new construction in an historic district in the Central Business District. The submittal requirements include an analysis of several discussion points regarding compatibility, including:

- The replacement project's architectural compatibility with the district without being subservient. If it is subservient to the district character, is it a watered down version of a period revival style or a generic building or a visually cohesive design with a strong concept?
- The new building's contemporary interpretation of the demolished building's elements in terms of the cultural, historic, economic, or technological trends of its time.
- The preservation of the authenticity of the existing historic district with a replacement building that has an authenticity of its own time.
- The compatibility of the design of the replacement proposal with the district without being merely a compilation of façade features that are common to district or a caricature of the buildings in the district.

The findings and the submittals emphasize that a replacement project should not imitate the façade of existing historic buildings, but rather relate to the district in more contemporary fashion. In other words, a new building should have elements that relate to the district, but should not be imitative or a caricature of its historic buildings.

**Finding #6: It is infeasible to incorporate the building into the proposed development [see 17.136.075(C)(3) of Attachment B].**

This is the same as Finding 4 for the demolition of an individual Local Register property. The submittal requirements are also the same as that finding.

**Findings for "C" rated buildings and ASI contributors**

The following summarizes the findings and submittals required to demolish a PDHP that are not on the Local Register. These include "C" rated buildings and buildings that contribute to an ASI. There are four findings listed for these historic resources, but an applicant would have a choice of three combinations findings to meet: Findings 1 and 3; or Findings 2 and 3; or just 4. The following lists the findings:

- Finding 1:** The design quality of the proposed replacement project is at least equal to that of the original structure and the proposed replacement project is compatible with the character of the neighborhood [see 17.136.075(D)(1) of Attachment B].
- Finding 2:** The public benefits of the proposed project outweigh the benefit of retaining the original structure [see 17.136.075(D)(2) of Attachment B].
- Finding 3:** It is economically, architecturally, or structurally infeasible to incorporate the historic building into the proposed development [see 17.136.075(D)(3) of Attachment B].
- Finding 4:** The existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood [see 17.136.075(D)(4) of Attachment B].

Findings 1, 2, and 4 are directly from the HPE. According to the HPE, only one of these findings needs to be met to demolish a "C" rated building or a contributor to an ASI. Staff recommends that Finding 2 also be required with Finding 1 or 2 because of the many opportunities to make additions to existing historic buildings. An application to demolish a building can be approved if only Finding 4 is met because demolition is no longer an issue if the building proposed for demolition is undistinguished and the new building is compatible with the district.

The submittal requirements for Findings 1 and 2 include an analysis of equal quality and compatibility by a historic architect. The submittal requirements emphasize that replacement projects should be compatible with the district without being a caricature of its historic buildings. The submittal requirements for 3 and 4 include analyses by qualified experts.

### **Other Proposed Code Amendments**

Staff proposes the following other significant changes to the Planning or Municipal Code to accommodate the proposed findings:

- The required design review process for several zones was modified to require a design review process for alterations to Designated Historic Properties and Potentially Designated Historic Properties. These sections currently only require a design review process for Local Register Properties. This change assures that the proposed demolition findings will be required for both Designated and Potentially Designated Historic Properties.
- Section 17.136.025(B)(1)(c) of the Planning Code and Section 15.36.080(B) of the Municipal Code are proposed to be amended to no longer exempt the demolition of

“nuisance” structures which are historic resources without first gaining design review approval. This change assures that a historic property can only be demolished without design review approval if its structural integrity is so compromised that it poses an immediate threat to health and safety. Demolition of historic nuisance structures would require design review, whereas non-historic structures could be abated without design review. The change also allows the planning department to review the design of replacement buildings. The modification change to the Building Code requires further review from the Building Department prior to a hearing in front of the City Council.

- Staff proposes to delete Section 15.36.080(A) of the Municipal Code to remove a significant loophole in the regulations that allows the demolition of any building if it results in a surface parking lot or a vacant lot without first obtaining a building permit for a replacement structure. This modification requires further review from the Building Department prior to a hearing in front of the City Council.
- Various section of the Planning Code (17.136.070(E), 17.84.060 and 17.100B.070) currently allow the demolition of a Landmark or a contributor or potential contributor to the S-7 or S-20 historic preservation districts after a postponement period even after a Design Review application to demolish the building is denied by the City. Staff proposes to delete these sections so that denial of a Design Review application can prevent such demolitions, not merely postpone them.

### **ZONING UPDATE COMMITTEE (ZUC) RECOMMENDATIONS**

The ZUC proposed the following changes to Staff’s recommendation at their January 20, 2010 meeting:

1. Include in the submittal requirements text that require a comparison of the proposed replacement project to the existing project when a finding requires that a replacement project has equal or superior design quality to the demolished structure;
2. Amend the discussion point regarding the public benefits of a project to include areas that exhibit change and growth “evidenced by the scale, use and building type;” and
3. Add the building soundness report and building maintenance history to the required documentation for the demolition of hazardous historic buildings.

The first two changes are recommended by staff and included in Attachment A. Staff discussed the third recommendation with the Oakland Heritage Alliance (OHA), the group that proposed the change, due to a concern that the time taken to perform a building maintenance history of a building that is an imminent hazard would endanger the health and safety of the public. The OHA agreed that only a building soundness should be required. This change is also included in Attachment A.

### **MINOR MODIFICATIONS**

Staff requests that the Planning Commission authorize staff to make minor changes, clarifications and refinements to the proposal prior to submittal to the City Council. This may be required to clean up language, correct typing errors, or make other minor changes consistent with the Commission’s recommendations. Although not anticipated, Staff proposes to bring any staff

initiated significant or controversial changes back to the Planning Commission for further recommendation prior to submittal to the City Council.

## **ENVIRONMENTAL DETERMINATION**

The proposal relies on the previously certified Final Environmental Impact Report (EIR) for the Land Use and Transportation Element of the General Plan (1998); the Final Environmental Report for the 1998 Amendment to the Historic Preservation Element of the General Plan; and the Housing Element Update Initial Study/Mitigated Negative Declaration (2004). As a separate and independent basis, the proposal is also exempt from CEQA pursuant to CEQA Guidelines Section 15183 "Projects Consistent with a Community Plan, General Plan or Zoning" and/or 15061(b)(3)(General Rule—no possibility of significant environmental impact.

### **Reliance on Existing Environmental Documents**

#### *Environmental Impact Report (EIR) for the LUTE*

The EIR for the LUTE evaluated the environmental impacts of the proposal and anticipated future reliance on it for actions that were consistent with it and intended to implement it. Reliance on the LUTE EIR is appropriate as stated on page I-4 of that document:

The EIR may also be used at a future date by the Planning Commission and City Council to evaluate the environmental impacts of subsequent actions that are consistent with the Land use and Transportation Element or are intended to implement the Land Use and Transportation Element.

Further, the changes to the ordinance being proposed were evaluated by the LUTE EIR. The LUTE EIR specifically states that the document may be used to evaluate the environmental impacts of "amendments of the Zoning Ordinance and Zoning Map for General Plan consistency". Page III.G-13 of the LUTE EIR states that LUTE policies regarding high density construction could result in the demolition of historic structures. The LUTE incorporates the 24 policies and 66 actions contained in the HPE designed to project historic buildings.

The EIR identifies the following mitigation measures:

1. Mitigation Measure G.3a: Amend the Zoning Regulations text to incorporate the new preservation regulations and Districts (page III.G.16); and
2. Mitigation Measure G3b: Develop and adopt design guidelines for Landmarks and Preservation Districts (page III.G.16).

The proposal implements the first mitigation measure through new findings in the Planning Code and submittal requirements relating to the demolition of historic resources.

### **EIR for Amendments to the Historic Preservation Element of the General Plan**



In 1998, the City certified an EIR to evaluate the impacts of four new policies proposed for the Historic Preservation Element. The proposed amendments affected Policy 3.2, which delineates the process that city-owned and controlled properties are considered for historic designation; Policy 3.3, which delineates a process that requires property owners to apply for historic designation as a condition of receiving City financial assistance; Policy 3.5, which addresses design review requirement for Potentially Designated Historic Properties; and Policy 3.8, which addresses the City's thresholds for environmental significance for historic properties. This EIR contains several mitigation measures regarding demolition impacts on historic properties to less than significant and identifies others as unavoidable or irreversible. Staff has incorporated the following mitigation into the proposal: Mitigation Measure B.1 Adoption and implementation of the proposed language of Policy 3.5 of the Historic Preservation Element.

*Initial Study/Mitigated Negative Declaration for the 2004 Housing Element Update*

In 2004, The City certified an Initial Study/Mitigated Negative Declaration for an update to the Housing Element. The element was based on eight goals that provide direction and guidance for meeting the City's housing needs through 2006:

1. Provide adequate sites suitable for all income groups;
2. Promote the development of adequate housing for low- and moderate-income households;
3. Remove constraints to the availability and affordability of housing for all income groups;
4. Conserve and improve older housing and neighborhoods;
5. Preserve affordable rental housing;
6. Promote equal housing opportunity;
7. Promote sustainable development and smart growth; and
8. Increase public access to information through technology.

The Initial Study/Mitigated Negative Declaration (IS/MND) for the element contains several mitigation measures that reduce the impacts of the actions directed by the Housing Element to less than significant. Staff has considered and incorporated the mitigations into the proposal. The IS/MND largely depends on the analysis contained in the LUTE EIR regarding the preservation of historic structures (see above).

Based upon the foregoing, further environmental review is not required as none of the requirements of CEQA Guidelines section 15162 and/or 15163 have been met.

**CEQA Guidelines Section 15183**

As a separate and independent basis, the proposal is exempt from CEQA under CEQA Guidelines section 15183, which provides that projects that are consistent with the development density established by existing general plan policies for which an EIR was certified shall not require additional environmental review, except to examine project-specific significant effects that are peculiar to the project. This allowed exemption streamlines the review of projects.

1. As discussed in the "General Plan Analysis" section of this document, the project is consistent with the LUTE, for which an EIR was certified in March 1998, and the Historic Preservation Element (HPE) of the General Plan, for which an EIR was certified in 1998.
2. Feasible mitigation measures identified in the LUTE and HPE EIRs were adopted and have been, or will be, undertaken;
3. The LUTE and HPE EIRs and this environmental review evaluated impacts peculiar to the project and/or project site, as well as off-site and cumulative impacts, and found them to be adequately addressed. The project is an implementation of the LUTE and the HPE and, therefore, no new impact should result from the project not anticipated by the EIRs for those plans.
4. Uniformly applied development policies and/or standards (imposed as Standard Conditions of Approval) have previously been adopted by the City Council on November 8, 2008. These conditions will substantially mitigate the impacts of future projects.
5. Substantial new information does not exist to show that these Standard Conditions of Approval and mitigations identified above will not substantially mitigate the project and cumulative impacts.

**CEQA Guidelines Section 15061(b)(3)**

As a further separate and independent basis, the proposal is also exempt from CEQA under CEQA Guidelines section 15061(b)(3), which provides that where it can be seen with certainty that a project will not have significant impacts, no environmental review is required. Here, the proposed demolition findings and submittal requirements are more restrictive than the current regulations regarding historic resources.

**RECOMMENDATION**

Staff recommends that the Planning Commission recommend approval of: a) the submittal requirements contained in Attachment A; (b) the Planning Code amendments contained in Attachment B; and (c) Municipal Code requirements contained in Attachment B to the City Council.

Prepared by:

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NEIL GRAY, Planner III

Approved for forwarding to the  
Zoning Update Committee of the  
City Planning Commission

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ERIC ANGSTADT  
Deputy Director  
Community and Economic Development Agency

**ATTACHMENTS:**

- A. Summary of proposed findings and submittal requirement for the demolition of historic resources.
- B. Proposed Planning and Municipal Code Amendments.
- C. Staff report for the January 20, 2010 meeting of the Zoning Update Committee.

**TABLE 4-1: DEMOLITION AND REMOVAL REGULATIONS  
FOR LANDMARKS AND PRESERVATION DISTRICTS (continued)**

**(e) Class 2 Preservation Districts:**

**(i) Contributing and potentially contributing properties:**

Same as for noncontributing properties in Class 1 Preservation Districts

**(ii) Noncontributing properties:**

Demolition or removal is permitted in all cases, subject to the requirements of other City ordinances, but City approval will be required for the design of any replacement facility pursuant to Table 4-2, Item (1)(d).

**2. DECISION MAKING PROCEDURE**

Decision is by the Planning Director after receiving a recommendation from the Landmarks Preservation Advisory Board. The Director's decision is appealable by anyone to the City Planning Commission. The Commission's decision is appealable to the City Council.

**NOTE 1:** When demolition of a Class 1 or Class 2 Landmark is approved, demolition in all cases will be postponed for a sufficient period of time, but not to exceed 240 days, to investigate sale or moving of the property unless either:

- (i) The applicant has demonstrated that (A) the property cannot be sold in the open market for a price sufficient to generate a reasonable economic return on the owner's investment in the property, and (B) the property is economically infeasible to move; or
- (ii) The applicant has demonstrated that postponement would result in excessive economic hardship to the owner; or
- (iii) The applicant has demonstrated that the property constitutes a hazard to public safety and is economically infeasible to rehabilitate either on its present site or at any relocation site.

Finding (iii) will apply only if the initial demolition approval is based at least in part on the similar Finding (b) for demolition or removal of Class 1 or Class 2 Landmarks (see Items (1) and (2) of the table). The only difference between the two findings is that Finding (iii) requires the applicant to demonstrate the infeasibility of rehabilitation at any relocation site, (i.e. that the property is economically infeasible to move) while Finding (b) does not.

**NOTE 2:** When demolition of any Class 1, Class 2, or Class 3 Landmark is approved, the City, when appropriate, will require:

- (i) That the property be documented and a salvage program instituted; and
- (ii) That, for Class 3 Landmarks, the applicant makes a reasonable effort to sell or move the property.

**TABLE 4-1: DEMOLITION AND REMOVAL REGULATIONS  
FOR LANDMARKS AND PRESERVATION DISTRICTS**

(Incorporated by reference into Policy 2.4)

**GENERAL NOTE:** Demolition or removal of Landmark and Preservation District properties is permitted in all cases and may proceed at once without the special approvals normally required by this table if based on a written determination by the Building Official, Housing Official, or their respective appeals boards that the property constitutes an immediate hazard to public safety and that the demolition or removal is necessary to abate the hazard.

If a property is both a Landmark and located in a Preservation District and is therefore subject to both Landmark and Preservation District regulations, the stricter regulations prevail.

