



Bureau of Planning and Sustainability
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MEMO

DATE: September 2, 2020
TO: Portland Historic Landmarks Commission
FROM: Brandon Spencer-Hartle (BPS)
CC: Hillary Adam (BDS), Kara Fioravanti (BDS), Sandra Wood (BPS)
SUBJECT: Response to Historic Landmarks Commission HRCP Discussion Draft Comments

Thank you for providing Bureau of Planning and Sustainability (BPS) staff with guidance, feedback, and evidence in support of the development of proposed zoning code amendments included in the Historic Resources Code Project (HRCP). Following unanticipated delays related to staff capacity and the Covid-19 pandemic, BPS is resuming the advancement of the HRCP legislative process. A Proposed Draft of zoning code amendments will be released on September 15 for public review, with testimony invited to be submitted to the Planning and Sustainability Commission (PSC). The Proposed Draft Staff Report, Code Amendments, and Informational Guides will be published on the [HRCP webpage on September 15](#). Written testimony on the code proposals will be accepted until October 27. A public hearing before the PSC has been scheduled for October 27 at 5 p.m.

While the PSC serves as the recommending body for changes to the zoning code, the expertise, experience, and passion of the Historic Landmarks Commission will be an invaluable addition to the public record and the PSC's consideration of the zoning code proposals. In advance of the Historic Landmarks Commission reviewing and preparing testimony on the HRCP Proposed Draft, BPS staff will brief the Commission at your regularly scheduled hearing on September 14 to provide an overview of the proposals. BPS staff will return to the Commission on October 12 for a follow-up briefing to answer any questions Commissioners may have on the Proposed Draft.

In addition to work sessions conducted on specific topic areas over the past two years, on May 2, 2019, the Historic Landmarks Commission submitted formal comments in response to the



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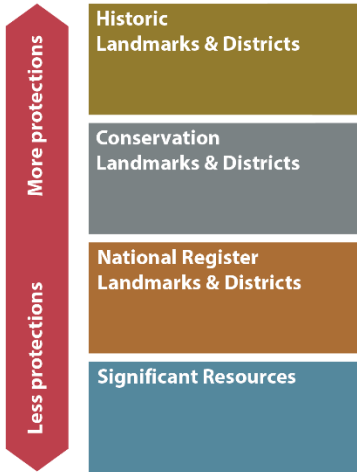
HRCP Discussion Draft code proposals. In addition to the Commission’s comments, staff received comments regarding the Discussion Draft from BDS staff, nonprofit organizations, neighborhood associations, historic resource owners, tenants, and a broad selection of members of the public. Feedback from all parties was reviewed by BPS staff, compiled into a table of potential amendments, and incorporated into the Proposed Draft proposals. Not all requests from the Historic Landmarks Commission were incorporated into the Proposed Draft. Excluding new proposals that have been incorporated into the Proposed Draft, BPS staff offer the following responses to the items identified in the Historic Landmark Commission’s May 2, 2019, letter:

Historic Landmarks Commission Comment	BPS Staff Response
No transfer of FAR should be allowed within (or into) a historic or conservation district. Allowing additional FAR only makes compatibility more difficult.	Several changes to FAR transfer provisions are proposed, including eliminating covenant requirements and ensuring transfers only occur from sites containing historic resources subject to demolition and design protections. Because of the recent City Council adoption of base zone and plan district allowances for transferring FAR into historic and conservation districts, the existing allowance for FAR transfer into historic areas is proposed to be retained.
Contributing buildings within historic districts should also be allowed to transfer FAR out of the district, though we do acknowledge that Contributing properties that are also URMs have this opportunity and that limiting the amount of FAR “for sale” will help to keep an economic value to this incentive.	Historic resource FAR transfer is proposed to be allowed only from those sending sites that contain a historic resource subject to demolition and design protections.
Very supportive of the idea of historic buildings in CC earning additional FAR that they can (hopefully) monetize. Yes the purpose is to encourage seismic work and to reduce redevelopment pressure. Is the purpose not also to support the appropriate scale and context of historic districts?	With the recent re-adoption of the Central City 2035 Plan, the HRCP proposes only minor amendments to the Central City plan district, including clarification on which historic resource sites can and cannot transfer FAR.
Maximum increases in FAR due to historic resource transfer on receiving sites in CM zones are limited (up to 1:1). No such limitation exists for FAR transfers on receiving sites in Residential and Employment zones. So as not to undercut the value of historic resource transfers, these limits should apply ONLY where transfers are being made within or into historic or conservation districts, regardless of whether into a commercial, residential or employment zone (assuming our suggestion above to prohibit FAR transfers into historic or conservation districts is not implemented).	With the recent adoption of Better Housing by Design, the HRCP proposes only minor amendments to the base zones to clarify which historic resource sites can and cannot transfer FAR.



