



## CITY OF PACIFIC GROVE HISTORIC RESOURCES COMMITTEE AND PLANNING COMMISSION AGENDA REPORT

**TO:** HISTORIC RESOURCES COMMITTEE & PLANNING  
COMMISSION

**FROM:** LYNN BURGESS, AICP, CHIEF PLANNER  
COMMUNITY DEVELOPMENT DEPARTMENT

**MEETING DATE:** APRIL 30, 2008

**SUBJECT:** DRAFT REVISIONS TO HISTORIC PRESERVATION ORDINANCE

### I. RECOMMENDATION

Staff recommends that the Historic Resources Committee (HRC) and Planning Commission (PC) receive the staff and consultant comments on the Draft Revisions to the City's Historic Preservation Ordinance, and provide direction to staff on a work program and timeline for the review and approval process. Staff will follow-up with a meeting with the HRC and PC Chairs to firm up the work program and schedule.

### II. BACKGROUND

On October 25, 2007, the Historic Resources Committee (HRC) issued Version 21 of its Draft Revisions to the City's Historic Preservation Ordinance (HPO), Chapter 23.76 of the Pacific Grove Municipal Code and the Architectural Review Board procedures, Chapter 23.73 of the Municipal Code (see Attachment 1). Generally, the draft revisions clarify terms, change the duties of the HRC, adjust the evaluation criteria thresholds, modify the process of maintaining the Inventory, change the procedures and standards of review for alterations to and demolitions of historic resources, and strengthen the appeal and enforcement provisions. The HRC requested that staff review and comment on these draft revisions.

### III. PEER REVIEW OF DRAFT ORDINANCE

Earlier this month, the City hired Kathryn Gualtieri, a Historic Preservation Consultant, to prepare a peer review of the HRC's Draft Revisions to the HPO. Ms. Gualtieri is highly qualified to provide this review, having been the State Historic Preservation Officer from 1985 through 1991, and having evaluated properties for their historic significance at the local, state and federal levels for over forty years.

Ms. Gualtieri has conducted a thorough review of the draft HPO revisions and has prepared comments aimed at helping make for a fully successful Historic Preservation Ordinance (see Attachment 2). While all sections of the HPO are addressed in the report, the major recommendations presented cover the composition, powers and duties of the HRC and the age eligibility requirements used to evaluate historic resources. Ms. Gualtieri will attend the April 30, 2008 meeting to walk through her report and to answer questions from the HRC and PC members and the public.

#### **IV. LEGAL REVIEW OF DRAFT ORDINANCE**

Heidi Quinn, Assistant City Attorney, has reviewed the draft HPO revisions from a legal perspective. Ms. Quinn's memorandum, dated February 21, 2008 (see Attachment 3), analyses the draft HPO against the backdrop of current and past litigation against the City of Pacific Grove, which challenge the constitutionality of the existing HPO. Ms. Quinn's comments have also been incorporated into Ms. Gualtieri's peer review report. Ms. Quinn will also attend the April 30, 2008 meeting to respond to questions about her comments on the draft Ordinance.

#### **V. NEW CDD GUIDELINES FOR HISTORIC ASSESSMENTS**

On March 24, 2008, the Community Development Department began disseminating the new "Guidelines for Historic Assessments" to applicants proposing to make exterior alterations to structures that are 50 years of age or older (see Attachment 4). The intent of these guidelines is to ensure that the City is fully complying with the historic resource provisions of the California Environmental Quality Act (CEQA). The guidelines are patterned after Monterey County's and are similar to the requirements of both the cities of Carmel and Monterey.

While Pacific Grove's Historic Resources Inventory (HRI) includes over 1,300 structures, it is based heavily on a historic survey that was conducted in the 1970's. CEQA recognizes structures as young as 50 years of age as potential historic resources. If the City were to consider only those structures listed on the HRI as potentially significant, there would be many 50-year-old and older structures not assessed for their historicity, contrary to the provisions of CEQA.

An assessment will determine if a resource is historic and, if so, how the proposed modifications to the resource will affect its historic significance. If there is a significant impact, the assessment will either provide mitigation measures to reduce the level of impacts, or state that the proposal will cause a significant impact to the resource that cannot be mitigated to a level of insignificance. This information will be used to determine if further CEQA documentation is required. Historic assessments will be prepared by an architectural historian or historic preservationist experienced in conducting such studies.

The information provided in these assessments will be important to the City decision-makers prior to acting on discretionary planning permits.

During the update of the HPO this year, staff recommends that the “Guidelines for Historic Assessments” be evaluated to determine whether any HPO revisions trigger a change in the way historic assessments should be carried out in the future. Staff will be available to respond to questions about the new Guidelines at the April 30, 2008 meeting.

For your information, additional background materials regarding the California Register of Historical Resources (see Attachment 5) and CEQA (see Attachment 6) are also provided with this report.

RESPECTFULLY SUBMITTED BY:

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LYNN BURGESS, AICP  
CHIEF PLANNER

Attachments:

1. HRC’s Draft Revisions to the Historic Preservation Ordinance (Version 21)
2. Peer Review of the Draft HPO, Kathryn Gualtieri, Historic Preservation Consultant
3. Legal Review of the Draft HPO, Heidi Quinn, Assistant City Attorney
4. Pacific Grove Guidelines for Historic Assessments
5. Q & A on the California Register of Historical Resources, State Office of Historic Preservation publication
6. CEQA and Historical Resources, State Office of Planning and Research publication

## DRAFT COPY OF PROPOSED CHANGES

Version 21 – October 25, 2007

### Chapter 23.76 HISTORIC PRESERVATION

#### 23.76.010 Purpose.

The protection, enhancement, perpetuation and use of structures and neighborhoods of historical and architectural significance located within the city are of cultural and aesthetic benefit to the community. The economic, cultural and aesthetic standing of the city will be enhanced by respecting the city's heritage. The purposes of this chapter are to:

- (a) Preserve, protect, enhance and perpetuate those historic structures and neighborhoods which contribute to the cultural and aesthetic heritage of Pacific Grove;
- (b) Further the city's goals of rehabilitating the existing housing stock and protecting the affordable housing supply through preservation and adaptive reuse of ~~historic buildings~~ structures;
- (c) Foster civic pride in the beauty and accomplishments of the past;
- (d) Preserve ~~buildings~~ structures significantly identified with people or events of historical and cultural importance to Pacific Grove's past;
- (e) Enrich the dimensions of human life by serving aesthetic as well as material needs and fostering knowledge of the living heritage of the past;
- (f) Enhance the visual and aesthetic character, diversity and interest of the city by maintaining the existing scale and the eclectic styles of ~~buildings~~ structures and their settings;
- (g) Control the demolition of historic structures in order to preserve, to the greatest extent feasible, the diverse qualities that define the character of the community of Pacific Grove and that reflect the distinct phases of its cultural and architectural history;
- (h) Enhance property values and increase economic and financial benefits to the city, its inhabitants, and property owners;
- (i) Protect and enhance the city's attraction to tourists and visitors, thereby stimulating business;
- (j) Conserve valuable material and energy resources by ongoing use and maintenance of the existing built environment.

(Ord. 01-25 § 1 (part), 2001; Ord. 97-23 § 1 (part), 1997).

#### 23.76.020 Definitions.

Throughout this chapter, the following definitions shall apply:

- (a) "Addition" means expansion of the size of a historic ~~building~~ structure by construction physically connected with the existing structure.
- (b) "Alteration" means any exterior change or modification to a structure, ~~which alters fifty percent or less of the total lateral length of the exterior walls, including porches and other projections, within a twenty-four month period. However, if the proposed modification alters.~~ Alteration of more than twenty-five percent of the

surface of all each exterior walls facing that faces a public street, this shall constitute a demolition; see the definition of demolition in subsection (c) below.

Exception: Maintenance and repair as defined in Section 23.76.020(i). Painting and wall shingle replacement are is also exempt.

(c) “Demolition” means an act or process which that destroys, dismantles or engulfs a building-structure, or a major portion of a building-structure, or impairs its structural integrity. Demolition includes:

(1) Destruction of the entire building-structure.

(2) “Partial Demolition:” all changes alterations to the exterior of a building-structure, including but not limited to moving or removing windows, doorways, walls, or other structural features, if such changes alter more than twenty-five percent (25%) of the surface of all each exterior wall that facings a public street or streets, and/or if these changes alter, dismantle, or engulf removes or obscures more than fifty percent (50%) of the total lateral length of the exterior walls, including porches and other projections of the building-structure, within a twenty-four month period.