**1. TYPES OF REGULATIONS**

(a) **Class 1 Landmarks:** Demolition or removal is permitted only if either:

- (i) The applicant demonstrates that the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return; or
- (ii) The applicant demonstrates that the property constitutes a hazard to public safety and is economically infeasible to rehabilitate on its present site.

See Notes 1 and 2.

(b) **Class 2 Landmarks:** Demolition or removal is permitted only if Finding (a) or (b) above for Class 1 Landmarks is made or if either:

- (iii) The design quality of the replacement facility is at least equal to that of the existing facility as determined by the Design Guidelines for Landmarks and Preservation Districts and is compatible with the character of the neighborhood as determined by the Guidelines; or
- (iv) Demolition or removal is necessary to allow the development of a project having public benefits outweighing the benefit of retaining the Landmark.

See Notes 1 and 2.

(c) **Class 3 Landmarks:** Demolition or removal is postponed for up to 240 days consisting of two successive 120-day postponement periods unless one of the four findings permitting demolition or removal of Class 2 Landmarks can be made. During the postponement period the applicant and the City will investigate all reasonable means to preserve the property including, but not necessarily limited to, moving the property to another site (for demolitions only) and selling the property to a new owner who will preserve it. The City will inform the owner of all preservation incentives and alternatives. The second 120-day postponement period applies only if the Planning Director determines that substantial progress is being made to preserve the property.

See Note 2.

(d) **Class 1 Preservation Districts:**

(i) **Contributing and potentially contributing properties:**

Demolition or removal is permitted only if one of the two findings permitting demolition or removal of Class 1 Landmarks can be made.

(ii) **Noncontributing properties:**

Same as for contributing and potentially contributing properties but demolition or removal is also permitted if either:

- (A) The existing facility is seriously deteriorated or a blighting influence; or
- (B) The design quality of the replacement facility is at least equal to that of the existing facility as determined by the Design Guidelines for Landmarks and Preservation Districts (Action 2.1.5) and is compatible with the character of the Preservation District as determined by the Guidelines.

(Continued on next page)

## ATTACHMENT C

### **CHANGES TO PROPOSED CODE AMENDMENTS SINCE THE 4-7-10 PLANNING COMMISSION MEETING.**

#### **6-8-10 Community and Economic Development Committee Meeting**

Additions are underlined; deletions are in ~~strikeout~~. Only those sections of a chapter affected by the changes are shown. Changes since the 4-7-10 Planning Commission are highlighted.

#### **Chapter 17.136**

### **DESIGN REVIEW PROCEDURE**

#### **17.136.075 ~~Postponement of demolition~~ Regulations for Demolition or Removal of Designated Historic Properties and Potentially Designated Historic Properties.**

A. With the exception of buildings declared be a public nuisance by the Building Official or City Council, Regular Design Review of the demolition or removal of a Designated Historic Property (DHP) or Potentially Designated Historic Property (PDHP) shall be reviewed in conjunction with the Regular Design Review of a replacement project at the subject site; however, demolition of nuisance buildings must still undergo Design Review for demolition as required by this chapter. [Note from staff: the two preceding shaded texts areas have been added to the code since the Planning Commission meeting to make clear that a public nuisance is required to go through the design review process but does not immediately require a replacement project]

B. Regular Design Review approval for the demolition or removal of any Landmark, Heritage Property, building rated "A" or "B" by the Oakland Cultural Heritage Survey, and building on the City's Preservation Study List that are not in an S-7 or S-20 zone or Area or Primary Importance (API) as determined by the Oakland Cultural Heritage Survey may be granted only if the proposal conforms to the general design review criteria, all other applicable design review criteria, and the following additional criteria:

1. The applicant demonstrates that a) the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generates such return or b) the applicant demonstrates that the property constitutes a hazard and is economically infeasible to rehabilitate on its present site. For this finding, a hazard constitutes a threat to health and safety that is not immediate;

2. The design quality of the replacement facility is equal/superior to that of the existing facility; and

3. It is economically, functionally architecturally, or structurally infeasible to incorporate the historic building into the proposed development.

C. Regular Design Review Approval for the demolition or removal of any building in an S-7 or S-20 zone or Area or Primary Importance (API) as determined by the Oakland Cultural Heritage Survey may be granted only if the proposal conforms the general design review criteria, all other applicable design review criteria, and the following criteria:

1. For the demolition of contributors to an S-7 or S-20 zone or API:

a. The applicant demonstrates that i) the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generates such return or ii) the applicant demonstrates that the property constitutes a hazard and is economically infeasible to rehabilitate on its present site. For this finding, a hazard constitutes a threat to health and safety that is not immediate; and

b. It is economically, functionally architecturally, or structurally infeasible to incorporate the historic building into the proposed development.

2. For the demolition of noncontributors to an S-7 or S-20 zone or API: The existing facility is either i) seriously deteriorated or a hazard, or ii) the existing design is undistinguished and does not warrant retention. For this finding, a hazard constitutes a threat to health and safety that is not immediate;

a. The design quality of the replacement facility is equal/superior to that of the existing facility; and

b. The design of the replacement project is compatible with the character of the preservation district, and there is no erosion of design quality at the replacement project site and in the surrounding area. This includes, but is not necessarily limited to, the following additional findings:

i. The replacement project is compatible with the district in terms of massing, siting, rhythm, composition, patterns of openings, quality of material, and intensity of detailing;

ii. New street frontage with forms that reflect the widths and rhythm of the facades on the street and entrances that reflect the patterns on the street;

iii. The replacement project provides high visual interest that either reflects the level and quality of visual interest of the district contributors or otherwise enhances the visual interest of the district;

iv. If the design contrasts the new to the historic character, the replacement project enriches the historic character of the district;

v. The replacement project is consistent with the visual cohesiveness of the district. For the purpose of this item, visual cohesiveness is the architectural character, the sum of all visual aspects, features, and materials that defines the district. A new structure contributes to the visual cohesiveness of a district if it relates to the design characteristics of a historic district while also conveying its own time. New construction may do so by drawing upon some basic building features, such as the way in which a building is located on its site, the manner in which it relates to the street, its basic mass, form, direction or orientation (horizontal vs. vertical), recesses and projections, quality of materials, patterns of openings and level of detailing. When a combination of some these design variables are arranged in a new building to relate to those seen traditionally in the area, but integral to the design and character of the proposed new construction, visual cohesiveness results; and

vi. The replacement project will not cause the district to lose its current historic status.

D. Regular Design Review Approval for the demolition or removal of any building rated "C" by the by the Oakland Cultural Heritage Survey or contributes to an Area of Secondary Importance (ASI) as determined by the Oakland Cultural Heritage Survey

may be granted only if the proposal conforms to the general design review criteria, all other applicable design review criteria, and to either: both criteria a. and b., both criteria b. and c., or only criterion d., below:

1. The design quality of the proposed replacement project is at least equal to that of the original structure and the proposed replacement project is compatible with the character of the neighborhood.

2. It is economically, architecturally, or structurally infeasible to incorporate the historic building into the proposed development.

3. The public benefits of the proposed replacement project outweigh the benefit of retaining the original structure.

4. The existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

D. Regular Design Review Approval for the demolition or removal of any building rated "C" by the by the Oakland Cultural Heritage Survey or contributes to an Area of Secondary Importance (ASI) as determined by the Oakland Cultural Heritage Survey may be granted only if the proposal conforms to the general design review criteria, all other applicable design review criteria, and to either: a., b., or c., below:

1. The design quality of the proposed replacement project is at least equal to that of the original structure and the proposed replacement project is compatible with the character of the neighborhood and it is economically, architecturally, or structurally infeasible to incorporate the historic building into the proposed development; or

2. The public benefits of the proposed replacement project outweigh the benefit of retaining the original structure and the proposed replacement project is compatible with the character of the neighborhood and it is economically, architecturally, or structurally infeasible to incorporate the historic building into the proposed development; or

3. The existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood. **[Note from staff: the deleted text is proposed to be replaced by the underlined. The new text is not a change in substance. It only reorganizes the findings to make the requirements simpler for the reader.]**

E. Except for postponement periods as otherwise specified for structures in the S-7 zone (Chapter 17.84), for structures in the S-20 zone (Chapter 17.101), and for Designated Landmarks (Section 17.136.070), the issuance of a demolition permit for any structure or portion thereof may be postponed by the Director of City Planning for a period not to exceed one hundred twenty (120) days from the date of application for such permit. The Director may do so upon determination that the structure or portion thereof is listed as a Local Register Property, or is on a study list of facilities under serious study by the Landmarks Preservation Advisory Board, the City Planning Commission, or the Director, for possible landmark designation under Section 17.136.070 or for other appropriate action to preserve it. During the period of postponement the Board, the Commission, or the Director shall explore means for preserving or restoring the structure or portion thereof. However, demolition may not be postponed under this section if, after notice to the Director of City Planning, the Building Services Department, the Housing Conservation Division, their respective appeals boards, or the City Council determines



that immediate demolition is necessary to protect the public health or safety. Any determination made by the Director of City Planning under this section may be appealed pursuant to the administrative appeal procedure in Chapter 17.132. (Prior planning code § 7005)

## **Chapter 17.84 - S-7 PRESERVATION COMBINING ZONE REGULATIONS**

### **15.36.085 – Design Review Procedure.**

Demolitions may be subject to the Design Review Procedure contained in Chapter 17.136 of the Oakland Planning Code if required by Title 17 of the Oakland Municipal Code. [Note from staff: the preceding shaded text is added to the code since the Planning Commission meeting to assure that all demolitions be referred to the Planning Commission, even those that do not require a building permit.]

### **15.36.080 - Exceptions.**

A demolition permit may be obtained without first obtaining a building permit where:

A. The owner intends to, and does, create a surface parking lot, for which no building permit is required, or a vacant lot. [Note from staff: the preceding shaded text was shown as deleted for the Planning Commission and is now proposed to be retained due to Building Department concerns regarding the community impact of nuisance properties]

B. The structure to be demolished is declared an unsafe structure or a public nuisance by the ~~Inspectional Services Department of the Office of Public Works or the Housing Conservation Division of the Housing Department of the Office of Community Development, their respective appeals boards~~ Building Official or the City Council. This exception shall not apply to any case where there is sufficient evidence that the owner or the owner's agent intentionally caused such structure to become an unsafe structure or public nuisance. [Note from staff: the two preceding shaded text areas were shown as deleted for the Planning Commission and is now proposed to be retained due to Building Department concerns regarding the community impact of nuisance properties]

~~B. The subject building is both: 1) not considered a Designated Historic Property or Potentially Designated Historic Property by the Oakland Cultural Heritage Survey; and 2) declared to be a public nuisance by the Building Official or City Council. This exception shall not apply to any case where there is sufficient evidence that the owner or the owner's agent intentionally caused such structure to become a public nuisance. [[Note from staff: the preceding shaded text was shown as added to the code for the Planning Commission and is now not proposed to be included in the code because protection from demolition is contained in the proposed Planning Code amendments]~~

C. The structure to be demolished is a:

1. Nonresidential, one-story building of Type V construction with an area not exceeding six hundred (600) square feet; or
2. Group M, Division 1, Occupancies of Type V construction; or

3. Small and unimportant structure.
  - C. The structure to be demolished is either:
    1. Part of a Redevelopment Agency-sponsored project; or
    2. Part of a project with a valid conditional use permit or planned unit development approval, where demolition has been expressly considered as part of the project approval process.

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2010 MAY 27 PM 5:54

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

*Mark P. Wall*

City Attorney

## OAKLAND CITY COUNCIL

ORDINANCE No. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE, RECOMMENDED BY THE PLANNING COMMISSION, TO (A) AMEND SECTION 17.136.075 OF THE OAKLAND PLANNING CODE AND MAKE OTHER RELATED AMENDMENTS TO THE PLANNING CODE AND BUILDING AND CONSTRUCTION CODE (CHAPTER 15.36 OF THE OAKLAND MUNICIPAL CODE) RELATING TO REQUIRED FINDINGS FOR THE DEMOLITION OF HISTORIC STRUCTURES; AND (B) ADOPT ADMINISTRATIVE SUBMITTAL REQUIREMENT FOR APPLICATIONS TO DEMOLISH HISTORIC STRUCTURES.**

**WHEREAS,** The Historic Preservation Element (HPE) of the General Plan was adopted in 1994 (and amended in 1998) and provides a strategy to preserve the City's historic resources; and

**WHEREAS,** the HPE contains policies regarding the demolition of historic resources; and

**WHEREAS,** the proposed code amendments will implement the policies of the HPE; and

**WHEREAS,** historic properties and neighborhoods are important economic and cultural resources for Oakland; and

**WHEREAS,** standardization of the application requirements and findings will make the review of applications for demolitions more efficient; and

**WHEREAS,** this ordinance complies with the California Environmental Quality Act (CEQA) for the reasons stated in the June 8, 2010 City Council Agenda Report and summarized below; and

**WHEREAS,** The Landmarks Preservation Advisory Board held six duly noticed public hearings to develop findings required to be met to demolish a historic resource and materials required to be submitted with an application to demolish a historic resource; and

**WHEREAS,** after a duly noticed public hearing on January 20, 2010, the Zoning Update Committee recommended referring the proposed findings and submittal requirements to the Planning Commission; and

**WHEREAS**, after a duly noticed public hearing on April 7, 2010, the Planning Commission voted 5-0 to recommend adoption of the proposed findings and submittal requirements to the City Council; and

**WHEREAS**, after a duly noticed public meeting on June 8, 2010, the Community and Economic Development Committee voted to recommend the proposal to the City Council; and

**WHEREAS**, the City Council held a duly noticed public hearing on June 15, 2010 to consider the proposal; now therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.** The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this Ordinance.

**Section 2.** The Oakland Planning Code is hereby amended to include required findings for the demolition of certain historic structures and other related changes and the Building and Construction Code of the Oakland Municipal Code, is also amended, as detailed in **Exhibit A**, attached hereto and hereby incorporated herein by reference.

**Section 3.** New submittal requirements, as detailed in **Exhibit B**, attached hereto and hereby incorporated herein by reference, are hereby adopted for a demolition of a Potentially Designated Historic Property and Designated Historic Property. The Planning Director is authorized to make modifications to these requirements that are consistent with the spirit and intent of the requirements.

