

Historic Preservation Ordinance Revisions
MAJOR AAPS OBJECTIVES
March 3, 2015

The following objectives are based on AAPS position statements issued since 2006 and address only the more significant issues concerning the Historic Preservation Ordinance revisions. AAPS positions concerning other issues are not included in the list in the interests of brevity.

1. Retain separate definitions of “demolition”, alteration” and “relocation”.
2. Change existing definition of “demolition” from 30% of the building’s monetary value to a percentage of exterior wall surfaces and percentage of roof structure. Here is one possibility based on the 12-11 draft ordinance definition of “demolition”:
 - a Removal of more than twenty-five percent of the surface of any two exterior walls, except for replacement in kind.
 - b Enclosure or visual obstruction of more than twenty-five percent of the exterior wall(s) of any building so that the wall(s) no longer function as exterior wall(s).
 - c Removal of more than fifty percent of the roof surface area as measured in plan view, except for the replacement of roof surfaces in kind or replacement to match original roof surfaces.
 - d Any alteration that, in combination with other alterations within the preceding five years, will represent a change as defined in one or more subsections above.

Consider lower percentage thresholds for “demolition” to street-facing walls and to roof surfaces within a certain distance of a street line and/or street-facing wall.

3. Retain HAB purview over demolition of the ca. 4,000 Study List properties and all pre-1942 properties. Do not transfer this purview to the Planning Board as proposed by staff in 2013 and 2014.
4. Codify the existing practice of allowing use of the California Historical Building Code to all pre-1942 buildings. Greg McFann has agreed to this.
3. **Findings for project approvals.** Replace existing ordinance findings for approving of demolition, alteration and new construction projects with findings similar to the following, which were presented in the February 2012 ordinance draft:
 1. The proposal does not demolish, remove or materially alter in an adverse manner those physical characteristics of the Landmark or contributor to a Historic District that convey its significance and that justify its designation. Generally, proposals that follow the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Properties shall be considered as meeting these criteria, as they are interpreted by the HAB.

2. The Landmark, Contributor to a Historic District, Historical-Cultural Resource or pre-1942 main building has become a detriment to the community and the detrimental condition cannot be reasonably corrected.
3. The owner of the Landmark, Contributor to a Historic District, Historical-Cultural Resource or pre-1942 main building has received a Certificate of Economic Hardship pursuant to Section 6.
4. The proposal is necessary to implement a project important to the City and the benefits of the proposal outweigh any adverse affect on the Landmark, Contributor to a Historic District, Historic-Cultural Resource or pre-1942 main building.

Any finding concerning whether a property has historical, architectural or other cultural value should be made by the HAB, not the Planning Board.

5. **Demolition of Accessory Structures.** Use the following procedure for proposed demolition of accessory structures that are part of Historical Monument, Historic District Contributor or Study List sites.
 - a. Staff screens Accessory Structure demolitions for historic resource eligibility.
 - b. If staff determines that the property appears eligible, the demolition is referred to the HAB as is currently done for pre-1942 properties.
 - c. If staff determines that the building does NOT appear eligible, it sends out a notice to the HAB, neighbors and other interested parties with a ten day period for anyone to challenge the determination or for an HAB member to issue a “call for review” for the determination.
 - d. If the 10 day period expires without a challenge or call for review, the demolition permit is issued.
6. Include a process for **dedesignation and modifying the designation of a landmark or historic district.** Such a process was in Subsections 30-21.4(b) and (d) in the 8-5-10 draft ordinance.
7. **HAB review of projects related to demolition or alteration of historic properties.** For demolition and alteration permits reviewed by the HAB, require that plans for the replacement project or “larger entitlement project” be included in the HAB submittal and allow the HAB to impose conditions on the larger project to minimize or avoid adverse effects on the historic property. See 30-21.5(b)(1) and (d) of the 8-5-10 draft ordinance. This process should have been applied as part of the “Yellow House” case.
8. **Give the HAB authority to impose conditions of approval on projects that replace demolished or removed Study List buildings, especially if the project is within a significant grouping of historic properties.** If the historic property is not so deteriorated or damaged so as to be infeasible to rehabilitate and is to be removed “to create a vacant lot” or a parking lot, then the lot should be required to remain vacant for a designated period of time (perhaps 10 years). This would prevent applicants who would like to construct a new building from initially claiming that the purpose of the demolition is to create a vacant lot in order to avoid HAB review of the proposed plans. (Hopefully demolition permits will never be issued “to create a vacant lot”.)
9. **Do not allow demolition permits for historic properties to be issued until building permits for any replacement project are issued.** This requirement, of course, would not apply if the purpose of the demolition is to “create a vacant lot”.