Exception: Maintenance and repair as defined in Section 23.76.020(i).

(d) “Dismantle” means to disconnect or disassemble exterior walls and/or floors either on a temporary or permanent basis. Dismantle shall be considered de facto demolition.

(e) “Engulf/engulfment” means an-alteration(s) that-visually obscures, encloses, or overwhelms the property’s historic integrity. Engulfment shall be considered a d facto demolition.

(f) “Historic resources committee” means a committee created to perform certain duties hereunder, as more particularly set out at Section 23.76.021.

(g) “Historic resources inventory” means (i)-a list of existing architecturally and/or historically significant structures, buildings, properties, and sites initiated in 1978 through a matching grant from the State Office of Historic Preservation and adopted by the city of Pacific Grove. The list was updated by the Heritage Society and the city of Pacific Grove to include structures built prior to 1927, and documented by the city of Pacific Grove and other structures, buildings, properties and (ii) Other properties-sites determined by the historic resources committee to be of architectural and/or historical significance in accordance with the evaluation criteria as defined in Section 23.76.025.

(h) “Integrity” means the authenticity of a property’s historic identity, evidenced by the survival of physical characteristics that existed during the property’s historic period.

(i) “Maintenance and repair” means the act or process of conserving or repairing a structure without modifying the form, detail, or type of material. Maintenance and repair includes the placement of a concrete foundation for buildings and structures listed on the city’s historic resources inventory. Replacing shingle siding and painting shall be considered normal maintenance.

(j) “Reconstruction” means the process of replicating/reproducing by new construction the exact form and detail of a vanished structure, or part thereof, as it appeared during a specific period of time.

(k) “Rehabilitation” means the process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use

while preserving those portions or features of the property that are significant to its historical, architectural, and cultural values.

(l) “Relocation” means any change in the location of a structure on its site or to another property.

(m) “Replication” means the process of reproduction. When the severity of deterioration requires replacement of a distinctive feature due to loss or deterioration, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

(n) “Restoration” means the process of returning a building structure to a documented prior condition.

(Ord. 01-25 § 1 (part), 2001: Ord. 97-23 § 1 (part), 1997).

### **23.76.021 Historic resources committee.**

(a) The historic resources committee shall consist of seven members having a demonstrated interest in and knowledge of historic preservation and the cultural resources of Pacific Grove. ~~One of the~~ Not less than two of the seven members shall have professional experience in the building industry, or as an architect, engineer, designer, or draftsman with a demonstrated interest in and knowledge of historic preservation, and one member ~~or be a licensed architect with preservation experience, one shall be a licensed general contractor with preservation experience, and one shall be a~~ representative of the Heritage Society.

(b) The mayor, with approval of the council, shall appoint all members, provided that the Heritage Society shall appoint its member. Terms of all members shall be two years. Three of the committee members shall be appointed for terms ending on January thirty-first in even-numbered years and four shall be appointed for terms ending on January thirty-first in odd-numbered years.

(c) The committee shall select one of the ~~members~~ to be chairperson for a one-year term, to commence at the first meeting in February.

(d) All meetings shall be open to the public and shall be held at a time and place determined to facilitate public convenience and involvement.

(e) The committee shall meet no less frequently than once a month.

(f) Powers and duties of the committee shall be as follows:

(i) Determination of additions and deletions from the historic resources inventory, per Section 23.76.030;

(ii) Participate in development, distribution, and presentation of public information materials related to the City’s historic resources inventory and historic preservation goals and policies.

(iii) Make recommendations to the City Council for the update of the historic preservation ordinance.

(iv) Other duties as set out in this chapter or as directed by the city council.

(g) An affirmative vote of ~~a majority of the total~~ four or more members of the historic resources committee shall be required for any action by the committee.

(Ord. 02-30 § 13, 2002: Ord. 01-25 § 1 (part), 2001: Ord. 97-23 § 1 (part), 1997).

**23.76.025 Evaluation criteria.**

The historic resources committee shall determine, following hearing, whether or not a property should be added to the Historic Resources Inventory. Any property or site within the City of Pacific Grove may be deemed eligible for the Historic Resource Inventory based on the following criteria. All properties seventy-five (75) years or older may be evaluated and must meet one criteria to qualify. Newer properties or sites must meet a minimum of two criterion to qualify. Owner consent is not required.

- (a) Whether the structure has significant character, interest or value as part of the development, heritage or cultural characteristics of the city of Pacific Grove, the state of California, or the United States;
- (b) Whether it is the site of a significant historic event;
- (c) Whether it is strongly identified with a person who, or an organization which significantly contributed to the culture, history or development of the city of Pacific Grove;
- (d) Whether it is a particularly good example of a period or style;
- (e) Whether it is one of the few remaining examples in the city of Pacific Grove possessing distinguishing characteristics of an architectural type or specimen;
- (f) Whether it is a notable work of an architect or master builder whose individual work has significantly influenced the development of the city of Pacific Grove;
- (g) Whether it embodies elements of architectural design, detail, materials or craftsmanship that represent a significant architectural innovation;
- (h) Whether it has a unique location or singular physical characteristics representing an established and familiar visual feature of a neighborhood, community, or of the city of Pacific Grove;
- (i) Whether it retains the integrity of the original design;
- (j) Whether it contributes to the architectural aesthetics and continuity of the street;
- (k) Whether it is located within a geographically definable area possessing a concentration of historic properties, which visually contribute to each other and are unified aesthetically.

(Ord. 01-25 § 1 (part), 2001; Ord. 97-23 § 1 (part), 1997)

**23.76.030 Historic resources inventory — ~~Additions and deletions~~ Maintenance of the List**

(a) Properties may be scheduled for added to the historic resources inventory either by initiation of review by the historic resources committee to determine the historic inventory status either by written request of the property owner, the Heritage Society of Pacific Grove, the community development department staff, or a vote of three members of the historic resources committee. The historic resources committee shall determine, following hearing, whether or not the property should be added to the inventory based on the criteria listed in Section 23.76.025.

(b) Property owners, the Heritage Society of Pacific Grove, and the community development department staff may request that their a property be deleted

from the historic resources inventory by submitting a written request to the historic resources committee. Three members of the historic resources committee may request a property be deleted from the historic resources inventory at a regularly scheduled meeting. The historic resources committee shall determine, following hearing, whether or not the property should be deleted based on the criteria listed in Section 23.76.025.

(c) Administrative changes to the historic resources inventory necessary to correct errors or due to address changes shall not be subject to public hearing and shall be completed by community development department staff and approved by the community development chief administrative officer. Administrative changes shall be confirmed by the historic resources committee at its next scheduled meeting. Should changes not be confirmed, a duly noticed public hearing will be held.

(Ord. 01-25 § 1 (part), 2001: Ord. 97-23 § 1 (part), 1997).

#### **23.76.040 State Historic Building Code.**

The California State Historic Building Code (SHBC) provides alternative building regulations for the rehabilitation, preservation, restoration or relocation of structures designated as cultural resources. As required by state law, the SHBC shall be used for buildings on the historic resources inventory in the city's building permit procedure.

(Ord. 01-25 § 1 (part), 2001: Ord. 97-23 § 1 (part), 1997).

#### **23.76.050 Ordinary maintenance and repair.**

Nothing in this chapter shall be construed to prevent ordinary maintenance and repair of a building structure on the historic resources inventory. Repair and reuse of existing materials is strongly encouraged. Replication is a secondary option.

(Ord. 01-25 § 1 (part), 2001: Ord. 97-23 § 1 (part), 1997).

#### **23.76.060 Incentive — Exceptions to land use regulations.**

Following notice of hearing (ten days published and posted), the architectural review board may grant an historic preservation permit for an exception to zoning district regulations when such exception is necessary to permit the preservation or restoration of, or improvements to, a building structure listed on the historic resources inventory. Such exceptions may include, but not be limited to, parking, yards, height and coverage regulations. Such exceptions shall not include approval of uses not otherwise allowed by the zoning district regulations. In considering an application for such exception, the architectural review board shall be directed and guided by the list of purposes found in Section 23.76.010 and by Section 23.04.010.

Exemplary projects may be exempt from architectural review board approval pursuant to Section 23.73.040 (2)(d)(iii).

(Ord. 01-25 § 1 (part), 2001: Ord. 97-23 § 1 (part), 1997).