**Section 4.** The proposal relies on the previously certified Final Environmental Impact Report (EIR) for the Land Use and Transportation Element of the General Plan (1998); the Final Environmental Report for the 1998 Amendment to the Historic Preservation Element of the General Plan; and the Housing Element Update Initial Study/Mitigated Negative Declaration (2004). As a separate and independent basis, the proposal is also exempt from CEQA pursuant to CEQA Guidelines Section 15183 "Projects Consistent with a Community Plan, General Plan or Zoning" and/or 15061(b)(3)(General Rule—no possibility of significant environmental impact. The Environmental Review Officer is directed to file a Notice of Determination/Exemption with the County Clerk.

**Section 6.** This Ordinance shall be effective 30 days from the date of final passage by the City Council, but shall not apply to (a) building/construction related permits already issued and not yet expired; (b) to zoning applications approved by the City and not yet expired; or to (c) zoning applications deemed complete by the City as of the date of final passage. However, zoning applications deemed complete by the City prior to the date of final passage of this Ordinance may be processed under provisions of these Planning Code amendments if the applicant chooses to do so.

**Section 7.** Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

**Section 8.** If any section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall no affect the validity of the remaining portions which shall remain in full effect.

**Section 9.** The City Council finds and determines that the proposals in Exhibits A and B will implement the policies presented in the General Plan.

**Section 10.** That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. the application, including all accompanying maps and papers;
2. all relevant plans and maps;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City;
4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application;
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations.

**Section 11.** That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City's decision is based are respectively: (a) the Community and Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

DATE OF ATTESTATION: \_\_\_\_\_

MPW

**EXHIBIT A**

**AMENDMENTS TO THE PLANNING AND MUNICIPAL CODES  
6-8-10 Community and Economic Development Committee Meeting**

Additions to the Current Codes are underlined; deletions are in ~~strikeout~~. Only those sections of a chapter affected by the changes are shown.

**OAKLAND PLANNING CODE**

**Chapter 17.136**

**DESIGN REVIEW PROCEDURE**

**17.136.025 Exemptions from Design Review.**

A. **Applicability.** A proposal will be exempt from design review if it meets each of the provisions set forth below. All such determinations are final and not appealable:

1. The proposal is limited to one or more of the types of work listed as exempt from design review in Section 17.136.025B;
2. The proposal does not require Regular Design Review, a conditional use permit or variance, pursuant to the zoning regulations of Title 17 of the Oakland Planning code;
3. The proposal is determined exempt from the California Environmental Quality Act (CEQA);
4. All exterior treatments visually match the existing or historical design of the building; and
5. The proposal will not have a significant effect on the property's character-defining elements. "Character-defining elements" are those features of design, materials, workmanship, setting, location, and association that identify a property as representative of its period and contribute to its visual distinction or historical significance.

B. **Definition.** The following types of work are exempt from design review, pursuant to all provisions in Section 17.136.025(A):

1. Additions or Alterations.
  - a. Projects not requiring a building permit, except if otherwise specified below;
  - b. *Repair or replacement of existing building components in a manner that visually matches the existing or historical design of the building;*
  - c. After notice to the Director of City Planning, demolition or removal of structures i) declared to be unsafe by the Building Official or the City Council; or ii) declared be a public nuisance by the Building Official or City Council that are not Designated Historic Properties or Potentially Designated Historic Properties. "Unsafe structures" means structures found by the Building Official or the City Council, to require immediate issuance of a demolition to protect the public health and safety  
~~Demolition or removal of structures on a site where neither the demolition or replacement project requires any discretionary zoning approvals, pursuant to Title 17 of the Oakland Planning Code; or demolition or removal of structures declared to be unsafe or a public nuisance by a City Department, their respective appeals boards or the City Council;~~

d. Secondary Units of five hundred (500) square feet or less on a lot with only one existing or proposed primary dwelling unit, pursuant to all regulations in Section 17.102.360;

e. Floor area additions within the existing building envelope not involving the creation of a living unit;

f. Cumulative additions over a three (3) year period not involving the creation of a dwelling unit that are outside the existing building envelope and equal no more than ten percent (10%) of the total floor area or footprint on site;

g. For Commercial, Civic, or Industrial Facilities and the Non-residential Portions of Mixed-Use Development Projects, any addition or alteration on a roof that does not project above the existing parapet walls; and any addition or alteration not otherwise exempt which is used as a loading dock, recycling area, utility area, or similar open structure addition that is no higher than six (6) feet above finished grade, less than five hundred (500) square feet in floor area or footprint, and is visually screened from neighboring properties; such exemptions shall only be permitted where the proposal conforms with all Buffering regulations in Chapter 17.110 and all Performance Standards in Chapter 17.120;

h. Areas of porch, deck or balcony with a surface that is less than thirty (30) inches above finished grade.

## 2. Signs.

a. A change of sign face copy or new sign face within an existing Advertisement Sign or a change of sign face copy within Business or Civic Sign structures so long as the structure and framework of the sign remain unchanged and the new sign face duplicates the colors of the original or, in the case of an internally illuminated sign, the letter copy is light in color and the background is dark;

b. Installation, alteration or removal of Realty Signs, Development Signs, holiday decorations, displays behind a display window and, except as otherwise provided in Section 17.114.120(C), for mere changes of copy, including cutouts, on Signs which customarily involve periodic changes of copy;

c. New or modified Signs conforming to an approved Master Sign Program, pursuant to Section 17.104.070.

## 3. Other Projects.

a. Sidewalk Cafes that have a maximum of five (5) tables and no more than fifteen (15) chairs and/or do not have any permanent structures in the public right of way, pursuant to Section 17.102.335.

b. Solar Power Production Equipment. The installation of Solar Power Production Equipment is exempt from design review within any zoning district.

### **17.136.030 Small Project Design Review.**

A. **Applicability.** "Small Project Design Review" shall apply to proposals that do not qualify for an exemption from design review as set forth in Section 17.136.025, or require Regular Design Review as either determined by the Director of City Planning or as set forth in Section 17.136.040. "Small Project Design Review" proposals shall meet all of the following provisions:

1. The proposal is limited to one or more of the types of work listed as a "Small Project" in Section 17.136.030(B);

2. The proposal does not require a conditional use permit or variance, pursuant to the zoning regulations of Title 17 of the Oakland Planning code;

3. The proposal is determined exempt from the California Environmental Quality Act (CEQA). and

4. The proposal will not have a significant effect on the property's character-defining elements. "Character-defining elements" are those features of design, materials, workmanship, setting, location, and association that identify a property as representative of its period and contribute to its visual distinction or historical significance.

**B. Definition of "Small Project".** Small Projects are limited to one or more of the following types of work:

1. Additions or Alterations.

a. Repair or replacement of existing building components in a manner that is compatible with, but not necessarily identical to, the property's existing or historical design;

b. Except as otherwise specified in Sections 17.136.025, and 17.136.040, demolition or removal of structures not involving a ~~Local Register Property~~ Designated Historic Property or Potential Designated Historic Property, on a site where the zoning regulations require design review to alter the exterior appearance of the applicable building facility, regardless of whether the owner intends to create a surface parking lot or a vacant lot pursuant to Section 15.36.080;

c. Cumulative additions over a three (3) year period not involving the creation of a dwelling unit that are outside the existing building envelope and equal more than ten percent (10%) of the total floor area or footprint on site, but do not exceed one thousand (1000) square feet or one hundred percent (100%) of the total floor area or footprint on site, whichever is less;

d. Secondary Units of more than five hundred (500) square feet in floor area, but not exceeding nine hundred (900) square feet or fifty percent (50%) of the floor area of the primary dwelling unit, whichever is less, pursuant to all regulations in Section 17.102.360;

e. For commercial, civic, or industrial facilities and the non-residential portions of mixed-use development projects, changes to storefronts or street-fronting facades, such as: (i) replacement or construction of doors, windows; bulkheads and nonstructural wall infill, or (ii) restoration of documented historic fabric.

2. Fences, barriers, and similar freestanding walls.

a. For Residential Zones and Residential Facilities, any fence, barrier, or similar freestanding wall exceeding forty-two (42) inches in height in the front yard and street-side yards, but not exceeding six (6) feet in height, pursuant to Section 17.108.140;

b. For Commercial Zones, Industrial Zones, and S-1, S-2, S-3, and S-15 Zones, any fence, barrier, or similar freestanding wall exceeding eight (8) feet in height within ten (10) feet of any abutting property in a residential zone, but not exceeding ten (10) feet in height, pursuant to Section 17.108.140.

3. Signs.

a. New or modified Signs, excluding Signs requiring Regular Design Review, Conditional Use Permit or Variance, pursuant to the zoning regulations of Title 17 of the Oakland Planning Code; and Signs conforming to an approved Master Sign Program, pursuant to Section 17.104.070;



- b. New or modified awnings or other similar facilities;
- c. Color changes to Signs, awnings or other similar facilities;
- d. Installation of flags or banners having any permanent structure within the public right of way, pursuant to the same regulations for sidewalk cafes in Section 17.102.335B;

**C. Procedures for Consideration -- Small Project Design Review.** The Director of City Planning may, at his or her discretion, consider an application for small project design review according to the following Three-Track process, or if additional consideration is required, determine that the proposal shall be reviewed according to the regular design review procedure in Section 17.136.040:

1. **Track One Procedure - Small Project Design Review Proposals Not Involving a Local Register Property; or an Upper-Story Addition requiring the Track Three review procedure pursuant to Subsection (C)(3):**

a. The Director of City Planning, or his or her designee, shall determine whether the proposal meets the requirements for small project design review as set forth in this section.

b. Decision by the Director of City Planning. The Director, or his or her designee, may approve or disapprove a Track One proposal determined eligible for small project design review and may require such changes therein or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to the applicable small project design review criteria in Section 17.136.035.

c. The decision by the Director, or his or her designee, shall be final immediately and not appealable.

2. **Track Two Procedure - Small Project Design Review Proposals Involving a Local Register Property:**

a. The Director of City Planning, in concert with the City of Oakland's Historic Preservation staff, shall determine whether a proposed addition or alteration involving a Local Register Property will have a significant effect on the property's character-defining elements. "Character-defining elements" are those features of design, materials, workmanship, setting, location, and association that identify a property as representative of its period and contribute to its visual distinction or historical significance. Any proposed addition or alteration determined to have a significant effect on a Local Register Property's character-defining elements shall be reviewed instead according to the regular design review procedure in Section 17.136.040. Any proposed addition involving an upper-story addition of more than two hundred fifty (250) square feet in floor area or footprint to a One- or Two-Family Residential Facility or to any Building Facility in the HBX-1, HBX-2, and HBX-3 zones that is determined eligible for small project design review and to not have a significant effect on the property's character-defining elements, shall be reviewed according to the Track Three procedure in Section 17.136.030(C)(3).

b. Decision by the Director of City Planning. The Director, or his or her designee, may approve or disapprove a Track Two proposal determined eligible for small project design review and may require such changes therein or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to the applicable small project design review criteria in Section 17.136.035.

c. The decision by the Director, or his or her designee, shall be final immediately and not appealable.

3. **Track Three Procedure** - Small Project Design Review Proposals Involving an Upper-Story Addition of More than Two Hundred Fifty (250) Square Feet in Floor Area or Footprint to a One- or Two-Family Residential Facility or an over eight (8) foot increase in the height of any Building Facility in the HBX-1, HBX-2, and HBX-3 zones, not including allowed projections above the height limits listed in 17.108.030:

a. The Director of City Planning, or his or her designee, shall determine whether the proposal meets the requirements for small project design review as set forth in this section.

b. At the time of small project design review application, the owner of the affected property, or his or her authorized agent, shall obtain from the City Planning Department, a list of names and mailing addresses of all persons shown on the last available equalized assessment roll as owning the City of Oakland lot or lots adjacent to the project site and directly across the street abutting the project site; a notice poster to install on the project site; and a Notice to Neighboring Property Owners form which includes the project description and contact information.

c. Prior to the subject application being deemed complete, the applicant shall install the notice poster provided at the time of application at a location on the project site that is clearly visible from the street, alley, or private way providing access to the subject lot; and provide by certified mail or delivery to all persons shown on the last available equalized assessment roll as owning the City of Oakland lot or lots adjacent to the project site and directly across the street abutting the project site, a copy of the completed project notice form, as well as a set of reduced plans (consisting of at least a site plan and building elevations that show all proposed exterior work).

d. All required posting of the site and notification of adjacent and across the street property owners shall be completed by the project applicant not less than ten (10) days prior to the earliest date for final decision on the application. During the required noticing period, the Planning Department shall receive and consider comments from any interested party, as well as accept requests for a meeting with City Planning staff.

e. Decision by the Director of City Planning. Prior to final decision, City Planning staff shall hold a single meeting with interested parties whenever such a meeting request is received in writing by the Planning Department during the small project design review comment period. Following any such meeting with interested parties, the Director, or his or her designee, may approve or disapprove a Track Three proposal determined eligible for small project design review and may require such changes therein or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to the applicable small project design review criteria in Section 17.136.035.

f. The decision by the Director, or his or her designee, shall be final immediately and not appealable.

#### **17.136.040 Regular Design Review.**

A. Applicability. "Regular design review" shall apply to proposals that require design review pursuant to the zoning regulations of Title 17 of the Oakland Planning Code, but do not qualify for a design review exemption as set forth in Section 17.136.025 or small project design review as set forth in Section 17.136.030. Projects requiring regular design review include, but are not limited to, the following types of work:

1. Any proposal involving one or more of the facility, activity, building, structure, or development types that require design review pursuant to the zoning regulations of Title 17 of the Oakland Planning Code, but does not qualify for a design review exemption as set forth in Section 17.136.025, or small project design review as set forth in Section 17.136.030;

2. Any construction, addition or alteration of structures requiring a conditional use permit or variance, pursuant to the zoning regulations of Title 17 of the Oakland Planning Code;

3. New construction of one or two dwelling units, other than a secondary unit;

4. New construction of three or more dwelling units, or adding units to a property for a total of three or more dwelling units on site;

5. New construction of principal facilities in the HBX zone;

6. The creation of any new HBX 'work/live' unit or HBX 'live/work' unit (see Sections 17.65.160 and 17.65.170). This requirement shall apply for both: a) conversions of existing facilities to contain either of these unit types, and b) the construction of new buildings that contain either of these unit types;

7. Cumulative additions over a three (3) year period not involving the creation of a dwelling unit that are outside the existing building envelope and exceed one thousand (1000) square feet or one hundred percent (100%) of the total floor area or footprint on site, whichever is less;

8. Exceptions to the parking accommodation requirements for one- and two-family Residential Facilities in Section 17.102.390;

9. New or modified Signs not qualifying for a design review exemption as set forth in Section 17.136.025 or small project design review as set forth in Section 17.136.030; ;

10. Proposals for new or modified Telecommunications Facilities, pursuant to Chapter 17.128, but excluding those alterations to existing Telecommunications Facilities listed as a Small Project in Section 17.136.030(B).

