

**REVISED SEPTEMBER 2009**

**SUMMARY OF PROPOSED REVISIONS  
TO CULTURAL HERITAGE ORDINANCE**

**Background:** The City of Los Angeles' Cultural Heritage Ordinance, originally approved by the City Council in 1962, created the procedures for the designation and protection of significant Los Angeles buildings and sites as Historic-Cultural Monuments. While the Ordinance has undergone several minor, procedural modifications over the past 47 years, it has never been comprehensively updated to give our city a state-of-the-art historic preservation program.

With the creation of the Office of Historic Resources (OHR) in 2006, the Cultural Heritage Commission (CHC) began discussing potential amendments to the Ordinance. OHR staff has conducted considerable research on other cities' ordinances and has utilized guidance publications from the State Office of Historic Preservation to propose ordinance language that reflects "best practices" nationally. The OHR convened a Cultural Heritage Ordinance Working Group, including representatives of several City departments, that made recommendations on the ordinance during 2008. The draft ordinance also reflects input from numerous additional meetings and public workshops with property owners and other interested parties during 2009.

Below is a summary of the proposed ordinance changes:

- **Increase number of Cultural Heritage Commissioners from five to seven**

When the Commission experiences a vacancy and/or a recusal due to professional employment, it has, at times, lacked a quorum necessary for action. Because Los Angeles is a Certified Local Government (CLG) for preservation, which enables the City to obtain State and Federal grants for historic preservation planning, the City's Cultural Heritage Commission must have a required level of professional expertise in architecture, landscape architecture, architectural history, planning and related fields. A slightly larger commission size would allow access to a broader cross-section of professional expertise, while still ensuring diverse community representation on the Commission. Drawing upon a suggestion of property owners, the most recent draft revisions also incorporate a requirement that at least two of the Commissioners be owners of a Historic-Cultural Monument.

- **Spell out designation criteria for Historic-Cultural Monuments**

While the current ordinance does contain criteria for designation, they are ambiguously buried as a lengthy paragraph labeled "Definition of Monument," rather than defined as clear, separate criteria to evaluate eligibility. The new ordinance would generally retain the existing language, but would clearly label these provisions as criteria and differentiate them in separate numbered sections that would parallel California Register and National Register criteria. In addition, at the suggestion of the Cultural Heritage Ordinance Working Group, the proposed Ordinance would add a fifth criterion recognizing places that are significant because they reflect or exemplify the diversity of Los Angeles.

The other major substantive change in this section is to require that designated Monuments retain integrity – that the proposed Monument still have the ability to convey its significance. The current ordinance is silent on the issue of integrity, often leading to confusion as to how the Commission should evaluate significantly altered structures. The ordinance underscores that a

building's poor maintenance or dilapidated condition does not necessarily equate to a loss of integrity.

- **Notify property owners prior to first public hearing if their property has been nominated for Historic-Cultural Monument (HCM) status**

The current ordinance does not allow for notification of the property owner that an HCM nomination has been filed until after the Commission holds an initial hearing to take the nomination officially under consideration. Many property owners therefore feel “blindsided,” not only by the nomination itself, but also by the realization that they were unable to participate in an initial public hearing affecting their own property. The delay in owner notification is currently necessitated because the “stay” preventing demolition or alteration of a resource does not go into effect until the Commission officially acts to take the matter under consideration. On several occasions (most recently for one of the first homes built in Van Nuys), property owners have demolished a building before it could be considered for potential HCM status.

Under the new proposal, the stay of demolition would begin when an application is deemed substantively complete by staff and scheduled for the Commission's hearing, rather than after initial Commission consideration. While this would lengthen the “stay” period by 10-20 days, it would provide for the ability to notify property owners of the initial hearing without triggering a preemptive demolition, and provide more appropriate due process.

- **Create a Certificate of Appropriateness (COA) process to ensure more “up front” clarity on proposed exterior alterations, additions, and demolitions**

Today, the Cultural Heritage Commission is sometimes the last, “hidden” step in the process to obtain a building permit. The Commission reviews projects only at the permit stage, not typically in coordination with other project entitlements. The Commission may only “object” or “not object” to the permit issuance, and its objection period is limited to 180 days, with a possible 180-day extension by the City Council.

By contrast, the City's Historic Preservation Overlay Zone (HPOZ) Ordinance for the past three decades has included a well-defined “Certificate of Appropriateness” (COA) process to review additions, exterior alterations, and demolitions. The new ordinance would parallel the COA procedure in the HPOZ Ordinance, placing preservation review earlier in the process to improve clarity for the development community.