#### **23.76.070 Unsafe or dangerous conditions.**

None of the provisions of this chapter shall be construed to prevent construction, alteration, demolition or relocation necessary to correct the unsafe or dangerous

conditions, as defined in applicable building codes, of any structure feature, or part thereof, when such condition has been declared unsafe or dangerous by the chief building inspector, where such unsafe or dangerous condition cannot be rectified through the use of the State Historic Building Code, and where the proposed measures have been declared necessary by such official to correct the said condition. However, only such work as is necessary to correct the unsafe or dangerous condition may be performed and only after obtaining any required building permit. In the event any structure or other feature is damaged by fire or other calamity, the chief building inspector may specify, prior to any required review by the historic resources committee, or the architectural review board, the amount of repair necessary to correct an unsafe condition. Such determination shall be made in conformance with the provisions of Public Resources Code Section 5028.

(Ord. 01-25 § 1 (part), 2001: Ord. 97-23 § 1 (part), 1997).

**23.76.080 Additions and alterations to historic structures.**

The following shall apply to additions and alterations made to historic structures in the city of Pacific Grove:

(a) No person shall carry out or cause to be carried out on a building structure listed in the city of Pacific Grove historic resources inventory, any addition to, or exterior alteration of, any such building structure without first obtaining approval by the architectural review board, or administrative architectural approval by the community development department. This provision applies to changes not requiring building permits as well as to changes requiring a building permit. Without limitation, examples of proposed exterior changes that must be approved by the architectural review board before they are carried out include: changing the profile of the building structure; closing or changing the dimensions of existing window or door openings; adding windows or doors, changing window or door framing materials, changing the type of roof or exterior wall materials and/or trim materials.

(b) Repair and reuse of existing materials (for example, and not limited to, doors, windows, floor and roof support systems) to the greatest extent feasible is required of all alterations of a structure listed on the city of Pacific Grove history resources inventory.

(c) A Restoration Plan may be required by the architectural review board, details of which will be established by resolution of that board.

(d) In reviewing applications for additions to, or exterior alteration of, historic building structures, the architectural review board shall ~~consider~~ apply the criteria listed in Section 23.79.025, ~~and shall be guided but not be bound by the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, the Architectural Review Guidelines and the "Design Criteria" of the City of Pacific Grove or succeeding document(s).~~

(e) An historic preservation permit will not be granted when the proposed alterations change the structure in such a way that it no longer qualifies for inclusion on the historic resource inventory based on the criteria listed in Section 23.76.025. Applicants may appeal this decision to the historic resources committee.

(f) Before granting approval of alterations, the architectural review board must make a finding that the alterations to the structure have not changed its historic status.

(Ord. 01-25 § 1 (part), 2001; Ord. 97-23 § 1 (part), 1997).

### **23.76.090 Demolitions.**

The following shall apply to all structures except as referenced in (a) below. Any proposal desiring complete demolition, as defined in Section 23.76.020 (c)(1), of a structure shall first appear before the historic resources committee unless the structure has been deemed unsafe or dangerous as defined in Section 23.76.070. Following ten days' posting and notice of hearing, the historic resources committee shall hold a public hearing to determine the historic status of the structure.

The following shall apply to demolitions of historic structures in the city of Pacific Grove:

(a) Any person desiring to demolish a building structure listed on the Pacific Grove historic resources inventory shall file an application for a historic demolition permit with the community development department.

Exceptions: Single-story detached garages, sheds, or other accessory buildings with no identified historic, cultural or architectural value, as determined by the community development ~~director~~ chief administrative officer, shall be exempt from this requirement.

(b) Following ten days' posting and notice of hearing, the architectural review board shall hold a public hearing to consider the application. The following information shall be provided to the architectural review board:

(1) The chief building inspector's evaluation of the stability of the building structure proposed for demolition;

(2) Any other information deemed necessary by the ~~historic resources committee~~ architectural review board to evaluate the application.

(c) Following the public hearing, the architectural review board shall take one of the following actions:

(1) Approve the permit;

(2) Approve the permit subject to a waiting period of up to one hundred eighty days to consider documentation, relocation or other alternatives to demolition, after which waiting period the permit is deemed approved;

(i) During the waiting period, the applicant shall advertise the proposed demolition in a paper of general circulation in the city of Pacific Grove at least once during the first thirty days following the action by the ~~historic resources committee~~ architectural review board. Such advertisement shall include the address at which the structure proposed for demolition is located, information as to how arrangements can be made for relocation and the date after which a demolition permit may be issued. Evidence of this publication must be submitted to the community development ~~director~~ chief administrative officer prior to issuance of a demolition permit.

(ii) During the waiting period, the architectural review board may recommend the historic resources committee ~~may~~ investigate and suggest

preservation measures or documentation such as photographing the ~~building structure~~, preparing measured drawings and gathering related historical data.

(3) Deny the permit;

(4) Approve the relocation (within the city of Pacific Grove) of the ~~building structure~~ as an alternative to demolition.

(d) The architectural review board shall consider the criteria listed in Section 23.76.025 in determining which of the actions listed in subsection (c) of this section applies.

(e) Findings.

(1) Prior to approval or modified approval, the architectural review board shall find that:

(i) The proposed action is consistent with the purposes of historic preservation as set forth in Section 23.76.010 and in the historic preservation element of the general plan; or

(ii) The applicant has demonstrated that the action proposed is necessary to correct an unsafe or dangerous condition on the property; or

(iii) There are no reasonable alternatives to the demolition at the time of the hearing.

(2) Prior to denial, the ~~historic resources committee architectural review board~~ shall find that:

(i) The proposed action is not consistent with the purposes of historic preservation as set forth in Section 23.76.010 and in the historic preservation element of the general plan; or

(ii) There are reasonable alternatives to the demolition at the time of the hearing.

(Ord. 01-25 § 1 (part), 2001; Ord. 97-23 § 1 (part), 1997).

### **23.76.100 Relocation.**

Relocating a structure off-site within the city of Pacific Grove may be permitted following the same procedural guidelines described in Section 23.76.090 including the filing of an application for relocation.

Relocating a structure on-site requires approval by the architectural review board, which shall apply the criteria listed in Section 23.9.025, the *Architectural Review Guidelines*, the Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*, and the "Design Criteria" of the city of Pacific Grove or succeeding document(s).

(Ord. 01-25 § 1 (part), 2001; Ord. 97-23 § 1 (part), 1997).

### **23.76.110 Minimum maintenance.**

(a) Minimum maintenance is necessary to prevent an owner, or other person having legal custody and control over a property, from facilitating the demolition of an historic resource by neglecting it. All ~~building structures~~ listed on the historic resources inventory shall be kept in a state of good repair consistent with all other state and city codes so as to preserve them against decay and deterioration.

(b) The community development ~~director~~ chief administrative officer may direct the property owner to maintain the historic property in a manner designed to prevent vandalism and destruction if such property is not occupied. (Ord. 01-25 § 1 (part), 2001; Ord. 97-23 § 1 (part), 1997).

### **23.76.120 Appeals—Review.**

(a) Any person not satisfied with the action of the architectural review board, made pursuant to the provisions of this chapter, may appeal in accordance with the provisions of Section 23.73.080. Any person not satisfied with an action of the historic resources committee, made pursuant to the provisions of this chapter, may, within ten days of the date of the decision of the board, appeal in writing to the planning commission. The appeal shall be in writing and shall be accompanied by a fee as set by resolution of the council. The planning commission shall consider the matter within thirty days of such appeal. The planning commission may within said thirty-day period affirm or overrule the action of the historic resources committee and architecture review board. Any person not satisfied with an action of the planning commission made pursuant to the provisions of this chapter, may appeal such action to the city council. The appeal shall be in writing and shall be accompanied by a fee as set by resolution of the council.

(b) Notwithstanding the time limit for appeal set out immediately above, the planning commission or city council shall always have until their next regularly scheduled meeting occurring at least ten days following architectural review board, historic resources committee or planning commission action to decide to review such action. A vote of three planning commissioners or three council members shall suffice to call such action for review.

(c) With respect to a matter on appeal or review as provided in subsections (a) and (b) of this section, a hearing de novo shall be held. Posting, notice and public hearing requirements shall be as was required before the board or committee first hearing the matter.

(d) An appeal or review matter hereunder shall be heard within thirty days following the date of filing the appeal or decision to review.

(e) Following hearing on appeal or review the council or planning commission may affirm, overrule or modify the decision of the board, committee or commission, with conditions as appropriate.