11. Demolition or removal of any structure, or portion thereof, where the replacement project requires Regular Design Review, Conditional Use Permit or Variance;

12. Demolition or removal of any ~~Local Register Property~~, Designated Historic Property (DHP), or Potential Designated Historic Property (PDHP) pursuant to Section 17.136.075.; subject to the following additional provisions:

~~a. For the Central Business District (CBD), see Section 17.136.055;~~

~~b. For landmarks outside of the CBD, see Sections 17.136.060 and 17.136.070;~~

~~c. For the S-7 zone, see Sections 17.84.040, 17.84.050, 17.84.060, and 17.136.060;~~

~~d. For "contributors" or "potential contributors" to the S-20 Historic Preservation District, as determined by the City's Cultural Heritage Survey, see Sections 17.100.050, 17.100.060, 17.100.070, and 17.136.060.~~

**B. Pre-Application Review --Regular Design Review.** Prior to application for regular design review, any applicant or his or her representative seeking early project feedback may submit for a pre-application review of the proposal by a representative of the City Planning Department. For projects of a larger scale or involving a significant policy issue, the Director of City Planning may, at his or her discretion, request that an applicant or his or her representative submit for a pre-application review of the proposal. During a pre-application review, the city representative will provide information about applicable design review criteria and pertinent procedures, including the opportunity for

advice from outside design professionals. Where appropriate the city representative may also informally discuss possible design solutions, point out potential neighborhood concerns, and mention local organizations which the applicant is encouraged to contact before finalizing the proposal.

**C. Procedure for Consideration of Regular Design Review Proposals which Involve or Result in a One- or Two-Unit Residential Facility--Decisions Not Ultimately Appealable to City Council.**

1. Decision by the Director of City Planning or the City Planning Commission. An application for regular design review shall be considered by the Director of City Planning. The Director may, at his or her discretion, refer the application to the City Planning Commission for decision rather than acting on it himself or herself. However, if the project requires an Environmental Impact Report, or results in twenty-five thousand (25,000) square feet or more of new floor area and is located in any zone other than the R-80, R-90, C-51, C-55, CBD-R, CBD-P (except when combined with the S-7 zone), CBD-C, CBD-X, S-2, or S-15 zones, the Director of City Planning shall refer the application to the City Planning Commission for an initial decision rather than acting on it himself or herself.

2. Notification Procedures. Notice shall be given by posting an enlarged notice at a location on the project site that is clearly visible from the street, alley, or private way providing access to the subject lot. Notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the project site; provided, however, that failure to send notice to any such owner where his or her address is not shown in said records shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) days prior to the date set, as the case may be, for decision on the application by the Director, or prior to the date set for a hearing before the Commission, if such is to be held. During the required noticing period, the planning department shall receive and consider comments from any interested party.

3. The Director or the applicant may seek the advice of outside design professionals. The Director shall determine whether the proposal conforms to the applicable design review criteria, and may approve or disapprove the proposal or require such changes therein or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to said criteria.

4. Finality of Decision. A determination by the Director shall become final ten calendar days after the date of initial decision unless appealed to the City Planning Commission or the Commission's Residential Appeals Committee in accordance with Section 17.136.080. In the event that the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. In those cases which are referred to the Commission by the Director, the initial decision of the Commission shall become final ten days after the date of decision.

**D. Procedure for Consideration of Regular Design Review Proposals which do not Involve or Result in a One- or Two-Unit Residential Facility--Decisions Ultimately Appealable to City Council.**

1. Decision by the Director of City Planning or the City Planning Commission. An application for regular design review shall be considered by the Director of City

Planning. The Director may, at his or her discretion, refer the application to the City Planning Commission for an initial decision rather than acting on it himself or herself. In these instances, any other minor permits associated with the application shall be considered concurrently by the Planning Commission, pursuant to Section 17.130.080. However, if the project requires an Environmental Impact Report, or results in twenty-five thousand (25,000) square feet of new floor area and is located in any zone other than the R-80, R-90, C-51, C-55, CBD-R, CBD-P (when not combined with the S-7 zone), CBD-C, CBD-X, S-2, or S-15 zones, the Director of City Planning shall refer the application to the City Planning Commission for an initial decision rather than acting on it himself or herself.

2. Notification Procedures. Notice shall be given by posting an enlarged notice at a location on the project site that is clearly visible from the street, alley, or private way providing access to the subject lot. Notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the project site; provided, however, that failure to send notice to any such owner where his or her address is not shown in said records shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) days prior to the date set, as the case may be, for decision on the application by the Director, or prior to the date set for a hearing before the Commission, if such is to be held. During the required noticing period, the planning department shall receive and consider comments from any interested party.

3. The Director or the Commission may seek the advice of outside design professionals. The Director or the Commission, as the case may be, shall determine whether the proposal conforms to the applicable design review criteria, and may approve or disapprove the proposal or require such changes therein or impose such reasonable conditions of approval as are in his or her or its judgment necessary to ensure conformity to said criteria.

4. Finality of Decision. A determination by the Director shall become final ten days after the date of initial decision unless appealed to the City Planning Commission in accordance with Section 17.136.080. In those cases which are referred to the Commission by the Director, the initial decision of the Commission shall become final ten days after the date of decision unless appealed to the City Council in accordance with Section 17.136.090. In the event that the last day of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal.

E. **Alternative Notification Procedures.** If the conditions as set forth in Section 17.130.020 apply, alternative notification procedures discussed therein may replace or supplement the procedures set forth in subsections C and D of this section. (Ord. 12376 § 3 (part), 2001; Ord. 12237 § 4 (part), 2000; Ord. 11816 § 2 (part), 1995; prior planning code § 9305)

#### **17.136.070 Special regulations for designated landmarks.**

A. **Designation.** In any zone, the City Council may designate as a landmark any facility, portion thereof, or group of facilities which has special character, interest, or value of any of the types referred to in 17.07.030P. The designating ordinance for each landmark shall include a description of the characteristics of the landmark which justify

its designation and a clear description of the particular features that should be preserved. Each ordinance shall also include the location and boundaries of a landmark site, which shall be the lot, or other appropriate immediate setting, containing the landmark. Designation of each landmark and landmark site shall be pursuant to the rezoning and law change procedure in Chapter 17.144.

**B. Design Review for Construction or Alteration.** Except for projects that are exempt from design review as set forth in Section 17.136.025, no Building Facility, , Telecommunications Facility, Sign, or other associated structure on any designated landmark site shall be constructed or established, or altered in such a manner as to affect exterior appearance unless plans for the proposal have been approved pursuant to the design review procedure in this chapter and the applicable provisions of this section. Furthermore, for a publicly owned landmark, the designating ordinance may require such approval of proposed changes to major interior architectural features.

a. The Director of City Planning, or his or her designee, shall determine whether the proposal meets the requirements for small project design review as set forth in this section.

b. Decision by the Director of City Planning. The Director, or his or her designee, may approve or disapprove a Track One proposal determined eligible for small project design review and may require such changes therein or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to the applicable small project design review criteria in Section 17.136.035.

c. The decision by the Director, or his or her designee, shall be final immediately and not appealable.

~~C. Design Review for Demolition or Removal. Within any designated landmark site, no Building Facility, portion thereof, or other landmark shall be demolished or removed, unless plans for the proposal have been approved pursuant to the regular design review procedure in Section 17.136.040 and the applicable provisions of this section. However, in any case, after notice to the Director of City Planning, demolition or removal shall be permitted without such approval upon a determination by the Building Services Department, the Housing Conservation Division, their respective appeals boards, or the City Council that immediate demolition is necessary to protect the public health or safety, or after expiration of the periods of postponement referred to in subsection E of this section.~~

**DC. Regular Design Review Criteria.** Proposals involving designated landmarks that require regular design review approval may be granted only upon determination that the proposal conforms to the regular design review criteria set forth in Section 17.136.050 and to the additional criteria set forth in subdivisions 1, 2 and 3, or to one or both of the criteria set forth in subdivision 4:

1. That the proposal will not adversely affect the exterior features of the designated landmark nor, when subject to control as specified in the designating ordinance for a publicly owned landmark, its major interior architectural features;

2. That the proposal will not adversely affect the special character, interest, or value of the landmark and its site, as viewed both in themselves and in their setting;

3. That the proposal conforms with the Design Guidelines for Landmarks and Preservation Districts as adopted by the City Planning Commission and, as applicable for

certain federally related projects, with the Secretary of the Interior's Standards for the Treatment of Historic Properties;

4. If the proposal does not conform to the criteria set forth in subdivisions 1, 2 and 3:

i. That the designated landmark or portion thereof is in such condition that it is not architecturally feasible to preserve or restore it, or

ii. That, considering the economic feasibility of alternatives to the proposal, and balancing the interest of the public in protecting the designated landmark or portion thereof, and the interest of the owner of the landmark site in the utilization thereof, approval is required by considerations of equity.

~~—E. **Postponement of Demolition or Removal.** If an application for approval of demolition or removal of a facility, pursuant to subsections C and D of this section, is denied, the issuance of a permit for demolition or removal shall be deferred for a period of one hundred twenty (120) days, said period to commence upon the initial denial by the reviewing officer or body. During the period of postponement, the Director of City Planning or the City Planning Commission, with the advice and assistance of the Landmarks Preservation Advisory Board, shall explore all means by which, with the agreement of the owner or through eminent domain, the affected facility may be preserved or restored. The reviewing officer or body from whose decision the denial of the application became final may, after holding a public hearing, extend said period for not more than additional one hundred twenty (120) days; provided, however, that the decision to so extend said period shall be made not earlier than ninety (90) days, nor later than thirty (30) days prior to the expiration of the initial one hundred twenty (120) day period. Notice of the hearing shall be given by posting an enlarged notice on the premises of the subject property involved. Notice of the hearing shall also be given by mail or delivery to the applicant, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing. Such extension shall be made only upon evidence that substantial progress has been made toward securing the preservation or restoration of the facility. In the event that the applicant shall have failed to exhaust all appeals under Sections 17.136.080 and 17.136.090 from the denial of the application, the decision to extend said period shall be appealable under the provisions of Sections 17.136.080 and 17.136.090 to those bodies to whom appeal had not been taken from the initial denial of the application.~~

**FD. Duty to Keep in Good Repair.** Except as otherwise authorized under subsections B and C of this section, the owner, lessee, or other person in actual charge of each designated landmark shall keep in good repair all of the exterior portions thereof, all of the interior portions thereof when subject to control as specified in the designating ordinance, and all interior portions thereof the maintenance of which is necessary to prevent deterioration and decay of any exterior portion. (Ord. 12513 Attach. A (part), 2003; Ord. 12237 § 4 (part), 2000; prior planning code § 7002)

**17.136.075 Postponement of demolition Regulations for Demolition or Removal of Designated Historic Properties and Potentially Designated Historic Properties.**

A. With the exception of buildings declared be a public nuisance by the Building Official or City Council, Regular Design Review of the demolition or removal of a Designated Historic Property (DHP) or Potentially Designated Historic Property (PDHP)

shall be reviewed in conjunction with the Regular Design Review of a replacement project at the subject site; however, demolition of nuisance buildings must still undergo Design Review for demolition as required by this chapter.

B. Regular Design Review approval for the demolition or removal of any Landmark, Heritage Property, building rated "A" or "B" by the Oakland Cultural Heritage Survey, and building on the City's Preservation Study List that are not in an S-7 or S-20 zone or Area or Primary Importance (API) as determined by the Oakland Cultural Heritage Survey may be granted only if the proposal conforms to the general design review criteria, all other applicable design review criteria, and the following additional criteria:

1. The applicant demonstrates that a) the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generates such return or b) the applicant demonstrates that the property constitutes a hazard and is economically infeasible to rehabilitate on its present site. For this finding, a hazard constitutes a threat to health and safety that is not immediate;

2. The design quality of the replacement facility is equal/superior to that of the existing facility; and

3. It is economically, functionally architecturally, or structurally infeasible to incorporate the historic building into the proposed development.

C. Regular Design Review Approval for the demolition or removal of any building in an S-7 or S-20 zone or Area or Primary Importance (API) as determined by the Oakland Cultural Heritage Survey may be granted only if the proposal conforms the general design review criteria, all other applicable design review criteria, and the following criteria:

1. For the demolition of contributors to an S-7 or S-20 zone or API:

a. The applicant demonstrates that i) the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generates such return or ii) the applicant demonstrates that the property constitutes a hazard and is economically infeasible to rehabilitate on its present site. For this finding, a hazard constitutes a threat to health and safety that is not immediate; and

b. It is economically, functionally architecturally, or structurally infeasible to incorporate the historic building into the proposed development.

2. For the demolition of noncontributors to an S-7 or S-20 zone or API: The existing facility is either i) seriously deteriorated or a hazard, or ii) the existing design is undistinguished and does not warrant retention. For this finding, a hazard constitutes a threat to health and safety that is not immediate;

3. For the demolition of any building in the S-7 zone or S-20 zone or API:

a. The design quality of the replacement facility is equal/superior to that of the existing facility; and

b. The design of the replacement project is compatible with the character of the preservation district, and there is no erosion of design quality at the replacement project site and in the surrounding area. This includes, but is not necessarily limited to, the following additional findings:

i. The replacement project is compatible with the district in terms of massing, siting, rhythm, composition, patterns of openings, quality of material, and intensity of detailing;



ii. New street frontage with forms that reflect the widths and rhythm of the facades on the street and entrances that reflect the patterns on the street;

iii. The replacement project provides high visual interest that either reflects the level and quality of visual interest of the district contributors or otherwise enhances the visual interest of the district;

iv. If the design contrasts the new to the historic character, the replacement project enriches the historic character of the district;

v. The replacement project is consistent with the visual cohesiveness of the district. For the purpose of this item, visual cohesiveness is the architectural character, the sum of all visual aspects, features, and materials that defines the district. A new structure contributes to the visual cohesiveness of a district if it relates to the design characteristics of a historic district while also conveying its own time. New construction may do so by drawing upon some basic building features, such as the way in which a building is located on its site, the manner in which it relates to the street, its basic mass, form, direction or orientation (horizontal vs. vertical), recesses and projections, quality of materials, patterns of openings and level of detailing. When a combination of some these design variables are arranged in a new building to relate to those seen traditionally in the area, but integral to the design and character of the proposed new construction, visual cohesiveness results; and

vi. The replacement project will not cause the district to lose its current historic status.