A COA process is found in most big-city preservation ordinances – including the ability to deny a demolition or modification request, not just temporary delay these actions. The Commission's COA decisions would be appealable to the City Council; today, the Commission's 180-day permit objections are not further appealable. Projects that have received approval for Federal Rehabilitation Tax Credits or under Section 106 of the National Historic Preservation Act will be exempted from the COA process, to avoid duplicative reviews.

- **Create a “Certificate of Hardship” process to allow approval of demolition in specified circumstances**

The proposed ordinance creates a balanced process for reviewing demolitions of designated Historic-Cultural Monuments. Demolition requests will require applicants to obtain a “Certificate of Hardship” based on specified findings. It allows for approval of demolition based on a finding that a substantial hardship exists due to the peculiar conditions associated with the property and

that the purpose and value of an alternative use of the property significantly outweighs the benefit conferred to the community from the preservation of the historical resource. The new language reflects the presumption that demolition of a Historic-Cultural Monument should occur only rarely, but allows policymakers case-by-case flexibility in reviewing demolition proposals.

The ordinance's demolition review process would directly parallel the standards that have long existed in the HPOZ Ordinance. Today, the City actually provides a considerably higher level of protection for thousands of often-modest "contributing structures" in HPOZs, as opposed to its most cherished historic resources, the more than 950 HCMs.

- **Provide a flexible standard for project review**

The draft ordinance will not be changing the historic preservation standards on which the City bases its approval of project work on Monument properties, the Secretary of the Interior's Standards for Rehabilitation. These standards, used in every local government's preservation law, are meant to allow significant change to historic properties, not to "freeze" historic buildings in time.

Furthermore, today's Cultural Heritage Ordinance requires strict compliance with the Secretary of the Interior's Standards to obtain project approval. The new draft ordinance allows for approval of a Certificate of Appropriateness in certain situations where strict compliance with the Standards may not be feasible, so long as the qualities and characteristics that led to the Monument's designation are preserved. This provision is meant to recognize that there are occasionally extenuating circumstances, such as economic or technical challenges, that may make full compliance with the Standards infeasible. The new draft also adds language directing the Commission to take into consideration the reasonable economic, environmental, and technical feasibility of the proposed work in determining whether to issue a Certificate of Appropriateness for a project. A property owner will be permitted to submit information on economic feasibility to substantiate the findings for a COA.

- **Require that new Monument applications include a list of the Monument's Character-Defining Features**

To provide greater clarity to property owners as to the specific historic features covered by a Historic-Cultural Monument designation, the new draft ordinance requires that all new designations contain a list of the Monument's character-defining features. For existing Monuments, any property owner may request preparation of such an inventory at any time, by submitting a draft inventory to the department, based upon a report by a qualified historic preservation consultant. The list would be approved by staff within 45 days.

- **Leave intact the Ordinance's current provisions for reviewing interior work on Monument properties**

The City Planning Commission considered several alternatives for how the new ordinance might review interior modifications to Monuments. The Commission ultimately adopted a draft ordinance which leaves intact the status quo on interiors: the review of interior work would continue precisely as it does today under the current Cultural Heritage Ordinance. Permits for interior work would continue to be referred to the Cultural Heritage Commission (CHC) and the Office of Historic Resources for review. However, the CHC could not deny approval of interior work altogether: it could only object to the issuance of the permit for no more than 180 days, with a possible 180-day extension of the objection period upon approval of the City Council.

Retaining the current ordinance's language specifically for interiors reflected a broad consensus that these provisions have worked successfully for 47 years. Because the review of interior spaces may present potential privacy issues, the "delay only" provisions represent a significantly lesser burden on property owners, who will ultimately receive approval for their interior modification request. However, the permit objection period does allow for a full exploration of preservation alternatives for historic buildings whose significant interiors are often inseparable from the building's overall architectural significance. Such permit objections occur only very rarely: indeed, the Cultural Heritage Commission has not objected to even a single interior permit in the past decade. Also, the new ordinance provisions allowing for a list of character-defining features may clarify for many property owners that their Monument has few significant historic interior features that would be subject to review.

- **Provide for speedy administrative sign-off of most modification requests**

The draft ordinance has added language specifying 14 categories of requests to which an "Administrative Certificate of Appropriateness" would apply. These sign-offs would typically occur over-the-counter or by telephone. To encourage day-to-day maintenance and repair activities, "Ordinary Maintenance and Repair" is defined in the current draft ordinance and is exempted from review altogether.

