

ATTACHMENT B

Design review/standards in the Planning Code regarding historic properties

The following are excerpts of the design review and standards regarding historic properties in the Planning Code. Relevant passages are underlined.

17.136.025 - Exemptions from design review.

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

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

17.136.030 - Small project design review.

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

1. The proposal is limited to one or more of the types of work listed as a "Small Project" in subsection B of this section;
2. The proposal does not require a conditional use permit or variance, pursuant to the zoning regulations of Title 17 of the Oakland Planning Code;
3. The proposal is determined exempt from the California Environmental Quality Act (CEQA), and
4. The proposal will not have a significant effect on the property's character-defining elements. "Character-defining elements" are those features of design, materials, workmanship, setting, location, and association that identify a property as representative of its period and contribute to its visual distinction or historical significance.

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

1. Additions or Alterations.
 - a. Repair or replacement of existing building components in a manner that is compatible with, but not necessarily identical to, the property's existing or historical design;
 - b. Cumulative additions over a three year period not involving the creation of a dwelling unit that are outside the existing building envelope and equal more than ten

percent of the total floor area or footprint on site, but do not exceed one thousand (1000) square feet or one hundred percent (100%) of the total floor area or footprint on site, whichever is less;

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

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

2. Fences.

a. For Residential Zones and Residential Facilities, fences exceeding forty-two (42) inches in height in the front yard and street-side yards, but not exceeding six feet in height, pursuant to Section 17.108.140;

b. For Commercial Zones, Manufacturing Zones, and S-1, S-2, S-3, and S-15 Zones, fences exceeding eight feet in height within ten feet of any abutting property in a residential zone, but not exceeding ten feet in height, pursuant to Section 17.108.140.

3. Signs.

a. New or modified signs, excluding advertising signs; and signs extending above the roofline;

b. New or modified awnings;

c. Color changes to signs, awnings or other similar facilities;

d. Installation of flags or banners having any permanent structure within the public right of way, pursuant to the same regulations for sidewalk cafes in Section 17.102.335B;

e. Exceptions to aggregate sign area limits, pursuant to Sections 17.104.020(B)(3) and 17.104.030 (B)(1).

4. Alterations to existing telecommunications facilities, pursuant to all regulations in Chapter 17.128.

a. At an existing Micro Facility, the addition of new or replacement antennas resulting in no more than six antennas that are concealed from view, consistent with the definition of "Micro" Facility in Section 17.10.870;

b. At an existing Mini Facility, the addition of new or replacement antennas resulting in no more than twelve (12) antennas that are concealed from view, consistent with the definition of "Mini" Facility in Section 17.10.880;

c. Repair or replacement of existing equipment cabinets that are concealed from view;

d. Repair or replacement of existing equipment ancillary to the transmissions and reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, cable, conduit, and connectors.

5. Other projects.

a. Retaining walls not flanking a driveway exceeding six feet in height, if all provisions in Section 17.102.400 are met;

b. Sidewalk Cafes that have more than five tables/fifteen (15) chairs and/or have a permanent structure in the public right of way, pursuant to Section 17.102.335.

C. Procedures for Consideration — Small Project Design Review. The Director of City Planning may, at his or her discretion, consider an application for small project

design review according to the following Three-Track process, or if additional consideration is required, determine that the proposal shall be reviewed according to the regular design review procedure in Section 17.136.040:

1. Track One Procedure — Small Project Design Review Proposals Not Involving a Local Register Property, or an Upper-Story Addition to a One or Two Unit Primary Dwelling Unit of More than Two Hundred Fifty (250) Square Feet in Floor Area:

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

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

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

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

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

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

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

3. Track Three Procedure — Small Project Design Review Proposals Involving an Upper-Story Addition to a One or Two Unit Primary Dwelling Unit of More than Two Hundred Fifty (250) Square Feet in Floor Area; or an over eight foot increase in the height of a building in the HBX-1, HBX-2, and HBX-3 zones, not including allowed projections above the height limits listed in 17.108.030:

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

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

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

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

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

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

17.136.035 - Small project design review criteria.

A. Small project design review approval shall be granted for proposals that conform to each of the applicable criteria set forth in subdivisions 1, 2, and 3 below, and if also applicable, to the criteria in subdivision 4 below:

1. That for commercial, civic, or industrial facilities and the nonresidential portions of Mixed Use Development projects, the proposed design conforms with the adopted Small Project Design Guidelines, as may be amended;

2. That for residential facilities with one or two primary dwelling units and the residential portions of Mixed Use Development projects with one or two primary dwelling units, the proposed design conforms with the adopted checklist criteria for facilities with 1-2 primary dwelling units, as may be amended;

3. That for residential facilities with three or more dwelling units and the residential portions of Mixed Use Development projects with three or more dwelling units, the proposed design conforms with the adopted checklist criteria for facilities with three or more dwelling units, as may be amended;

4. That for Local Register Properties and Potential Designated Historic Properties, the proposed design will not substantially impair the visual, architectural, or historic value of the affected site or facility.