D. Regular Design Review Approval for the demolition or removal of any building rated "C" by the by the Oakland Cultural Heritage Survey or contributes to an Area of Secondary Importance (ASI) as determined by the Oakland Cultural Heritage Survey may be granted only if the proposal conforms to the general design review criteria, all other applicable design review criteria, and to either: a., b., or c., below:

1. The design quality of the proposed replacement project is at least equal to that of the original structure and the proposed replacement project is compatible with the character of the neighborhood and it is economically, architecturally, or structurally infeasible to incorporate the historic building into the proposed development; or

2. The public benefits of the proposed replacement project outweigh the benefit of retaining the original structure and the proposed replacement project is compatible with the character of the neighborhood and it is economically, architecturally, or structurally infeasible to incorporate the historic building into the proposed development; or

3. The existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

E. Except for postponement periods as otherwise specified for structures in the S/7 zone (Chapter 17.84), for structures in the S-20 zone (Chapter 17.101), and for Designated Landmarks (Section 17.136.070), the issuance of a demolition permit for any structure or portion thereof may be postponed by the Director of City Planning for a period not to exceed one hundred twenty (120) days from the date of application for such permit. The Director may do so upon determination that the structure or portion thereof is listed as a Local Register Property, or is on a study list of facilities under serious study by the Landmarks Preservation Advisory Board, the City Planning Commission, or the Director, for possible landmark designation under Section 17.136.070 or for other appropriate action to preserve it. During the period of postponement the Board, the Commission, or the Director shall explore means for preserving or restoring the structure

or portion thereof. However, demolition may not be postponed under this section if, after notice to the Director of City Planning, the Building Services Department, the Housing Conservation Division, their respective appeals boards, or the City Council determines that immediate demolition is necessary to protect the public health or safety. Any determination made by the Director of City Planning under this section may be appealed pursuant to the administrative appeal procedure in Chapter 17.132. (Prior planning code § 7005)

## **Chapter 17.84 - S-7 PRESERVATION COMBINING ZONE REGULATIONS**

17.84.010 - Title, purpose, and applicability.

17.84.020 - Zones with which the S-7 zone may be combined.

17.84.030 - Required design review process.

17.84.040 - Design review criteria for construction or alteration.

17.84.050 - Design review criteria for demolition or removal.

~~17.84.060 - Postponement of demolition or removal.~~

17.84.070 - Duty to keep in good repair.

### **17.84.030 - Required design review process.**

A. Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Building Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the additional provisions in Sections 17.84.040, 17.84.050, and 17.84.060; the Telecommunications regulations in Chapter 17.128; or the Sign regulations in Chapter 17.104.

B. Section 17.136.040 contains design review criteria for the demolition or removal of Designated Historic Properties and Potentially Designated Historic Properties.

~~However, as an exception to subsection A above and after notice to the Director of City Planning, demolition or removal of a structure or portion thereof shall be permitted without such approval upon a determination by the Building Services Department, the Housing Conservation Division, their respective appeals boards, or the City Council that immediate demolition is necessary to protect the public health or safety, or after expiration of the periods of postponement referred to in Section 17.84.060. Whenever it is proposed that demolition or removal be followed within a reasonable period of time by new construction, review of the new construction shall take place in conjunction with review of the demolition or removal.~~

### **~~17.84.050 - Design review criteria for demolition or removal.~~**

~~In the S-7 zone, no demolition or removal of a structure or portion thereof may be granted unless the proposal conforms to the regular design review criteria set forth in the design review procedure in Chapter 17.136 and to the following additional design review~~

criteria set forth in subsections A and B of this section, or to one or both of the criteria set forth in subsection C of this section:

A. That the affected structure or portion thereof is not considered irreplaceable in terms of its visual, cultural, or educational value to the area or community;

B. That the proposed demolition or removal will not substantially impair the visual, architectural, or historic value of the total setting or character of the surrounding area or of neighboring facilities;

C. If the proposal does not conform to the criteria set forth in subsections A and B of this section:

1. That the structure or portion thereof is in such condition that it is not architecturally feasible to preserve or restore it, or

2. That, considering the economic feasibility of preserving or restoring the structure or portion thereof, and balancing the interest of the public in such preservation or restoration and the interest of the owner of the property in the utilization thereof, approval is required by considerations of equity.

#### **17.84.060—Postponement of demolition or removal.**

If an application for approval of demolition or removal of a structure or portion thereof, pursuant to Sections 17.84.030 and 17.84.050, is denied, the issuance of a permit for demolition or removal shall be deferred for a period of one hundred twenty (120) days, said period to commence upon the initial denial by the reviewing officer or body. However, if demolition or removal of the structure or portion thereof has also been postponed pursuant to Section 17.136.075, the initial period of postponement under this section shall be reduced by the length of the period imposed pursuant to Section 17.136.075. During the period of postponement, the Director of City Planning or the City Planning Commission, with the advice and assistance of the Landmarks Preservation Advisory Board, shall explore all means by which, with the agreement of the owner or through eminent domain, the affected structure or portion thereof may be preserved or restored. The reviewing officer or body from whose decision the denial of the application became final may, after holding a public hearing, extend said period for not more than one hundred twenty (120) additional days; provided, however, that the decision to so extend said period shall be made not earlier than ninety (90) days nor later than thirty (30) days prior to the expiration of the initial one hundred twenty (120) day period. Notice of the hearing shall be given by posting an enlarged notice on premises of the subject property involved. Notice of the hearing shall also be given by mail or delivery to the applicant, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing. Such extension shall be made only upon evidence that substantial progress has been made toward securing the preservation or restoration of the structure or portion thereof. In the event that the applicant shall have failed to exhaust all appeals under Sections 17.136.080 and 17.136.090 from the denial of the application, the decision to extend said period shall be appealable under the provisions of Sections 17.136.080 and 17.136.090 to those bodies to whom appeal had not been taken from the initial denial of the application.

**Chapter 17.100B - S-20 HISTORIC PRESERVATION DISTRICT COMBINING ZONE REGULATIONS**

17.100B.010 - Title, purpose, and applicability.

17.100B.020 - Zones with which the S-20 zone may be combined.

17.100B.030 - Required design review process.

17.100B.050 - Design review criteria.

~~17.100B.060 - Criteria for demolition or removal.~~

~~17.100B.070 - Postponement of demolition or removal.~~

17.100B.080 - Duty to keep in good repair.

**17.100B.030 - Required design review process.**

A. Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property, Building Facility, (see code section 17.09.040 for definition), Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the additional provisions in Sections 17.100B.050, 17.100B.060, and 17.100B.070, the Telecommunications regulations in Chapter 17.128; or the Sign regulations in Chapter 17.104.~~

B. Section 17.136.075 contains design review criteria for the demolition or removal of Designated Historic Properties and Potentially Designated Historic Properties.

~~Except as specified in subsection C, no demolition or removal of any structure or portion thereof that is a "contributor" or "potential contributor" to the S-20 Historic Preservation District, as determined by the City's Historical and Architectural Inventory (Cultural Heritage Survey) shall be permitted unless plans for the proposal have been approved pursuant to the regular design review procedure in Chapter 17.136 and the additional provisions in Sections 17.100B.050, 17.100B.060, and 17.100B.070.~~

~~C. Exceptions - Demolition. After notice to the Director City Planning, demolition or removal of a structure or portion thereof shall be permitted without design review approval upon a determination by the Building Official or the City Council that immediate demolition is necessary to protect the public health or safety, or after expiration of the periods of postponement referred to in Section 17.100B.070.~~

~~D. Landmarks Referral. If an application is for regular design review in the S-20 zone, and the Director of City Planning determines that a proposed addition or alteration will have a significant effect on the property's character-defining elements that are visible from a street or other public area, the Director may, at his or her discretion, refer the project to the Landmarks Preservation Advisory Board for its recommendations.~~

~~"Character-defining elements" are those features of design, materials, workmanship, setting, location, and association that identify a property as representative of its period and contribute to its visual distinction or historical significance. An addition or alteration is normally considered "visible from a street or other public area" if it affects a street face or public face of the facility or is otherwise located within the "critical design area,"~~

defined as the area within forty (40) feet of any street line, public alley, public path, park or other public area. (Ord. No. 12899 § 4, Exh. A, 2008; Ord. 12872 § 4, Exh. A (part), 2008; Ord. 12776 § 3, Exh. A (part), 2006; Ord. 12513 Attach. A (part), 2003)

~~17.100B.070—Postponement of demolition or removal.~~

~~A. Initial One Hundred Twenty (120) Day Postponement. If an application for approval of demolition or removal of a structure or portion thereof, pursuant to Sections 17.100B.030 and 17.100B.060, is denied, the issuance of a permit for demolition or removal shall be deferred for a period of one hundred twenty (120) days, beginning upon the initial denial by the reviewing officer or body. During the period of postponement, the Director of City Planning or the City Planning Commission, with the advice and assistance of the Landmarks Preservation Advisory Board, shall explore all means by which the affected structure or portion thereof may be preserved or restored, with the agreement of the owner or through eminent domain.~~

~~B. Possible One Hundred Twenty (120) Day Extension. The reviewing officer or body from whose decision the denial of the application became final may, after holding a public hearing, extend the initial postponement for not more than one hundred twenty (120) additional days. Notice of the hearing shall be given by the posting an enlarged notice on the premises of the subject property involved and by mail or delivery to the applicant, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing. The decision to extend the postponement can only be made between the 30th and 90th days, inclusive, of the initial one hundred twenty (120) day period. Extension shall be made only upon evidence that substantial progress has been made toward securing the preservation or restoration of the structure or portion thereof. If the applicant has not exhausted all appeals under Sections 17.136.080 and 17.136.090 from the denial of the application, the decision to extend the postponement is appealable under the provisions of Sections 17.136.080 and 17.136.090 to those bodies to whom appeal had not been taken from the initial denial of the application.~~

## **R-1 ONE ACRE ESTATE RESIDENTIAL ZONE REGULATIONS**

### **17.11A.030 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.~~ (Ord. 12272 § 3 (part), 2000)

## **R-10 ESTATE RESIDENTIAL ZONE REGULATIONS**

### **17.12.030 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic~~

Property, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.  
(Ord. 11904 § 5.60 (part), 1996: prior planning code § 3252)

## **R-20 LOW DENSITY RESIDENTIAL ZONE REGULATIONS**

### **17.14.030 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.  
(Ord. 11904 § 5.60 (part), 1996: prior planning code § 3352)

## **R-30 ONE-FAMILY RESIDENTIAL ZONE REGULATIONS**

### **17.16.030 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.  
(Ord. 11904 § 5.60 (part), 1996: prior planning code § 3452)

## **R-35 SPECIAL ONE-FAMILY RESIDENTIAL ZONE REGULATIONS**

### **17.18.030 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.  
(Ord. 11904 § 5.60 (part), 1996: prior planning code § 3552)

## **R-36 SMALL LOT RESIDENTIAL ZONE REGULATIONS**

### **17.20.020 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Building Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in

Chapter 17.136, and when applicable, the additional provisions in Section 17.20.070, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104. (Ord. 12501 § 25, 2003; Ord. 11904 § 5.61, 1996: prior planning code § 3576)

## **R-40 GARDEN APARTMENT RESIDENTIAL ZONE REGULATIONS**

### **17.22.040 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 11904 § 5.60 (part), 1996: prior planning code § 3602.1)

## **R-50 MEDIUM DENSITY RESIDENTIAL ZONE REGULATIONS**

### **17.24.040 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 11904 § 5.60 (part), 1996: prior planning code § 3652.1)

## **R-60 MEDIUM-HIGH DENSITY RESIDENTIAL ZONE REGULATIONS**

### **17.26.040 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 11904 § 5.60 (part), 1996: prior planning code § 3752.1)

## **R-70 HIGH DENSITY RESIDENTIAL ZONE REGULATIONS**

### **17.28.040 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 11904 § 5.60 (part), 1996: prior planning code § 3802.1)

## **R-80 HIGH-RISE APARTMENT RESIDENTIAL ZONE REGULATIONS**

### **17.30.040 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 11904 § 5.60 (part), 1996: prior planning code § 3852.1)

## **R-90 DOWNTOWN APARTMENT RESIDENTIAL ZONE REGULATIONS**

### **17.32.040 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 11904 § 5.60 (part), 1996: prior planning code § 3902.1)

## **C-5 NEIGHBORHOOD COMMERCIAL ZONE REGULATIONS**

### **17.34.020 Required design review process.**

A. Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Building Facility, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

B. No facility accommodating an Automotive Servicing or Automotive Repair and Cleaning Commercial Activity that is located within one hundred fifty (150) feet of any residential zone boundary shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136. (Ord. 12606 Att. A (part), 2004: Ord. 12501 § 50, 2003: Ord. 11904 § 5.62 (part), 1996: prior planning code § 4202)

## **C-10 LOCAL RETAIL COMMERCIAL ZONE REGULATIONS**

### **17.36.030 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.



(Ord. 11904 § 5.60 (part), 1996: prior planning code § 4252)

## **C-20 SHOPPING CENTER COMMERCIAL ZONE REGULATIONS**

### **17.38.020 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Building Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 12606 Att. A (part), 2004: Ord. 12501 § 55, 2003: Ord. 11904 § 5.63 (part), 1996: prior planning code § 4302)

## **C-25 OFFICE COMMERCIAL ZONE REGULATIONS**

### **17.40.030 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Building Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 12606 Att. A (part), 2004: Ord. 11904 § 5.62 (part), 1996: prior planning code § 4352)

## **C-27 VILLAGE COMMERCIAL ZONE REGULATIONS**

### **17.42.030 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Building Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 12606 Att. A (part), 2004: Ord. 11904 § 5.62 (part), 1996: prior planning code § 4402)

## **C-28 COMMERCIAL SHOPPING DISTRICT ZONE REGULATIONS**

### **17.44.020 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Building Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 12606 Att. A (part), 2004: Ord. 11904 § 5.62 (part), 1996: prior planning code § 4427)

## **C-30 DISTRICT THOROUGHFARE COMMERCIAL ZONE REGULATIONS**

### **17.46.040 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 11904 § 5.60 (part), 1996: prior planning code § 4452.1)

## **C-31 SPECIAL RETAIL COMMERCIAL ZONE REGULATIONS**

### **17.48.020 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Building Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 12606 Att. A (part), 2004: Ord. 11904 § 5.62 (part), 1996: prior planning code § 4477)

## **C-35 DISTRICT SHOPPING COMMERCIAL ZONE REGULATIONS**

### **17.50.040 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 11904 § 5.60 (part), 1996: prior planning code § 4502.1)

## **C-36 GATEWAY BOULEVARD SERVICE COMMERCIAL ZONE REGULATIONS**

### **17.52.040 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Building Facility, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104. Findings for design review approval shall also be consistent with the Hegenberger Design Guidelines.