(Ord. 01-25 § 1 (part), 2001; Ord. 97-40 § 1, 1997; Ord. 97-23 § 1 (part), 1997).

### **23.76.130 Enforcement and penalties.**

(a) ~~It shall be the duty of the community development director, or the community development director's delegate, to administer and enforce the provisions of this chapter. See Chapter 1.19 "Charter, Municipal Code and Ordinance Enforcement for the administration and enforcement of the provisions of this chapter.~~

(b) It is unlawful for a person or entity to alter or demolish or cause to be altered or demolished any building structure or portion thereof in violation of any of the provisions of this chapter.

(c) Any person or entity who alters or demolishes a building structure or causes an alteration or demolition in violation of the provisions of this chapter, may be liable civilly in a sum equal to ~~the replacement value of the building in kind, twice the appraised value of the original improvements on the property,~~ or an amount set at the discretion of the court. Appraisal fees paid by the person or entity causing the alteration or demolition. This includes *d facto* demolition caused by maintenance neglect or engulfment.

(d) The city attorney may maintain an action for injunctive relief to restrain or correct a violation, or cause, where possible, the complete or partial restoration, reconstruction or replacement in kind of any building structure or site demolished, altered or partially demolished, or allowed to fall below minimum maintenance standards in violation of this chapter.

(e) The property which is the site of alteration or demolition of an historic structure in violation of this chapter shall not be developed in excess of the floor area ratio, or the dwelling unit density, of the altered or demolished structure for a period of five ten years from the unlawful alteration or demolition. ~~A person or entity may be relieved of the penalties provided in this subsection if, as to an unlawful alteration, the person or entity restores the original distinguishing qualities and character integrity of the building destroyed or altered. A property owner may be required to reconstruct the original distinguishing integrity of the structure altered or destroyed. Such restoration reconstruction must be undertaken pursuant to a valid building permit issued after a recommendation by the architectural review board, and a finding by the city council that the proposed work will effect adequate restoration reconstruction and can be done with a substantial degree of success.~~

(f) The remedies provided in subsections (b) through (e) of this section are not exclusive.

(Ord. 01-25 § 1 (part), 2001; Ord. 97-23 § 1 (part), 1997).

## Chapter 23.73. Architectural Review Board

### 23.73.040 Architectural review board approval required.

Approval of the architectural review board shall be required for the following:

- (a) Any new construction of, or exterior modification or addition to, any building or structure.
- (b) Historic structure requirements and limitations as set forth in Section 23.76.080.

Exceptions:

1. Approval shall not be required for single-family dwellings in R-1 zone districts for (1) exterior additions less than twenty-five percent of the dwelling's existing square footage and which do not enlarge or create a second story, (2) color, (3) landscaping, (4) modifications or additions either visually insignificant or not visible from any adjacent public street, as determined by the community development ~~director~~ chief administrative officer. These exceptions shall not apply to buildings on the historic resources inventory and to projects for which a variance or use permit is required.

However, approval of the architectural review board shall not be required for a second unit requiring a use permit under Section 23.80.040(b) if the project meets the criteria in subsection (a)(4) of this section.

2. The community development ~~director~~ chief administrative officer, or a designate, may approve an exterior modification or addition to any building or structure in accordance with guidelines adopted by resolution of the city council.

(c) The installation or enlargement of any "solar energy device" as defined in Section 801.5 of the California Civil Code. Such review shall not prohibit or unreasonably restrict the use of a solar energy system, but shall be for the purposes of assuring a design consistent with the intent of this chapter. The architectural review board shall take into account whether or not the device enjoys the protection of the California Shade Control Act of 1978 (California Public Resources Code Sections 25980 through 25986) by a location of five feet or more from a boundary or ten feet or more above the ground. No fee shall be charged for a review under this subsection.

(d) The roof overhang, roofing material and siding material for any mobile home installed in other than the R-1-M-H District.

(e) Determinations of applications for buildings on the historic resources inventory for;

(i) Demolitions and relocations pursuant to Sections 23.76.090 and 23.76.100.

(ii) Exceptions to land use regulations (historic preservation permits) pursuant to Section 23.76.060.

(iii) Projects that conform to the Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*, the "Design Criteria" and the *Architectural Review Guidelines* of the City of Pacific Grove or succeeding document(s) may be exempt from architectural review board approval and may be approved by staff and the community development chief administrative officer as determined by administrative policy. Approvals will be reported to the architectural review board and the historic resources committee. The architectural review board may

have until their next regularly scheduled meeting following administrative approval to decide to review such action. The vote of three members of the body shall suffice to call an action for review. An action so called shall be reviewed within thirty days of the decision to call. Said review is to result in affirming the administrative action with suggestions or directions, or overruling the administrative action and making determinations.

- (e) Whenever prescribed by this code.

DRAFT 21

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To: Community Development Department, City of Pacific Grove  
From: Kathryn Gualtieri, Historic Preservation Consultant  
Subject: Peer Review of Proposed Historic Preservation Ordinance  
Date: April 21, 2008

### ***Introduction***

Historic preservation programs in California achieve their highest success when they are supported by local officials, advisory bodies and citizens. Pacific Grove is seeking to revise its Historic Preservation Ordinance to ensure that the City's important historic resources receive adequate protection and are preserved for future generations.

The revised Ordinance (draft version no. 21) was developed by the Historic Resources Committee in conjunction with the Community Development Department. In my peer review of the draft revised Ordinance (referred to as "draft Ordinance" throughout the remainder of this document), I noted several areas that warrant some additional community discussion.

My evaluation covers specific planning components that go together to make up a successful Historic Preservation Ordinance. These include: clearly expressed Purpose; specific definitions of terms; authority and functions of a historic review board; procedures and criteria used for designating historic resources; design criteria; legally accepted procedures and criteria for reviewable actions; permit issuance; appeals; and enforcement and penalties.

The City's Historic Resources Committee, Planning Commission, and City Council will determine the final outcome of the Historic Preservation Ordinance review. It is my belief that a well crafted Historic Preservation Ordinance will provide the City with numerous historical, cultural and economic advantages.

### ***Summary of Major Recommendations of the Report***

The composition, powers and duties of the Historic Resources Committee (HRC) and the criteria and age eligibility requirements used to evaluate historic resources, are critical areas of the draft Ordinance that should be addressed.

- The appointment of additional HRC members with professional qualifications, demonstrated technical skills, and experience in the field of historic preservation, should be considered. A change in the makeup of the HRC would help to validate their decisions. The combination of public and professional members conforms to established historic preservation principles and practices and would result in the creation of a well-rounded historic review board. Professionals working in tandem with public members, who represent the community's values and concerns, make better informed historic preservation decisions that are legally defensible.
- The responsibilities for historic preservation are shared between the HRC and the Architectural Review Board (ARB) in the draft Ordinance. This separation of authority, unnecessary division of labor, and divided accountability for the City's historic preservation program is unwieldy and has the potential for creating an ineffective historic preservation planning process. There is a need for additional qualified historic preservation members on the HRC. Guidance from outside consultants working in the field of historic preservation could assist the City in avoiding conflicts resulting from uninformed decisions concerning historic resources.

- The evaluation criteria contained in the draft Ordinance lack uniformity with other standardized criteria that are used by many communities in the state. These criteria are established in the California Environmental Quality Act (CEQA) and are commonly accepted by historic preservation activists and practitioners who prepare evaluations that affect historic resources. One of the major responsibilities of the HRC involves public education. The adoption of a standardized set of evaluation criteria will allow the City's historic designation process to be better understood by the community and others who are interested in the work and goals of the HRC.
- The eligibility rule of 75 years that is applied to evaluations of potential historic resources for designation by the HRC should be reassessed and changed. The commonly accepted age requirement used in California is 50 years. If this eligibility rule were to be adopted, it would bring the City's historic preservation program into compliance with CEQA. The 50 years of age rule is also used to list historic resources on other well known registration programs, such as the California Register of Historical Resources, State Historical Landmarks, California Points of Historical Interest, and the National Register of Historic Places.

### ***Purpose of the Ordinance (Section 23.76.010)***

The Purpose of a Historic Preservation Ordinance is to explain the reasons why the City wishes to enact historic preservation law. The Ordinance also ties historic preservation efforts to the appropriate governmental authority. Historic preservation ordinances are unique to individual cities. The wording of Pacific Grove's Ordinance should not be constrained by those developed by other governmental entities to meet their needs. However, it is important that a clearly stated Purpose is presented, one that will express the community's historic preservation principles, rules, and standards.