<p>Limiting Quasi-Judicial process for creating historic districts to only 16 properties ignores best science and rationale for preservation. The size of districts and the criteria to create them should be based on the research of trained professionals, not on politics. Boundary decisions are always based on geographic barriers, historic evidence, or other notable shift. Also see suggested criteria in 2.3 below. The arbitrary limit to 16 properties in quasi-judicial will have unfortunate consequences as proponents of districts try to meet this goal for reasons that have nothing to do with what is actually on the ground. Even if a 16-property district gets listed, what if properties are divided and now there are 18 ownerships? Districts can include streets, parks, and other parcels; are these included in the “count?”</p>	<p>The HRCP proposes to eliminate quasi-judicial option for establishing or removing an entire Historic or Conservation Districts. The HRCP proposals would allow for boundary changes and reclassification of contributing status quasi-judicially, but creation or removal of an entire district would need to occur legislatively. Neither quasi-judicial or legislative procedures would affect a resource’s listing on the National Register of Historic Places.</p>
<p>Poor and/or ethnically diverse neighborhoods can’t always afford the designation process, how are these historic districts going to be recognized. We need more outreach baked into the system to allow the City to listen to local long-time residents and help them take advantage of incentives.</p>	<p>BPS staff intend for the proposed hierarchy of historic resource classifications to better allow the Historic Landmarks Commission, nonprofits, interested communities, and City staff to prioritize future legislative proposals to list resources at a level of designation appropriate to their significance and the regulations that would apply. Without proposed revisions to the existing hierarchy, the menu of designation and protection options is complex, limited, and inadequate for the diversity of potentially eligible historic resources across the city.</p>
<p>Criteria to create HDs is missing! Suggest the following: D.1.h. <i>“If the proposal is to designate a Historic District, the resource is a distinct and highly significant grouping associated with 1.a, 1.b, 1.c, or 1.d above, and shares a historic relationship or commonality that is not demonstrated outside of the district.”</i> NOTE that reductions in the size of any HD or removal of a HD must also reflect a similar criteria.</p>	<p>BPS staff have revised the approach to the procedures and approval criteria for listing or removing entire resources or portions of resources. See sections 33.445.200.A, 33.445.210.A, 33.846.030, and 33.846.040.</p>
<p>Owner consent cannot be 100% required for “small district” designation but only 50% for “larger.” State law allows for 50% so why would the city increase it? The PHLC would rather see all districts be established under the same criteria and by the same body, even if the apparent result will be to limit the PHLC’s role. We can at least speak up against unintended consequences of this poorly considered idea.</p>	<p>BPS staff have revised the approach to incorporating State-required owner consent in the proposed amendments. Owner consent would become an application requirement for quasi-judicial applications to designate a landmark. Owner consent would be incorporated, per State Administrative Rule, into the legislative process to list a Historic or Conservation District.</p>
<p>PHLC does not agree with adjusting boundaries of historic districts, unless the same criteria for creating boundaries is used: Boundary decisions must be based on geographic barriers, historic evidence, or other notable shift. (See 2.1)</p>	<p>BPS staff have revised the procedures and approval criteria for quasi-judicially adjusting landmark and district boundaries. See sections 33.846.030, and 33.846.040.</p>