(Ord. 12606 Att. A (part), 2004: Ord. 12076 § 3 (part), 1998: Ord. 11904 § 5.60 (part), 1996: prior planning code § 4527.1)

## **C-40 COMMUNITY THOROUGHFARE COMMERCIAL ZONE REGULATIONS**

### **17.54.040 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Facility accommodating an Automotive Servicing or an Automotive Repair and Cleaning Commercial Activity, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.  
(Ord. 11904 § 5.60 (part), 1996: prior planning code § 4552.1)

## **C-45 COMMUNITY SHOPPING COMMERCIAL ZONE REGULATIONS**

### **17.56.040 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.  
(Ord. 11904 § 5.60 (part), 1996: prior planning code § 4602.1)

## **CENTRAL BUSINESS DISTRICT ZONES REGULATIONS**

### **17.58.020 Required Design Review Process**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Building Facility, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

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## **C-51 CENTRAL BUSINESS SERVICE COMMERCIAL ZONE REGULATIONS**

### **17.60.040 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.  
(Ord. 11904 § 5.60 (part), 1996: prior planning code § 4827.1)

## **C-55 CENTRAL CORE COMMERCIAL ZONE REGULATIONS**

**17.62.040 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.  
(Ord. 11904 § 5.60 (part), 1996: prior planning code § 4877.1)

**C-60 CITY SERVICE COMMERCIAL ZONE REGULATIONS**

**17.64.020 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Residential Facility, Facility accommodating an Automobile and Other Light Vehicle Gas Station and Servicing or an Automotive and Other Light Vehicle Repair and Cleaning Commercial Activity, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.  
(Ord. 11904 § 5.60 (part), 1996: prior planning code § 4902)

**HBX HOUSING AND BUSINESS MIX COMMERCIAL ZONE REGULATIONS**

**17.65.020 Required design review process.**

A. Except for projects that are exempt from design review as set forth in Section 17.136.025, no Building Facility, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

B. Conformance to the "HBX Design Guideline Manual" is required for any change to the exterior of a building that requires a building permit in the HBX-1, HBX-2, HBX-3 zones.

C. Where there is a conflict between the design review criteria contained in Section 17.136.070 the design objectives contained in the "HBX Design Guideline Manual" the design objectives in the "HBX Design Guideline Manual" shall prevail.

**M-10 SPECIAL INDUSTRIAL ZONE REGULATIONS**

**17.66.020 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.  
(Ord. 11904 § 5.73 (part), 1996: prior planning code § 5402)

**M-20 LIGHT INDUSTRIAL ZONE REGULATIONS**

**17.68.020 Required design review process.**

A. Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

B. No facility accommodating an Automotive Servicing or Automotive Repair and Cleaning Commercial Activity that is located within one hundred fifty (150) feet of any residential zone boundary shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136. (Ord. 11904 § 5.73 (part), 1996; prior planning code § 5602)

**M-30 GENERAL INDUSTRIAL ZONE REGULATIONS**

**17.70.020 Required design review process.**

A. Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

B. No facility accommodating an Automotive Servicing or Automotive Repair and Cleaning Commercial Activity that is located within one hundred fifty (150) feet of any residential zone boundary shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136.

**M-40 HEAVY INDUSTRIAL ZONE REGULATIONS**

**17.72.020 Required design review process.**

A. Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

B. No facility accommodating an Automotive Servicing or Automotive Repair and Cleaning Commercial Activity that is located within one hundred fifty (150) feet of any residential zone boundary shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136.

**S-1 MEDICAL CENTER ZONE REGULATIONS**

**17.74.020 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Building Facility, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 12606 Att. A (part), 2004: Ord. 11904 § 5.63 (part), 1996: prior planning code § 6102)

## **S-2 CIVIC CENTER ZONE REGULATIONS**

### **17.76.040 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Residential Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 11904 § 5.60 (part), 1996: prior planning code § 6152.1)

## **S-3 RESEARCH CENTER ZONE REGULATIONS**

### **17.78.020 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Building Facility, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 12606 Att. A (part), 2004: Ord. 11904 § 5.63 (part), 1996: prior planning code § 6202)

## **S-4 DESIGN REVIEW COMBINING ZONE REGULATIONS**

### **17.80.030 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Building Facility, Telecommunications Facility, Sign, or other associated structure in the S-4 combining zone shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 12501 § 58, 2003: prior planning code § 6252)

## **S-5 BROADWAY RETAIL FRONTAGE INTERIM COMBINING ZONE REGULATIONS**

### **17.81.050 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property~~, Building Facility, Telecommunications Facility, Sign or other associated structure in the S-5 combining zone shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.125, or the Sign regulations in Chapter 17.104. (Ord. 12850 § 2 Exh. A (part), 2008)

## **S-8 URBAN STREET COMBINING ZONE REGULATIONS**

### **17.86.040 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Building Facility (see code section 17.09.040 for definition), Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the additional provisions in Section 17.86.110, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

## **S-10 SCENIC ROUTE COMBINING ZONE REGULATIONS** 17.90.030

### **Required Design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Building Facility, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the additional provisions in Section 17.90.050, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

## **S-11 SITE DEVELOPMENT AND DESIGN REVIEW COMBINING ZONE REGULATIONS**

### **17.92.030 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Building Facility, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the additional provisions in Section 17.92.050, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Ord. 12501 § 64, 2003: prior planning code § 6602)

## **S-13 MIXED-USE DEVELOPMENT COMBINING ZONE REGULATIONS**

### **17.96.030 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Building Facility, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the additional provisions in Section 17.96.080, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

(Prior planning code § 6702)

## **S-15 TRANSIT ORIENTED DEVELOPMENT ZONE REGULATIONS**

### **17.97.020 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Building Facility, Telecommunications Facility, Sign, or other associated structure shall

be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104. (Ord. 12606 Att. A (part), 2004; Ord. 11904 § 5.62 (part), 1996; Ord. 11892 § 4 (part), 1996; prior planning code § 6851)

## **S-16 INDUSTRIAL-RESIDENTIAL TRANSITION COMBINING ZONE REGULATIONS**

### **17.98.030 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Building Facility, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104. (Ord. 12289 § 3 (part), 2000)

## **D-BR BROADWAY RETAIL FRONTAGE INTERIM COMBINING DISTRICT ZONE REGULATIONS**

### **17.101C.050 Required design review process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, ~~no Local Register Property, no Designated Historic Property, Potentially Designated Historic Property,~~ Building Facility, Telecommunications Facility, Sign or other associated structure in the D-BR combining zone shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.125, or the Sign regulations in Chapter 17.104.



## OAKLAND MUNICIPAL CODE CHAPTER 15.36 - DEMOLITION PERMITS

- 15.36.010 - Definitions.
- 15.36.020 - Unlawful to demolish without permit.
- 15.36.030 - Demolition of buildings or structures, owner's completion bond.
- 15.36.040 - Posting requirement.
- 15.36.050 - Demolition permit fees.
- 15.36.060 - Penalties.
- 15.36.070 - Unlawful to demolish structure without building permit.
- 15.36.080 - Exceptions.
- 15.36.085 - Design Review Procedure.
- 15.36.090 - Applicability of the California Environmental Quality Act (CEQA).
- 15.36.100 - Dust control measures.

### **15.36.010 - Definitions.**

For purposes of this chapter, certain words and phrases are defined, and certain provisions shall be construed, as herein set out, unless it shall be apparent from their context that a different meaning is intended.

"Demolition" means the decimating, razing, ruining, tearing down or wrecking of any facility, structure or building covered by this chapter. As used herein, the word "demolition" shall include any partial demolition and any interior demolition affecting more than ten percent of the replacement value of the structure as determined by the Building Official.

"Discretionary demolition permit" means a demolition permit for a building or structure where either the demolition project or the replacement project requires one or more discretionary zoning acts by the City.

"Facility" means structure or any part thereof.

"Ministerial demolition permit" means a demolition permit issued for unsafe structures, structures on a site where the demolition project or replacement project does not require any discretionary zoning permits, or where the owner intends to create a vacant lot pursuant to Section 15.36.080.

"Redevelopment Agency-sponsored project" means projects approved by the Agency for sites within redevelopment project areas.

"Redevelopment project areas" shall have the same definition herein as it is given by the Community Redevelopment Law.

"Residential structures" means and includes apartment buildings, single-family dwellings, cooperatives, condominiums, and hotels and motels which contain dwelling units, as said latter term is defined by the zoning regulations. This term shall not be applied to structures where no more than one dwelling unit exists in a building primarily devoted to a nonresidential use.

"Structure" means and includes anything that would require a building permit to construct, excluding, however, structures built or that could be built pursuant to a temporary building permit.

"Unsafe structures" means structures found by the ~~Inspectional Services Department of the Office of Public Works or the Housing Conservation Division of the Housing Department of the Office of Community Development, their respective appeals~~

boards Building Official or the City Council, to require immediate issuance of a demolition permit to protect the public health and safety.

**15.36.085 – Design Review Procedure.**

Demolitions may be subject to the Design Review Procedures contained in Chapter 17.136 of the Oakland Planning Code.

**15.36.080 - Exceptions.**

A demolition permit may be obtained without first obtaining a building permit where:

A. The owner intends to, and does, create a surface parking lot, for which no building permit is required, or a vacant lot.

B. The structure to be demolished is declared an unsafe structure or a public nuisance by the ~~Inspectional Services Department of the Office of Public Works or the Housing Conservation Division of the Housing Department of the Office of Community Development, their respective~~ ~~appeals boards~~ Building Official or the City Council. This exception shall not apply to any case where there is sufficient evidence that the owner or the owner's agent intentionally caused such structure to become an unsafe structure or public nuisance.

C. The structure to be demolished is a:

1. Nonresidential, one-story building of Type V construction with an area not exceeding six hundred (600) square feet; or

2. Group M, Division 1, Occupancies of Type V construction; or

3. Small and unimportant structure.

C. The structure to be demolished is either:

1. Part of a Redevelopment Agency-sponsored project; or

2. Part of a project with a valid conditional use permit or planned unit development approval, where demolition has been expressly considered as part of the project approval process.

**EXHIBIT B**  
**SUMMARY FINDINGS AND SUBMITTAL REQUIREMENTS FOR THE**  
**DEMOLITION OF HISTORIC PROPERTIES**  
**6-8-10 Community and Economic Development Committee Meeting**

The following is a summary of the recommendations for amendments to the Planning Code and required material to be submitted with an application for demolition of certain historic resources. The first column contains the applicable historic resources. The second column contains the findings required to be met to demolish the historic resource described in first column. These findings are contained in Section 17.136.075 of the Planning Code and the Planning Code controls if there are any inconsistencies or differences. The last column lists the submittals required for staff to analyze whether a demolition proposal meets the corresponding findings. The goal of the required submittal is to assist staff in evaluating whether a project meets the findings required to demolish a building. The submittals are not criteria for whether a demolition can or cannot occur. Further, the required submittals are not meant to discourage either historicist or contemporary architecture in new construction. The Planning Director can, from time to time, make modifications to the required submittals if they are consistent with the intent of the proposed requirements.

Deletions since the April 7, 2010 Planning Commission Meeting are in ~~strikeout~~; additions are underlined.

Historic Status	Findings for demolition or removal	Submittal Requirements/Discussion Points
<p><b>Category I</b> The following Local Register Properties:</p> <ul style="list-style-type: none"> <li>➤ Landmarks</li> <li>➤ Heritage Properties</li> <li>➤ "A" and "B" rated properties</li> <li>➤ Preservation Study List Properties</li> </ul>	<p>1. The applicant demonstrates that the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return</p> <p style="text-align: center;"><i>Or</i></p> <p>2. The applicant demonstrates that the property constitutes a hazard and is economically infeasible to rehabilitate on its present site. For this finding, a hazard constitutes a threat to health and safety that is not imminent.</p>	<p><b>For Finding 1:</b></p> <p><b>(i) Complete application for the replacement project prepared by a licensed architect, unless the building proposed for demolition poses an imminent hazard to the public health.</b></p> <p><b>(ii) Building Use – Economic Viability</b> The applicant shall submit a market analysis prepared by an architect, developer, real estate consultant, appraiser, or other real estate professional with extensive experience in both real estate and historic rehabilitation that demonstrates all of the following:</p> <ul style="list-style-type: none"> <li>a. The current use does not generate a reasonable economic return (may include market report of like uses and building scale in the same or similar neighborhood);</li> <li>b. That appropriate and reasonable alternate uses in the building could not generate a future reasonable economic return;</li> <li>c. That alterations or additions to the existing building could not make the current or future use generate a reasonable economic return; and</li> <li>d. Potential Federal Tax Credits, Mills Act Contracts, Façade Grants, Transfer of Development Rights or other funding sources are not feasible to bridge the gap identified above.</li> </ul> <p><b>(iii) Building Soundness</b> The applicant shall submit a report from a licensed engineer or architect with extensive experience in rehabilitation as to the structural soundness of the property and its suitability for rehabilitation. The soundness report shall be based on the requirements contained in Document A, attached. This soundness report is based on a methodology used by San Francisco's Planning Department for Proposed Demolition of Historic Buildings.</p> <p><b>(iv) Building Maintenance History</b> The applicant shall submit a cost estimate report prepared by a qualified cost estimator with extensive experience in rehabilitation, analyzing any building neglect contributing to any deterioration;</p> <ul style="list-style-type: none"> <li>a) Is the building free of a history of serious, continuing code violations?</li> <li>b) Has the building been maintained and stabilized?</li> </ul> <p>Long term deferred maintenance and/or a history of continuing code violations not addressed by the owner, or other proper person having legal custody of the structure or building shall constitute a violation and will not be considered as a part of the economic infeasibility analysis bottom line.</p>