In the draft Ordinance, the Purpose section includes the protection of Pacific Grove's visual character, its property values, and the enhancement of economic benefits

to the community as a whole. These goals are clearly stated. They support the City's regulatory powers and justify the Historic Preservation Ordinance. They demonstrate that the City considers the historic preservation program an integral part of its efforts to foster and promote the general welfare.

In my analysis of other historic preservation ordinances, the term "historic resource," is used consistently, rather than "historic building" or "historic structure." Both of these terms fit under the larger umbrella of "historic resource." The definition of a historic resource includes a: building, structure, object, site, district, neighborhood, or archeological resource. I recommend that "historic resource" replace "historic building" and "historic structure" in the draft Ordinance. This is appropriate, since the City's historic review board is known to the public as the Historic Resources Committee.

The term, "aesthetics" appears five times throughout the Purpose section. If "aesthetics" is used once in the first paragraph, it would be more effective.

Sub-sections (a) through (j) of the Purpose section are generally consistent with historic preservation goals.

Sub-section (e) might be made clearer if the following language was substituted: "Promote public knowledge, participation, understanding and appreciation of Pacific Grove's rich history in collaboration with other like-minded groups and organizations."

Sub-section (g) is a very essential part of the City's Purpose. However, I suggest that the term "discourage" be substituted for "control."

There are two other provisions that I recommend adding to the Purpose section:

(k) "Provide for consistency with state and federal historic preservation standards, criteria and practices." This function solidly places the Historic Preservation Ordinance within the accepted state and national standards and bolsters its legal effectiveness.

(l) "Provide a mechanism to compile, update and maintain the city's historic resource inventory." This function is one of the main purposes for a City to appoint a historic review board. Without a mechanism to continually update a historic resource inventory, it would be next to impossible to preserve endangered historic properties from demolition in the future.

### ***Definitions (Section 23.76.020)***

As explained above and for consistency's sake, the term, "resource." should appear in the draft Ordinance, rather than "building" or "structure." It is commonly accepted in the field of historic preservation and conforms to standard terminology.

The following definition for a historic resource is appropriate in this section: "A historic resource includes a building, site, district, object or structure that has been evaluated as historically significant."

"Engulf" and "engulfment," as explained in sub sections (c) and (e), deal with unacceptable building practices that overwhelm a historic resource and work to destroy its integrity. Although not commonly used terms, they are important in Pacific Grove and convey a serious problem that can be explained to the public as required.

Sub-section (g) requires a clearer definition of a Historic Resource Inventory (HRI). An HRI is the compilation and ongoing collection of information regarding buildings, structures, sites, objects, districts, and properties contained in the Inventory that have been documented and evaluated by qualified persons through surveys of defined geographic areas.

Also, in this same sub-section, I recommend that references to past city historic surveys be retained. Surveys are the official sources of the HRI. The specific details as to survey dates and groups who prepared them could be eliminated from the sub-section...

The evaluation of the integrity of a historic resource is closely tied to the criteria that are used to evaluate the resource. Due to the current legal problems the city is experiencing, I recommend that the definition of "historic integrity" in sub-section (h) correspond with established criteria in National Register Bulletin #15. It defines integrity as: "the unimpaired ability of a property to convey its historical significance."

Sub-section (i) discusses replacement of painting and shingle siding as allowable routine maintenance and repair activities. I concur with the City Attorney that "routine" is a better choice than "normal."

I suggest inserting "in-kind" in front of "shingle siding" in this sub-section. Shingles and other historic fabric such as doors, windows, gutters, shutters, and the like chosen for replacement should be the same materials as the original. For example, there is a wide variety of wood and non-wood replacement shingle products on the market that

may or may not duplicate a historic resource's original materials. If one of these is proposed, it should first be reviewed and approved by the City prior to its application. The product must match the existing historic material, not simply look like it.

While "rehabilitation" and "restoration" are commonly used terms in historic preservation ordinances, and both meet the accepted standards for treatment of historic resources, "relocation" is not considered a preferred option. I suggest that the term not be included in the Definitions section.

Further, sub-section (l) states that the City approves of the practice of moving historic resources from original locations and settings. Historic preservation principles state that relocation is the last approach to preserving a resource, and only agreed to after rehabilitation efforts are exhausted. In order to retain its physical integrity, a historic resource needs to remain on its original site when possible, in its original configuration.

If the definition of relocation is meant to convey the action of raising up a resource so as to create what is essentially another story below the original first floor (a "basement"), then it must be noted that this approach would not be in keeping with the Secretary of the Interior's Standards and Guidelines. However, the act of placing a new foundation underneath a historic resource, so that it appears essentially the same, would be in keeping with the Secretary's Standards.

With regard to sub-section (m), the term "replication" is also not an established historic preservation practice. I recommend that the definition be removed from the section. The approval of replacement of a historic resource's original, yet deteriorated character defining materials is best determined by the City at the time when the Secretary of the Interior's Standards & Guidelines are applied to the historic resource in question.

Although it is a subtle point, the term "reconstruction" in sub-section (j) should come **after** sub-sections (k) and (l). Preservation measures such as "rehabilitation" and "restoration" are the preferred options among all the alternatives under consideration. Reconstruction should only be approved in rare cases for an exceptional historic resource, and only after all other historic preservation options are exhausted.

Finally, there are important terms that deserve inclusion in the Definitions section. My suggestions for additional terms at this time are:

1) **Building Official** shall mean the Building Official designated in the City Code or his or her designee.

2) **California Environmental Quality Act** (also CEQA) shall mean the California Public Resources Code Section 21000 et seq. as it may be amended.

3) **California Historical Building Code** (also State Historical Building Code or SHBC) shall mean Part 8 of Title 24 (California Building Standards Code) of the California Code of Regulations.

4) **California Register of Historical Resources** (also California Register) shall mean the inventory as required by the Public Resources Code Section 5020.1 et. seq. and regulations codified in the California Code of Regulations Section 4850 et. seq.

5) **Certified Local Government** (also CLG) shall mean the program authorized by the National Historic Preservation Act of 1966 (16 U.S. C. Section 470 et. seq. as amended. and the subsequent participatory agreement between a city and the California Office of Historic Preservation.

6) **Guidelines for Historic Assessments** shall mean the survey and evaluation that is used by the City to determine the significance of a potential historic resource.

7) **Historic Context Statement** --- shall mean the adopted Historic Context Statement that documents the historic periods, themes, events, people, architects and builders who have contributed to the cultural and developmental history of the city.

8) **Historic District** --- shall mean a group of buildings, structures, sites and objects that are united historically by plan or physical development that meets the criteria for the Historic Resource Inventory.

9) **Historic Resource** ---shall mean any resource that meets the criteria for the Historic Resource Inventory.

10) **Mills Act** ---shall mean California Government Sections 50280 et seq., as it may be amended from time to time.

11) **National Register of Historic Places** (also National Register) shall mean the official inventory of districts, sites, buildings, structures and objects significant in American history. Architecture, archeology and culture which is maintained by the Secretary of the Interior under the authority of the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq., 36 C.F.R. Sections 60, 63.)

12) **Secretary of the Interior's Standards & Guidelines for Rehabilitation** (also Secretary's Standards) shall mean the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995, National Park Service), as it may be amended from time to time.

13) **Survey** shall mean the act of conducting a reconnaissance or intensive survey conducted by a qualified professional to evaluate eligibility for the Historic Resource Inventory.

There may be other definitions that are suggested during the City's deliberations and review that should be added to the above lists as the draft Ordinance is finalized.

### ***Authorization of a Preservation Board (Section 23.76.021)***

This Section describes the composition and qualifications of the historic review body, its membership and length of terms, the appointment process, and the board's legal charge. The HRC administers and enforces jointly with the Architectural Review Board (ARB), the City's Historic Preservation Ordinance. A list of the specific responsibilities follows the draft Ordinance's introductory paragraph.

I concur with the City Attorney's opinion that additional HRC members should represent professional historic preservation disciplines, so that broad representation and technical experience is available to the HRC during its deliberations.

I have a concern with the limited authority of the HRC, as defined in the draft Ordinance. Not all historic preservation decisions are under their jurisdiction, but shared with the City's Architectural Review Board (ARB). This is not ideal, given that neither group has the major responsibility for evaluating, designating, and approving alterations or demolitions of historic resources. A split review makes the City more vulnerable to legal challenge, due to this atypical arrangement.