- **Allow City Departments to enter into a Memorandum of Agreement (MOA) with the Commission to tailor Certificate of Appropriateness review to the unique needs of City-owned historic resources**

Several City departments participating in the Cultural Heritage Ordinance Working Group had indicated that the proposed COA process was not well-suited to certain public properties, public improvements, and infrastructure where no building permits are required. To address these concerns and ensure that the COA process does not adversely affect the City's public safety responsibilities and capital improvement programs, the new draft allows the Commission to enter into a Memorandum of Agreement (MOA) with other City departments upon request.

The MOA may not exempt City projects from review altogether. It may exempt from review certain types of activities affecting City-owned properties that would not alter character-defining features. It may also exempt from review those requests that have already completed reviews under CEQA and Section 106 of the National Historic Preservation Act, or clarify the timing of the Commission's review process and create protocols for inter-departmental coordination. To ensure transparency and public input, the MOA would require Commission approval, following a public hearing.

- **Include limits on reconsideration of previously declined Monument nominations**

To prevent potential misuse of the Cultural Heritage process by those who might repeatedly submit Historic-Cultural Monuments for the same site, the new draft ordinance proposes a prohibition on resubmission of a Historic-Cultural Monument nomination for five years after a nomination was denied. An exception would be made if the Cultural Heritage Commission determines that significant new information makes the new nomination materially different from the previous submittal. The draft ordinance also includes a similar provision to prevent project applicants from repeatedly re-submitting substantially the same Certificate of Hardship request for demolition, if it had previously been denied by the Commission and Council.

- **Update Ordinance sections addressing purpose and duties of the Commission and definitions**

Unlike most state-of-the-art preservation ordinances, the Cultural Heritage Ordinance presently lacks clear statements articulating either the City's overarching goals for historic preservation, or the Commission's specific duties. A new "duties" section would define the Commission's role and purview in preservation. The addition of a definitions section will allow the public to clearly understand the specific usage of terms. Based on input from property owners, several points were added to the ordinance's statement of purpose to articulate more clearly the critical role served by property owners in historic preservation, the need to accommodate changes of use and new functions in historic buildings, and the imperative to ensure continued economic vitality of the City's historic structures.

- **Clarify process for potential repeal of Historic-Cultural Monument status**

Occasionally, as with St. Vibiana's Cathedral in 1996, there is an attempt to repeal a site's Monument status. This section would clarify that repeals are only possible if the evidence used to establish the designation was significantly erroneous, where there were procedural errors associated with the designation, or in case of fire or disaster. It would also clarify that removal of Monument status triggers review under the California Environmental Quality Act (CEQA).

- **Add language on compliance with CEQA requirements**

The California Environmental Quality Act contains some of the most significant protections for historic resources in California. The Ordinance will ensure that projects affecting historic resources are given full review under the provisions of CEQA.

- **Clarify enforcement and penalties provisions, and owner's duty to keep a historic resource in good repair**

The original drafts of the revised Ordinance sought to clarify provisions on enforcement and penalties for violations of the code. Property owners expressed concerns that these provisions might single out Historic-Cultural Monument owners for penalties or prosecution. The new revisions to the draft therefore merely reference existing enforcement and penalty provisions found elsewhere in the code that apply to all properties, whether historic or non-historic.

Similarly, the ordinance states a "Duty to Keep in Good Repair," found in most preservation ordinances locally and nationally, to address potential neglect and vandalism of designated historic properties. After owners expressed concerns that such a provision could be onerous, the language was further refined so that it only references specific maintenance requirements already found in the City's Building Code and that apply to all properties.

- **Add transition rules for projects already in the approval pipeline**

The Department of City Planning frequently includes such transition rules in new citywide ordinances, to address applications that were already in the approval pipeline at the time of the ordinance's enactment. The transition rules would ensure that Monument applications or proposed projects filed prior to the effective date of the ordinance would be governed by the current version of the Cultural Heritage Ordinance.

- **Provide advance notice to Monument owners of future Ordinance amendments**

To ensure appropriate and timely notification of property owners regarding any future changes to the Cultural Heritage Ordinance, the draft Ordinance now requires 60-day notice to all owners prior to initial consideration of any future amendments.

- **Include preservation incentives in ordinance**

The Cultural Heritage Ordinance should not be seen as solely regulatory or punitive: it should include positive incentives that help make good historic preservation projects possible. The Ordinance therefore references the City's successful Mills Act Historical Property Contracts Program (which can provide a significant property tax reduction to historic property owners), the California Historical Building Code (which provides considerable flexibility for designated historic structures in achieving code compliance), and other preservation incentives found in other sections of the City's codes. Recent discussions with Monument property owners have generated additional, constructive proposals for new historic preservation incentives that will require separate City Council actions. OHR staff will be working with property owners, other City departments, and Council offices to pursue these proposals.