10. **Requirement for relocating structures approved for demolition.** Restore the provisions in Subsection 30-21.5(f) of the 8-5-10 draft enabling the HAB to require that “good faith efforts” be made to relocate a building approved for demolition as an alternative to demolition, as per the “Yellow House” (2413 Buena Vista Avenue) case.
11. **“Least detrimental effect” for abatement of “imminent hazard” properties.** Restore the language in the existing ordinance and Subsection 30-21.6 of the 8-5-10 draft ordinance requiring the Building Official to take actions that will have the “least detrimental effect” on a historic resource, where action by the City is necessary to abate an imminent hazard.
12. Restore the **Certificate of Economic Hardship** provisions in 30-21.14 of the 8-5-10 draft ordinance.
13. **Enforcement.** Consider the following additional approaches to penalties and enforcement for illegal demolition and alterations:
 - a. Provide additional financial penalty options in addition to the \$50,000 fine and cost of replacing the demolished building or undoing unapproved alterations as proposed in the 2-4-10 draft ordinance. This will give the City more flexibility in determining which penalties are appropriate. Examples include:
 - i. One-half of the current appraised value, perhaps as set by the average value determined by the owner’s appraiser and as set by either the County Assessor (but based current market value prior to demolition, not assessed value) or the City’s appraiser;
 - ii. A fine equivalent to five years (or other appropriate period) rent on the building as determined by appraisers; and/or
 - iii. A fine equal to the full stated permit value of the proposed work. (This fine may not be high enough in some cases, but may be appropriate in others).
 - b. Require training for contractors who perform work without permit or who exceed the scope of approved permits. (Other communities report that contractor training has been very effective.)
 - c. Change from five years to 10 years the period during which the site of an illegally altered, relocated or demolished HCR cannot be developed in excess of the HCR’s floor area ratio or dwelling unit density.
 - d. Prohibit curb cuts as part of limits on any reconstruction on sites of demolished buildings (so the site cannot be used as a parking lot).
 - e. Define “replication” more clearly, e.g. as set forth in Secretary of the Interiors’ Standards and/or including requirements that replication must be based on definitive documentation such as old photographs, original plans, surviving physical evidence, etc.
 - f. Require deed recordations, where appropriate, such as where limits are imposed on building size due to penalties.

- g. If requiring an illegally demolished or altered property to be restored to its original appearance is inappropriate (such as where a very different design was already approved, as in the case of 616 Pacific Avenue), allow the HAB to require enhancements to the previously approved design. This is essentially what the City Council did for 616 Pacific Avenue and what staff did for 1104 Oak Street.
- h. Ban the contractor from doing work in the City for a specified period (perhaps three years), pulling permits, working for an owner/builder or playing hide and seek games, such as working under a different name. This should probably be applied at least against repeat offenders and especially egregious first offenders. The folks at 500 Central are prime candidates.
- i. In all cases, revised plans would have to be approved within a specified period (perhaps six months) and work resumed; otherwise additional penalties would be imposed.
- j. If the owner is nonresponsive, the City, in all cases, would have the ability to take whatever corrective action is necessary, (including providing security, weatherization, engineering analysis of the building's stability, preparation and implementation of any interim stabilization plan and completion of all work) and putting a lien on the property to cover the City's expenses.

14. **Expand HAB authority to specially designated Landmark interiors.** The 2-4-10 draft ordinance gives the HAB authority over interior changes to specifically designated spaces in City-owned Landmarks, such as the Carnegie Building, Alameda Theater, etc. This authority should be expanded to specifically designated interior spaces in other publicly or privately owned Landmarks.

It should be noted that this review authority would apply only to specific interior spaces called out in the resolution designating the Landmark. Including this authority in the Historic Preservation Ordinance will therefore not by itself cause interior spaces to become subject to HAB review. Any designation of these spaces would instead be considered as a separate building-by-building process that could not occur until after the ordinance revisions are adopted and only after owner notification and full public review.

15. **Describe in the ordinance permitted uses for monies to be deposited into the HAB Fund.** Such uses should include a revolving fund to stabilize at-risk structures, such as 500 Central, using strategies such as receivership, if necessary.