According to the draft Ordinance, the HRC's responsibilities focus for the most part on decisions related to the HRI and they are not involved in reviews of proposed alterations or demolitions of historic resources, which are brought instead to the ARB. It is fair to say that the HRC is not fully integrated into the historic preservation planning process. Therefore, its authority is diminished.

The draft language eliminates all requirements for representative members of the following: building industry, architect, engineer, designer, draftsman, and general contractor. It leaves in the wording recommending that a representative of the Heritage Society and two members with knowledge and interest in historic preservation and cultural resources be part of the HRC membership. Such a change would not strengthen the HRC, in my opinion, but would weaken the City's position from a legal and a historic preservation standpoint. I recommend that the above named professional positions remain in the draft Ordinance, and that others be added to the list, so that the HRC has a full complement of professional disciplines, along with several public members, to assist it in carrying out its historic preservation responsibilities.

Some of those other fields are: local or regional historian, architectural historian, urban planner, archeologist, landscape architect or designer, folklorist, conservation studies, cultural geographer, and fine arts specialist.

The combination of public members with those having a professional discipline achieves a good balance. Public members reflect the views of the community at large, while professional members provide the necessary expertise to review technical matters that come before the HRC. If there is a lack of candidates with professional backgrounds, the mayor could consider appointing non-residents.

I concur with the City Attorney that the draft Ordinance language should require members to have a demonstrated interest and knowledge of historic preservation. This

should be retained in the draft Ordinance. Should it prove difficult to locate individuals with historic preservation experience, candidates could be asked to participate in a variety of state and regional workshops dealing with historic preservation issues as a necessary qualification before they are appointed to the HRC.

### ***EVALUATION CRITERIA (SECTION 23.76.025)***

I recommend sub-section (a) containing the language that deals with "character, interest and value..." be moved up, and added to the first paragraph of this section.

One of the salient points raised by the City Attorney in her letter of February 21, 2008, concerned the overly broad range of potential historic resources that would likely qualify for listing on the city's Historic Resource Inventory (HRI), should the draft Ordinance be approved. In her words, the wording "effectively makes any property located within the City eligible for inclusion on the HRI."

It seems critical then, that the evaluation criteria the City will use to designate historic resources needs to be redefined, to avoid legal challenges to HRC decisions.

Along with a diverse HRC membership as recommended above, the application of concise evaluation criteria to determine which potential properties should be recognized as historic resources is important. It will be strengthened if professional opinions are obtained from qualified experts as well. The use of historic preservation consultants is an integral part of the planning process, especially in times of litigation. Expert opinions can assist the HRC by providing necessary advice and information as they evaluate potential historic resources.

For this reasons, I would recommend that the City adopt standardized criteria. Those used for the California Environmental Quality Act (CEQA) are ideal. Although they are tied to properties that qualify for listing in the California Register of Historical Resources, they can easily apply to all properties that are considered important at the local level of significance. (See the criteria on page 12 at the end of this section.)

If the City adopts criteria that correspond with well established and tested evaluation criteria, then the decisions it makes when applying them, will be not only dependable, but defensible, should legal questions arise. The California Register

evaluation criteria can also be used with environmental reviews that the City conducts for CEQA purposes, and for all federal project reviews.

The draft Ordinance contains non-standardized evaluation criteria that do not correspond with CEQA language. Also, in the section's opening paragraph, an arbitrary date of 75 years is a criterion for determining a historic resource. For those less than 75 years old, the language states that two criteria must be satisfied in order to qualify.

It seems unnecessary to codify the age that a property must be in order for it to be considered a historic resource, especially when that age doesn't correspond with CEQA. When the bar is set at 75 years, one also eliminates other properties that are worthy of historic designation and they receive less legal protection. By requiring buildings to be 75 years of age, the city also denies other property owners the use of the State Historical Building Code (SHBC) and potentially eliminates their owners from applying for federal tax credit benefits for income-producing properties.

I recommend that the City adopt 50 years of age in the draft Ordinance. CEQA regulations in 1998 confirmed that all California buildings that are 50 years of age must be considered potential historic resources. Cities must evaluate these potentially historic properties before allowing any significant alterations to them to go forward.

As I examined the 11 specific criteria that are defined in the draft Ordinance, it appears that much of the criteria's emphasis is on buildings with architectural merit. Sub-sections (d), (e), (f), (g), (i) and (j) focus on the field of architecture. The city's HRI must include a broad range of representative historic resources, including those associated with historic events and important persons, in addition to buildings with architectural merit.

Sub-section (k) appears to be the only place where "a concentration of historic properties" is discussed. The designation of historic districts needs to be included in the draft Ordinance.

I also found no evaluation criteria that address archeological resources. This omission could be used against the City in a future lawsuit if an archeological site was disturbed and the HRC did not evaluate it. I recommend that these resources need to be included in the draft Ordinance. They are covered in the CEQA evaluation criteria.

The City's evaluation criteria will be decisively strengthened if the draft Ordinance's broad, non-standardized criteria, including the criterion for 75 years, are

replaced with others used to designate historic resources for listing on many California city and county registers, in addition to the California Register of Historical Resources. This one change will provide consistency and compliance with state regulations. I recommend that the 11 criteria in the draft Ordinance be replaced with standardized criteria, to make evaluations of potential historic resources more defensible in court.

The following California Register of Historical Resources criteria are easy to comprehend and speak to the point. They are unambiguous criteria. They would be useful to the City for preparing evaluations of potential historic resources. Easy to apply, they also discourage arbitrary interpretation.

1. It is associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States;
2. It is associated with the lives of persons important to local, California, or national history;
3. It embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master, or possesses high artistic values;
4. It has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California or the nation.

### ***Historic Resource Inventory (Section 23.76.030)***

General written notice to interested parties and an opportunity to present relevant facts at an open meeting should be required when the city's HRC designates a historic resource or a group of historic resources in a historic district. When an applicant applies to alter or demolish a historic resource, the process is also open. Guidelines for historic review boards, beginning with the designation of a historic resource, will help minimize the risk of procedural challenges to HRC decisions.

In the draft Ordinance, owner consent is not required when the HRC designates a historic resource and adds it to the HRI. Other cities also don't require owner consent when properties are found to be eligible for listing on a historic inventory. Some cities distinguish between the most significant historic resources and those they consider less important, and only the first category is voluntarily designated. With the addition of professional membership, this will assist the HRC in preparing evaluations of properties 50 years of age or older that they consider eligible for the historic inventory.

The process that is described in the draft Ordinance for the review of potential historic resources to add or delete from the HRI is unclear, and why HRC members are the ones who bring up additions or deletions by a certain vote seems puzzling. Their actions might be perceived as biased, since they also vote to decide.

In my experience, potential historic resources to be considered for a historic inventory listing would usually come before the HRC as a result of a historic survey, one that the city sponsored and one that was performed in accordance with accepted survey techniques and standards. Perhaps that is the case here.

I believe that a property owner may request a public hearing to determine if his property is eligible for listing in the HRI, but the procedure for designating new historic resources seems problematic, since the HRC apparently approves these historic resources without guidance from historic preservationists or other professionals.

I'm unsure what is meant in sub-section (c) by "administrative changes" to the HRI. I think all such matters need to be discussed openly at a publicly noticed meeting, especially when the HRC is dealing with private property matters. Only minor decisions for changes or alterations to historic resources should be approved by the city's full-time administrative staff and what decisions can be made by the staff should be fully described.

### ***State Historical Building Code (Section 23.76.040)***

This section appears to be appropriate, with the exception of the incorrect spelling of Historical, not Historic Building Code.

***Ordinary Maintenance and Repair (Section 23.76.050)***

This section should remove "relocation" from the text and replace "buildings" with "historic resources." Following the City Attorney's advice, I suggest changing the title to "Routine Maintenance and Repair." (See pp. 5 and 6 for discussion of "in-kind replacement of historic materials.")

***Incentive -- Exceptions to Land Use Regulations (Section 23.76.060)***

I continue to be concerned that the HRC needs a connection with the ARB when that board deals with historic preservation permits. Having two bodies weakens the authority of the Ordinance and the program. Combining them would be ideal.

***Unsafe or Dangerous Conditions (Section 23.76.070)***

Substitute "California Historical Building Code."

***Additions and Alterations to Historic Structures (Section 23.76.080)***

As I reviewed the process that is used to evaluate projects involving alterations to historic resources, I was unsure whether or not the Architectural Review Board (ARB) had the expertise to determine whether a proposed alteration or addition to a historic resource conformed to the Secretary of the Interior's Standards and Guidelines as stated in sub-section (d). Professional advice and expertise in the field of historic preservation is necessary to administer this complex, technical treatment program.