17.136.050 - Regular design review criteria.

Regular design review approval may be granted only if the proposal conforms to all of the following general design review criteria, as well as to any and all other applicable design review criteria:

A. For Residential Facilities.

1. That the proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures;
2. That the proposed design will protect, preserve, or enhance desirable neighborhood characteristics;
3. That the proposed design will be sensitive to the topography and landscape.
4. That, if situated on a hill, the design and massing of the proposed building relates to the grade of the hill;
5. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

B. For Nonresidential Facilities and Signs.

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060;
2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;
3. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

C. For Local Register Properties that are not Landmarks or located in the S-7 or S-20 zone:

1. That for additions or alterations,

a. The proposal will not substantially impair the visual, architectural, or historic value of the affected site or facility. Consideration shall be given to design, form, scale, materials, texture, lighting, landscaping, Signs, and any other relevant design element or effect, and, where applicable, the relation of the above to the original design of the affected facility.

2. That for demolition or removal,

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

b. The structure or portion thereof is in such condition that it is not architecturally feasible to preserve or restore it, or

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

D. For Potential Designated Historic Properties that are not Local Register Properties:

1. That for additions or alterations,

a. The design matches or is compatible with, but not necessarily identical to, the property's existing or historical design; or

b. The proposed design comprehensively modifies and is at least equal in quality to the existing design and is compatible with the character of the neighborhood; or

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

2. That for demolition or removal,

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

b. The public benefits of the proposed project outweigh the benefit of retaining the original structure; or

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

E. For Retaining Walls,

1. That the retaining wall is consistent with the overall building and site design and respects the natural landscape and topography of the site and surrounding areas;

2. That the retaining wall is responsive to human scale, avoiding large, blank, uninterrupted or undesigned vertical surfaces;

3. That the retaining wall respects the natural topography, avoiding obvious scars on the land;

4. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

17.136.060 - Review by Landmarks Board in certain cases.

A. Whenever an application is for regular design review in the S-7 zone, or on a designated landmark site, the Director of City Planning shall refer the proposal to the Landmarks Preservation Advisory Board for its recommendations.

B. Whenever an application is for regular design review in the S-20 zone, and the Director of City Planning determines that a proposed addition or alteration will have a significant effect on the property's character-defining elements that are visible from a street or other public area, the Director may, at his or her discretion, refer the project to the Landmarks Preservation Advisory Board for its recommendations. "Character-defining elements" are those features of design, materials, workmanship, setting, location, and association that identify a property as representative of its period and contribute to its visual distinction or historical significance. An addition or alteration is normally

considered "visible from a street or other public area" if it affects a street face or public face of the facility or is otherwise located within the "critical design area," defined as the area within forty (40) feet of any street line, public alley, public path, park or other public area.

17.136.070 - Special regulations for designated landmarks.

A. Designation. In any zone, the City Council may designate as a landmark any facility, portion thereof, or group of facilities which has special character, interest, or value of any of the types referred to in Section 17.07.030P. The designating ordinance for each landmark shall include a description of the characteristics of the landmark which justify its designation and a clear description of the particular features that should be preserved. Each ordinance shall also include the location and boundaries of a landmark site, which shall be the lot, or other appropriate immediate setting, containing the landmark. Designation of each landmark and landmark site shall be pursuant to the rezoning and law change procedure in Chapter 17.144.

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

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

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

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

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

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

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

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

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

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

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

F. Duty to Keep in Good Repair. Except as otherwise authorized under subsections B and C of this section, the owner, lessee, or other person in actual charge of each designated landmark shall keep good repair all of the exterior portions thereof, all of the interior portions thereof when subject to control as specified in the designating ordinance, and all interior portions thereof the maintenance of which is necessary to prevent deterioration and decay of any exterior portion.

17.136.075 - Postponement of demolition.

Except for postponement periods as otherwise specified for structures in the S-7 zone (Chapter 17.84), for structures in the S-20 zone (Chapter 17.101), and for Designated Landmarks (Section 17.136.070), the issuance of a demolition permit for any structure or portion thereof may be postponed by the Director of City Planning for a period not to exceed one hundred twenty (120) days from the date of application for such permit. The

Director may do so upon determination that the structure or portion thereof is listed as a Local Register Property, or is on a study list of facilities under serious study by the Landmarks Preservation Advisory Board, the City Planning Commission, or the Director, for possible landmark designation under Section 17.136.070 or for other appropriate action to preserve it. During the period of postponement the Board, the Commission, or the Director shall explore means for preserving or restoring the structure or portion thereof. However, demolition may not be postponed under this section if, after notice to the Director of City Planning, the Building Services Department, the Housing Conservation Division, their respective appeals boards, or the City Council determines that immediate demolition is necessary to protect the public health or safety. Any determination made by the Director of City Planning under this section may be appealed pursuant to the administrative appeal procedure in Chapter 17.132.