<p>“Loss of Public Benefit” according to whom or what criteria? Is removal review still split between HLC for tiny districts and PSC for anything larger? If so, see 2.4- all HDs should follow the same rules, same criteria, even if PHLC is cut out of the process. Do property owners get a voice? Process is very poorly defined. Also, this must be better defined as weighing the goals and priorities of the comp plan and must be based on actual criteria.</p>	<p>BPS staff have revised the historic designation removal review criteria to connect the criteria for designation to the criteria for removal of a designation. Removing a designation quasi-judicially or legislatively would not affect a resource’s listing on the National Register of Historic Places. A proposed new criterion in historic designation removal review would allow a resource to be reclassified at a lower classification if the change was found to better support the goals and policies of the Comprehensive Plan.</p>
<p>This is too vague. “Additional information... no longer satisfies the criteria for historic designation” meaning exactly WHAT criteria? Notice that there are currently no criteria for creating a HD (see 2.3). It will be easy to get rid of any and all historic and conservation districts in Portland with this code language, if that was someone’s aim.</p>	<p>See response above.</p>
<p>If reclassifying a single resource in a CD from contributing to noncontributing is allowed quasi-judicially then why not vice-versa with a property that has a 1970s storefront removed, for example?</p>	<p>BPS staff have proposed procedures and criteria to allow for reclassification in both directions— contributing and noncontributing. See sections 33.846.030 and 33.846.040.</p>
<p>Classification of resources is confusing and unclear. Language in the code should make clear that individually listed NR resources are both National Register Resources (subsection A) as well as Historic Landmarks (subsection B). Historic Landmarks under Subsection B should include “City Historic Landmarks” as that term is used throughout the code – see Section 33.445.200(B) and 33.445.210(A).</p>	<p>BPS staff have proposed new definitions for each classification of historic resource. The Proposed Draft definitions differ from those included in the Discussion Draft. See sections 33.445.040 and 33.910.</p>
<p>Administrative Rule Changes - January 27,2017 -and possibly another date/change coming from the State-(?) Creating two (or more) types of NR resources based solely on date is problematic for processes, perception, and for actual protection and regulations applicable. The perception is that newly added NR resources are less important, which is not true. If we cannot avoid the “upper” and “lower” tier resources, we should at least refer to resources “with A-level protections” and those with “B-level protections” as opposed to defining them when listed. Is there not a scenario under which protections are added to a resource listed on the NR after Jan 27? If the state removes demo protections from newly listed NR resources then we would have 3 categories (these last with “C-level protections.”)</p>	<p>BPS staff have proposed a revised hierarchy of designations that would safe-harbor existing resource classifications for resources that were listed before January 2017. The hierarchy would establish a new classification for resources listed in the National Register in the future and for National Register resources that have their City historic or conservation status removed by quasi-judicial or legislative action.</p> 



<p>Although we would like to see all National Register resources designated after 1.27.17 deemed Historic Landmarks under Subsection B where owner consent is given, there should at least be a helpful process so owners can easily designate NR resources as local resources, such as keeping the fee very low. There are still powerful incentives to designate something onto the National Register (federal tax credits being one!).</p>	<p>BPS staff have proposed a new Type I procedure for quasi-judicially listing a National Register Landmark as a City Historic or Conservation Landmark. See section 33.846.030.B.1.</p>
<p>Incentives should apply to National Register Properties created after 1.27.17, even if restrictions such as design and demo review or delay do not. Why are incentives 9 & 10 not to be used by “past” designated resources? It’s almost like the proposed code is punishing people for using National Register designation. We need incentives to be applied as broadly as possible. [If the reason is to not give incentives to buildings that have no HR protection and might become a mess of alterations, then at least allow all “past” designated resources that have A-level protections to utilize incentives]</p>	<p>BPS staff have proposed changing the classifications for historic resources to ensure that all City-designated and City-identified Historic and Conservation Landmarks and Districts remain as such unless or until they have their City resource status removed quasi-judicially or legislatively. Resources that are not protected by historic resource review (or the Community Design Standards) are not proposed to be eligible for the incentives in section 33.445.400 because of the potential impacts to the integrity of historic resources when review is not required. Those safe-harbored resources with City historic resource status would be eligible for the incentives.</p>
<p>Eliminate Minimum Parking requirements in historic/conservation districts as well as for individually listed properties– Yes! This is one good incentive that can be used by a range of properties. Parking takes up far too much space that we cannot afford to mis-use.</p>	<p>BPS staff have retained this proposal.</p>
<p>Allowing a 10 foot move by right could be detrimental in HDs where a common pattern is important. The front setback is typically a consistent attribute in a district, also average spacing between buildings. Vertical relocation of some amount may be OK (allow for daylight basement). Perhaps add more “checks” on this exemption, such as if the closest 10 properties have similar front and side setbacks, the exemption is not allowed? Could allow the 10’ in any direction in Conservation Ds. Also OK for accessory/ secondary structures without review.</p>	<p>BPS staff have revised the approach to historic resource relocation. See relevant ‘relocation’ sections in 33.445 and 33.846.060 (specifically section 33.846.060.I).</p>
<p>How are the various criteria weighed i.e. economic value of new construction vs. cultural value of the historic resource? There appear to be no criteria to be applied by the reviewing body in the new section created for this purpose!</p>	<p>BPS staff have proposed new historic resource review approval criteria for relocation proposals. These criteria incorporate State-required factors that must be considered for relocation of National Register resources. See section 33.846.060.I.</p>
<p>Defining demolition more narrowly might better reinforce the important parts of a building vs defining demo as a percentage of demolished building. Still it is a big improvement to use the front facade as part of the definition.</p>	<p>BPS staff have proposed changes to the demolition definition thresholds, exemptions, and permit issue sections. See Chapter 33.445. BPS staff are not proposing code amendments related to demolition-by-neglect due to concerns that such regulations could be used to target low-income and minority owners</p>