If there is a lack of expertise in applying the Secretary's Standards, I recommend that the city hire qualified professional consultants, whose services would be reimbursed with funds from the project applicants, and that the consultants participate in the ARB review. This step would ensure that historic preservation standards are being met.

### ***Demolitions (Section 23.76.09)***

I agree with the City Attorney that paragraph 1 of this section is redundant. As for not requiring an application to demolish accessory buildings and exempting them from the public review process, this could be a problem from a historical perspective. What will happen in a situation where a barn or detached garage built in the same time period as the primary historic resource is proposed for demolition? Would the accessory building also be historic? Will city staff have the required historical background and information to allow them to determine whether an accessory building does or does not contribute to the overall significance of the primary historic resource?

Sub-section (b) relates to the question of whether the ARB has the technical expertise to consider a demolition application for a historic resource. The HRC, with additional qualified professional members, could participate in the ARB decision.

Sub-section (c) (ii). Again, the HRC seems removed from the demolition process. Item (4) on page 8 of this section also raises concerns. As stated earlier, relocation of a historic building should be approved only in rare situations and it should always be considered the last possible option.

I recommend that Section (e) (ii) come first in the list of Findings.

### ***Relocation (Section 23.76.100)***

As stated earlier, relocation of a historic resource is not considered a good alternative and should only be used in rare circumstances when no other option to preserve the historic resource exists. The significance of a historic resource is embodied in its location and setting. Moving it destroys the relationship between the resource and its surroundings, and can also destroy associations with historic events and persons.

A move can also cause the loss of important historic features and fabric, such as landscaping, foundations and chimneys, each considered valuable parts of the history of the resource. Because of this, a historic resource that is moved from its original setting runs a greater risk of losing its historic integrity.

One of the City's goals is to encourage the preservation of historic resources on their sites as living parts of the community. A moved historic resource can create a false

sense of the historical development of the community. I recommend that less emphasis is placed on this approach when dealing with historic resources.

### ***Minimum Maintenance (Section 23.76.110)***

In the City Attorney's letter, she questioned the use of the term, "chief administrative officer." I understand that "Chief Planner or designee" is appropriate.

### ***Appeals --- Review (Section 23.76.120)***

The HRC should play a larger role in the preservation planning process when it comes to the disposition of historic resources. The HRC is in a good position to make informed decisions and should be the body to hear the first appeal, rather than the ARB. If the issue is unresolved, the appeal would continue to the Planning Commission, and finally, to the City Council. Responsibility and authority for the disposition of historic resources should rest with those who have the necessary expertise that qualifies them to apply historic preservation standards to decisions. If this doesn't happen, it weakens the city's Historic Preservation Program. If both city boards were combined, this would solve the problem.

### ***Enforcement and Penalties (Section 23.76.130)***

I agree with the City Attorney's suggestion that provisions for public hearings should be included in this section.

The option of requiring a property owner to restore part or all of a building altered or demolished without a permit seems a reasonable approach. Requiring reconstruction in the case of unlawful demolition, however, may be less desirable.

The Secretary of the Interior's Standard that deals with reconstruction points out that reconstruction methods are principally applied to those buildings that will re-create a vanished or non-surviving historic resource to be used primarily for interpretive purposes. When the new building is completed, it will be a contemporary re-creation. Because of

the potential for historical error in the absence of sound physical evidence, reconstruction as a proposed treatment option for a demolished historic resource is rarely justified.

A reconstruction project requires detailed physical and documentary evidence that minimizes or eliminates conjecture, so that the new building is as accurate as possible. Only a very exceptional historic resource will rise to this level of treatment. Other properties may survive, and these can adequately reflect or explain the history of the property, the historical event, or have the same associative value as the demolished building.

Finally, in sub-section (d), I wonder whether the City Attorney wishes to serve as the staff person who will require the restoration, reconstruction or replacement of a demolished historic resource.

In my view, civil penalties, restrictions on the size of subsequent development and ineligibility for issuance of building permits for 10 years are adequate means that will help to discourage unlawful destruction of the city's historic resources.

### ***Architectural Review Board (Section 23.73)***

I am concerned about the appropriateness of separating the duties of the HRC and ARB when it comes to approving significant alterations to historic resources.

### ***Items That Are Not Addressed in the Draft Ordinance***

1. The draft Ordinance does not mention a Historic Context Statement for Pacific Grove. This planning document lists the historic periods, themes, events, people, architects and builders who have contributed to the cultural and developmental history of the city. It can be a vital tool and helpful to the ongoing work program of the HRC. A Historic Context Statement is an effective organizing structure for interpreting a community's history. It groups information about local historic resources that share a common theme, common geographic area and a common time period. The development of historic contexts is the foundation for decisions about the planning, identification,

evaluation, designation and treatment of historic resources, based upon comparative historic significance. In my view, a Historic Context Statement should be developed for Pacific Grove as soon as possible, and by a group or individual with expert knowledge of the City's history.

2. The draft Ordinance does not contain a specific section describing the benefits and financial incentives that would be available to those owners of historic resources in Pacific Grove.

One benefit/incentive is a building permit fee reduction, in which a percentage of the permit fee is reduced for a historic rehabilitation project that uses the Secretary of the Interior's Standards.

Another is the Mills Act, where property contracts are entered into with the County Assessor for a reduction in taxes.

A donation to the city of a conservation or facade easement could be given by an owner of a historic resource. This donation could make the property owner eligible for certain federal income tax deductions.

Finally, there is the Certified Local Government program, a federally funded program that is administered by the State Office of Historic Preservation. Typically, planning grants are awarded to cities and counties for historic surveys, historic context statement preparation, educational programs, and the like. Staff and historic review board time can serve as matching funds for the grant program.

## Biography

Kathryn Gualtieri is registered as a professional historian with the Northwest Regional Information Center. She has evaluated a variety of properties for their significance at the local, state and federal levels over the past forty years.

Her volunteer work includes service on the Board of Trustees of the National Trust for Historic Preservation, public member and Chair of the State Historical Resources Commission, board member of the San Mateo County Historical Association, and board member of the Capitola Historical Museum.

Ms. Gualtieri conducted a historical survey of the County of San Mateo under the auspices of the Junior League of Palo Alto which led to the creation of a Historic American Buildings Survey project in San Mateo County and a book published by Stanford University Press. She wrote the first history of the coastal community of Half Moon Bay, which remains in publication by the Spanishtown Historical Society since it was released in 1988.

She was the State Historic Preservation Officer from 1985 through 1991.

In her former capacity as a member of the city of Carmel's Historic Preservation Committee, Ms. Gualtieri reviewed numerous applications for designations of historic properties and provided that city with an expert opinion on the EIR later approved by the State Coastal Commission for Carmel's Historic Preservation Program, including a Historic Preservation Ordinance.

As a consulting historian, she also provided peer review to the city of Carmel on its updated historic survey and currently prepares numerous historic evaluations of potential historic resources for the Carmel Planning Department.

Ms. Gualtieri served on the Capitola Planning Commission. Currently she is the historian on the city of Capitola's Architecture and Site Review Committee. She assisted Capitola's museum director in updating the city's historic survey and the team later developed the city's Historic Context Statement.

She has been a full time resident of Santa Cruz County since 1991.

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### **EDUCATION**

- 1982            Master of Arts Degree, Department of History, San Jose State University.
- 1959            Bachelor of Arts Degree, School of Social Science, San Diego State University.

### **EXPERIENCE**

- 2007-            Historic Preservation Consultant, City of Carmel Planning Department
- 2005 -            Historian, City of Capitola Architectural and Site Review Committee.
- 2003-2006       Peer Review, City of Carmel Historic Survey, Planning Department.
- 1998-2002       Member, Carmel Historic Preservation Committee.
- 1994-1999       Member, Rispin Mansion Advisory Committee
- 1992-1995       Member, City of Capitola Planning Commission.
- 1989-1992       Member, City of Capitola Historical Museum Board.
- 1985-1991       State Historic Preservation Officer, Sacramento.
- 1967-1980       Member, State Historical Resources Commission.