Historic Status	Findings for demolition or removal	Submittal Requirements/Discussion Points
<p><b>Category I (continued)</b>            The following Local Register Properties:            &gt; Landmarks            &gt; Heritage Properties            &gt; "A" and "B" rated properties            &gt; Preservation Study List Properties</p>		<p><b>(v) Existing Building Appraised Value</b></p> <ol style="list-style-type: none"> <li>a. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;</li> <li>b. Any listing of the property for sale or rent price asked, and offers received, if any, within the previous two years; and</li> <li>c. Existing Building/Property Appraisal (current within the last six months):             <ol style="list-style-type: none"> <li>1. Estimated market value of the property in its current condition under best practices management;</li> <li>2. After repair of construction deficiencies;</li> <li>3. After repair of construction deficiencies and maintenance;</li> <li>4. After any changes recommended by the Historic Preservation Staff/LPAB;</li> <li>5. After completion of the proposed demolition or removal; and</li> <li>6. After completion of the replacement proposal.</li> </ol> </li> </ol> <p><b>(vi) A Public Benefits</b>            A public benefits analysis report shall be prepared and take into consideration the educational, cultural, social, equity, and economic benefits of the historic building and the proposed building. Some issues that shall be considered include, but are not limited to:</p> <ol style="list-style-type: none"> <li>a. The benefits to the City's tourism industry;</li> <li>b. The benefits to owners of other commercial and residential property owners and renters in the area;</li> <li>c. The services provided to the community, including social services;</li> <li>d. Housing and jobs opportunities;</li> <li>e. Civic, community, and neighborhood identity;</li> <li>f. Cultural heritage and the image of the City and local neighborhood; and</li> <li>g. Educational opportunities and cultural benefits regarding architectural and local history.</li> </ol>

<p><b>Category I (continued)</b>          The following Local Register Properties:          &gt; Landmarks          &gt; Heritage Properties          &gt; "A" and "B" rated properties          &gt; Preservation Study List Properties</p>		<p><b>vii) Optional submittal: Sustainability – Life Cycle Assessment Criteria</b>          The applicant may wish to submit a Life Cycle Assessment Report to demonstrate the quality of the replacement proposal and of the existing building as described below. Demonstration that the durability and expected life of the new proposal's quality of construction, materials and craftsmanship, including the cost of demolition or deconstruction of the historic resource, exceeds the value of the embodied energy of the building's existing materials, durability of materials, quality of construction, level of craftsmanship, cost to repair construction deficiencies and maintenance.</p> <p><b>For Finding 2:</b>          A declaration from the Building Official or the City Council that the structure to be demolished is a threat to the public health and safety although such threat is not immediate. The applicant shall also submit a report from a licensed engineer or architect with extensive experience in rehabilitation as to the structural soundness of the property and its suitability for rehabilitation. The soundness report shall be based on the requirements contained in Exhibit A, attached. The applicant shall also submit a building maintenance history report, (see iii, above). Based on these reports, the other submittals contained in Finding 1 may be required. A replacement project, if any, must meet Finding 3.</p>
	<p>3. The design quality of the replacement facility is equal/superior to that of the existing facility.</p>	<p>Analysis prepared by a historic architect or professional with equivalent experience. The following discussion points shall be taken into account when making this finding. The proposal demonstrates 'equal quality' with respect to:</p> <ol style="list-style-type: none"> <li>A clearly identifiable visual or design value. For instance, does the replacement proposal express its present character as strongly as the historic design expressed its past?</li> <li>Durability, quality, and design value of surface materials. Durable and quality materials include, but are not limited to: stone, granite, marble, concrete, highest quality and detailed glass curtain wall, terra cotta or other materials appropriate to the design style of the building or context of the neighborhood. In terms of design value, are materials in the replacement building used to enhance the architectural design elements of the building instead of used solely for the sake of variety?</li> <li>Significant enhancement of the visual interest of the surrounding area;</li> <li>High quality detailing;</li> <li>Composition. A well composed building integrates all aspects of the building (materials, façade patterns, proportions, openings, forms, massing, detailing, etc.) into its overall character and design.</li> <li>Site setting, neighborhood, and streetscape contexts;</li> <li>Incorporating "especially fine" construction details, methods, or structural materials. These include those that successfully address challenging structural problems, contribute significantly to the building's overall design quality, exhibit fine craftsmanship, or are visible design elements;</li> <li>The replacement building's reflection of the time it was designed not merely a caricature of the demolished building;</li> <li>The replacement building's contemporary interpretation of the demolished building's elements in terms of the cultural, historic, economic, or technological trends of its time.</li> </ol>
	<p>4. It is economically, functionally architecturally, or structurally infeasible to incorporate the historic building into the proposed development.</p>	<ol style="list-style-type: none"> <li><u>Could alternations or additions to the existing building make the current or a future use generate a reasonable economic return and/or architecturally/structurally accommodate the proposed uses?</u></li> <li><u>Do preservation alternatives exist which can achieve at least the same level of non-preservation benefits?</u></li> <li><u>Include discussion of potential economic benefits of a rehabilitated or reused cultural resource, including how building or district character might affect property values, attract commercial economic development, and increase City tax revenues.</u></li> </ol>

Historic Status	Findings for demolition or removal	Submittal Requirements/Discussion Points
<p><b>Category II</b>            The following Local Register Properties:            S-7/S-20/API contributors &amp; noncontributors</p>	<p>For contributing or potentially contributing properties:</p> <ol style="list-style-type: none"> <li>1. The applicant demonstrates that the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return  <i>Or</i></li> <li>2. The applicant demonstrates that the property constitutes a hazard and is economically infeasible to rehabilitate on its present site. For this finding, a hazard constitutes a threat to health and safety that is not imminent;</li> </ol>	<p>Same as submittal findings as Findings 1 and 2 for Landmarks, Heritage Properties, "A" and "B" rated properties and study list properties.</p>
	<ol style="list-style-type: none"> <li>3. For noncontributing properties: The existing facility is either:               <ol style="list-style-type: none"> <li>a. Seriously deteriorated or a hazard, or</li> <li>b. The existing design is undistinguished and does not warrant retention.</li> </ol> <p>For this finding, a hazard constitutes a threat to health and safety that is not imminent;</p> </li> </ol>	<p>Same as (1), but demolition or removal is also permitted if either:</p> <p>For a: A declaration from the Building Official or the City Council that the structure to be demolished is a threat to the public health and safety although such threat is not immediate or a public nuisance; or</p> <p>For b: The Property is determined to be "Of no particular interest" by the Oakland Cultural Heritage Survey Evaluation. If the property is so rated due to alterations, reversal of the historic architectural integrity is not economically or physically feasible (as determined under Local Register Properties (ii), (iii) and (iv)).</p>
	<ol style="list-style-type: none"> <li>4. For all properties in a district: The design quality of the replacement facility is equal/superior to that of the existing facility.</li> </ol>	<p>Same as submittal findings as Finding 3 for Landmarks, Heritage Properties, "A" and "B" rated properties.</p>
	<ol style="list-style-type: none"> <li>5. For all properties in a district: the design of the replacement project is compatible with the character of the preservation district, and there is no erosion of design quality at the replacement project site and in the surrounding area. This includes, but is not necessarily limited to, the following additional findings: The replacement project is compatible with the district in terms of massing, siting, rhythm, composition, patterns of openings, quality of material, and intensity of detailing;           <ol style="list-style-type: none"> <li>a. New street frontage with forms that reflect the widths and rhythm of the facades on the street and entrances that reflect the patterns on the street;</li> </ol> </li> </ol>	<p>Analysis of the findings prepared by a historic architect or professional with equivalent experience. Other discussion points include:</p> <ol style="list-style-type: none"> <li>a. The proposed design not only protects the integrity and aesthetic quality of the historic district but enhances and enlivens the historic fabric at the same time respecting and recognizing the district or due to circumstances discussed in the analysis, the project has been designed as a background project to the district (i.e., a simplified version of a period revival style.</li> <li>b. The new building's contemporary interpretation of the demolished building's elements in terms of the cultural, historic, economic, or technological trends of its time.</li> <li>c. If a replacement project conveys an authenticity of its own time, it is compatible with the authenticity of the existing historic district.</li> <li>d. The compatibility of the design of the replacement proposal with the district without being merely a compilation of façade features that are common to district or a caricature of the buildings in the district.</li> </ol>

**Category II (continued)**

The following Local Register Properties:  
 > S-7/S-20/API contributors & noncontributors

- b. The replacement project provides high visual interest that either reflects the level and quality of visual interest of the district contributors or otherwise enhances the visual interest of the district;
- c. If the design contrasts the new to the historic character, the replacement project enriches the historic character of the district;
- d. Is consistent with the visual cohesiveness of the district. For the purpose of this item, visual cohesiveness is the architectural character, the sum of all visual aspects, features, and materials that defines the district. A new structure contributes to the visual cohesiveness of a district if it relates to the design characteristics of a historic district while also conveying its own time. New construction may do so by drawing upon some basic building features, such as the way in which a building is located on its site, the manner in which it relates to the street, its basic mass, form, direction or orientation (horizontal vs. vertical), recesses and projections, quality of materials, patterns of openings and level of detailing. When a combination of some these design variables are arranged in a new building to relate to those seen traditionally in the area, but integral to the design and character of the proposed new construction, visual cohesiveness results; and
- e. The replacement project will not cause the district to lose its current historic status.

6. It is economically, functionally architecturally, or structurally infeasible to incorporate the historic building into the proposed development.

- a. Could alternations or additions to the existing building make the current or a future use generate a reasonable economic return and/or architecturally/structurally accommodate the proposed uses?
- b. Do preservation alternatives exist which can achieve at least the same level of non-preservation benefits?
- c. Include discussion of potential economic benefits of a rehabilitated or reused cultural resource, including how building or district character might affect property values, attract commercial economic development, and increase City tax revenues.

Historic Status	Findings for demolition or removal	Submittal Requirements/Discussion Points
<p><b>Category III:</b>            Other PDHPs:            &gt; C's            &gt; ASI contributors</p>	<p><b>Findings required: 1, and 2 or 2 and 3, or only 4.</b></p> <p>1. The design quality of the proposed replacement project is at least equal to that of the original structure and the proposed replacement project is compatible with the character of the neighborhood <u>and it is economically, architecturally, or structurally infeasible to incorporate the historic building into the proposed development.</u></p>	<p><u>The following submittals shall be required:</u></p> <ol style="list-style-type: none"> <li>Complete application for the replacement project, including plans designed by a licensed architect.</li> <li>Analysis of 'equal quality' and compatibility prepared by historic architect, or professional with equivalent experience; this includes: 1) the same submittal findings as Finding 3 for Landmarks, Heritage Properties, "A" and "B" rated properties and Finding 4 for Local Register of Historical Resources Districts and; 2) Discussion points for Finding 5 for S-7/S-20/API contributors &amp; noncontributors.</li> <li>For the demolition of a substantial portion of or an entire ASI, the analysis should include whether the cumulative effect of a significant loss of the City's character and special sense of place provided by older historic properties commensurate with the quality of the proposed replacement project.</li> <li>Could alternations or additions to the existing building make the current or a future use generate a reasonable economic return and/or architecturally/structurally accommodate the proposed uses?</li> <li>Do preservation alternatives exist which can achieve at least the same level of non-preservation benefits?</li> <li>Include discussion of potential economic benefits of a rehabilitated or reused cultural resource, including how building or district character might affect property values, attract commercial economic development, and increase City tax revenues.</li> </ol>
	<p><del>2. It is economically, architecturally, or structurally infeasible to incorporate the historic building into the proposed development.</del></p>	<p><del>Complete application for the replacement project, including plans designed by a licensed architect. Analysis of the finding prepared by qualified architects, economists, engineers, or other equally qualified professionals.</del></p>
	<p>2. The public benefits of the proposed replacement project outweigh the benefit of retaining the original structure <u>It is economically, architecturally, or structurally infeasible to incorporate the historic building into the proposed development.</u></p>	<ol style="list-style-type: none"> <li>Same as submittal findings as Finding 1(vi) for Landmarks, Heritage Properties, "A" and "B" rated properties, and study list properties. In addition to the analysis above, the following may be taken into account in the analysis. Is the original structure lacking in benefit because it:             <ol style="list-style-type: none"> <li>does not contribute to a district architectural context;</li> <li>is not located in a highly visible prominent location (major corridor, corner);</li> <li>is not part of a continuous group/streetscape whose continuity would be diminished if demolished;</li> <li>is not a neighborhood landmark or a building that the neighborhood identifies as a symbol/image of the neighborhood;</li> <li>is not part of a thematic group of buildings contributing to a cultural/historical group of buildings (e.g., Kaiser in Richmond which includes ship building docks, industrial related buildings, worker housing);</li> <li>is not a rare building with respect to age, style, quality, character and/or use; or</li> <li>is located in a "Grow and Change" area as described in the Strategic Diagram of the Land Use and Transportation Element of the General Plan excluding the Central Business District, and is located in an area that exhibits change and growth, evidenced by the scale, use and building type.</li> </ol> </li> <li>Could alternations or additions to the existing building make the current or a future use generate a reasonable economic return and/or architecturally/structurally accommodate the proposed uses?</li> <li>Do preservation alternatives exist which can achieve at least the same level of non-preservation benefits?</li> <li>Include discussion of potential economic benefits of a rehabilitated or reused cultural resource, including how building or district character might affect property values, attract commercial economic development, and increase City tax revenues.</li> </ol>
	<p>3. The existing design is undistinguished and does not warrant retention and the proposed design is compatible with the</p>	<ol style="list-style-type: none"> <li>Complete application for the replacement project, including plans designed by a licensed architect.</li> <li>Determination by Oakland Cultural Heritage Survey Evaluation the property is determined to be 'Of no particular interest.' If the property is so rated due to alterations, reversal of the historic architectural integrity is</li> </ol>



Historic Status	Findings for demolition or removal	Submittal Requirements/Discussion Points
	character of the neighborhood.	not economically or physically feasible (as determined under Local Register Properties (ii), (iii) and (iv)). c. Analysis of 'compatibility with the neighborhood' prepared by historic architect (see discussion points for # 1 above).

All consultant reports required for the Demolition Findings shall be prepared by independent third party consultants, or each report shall be peer reviewed. Reports shall be paid for by the applicant, the consultant approved by the City and the Consultant shall report to City, as in the City's Environmental Review process. All applicable discussion points shall be taken into account when making a finding. If a point is not applicable, the analysis shall state why. Any analysis may also include attributes that support the replacement project, but are not mentioned in the points.

MPW

**Document A (to Exhibit B)  
6/8/10 CEDC**

**SOUNDNESS REPORT REQUIREMENTS  
FOR PROPOSED DEMOLITION OF STRUCTURES**

Applicants proposing demolition of a Local Register Property shall provide the Planning Department with a Soundness Report prepared in accordance with the requirements described below. This submittal is required by the Findings for Demolition of Local Register Historic Properties. Without a determination that the structure is unsound, the recommendation of approval to demolish is more difficult to make, and in that case, the applicant may be advised to consider a project that alters, rather than demolishes, the existing structure.