<p>There is no punishment for demolition by neglect- yet this happens too often. Perhaps there is a “maintenance fund” that redevelopment projects must pay into if they or the past owner cannot show that they have spent a certain minimum on upkeep & maintenance of a historic structure? Or they have to show that they have spent some minimum upkeep \$ before they can build a new structure on the property?</p>	<p>and tenants, expedite proposals to demolish unreinforced masonry buildings, and/or lead to appeals of enforcement actions.</p>
<p>Protected under Forestry? Who speaks for Heritage trees?</p>	<p>The Heritage Tree provisions are codified in Chapter 11.20.060. No amendments are proposed to Title 11.</p>
<p>Support the entire process of adding to the HRI; creating a new category of resource (“significant”)- great!</p>	<p>BPS staff have retained this proposal.</p>
<p>Need a lot more incentives to prevent demolition & gentrification! But happy to see new incentives added to the code.</p>	<p>BPS staff have retained and expanded the list of proposed historic resource incentives.</p>
<p>Create incentives for uses that enhance culturally significant districts like New Chinatown/Japantown- could help small locally owned businesses? We already have precedent for supporting certain uses, such as in industrial sanctuaries. We can do the same for supporting and promoting, say, Asian markets or restaurants in New Chinatown/ Japantown.</p>	<p>BPS staff have not proposed incentives outside of the scope of Title 33. Staff are encouraged by the ongoing Legacy Business discussions and look to the Historic Landmarks Commission for guidance regarding possible future incentive concepts.</p>
<p>Maybe (up to 2?) additional dwelling units, if not used for accessory short-term rental use for at least 10 years, are eligible for a waiver of SDC’s as long as the property has historic FAR on it. SDCs could apply retroactively if the historic floor area is removed within that 10 years?</p>	<p>BPS staff have proposed changes to the residential density incentive in response to the Residential Infill Project changes to base zone allowances. Changes to System Development Charges are not proposed.</p>
<p>See above under 4.4, all incentives should apply to any “A-level” protected resource notwithstanding when it was designated.</p>	<p>BPS staff have proposed a solution to this comment by restricting the hierarchy of historic resource classifications (see earlier response).</p>
<p>Community design standards are not working well in conservation districts. As a result, many changes have occurred to some conservation districts and some districts may need reconsideration or boundary changes. Should we consider rethinking boundaries/tradeoffs? If some district areas get removed, though, others should be expanded! In other words, how can we promote better preservation of areas that deserve that preservation.</p>	<p>BPS staff have proposed new definitions for Conservation Landmark and Conservation District, expansion of demolition review to conservation-level resources, and revisions to the exemptions, procedures, and approval criteria that would apply to conservation-level resources. Retention of the existing two-track approach to historic resource review for conservation-level resources is proposed to allow the regulations for conservation-level resources to straddle the regulations for National Register-level resources and historic-level resources. Revisions to the Community Design Standards and/or revisions to the boundaries of existing Conservation Districts may be a possible future work item and is identified as such in the HRCPP Proposed Draft Staff Report.</p>



Review procedures fee increase. The recent Type I HR fee increase is dramatic and very troubling. Minor HR fees should be kept low in order to incentivize property owners- the PHLC strongly supports the use of general fund dollars to bring these back close to where they were.	BPS staff have proposed changes to procedure types. BDS is responsible for proposing adjustments to the land use review fee schedule.
Appreciate an actual review added for contributing structures rather than just a delay. Yes!	BPS staff have proposed retaining demolition review for contributing resources in Conservation Districts, but with additional approval criteria not applicable to landmarks and resources in Historic Districts.
Mostly seem to strike the right balance. For #29, explanatory language says “key boxes” but proposed code only says “boxes.” Define better.	BPS staff have retained and expanded proposed exemptions to historic resource review. See relevant sections in 33.445. Two significant expansions to the existing exemptions would allow more roof area to be concealed with solar panels and larger detached accessory structures to be built in districts without review.
Allowing certain alterations (new accessory structure, changes for accessibility, paving etc) a lower level of review seems supportable.	BPS staff have proposed further refinements to the historic resource review procedure tables in 33.846.
Allowing demo of garages, etc in historic and conservation districts and for individual properties through a Type II rather than a Type IV seems very supportable and a good idea.	BPS staff have proposed retaining the Type II procedure for contributing detached accessory structure demolition in Historic Districts. BPS staff have proposed exempting all detached accessory structure demolition from demolition review for Conservation Landmarks and Districts and National Register Landmarks and Districts.

BPS staff look forward to briefing the Commission on September 14 and engaging with Commissioners during the public comment period for the HRCP Proposed Draft.

Thank you, as always for your service and commitment to ensuring historic preservation improves the city for all Portlanders,

Brandon Spencer-Hartle
Historic Resources Program Manager