### **PUBLICATIONS**

- 2004            Contributor to Capitola Historic Context Statement by Carolyn Swift.
- 1988            Half Moon Bay: Birth of a Coastside Town. Magic Press, Burlingame.



challenged evaluation criteria. The Ordinance does require mandatory compliance with other evaluation criteria, including the Secretary of Interior's Standards for Rehabilitation, but these criteria have not been reviewed by our office. Appeals of decisions of the HRC must now go to the Planning Commission rather than directly to the City Council. Lastly, substantial revisions must be made to the penalty and enforcement subsection of the draft Ordinance so as to provide adequate due process, i.e., notice and hearing requirements, to property owners.

#### Background: Current Litigation

Two pending lawsuits against the City challenge the constitutionality of the City's evaluation criteria for listing a property on the HRI. Plaintiffs contend the criteria set forth at § 23.76.025 are vague and ambiguous, and overbroad, and are arbitrarily enforced. A third matter, involving the demolition of an historic property located at 13<sup>th</sup> Street, has been resolved short of litigation.

#### *Butler v. City of PG*

This matter involves the listing of a property at 837 Ocean View Boulevard on the City's HRI after the plaintiff was assured the property was not eligible for such listing, and after his subsequent purchase of the property based upon that representation. During submission of his demolition and construction plans to the Architectural Review Board ("ARB"), the matter was referred to the HRC, who determined the property was an historic resource based upon three evaluation criteria found in § 23.76.025. Plaintiff filed suit against the City, claiming that the evaluation criteria are vague and ambiguous, and result in arbitrary and discriminatory enforcement. The litigation has been stayed pending the outcome of the plaintiff's alternate development plans for the property.

Plaintiff's attorneys assert the evaluation criteria are vague and overbroad in that the Municipal Code does not provide standards or definitions for phrases and terms such as "unique location," "familiar visual features," "architectural aesthetics," and "continuity of the street." They claim that HRC's imprecise and undefined guidelines are subject to varying interpretations and arbitrary enforcement.

#### *Neo Ventures, Inc. v. City of PG*

After an historic property located at 275 Spruce was partially demolished during construction, the City issued a Stop Work Order. The City held an administrative hearing to determine whether a demolition had occurred, and if so, what enforcement and penalties should be imposed. The hearing officer determined that the demolition was de minimus and did not impact the historic integrity of the home.

Plaintiff subsequently filed suit against the City seeking to have the property removed from the HRI. Plaintiff alleges that the City's decision to place the property on the HRI was improper based upon the vague and overbroad criteria, and because the HRC was not properly constituted. This litigation focuses on the evaluation criterion of 23.76.025(i), as the property was deemed historic because it "retains the integrity of the original design" but also challenges the process by which properties are determined to be historic.

156 13<sup>th</sup> Street

The City issued a Stop Work Order after it discovered that an historic property located at 13<sup>th</sup> Street was demolished without permission. As with 275 Spruce, an administrative hearing was held to determine the issue of demolition and enforcement. The hearing officer found that plaintiff's disassembly of the structure, as a means to relocate it, was appropriate as the Municipal Code lacked a requirement that the structure be raised as one complete unit. The hearing officer also noted that the Code does not require a property owner to submit a disassembly/reassembly plan.

Comments and Concerns

In addition to the concerns regarding the evaluation criteria, raised by litigation matters, our office offers the following comments and concerns regarding the proposed draft Ordinance:

## 1. 23.76.020 Definitions

(a) Changes term "building" to "structure." Not certain about the rationale for the change in terminology as "building" is defined in Municipal Code, § 23.08.040, whereas "structure" is not. (See also § 23.76.010).

(b)(c) Appears to expand definition of "demolition" and introduces new term, "engulf," which incorporates already-challenged term "historic integrity." (See 23.76.020(e)).

(e) Term "engulf/engulfment" may give rise to challenge as it is not a precise definition, i.e., "overwhelms." Also, there are several typos.

(g) The proposed revision renders any property within the City limits eligible for inclusion on the HRI. The proposed section no longer refers to existing structures, or the list initiated in 1978 through grant from State Office of Historic Preservation, and no longer requires structures to be historic, i.e., "expands to architecturally *and/or* historically significant." In other words, this Ordinance contemplates a future structure of architectural significance, but not historic, as appropriate for inclusion on the HRI. Additionally, the revision allows the HRC to determine a structure to be of "architectural and/or historical significance" without documentation by the City.

(i) Revision introduces the new term "normal" but may consider "routine" or "ordinary," as used in § 23.76.050.

## 2. 23.76.021(a) Historic Resources Committee

The requirements for the HRC are under challenge in *Neo Ventures*, above, i.e., Plaintiff alleges that the HRC was not "properly constituted." The revision would require "no less than two" members with "professional experience in building industry," rather than one member, and the HRC is no longer requiring HRC members to have *preservation*

experience. The members only need to have “demonstrated interest in and knowledge of historic preservation.” This, too, has been an area of legal challenge, in that HRI members may lack the requisite knowledge of historic preservation to make the decisions to list or delist a property.

3. 23.76.025 Evaluation Criteria

The draft Ordinance effectively makes *any* property located within the City eligible for inclusion on the HRI, “Any property or site within the City of Pacific Grove may be deemed eligible for the Historic Resources Inventory based on the following criteria.” (See also § 23.76.020(g), above).

As stated above, the vagueness of the evaluation criteria is the heart of the legal challenges to the City’s Municipal Code. The proposed Ordinance does not offer any amendments to the criteria to further define or clarify terms so as to avoid future challenge. Additionally, any property can be considered historic by simply meeting one or two criteria, without any documentation or evaluation requirements.

Another aspect of legal challenge to this section involves due process rights. Plaintiffs have claimed that property has been listed on the HRI without notice to the property owner and/or a right to hearing. Although the proposed revisions add a hearing reference, requirements for notice and hearing procedures should be further detailed, perhaps along the lines of § 23.76.090.

4. 23.76.030(a)(b) Historic Resources Inventory

Previously, properties were added to the HRI only by the HRC or by written request of property owner. Pursuant to the draft Ordinance, properties may be scheduled for review to determine historic status by a vote of three (3) members of the HRC or the property owner, as well as by The Heritage Society, or a CDD staff member.

5. 23.76.080 Additions and Alterations

(c) As stated above, 156 13<sup>th</sup> Street exposed a loophole in the Municipal Code which effectively allowed an historic property to be disassembled in an effort to move the structure on the property. The hearing officer required the property owner to submit a restoration plan.

(d) Under the proposed Ordinance, the HRC is now bound by the criteria set forth in § 23.79.025 as well as the Secretary of Interior’s *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*, the Architectural Review Guidelines and the “Design Criteria” of the City. Previously, the HRC had discretion to consider such criteria. These provisions should be reviewed to check for contradictions and/or inconsistencies with City’s evaluation criteria.

(e) The word “will” should be changed to “shall.”

6. 23.76.090 Demolitions

It is unclear what is intended by the addition of the first paragraph, as the section already seems to apply to demolitions of historic structures. The requirement of a hearing to “determine the historic status of the structure” does not make sense in the context of historic properties already listed on the HRI. Does the HRC want to have a hearing to weigh in on a proposed demolition before the owner applies to the Community Development Department?

- (a) Is the title of Chief Administrative Officer proper?

7. 23.76.120 Appeals-Review

The proposed Ordinance adds another step to the appeal process, requiring appeals of the HRC to proceed to the Planning Commission for review. The decision of the Planning Commission may then be appealed to City Council.

8. 23.76.130 Enforcement and Penalties

- (a) The enforcement provision should be changed to 1.16, which incorporates the new administrative enforcement processes set forth at 1.19.

(c) The City may not levy fines or fees upon a property owner without due process, i.e., notice and hearing. (In 275 Spruce and 156 13<sup>th</sup> Avenue, the City was required to hold hearings to determine whether a demolition had occurred and, if so, what penalties or enforcement measures were appropriate.) This subsection does not contain any provisions for a hearing.

An option would be to cite and/or integrate the new administrative enforcement process set forth in § 1.19 which allows for an Administrative Compliance Order (“ACO”). ACOs apply to serious, continuing or recurring violations, and are issued by a City enforcement officer. The ACO sets forth a description of the violation(s), a description of what is required to bring the property into compliance, and the date for compliance. The ACO also provides notice as to administrative penalties that accrue if compliance is not achieved, and may be contested through an administrative hearing process.

(d) The proposed revision eliminates relief from penalties if the property owner agrees to restore the property. As revised, the City may require the property owner to reconstruct, rather than restore, but the language is unclear, “may be required to reconstruct the original distinguishing integrity of the structure altered or destroyed.” As stated above, this section should incorporate a provision for due process, i.e., notice and hearing.