**Who prepares the Soundness Report?** Soundness Reports are required to be produced by licensed design or construction professionals (architects, engineers, and contractors) or by certified specifiers, construction cost estimators or physical inspectors. The author of the report must be a disinterested third party at "arm's length" from the project; that is, not involved in its ownership, design or construction. Professionals who prepare such reports must be familiar with the demolition standards and procedures adopted by the City Council, and knowledgeable about construction assemblies, processes and cost.

**How is Soundness defined?** "Soundness" is an economic measure of the feasibility of repairing construction deficiencies. It compares an estimate of construction-repair cost called the Upgrade Cost to an estimate called the Replacement Cost.

Replacement Cost is defined as the current cost to construct structures exactly like the size of those proposed for demolition. The Soundness Report Requirements will use unit costs, as outlined in the most recent City of Oakland Building Services Construction Valuation For Building Permits<sup>1</sup>.

Upgrade Cost is an estimate of the cost to make the existing structure 'usable,' that is, the cost to bring a construction deficient structure into compliance with the minimum standards of the Building Code in effect at the time of its construction, with certain retroactive life-safety exceptions.

Programmatic shortcomings of the existing structure have no bearing on the soundness report. Costs to add floor space in an addition, to increase headroom in a basement or attic, to install interior upgrades, etc., cannot be included, nor can certain "soft costs" and site improvements listed below. Bringing the structure into compliance with current seismic requirements of the Building Code is not an allowable expense, even though it may be prudent or desirable for the public good, or even if required by the

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<sup>1</sup> Market value based on the current costs of labor, materials, related fees, and any entrepreneurial profit or incentive. - Marshall & Swift

Building Code for the scope of repair work. Routine, repetitive maintenance costs must also be excluded. Contractor's profit and overhead and permit costs may be included, but Architects' and Engineers' design fees, and allowances for construction contingencies may not.

Authors of Soundness Reports need to be focused on the concept that "Soundness" is an economic measure, not an issue of structural compliance with the Building Code. Further, they need to distinguish costs to upgrade elements that were original construction deficiencies from those elements needing repair due to deferred maintenance, as explained below.

Soundness Determination: A structure is considered unsound if the cost to upgrade construction deficiencies exceeds 50% of the replacement cost.

If the soundness report cannot support that finding, the next step is to calculate a second upgrade cost, including the costs calculated for the 50% upgrade, and also adding in the cost of any necessary functional repairs attributable to lack of maintenance. For example, if a significant roof leak went unrepaired for a sufficient length of time to cause mildewed gypsum board and rotted structural members, their repair could be included in this upgrade, if it is certain and demonstrable that the leak was the cause. If this second upgrade cost exceeds 75%, then the structure is determined to be unsound.

Just because a building component or system is not pristine or modern does not justify its replacement, as long as it meets required functional standards and is not a hazard. For example, rusted ductwork on a heating system that can maintain the temperature requirement does not justify replacement of the heating system. The presence of knob and tubing wiring, unless unequivocally documented as a hazard, does not justify replacement of the electrical service with conduit or Romex. The cost to replace a pull-out fuse box that is not a hazard with a new circuit breaker panel cannot be included as an upgrade expense, even if it is part of the proposed work.

Further examples:

**Flashing:** Replacement of roof flashing, step flashing, coping, gravel stops, diverters, etc. should be excluded, because these items can be replaced as part of the re-roofing process, and in that sense are maintenance items. Replacement of corroded galvanized sheet metal head flashing over doors and windows might be allowed at the 75% level if it is clear that the corrosion resulted from lack of painting or other improper maintenance.

**Windows:** The Building Code requires that windows, like all elements of structure, be maintained and repaired. Replacement of windows meeting the code requirements at the time of their installation cannot be included in upgrade costs, (e.g., replacing single-glazed windows installed in 1972, before Title 24 energy requirements, with double-glazed, energy efficient windows, would not be an allowed upgrade cost. Repair of leaky or aged windows may be included at the 75% threshold to the extent that it is demonstrable that the repair is necessitated by poor maintenance.

**Stairs:** Removal and replacement of existing stairs without legal headroom can be included (at the 50% level) only if the stairs are a means of egress **required** by the Building Code. If the stairs are not part of a required exit system, but for example provide access to a basement or garage, their replacement to meet current headroom requirements or rise and run ratios cannot be included. Wooden exterior stairs have a finite life, and their periodic replacement is considered a maintenance issue. Only if it can be

documented that improper construction led to the early loss of the stairs could their replacement be included in upgrade costs for soundness determination.

For general guidelines, see the description in the three lists below: Also note that in general, the code requires that buildings be maintained in accordance with the codes in effect at the time of their original construction. Please note that some of the concepts addressed in these standards are not detailed, and can only be determined upon review of specific cases by competent professional persons.

**WORK THAT COULD BE INCLUDED IN THE UPGRADE COST ESTIMATE FOR THE 50% THRESHOLD: (include costs to correct original construction deficiencies, NOT deferred maintenance items or programmatic requirements of the project.)**

- Building Permit Application cost.
- Correcting lack of flashing or proper weather protection if not originally installed.
- Installing adequate weather protection and ventilation to prevent dampness in rooms if not originally constructed.
- Provision of garbage and rubbish storage and removal facilities if not originally constructed.
- Eliminating structural hazards in foundation due to structural inadequacies.
- Eliminating structural hazards in flooring or floor supports, such as defective members, or flooring or supports of insufficient size to safely carry the imposed loads.
- Correcting vertical walls or partitions which lean or are buckled due to defective materials or which are insufficient in size to carry loads.
- Eliminating structural hazards in ceilings, roofs, or other horizontal members, such as sagging or splitting, due to defective materials or insufficient size.
- Eliminating structural hazards in fireplaces and chimneys, such as listing, bulging or settlement due to defective materials or due to insufficient size or strength.
- Upgrading electrical wiring which does not conform to the regulations in effect at the time of installation.
- Upgrading plumbing materials and fixtures that were not installed in accordance with regulations in effect at the time of installation.
- Providing exiting in accordance with the code in effect at the time of construction.
- Correction of improper roof, surface or sub-surface drainage if not originally installed
- Correction of structural pest infestation (termites, beetles, dry rot, etc.) to extent attributable to original construction deficiencies, (e.g., insufficient earth-wood separation).
- Contractor's profit and overhead, not to exceed 18% of construction subtotal, if unit costs used for repair items do not include Profit and Overhead.

**WORK THAT COULD BE INCLUDED IN THE UPGRADE COST ESTIMATE FOR THE 75% THRESHOLD: (include costs to correct deficiencies resulting from deferred maintenance.)**

- Repair of fire-resistive construction and fire protection systems if required at the time of construction, including plaster and sheet rock where fire separation is required, and smoke detectors, fire sprinklers, and fire alarms when required.
- Repairs as need to provide at least one properly operating water closet, lavatory, and bathtub or shower.
- Repair of a sinks not operating properly.

- Provision of kitchen appliances, when provided by owner, in good working condition, excluding minor damage.
- Repair if needed of water heated to provide at least 8 gallons of hot water storage.
- Both hot and cold running water to plumbing fixtures.
- Repair to a sewage connection disposal system, if not working.
- Repair heating facilities to permit heat to habitable rooms, if not working.
- Repair ventilation equipment, such as bathroom fans, where operable windows are not provided, if not working.
- Provision of operable windows in habitable rooms (certain exceptions may apply).
- Repair of electrical wiring if not maintained in a safe condition.
- Repair of plumbing materials and fixtures if not maintained in good condition.
- Correcting vertical walls or partitions which lean or are buckled due to deterioration.
- Eliminating structural hazards in ceilings, roofs, or other horizontal members due to deterioration.
- Eliminating structural hazards in fireplaces and chimneys, such as listing, bulging or settlement due to deterioration.
- Eliminating chronic, severe mold and mildew.
- Repairing proper weather protection, including exterior coverings such as paint and roof coverings and windows and doors due to lack of maintenance.
- Repairing deteriorated, crumbling or loose plaster, gypsum board and floor finishes due to faulty, poorly maintained weather protection.
- Contractor's profit and overhead, not to exceed 18% of construction subtotal, if unit costs used for repair items do not include profit and overhead.

**WORK THAT MUST BE EXCLUDED FROM THE UPGRADE COST ESTIMATE FOR BOTH THE 50% AND THE 75% THRESHOLDS: (Although these elements may be required, prudent, or desirable, the costs associated with them are not included in upgrade estimates.)**

- Architects' fees, Engineers' fees and other design fees.
- Construction contingency allowance.
- Addition of floor space, or increasing headroom or other programmatic requirements that are not required standards as part of the original structure.
- Interior and exterior painting except to assemblies required to be repaired or replaced under habitability standards.
- Adding electrical receptacles where not necessary;
- Installation of a higher capacity electrical service, unless the existing is a hazard.
- Finish upgrades, such as new cabinetry, countertops, tile, stonework and other interior finishes;
- Routine re-roofing except to assemblies required to be repaired or replaced under habitability standards.
- Site work, such as repairs to walkways, driveways, decks on grade, and retaining walls not part of the building foundation.
- Landscape and irrigation work.
- Removal of fire hazards, such as buildup of combustible waste and vegetation.
- Removal of accumulation of weeds, vegetation, trash, junk, debris, garbage, stagnant water.
- Elimination of insect, vermin or rodent infestation.

- o Other routine, repetitive maintenance costs.

**What constitutes a “hazard”?**

For the purposes of Soundness Reports, “hazard” shall be defined as it is in the Demolition Findings, Category I and Category II, Finding 2. For this finding, a hazard constitutes a threat to health and safety that is not imminent.

**What should be in the Soundness Report?**

The Soundness Report should begin with a thorough description of the building in question: its age, size (e.g., footprint area, height, number of stories, square footage), roof form, roofing material, construction type, foundation and floor system, exterior siding, interior wall finish, and a description of repairs, maintenance, and any remodeling or additions. Documentation supporting the previous should be included in an appendix, using copies of the building permit history of the building.

Next, the Replacement Cost should be calculated using the methodology described above. Both the 50% threshold and the 75% threshold should be computed and noted.

The 50% Upgrade Cost should be described next, with line item descriptions of each element qualifying for upgrade (those due to initial construction deficiencies), followed by the unit cost, the unit multiplier, and the total cost for that element. If the sum of these cost items does not exceed 50% of the Replacement Cost, than a 75% Upgrade Cost can be detailed, including the previous upgrade items and adding in costs for repair of qualifying items deteriorated due to deferred maintenance, presented in a similar format.

Generalities and assertions unsupported by professional, detailed justification, or by photographic evidence or other documentation will undermine the essential credibility of the report. Replacement of many structural assemblies and mechanical systems is justified only if the existing elements are hazards. Careful and thorough demonstration of the hazardous condition is required, to justify including the replacement in the upgrade cost estimate.

Copies of any pest report, if such work is needed, and any other documentation supporting the conclusions of the soundness report, should be provided. Pest control work should be carefully analyzed to determine which portions of work and cost are applicable to the 50% threshold and which to the 75% threshold.

Clear and well-labeled photographs of the façade, and close-ups that document elements needing upgrade work, are essential to support assertions that the elements in question qualify for inclusion in the upgrade cost.

A factual summary of the findings is a useful conclusion to the document.

**How will the Planning Commission decide whether to approve the demolition application?**

The City of Oakland General Plan Land Use and Transportation Element (LUTE) and Historic Preservation Element (HPE) Policies discourage demolition and promote preservation of history and community through rehabilitation and reuse. Below are specific LUTE and HPE Policy references.

LUTE Policy I/C2.2 Reusing Abandoned Buildings  
LUTE Policy D1.4 Planning for Old Oakland  
LUTE Policy D2.1 Enhancing the Downtown  
LUTE Policy D6.2 Reusing Vacant or Underutilized Buildings  
LUTE Policy N9.8 Preserving History and Community  
LUTE Policy N9.9 Respecting Architectural Integrity  
HPE Policy 2.4: Landmark and Preservation District Regulations  
HPE Policy 2.6 Preservation Incentives  
HPE Policy 3.5 Historic Preservation and Discretionary Permit Approvals  
HPE Policy 3.8 Definition of “Local Register of Historical Resources” and Historic Preservation  
“Significant Effects” For Environmental Review Purposes  
HPE Policy 3.12 Historic Preservation and Substandard or Public Nuisance Properties  
HPE Policy 3.13 Security of Vacant Properties  
HPE Policy 3.14 Commercial Revitalization Programs

The Soundness Report will be reviewed and considered in conjunction with all other required submittals by the Findings for Demolition of Local Register Historic Properties. All of these reports will be reviewed by the appropriate advisory group(s) and decision maker(s). A replacement project, if any, must also meet the Demolition Findings.

Because a finding that a building is unsound makes approval of the demolition more probable, and because some costs included in the soundness report represent a subjective professional judgment, there may be a temptation to inflate the upgrade cost estimate, by including costs of elements that do not require repair or by exaggerating the cost of repairs, or by suggesting seismic or other structural upgrades beyond the scope of the requirements. Resist this temptation. Presentation of soundness reports with inflated upgrade costs or low replacement costs may lead to denial of the related demolition permits, or require a peer review, paid for by the applicant.

If the Soundness Report is credible and demonstrates that the structure in question is sound/not sound, the report findings will be taken into consideration, along with other required submittals by the Findings for Demolition of Local Register Historic Properties, for evaluation and determination of demolition approval, when reviewed by Landmarks Preservation Advisory Board and the Planning Commission.

## NOTICE AND DIGEST

**AN ORDINANCE, RECOMMENDED BY THE PLANNING COMMISSION, TO (A) AMEND SECTION 17.136.075 OF THE OAKLAND PLANNING CODE AND MAKE OTHER RELATED AMENDMENTS TO THE PLANNING CODE AND BUILDING AND CONSTRUCTION CODE (CHAPTER 15.36 OF THE OAKLAND MUNICIPAL CODE) RELATING TO REQUIRED FINDINGS FOR THE DEMOLITION OF HISTORIC STRUCTURES; AND (B) ADOPT ADMINISTRATIVE SUBMITTAL REQUIREMENT FOR APPLICATIONS TO DEMOLISH HISTORIC STRUCTURES.**

This ordinance amends the Planning Code to include detailed findings that must be met to demolish a historic resource. The ordinance also identifies specific submittal requirements to accompany an application to demolish a historic resource.



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