



## **Historic Preservation Ordinance Update Frequently Asked Questions February 17, 2017**

### **1. What is the Historic Inventory?**

The Historic Inventory is a list of 706 pre-1940 homes that were identified through a historic survey in 1981 as being eligible for the City's Historic Register. These homes were determined to be those which have most retained their original appearance, and architectural integrity and which most represent the former character of Laguna Beach.

The Inventory is a valuable planning tool as the Inventory provides a preliminary property rating designation which indicates if a property should be reviewed as a historic resource during the evaluation of a project.

### **2. What is the Historic Register?**

The Historic Register is a list of approximately 300 properties which have been officially designated on the City's Historic Register. These properties were all voluntarily placed on the Register by its property owner, at some point in time since 1989. The owner of each property has signed an agreement to preserve the property. These agreements are recorded with the County. The current Historic Preservation Ordinance (Municipal Code Section 25.45.006) notes that properties on the Register are eligible to apply for preservation benefits such as parking reductions, setback flexibility and financial incentives for properties listed on the Register.

A majority of the properties listed on the Historic Register were identified on the 1981 Historic Inventory (approximately 250), but other homes not identified in the Inventory have also been designated over time pursuant to Municipal Code Section 25.45.004. The current Ordinance requires Design Review approval, with a recommendation by the Heritage Committee for exterior changes proposed to a property listed on the Historic Register. The same procedure is proposed in the proposed draft Ordinance.

### **3. How are the City's Historic Ratings defined?**

The following definitions were adopted by the City Council (Resolution 82.111) in 1982:

#### ***E- Exceptional:***

Buildings with this classification are outstanding historic architectural examples. Most have been recommended eligible for the National Register and those which are not may be considered for National Register status in the future. Buildings in this category are usually in excellent architectural condition and are typically unique or excellent historical and/or historical architectural examples.

***K- Key:***

Buildings with this classification are very good historical architectural examples which strongly retain their original integrity. These buildings have significant architectural, historical, and/or aesthetic value and are fine period examples.

***C- Contributive:***

Buildings with this classification are those which contribute to the overall character of and history of the neighborhood, though they are not unique in and of themselves. The great preponderance of these buildings contribute greatly to the visual fabric of Laguna Beach and are important in a more general historical architectural context. The many beach bungalows built in Laguna during the 1920's are examples of buildings in this category. While contributive buildings are not architecturally outstanding, without them the streetscape of many Laguna neighborhoods would be very different.

**4. What is the Draft Inventory?**

The draft Inventory is a survey which was initiated by Ostashay and Associates in 2014. The survey was conducted to re-evaluate those properties originally identified on the Historic Inventory in 1981. The draft inventory provides a recommended property rating for all of the properties listed on the Inventory, which have not been placed on the Register. These ratings are preliminary and are subject to City Council approval, upon a recommendation from the Heritage Committee. No additional properties were evaluated as part of this survey effort. This inventory is still in draft form, and it will be reviewed by the Heritage Committee and then ultimately presented to the City Council.

**5. What is the “existing” Historic Preservation Ordinance?**

The “existing” Historic Preservation Ordinance was originally adopted in 1989. This Ordinance established the City’s current historic preservation program and includes sections which provide for the process to designate a property to the Historic Register, to modify a property on the Historic Register, and lists the incentives available for properties listed on the Register. Penalties for illegal demolition of historic properties are also included. The current Historic Preservation Ordinance does not include a review process to modify properties listed on the Historic Inventory, or potentially historic properties that have never been surveyed. The following is a list of the sections provided in the current Ordinance. Note that a process to alter a property listed on the Historic Inventory, or a rating re-evaluation process is not included in the existing Ordinance.

- 25.45.002 Intent and purpose.
- 25.45.004 General provisions.
- 25.45.006 Historic register preservation incentives.
- 25.45.008 Procedures for the alteration of historic register structures.
- 25.45.010 Procedures for demolition.
- 25.45.012 Unsafe or dangerous conditions.
- 25.45.014 Illegal demolition—Penalty for violations.

## 6. What is the “proposed” Draft Historic Preservation Ordinance?

The proposed draft Historic Preservation Ordinance is a proposed revision to the originally adopted Historic Preservation Ordinance. The proposed draft Ordinance includes several expanded topics and processes, and appeal provisions. The following is a list of the proposed Sections in the Ordinance. Note that a process to alter a property listed on the Historic Inventory, or a rating re-evaluation process is now included in the existing Ordinance:

25.45.002	Intent and purpose.
24.45.004	Definitions.
25.45.006	Properties listed on the historic register.
25.45.008	Historic property preservation incentives.
25.45.010	Procedures for the alteration of historic register structures.
25.45.012	Procedures to alter a property on the historic inventory.
25.45.014	Procedures for the alteration of a structure constructed before 1955.
25.45.016	Property rating evaluation.
25.45.018	Historic property disclosure.
25.45.020	Procedures for demolition of a historic structure.
25.45.022	Unsafe or dangerous conditions.
25.45.024	Property owned by public agencies.
25.45.026	Property maintenance required.
25.45.028	Illegal demolition Penalty for violations.
25.45.030	Appeals.

## 7. What is CEQA and how does CEQA relate to historic properties?

The California Environmental Quality Act (CEQA) requires that the lead agency (the City of Laguna Beach) review a project for environmental impacts, including impacts to historic resources, prior to the discretionary approval of that project. Projects which require design review are considered discretionary projects and are therefore subject to CEQA review.

Historic resources are protected under CEQA. For purposes of CEQA, the “environment” includes objects of historic significance. A project that involves modification or demolition of a historic resource will normally be viewed as having a “significant impact” on the environment. CEQA contains certain exemptions, which predetermine that a project will not create a significant effect on the environment. Exempt projects typically require no environmental analysis before they can be acted upon by the City. The CEQA Class 31 Exemption provides that if modifications proposed to a historic property are consistent with the Secretary of the Interior’s Standards (SOIS), then a project can be exempt from additional environmental (CEQA) review. If a project is not consistent with the SOIS, then additional environmental review (initial study, negative declaration, mitigated negative declaration or an environmental impact report) would be required. Hence, it is important to determine if a property is historic when initially reviewing a discretionary project to determine if the existing property has any historic value. If the property is determined to not have significant historic value, then the discretionary project could be processed without considering the CEQA impacts to a historic resource. However, if the discretionary project includes modifications to a historic resource, then the City must determine what appropriate CEQA analysis would be required for the project (exemption, initial study, negative declaration, mitigated negative declaration or an environmental impact report). Further information regarding this can be found in the attached (9-8-15) memorandum from the City Attorney.

## **8. Can I “opt-out” of the Historic Inventory?**

The City’s General Plan notes that the Historic Preservation Ordinance proves a tool for implementing the Historic Resources Element. It notes that “the [Historic Preservation] Ordinance promotes voluntary implementation and provides incentives for adding to and modifying historic structures while ensuring the preservation of the original architectural integrity of the structure.”

During the process of updating the Historic Inventory and Historic Preservation Ordinance, the question has been raised as to if a property owner can request that their property be removed from the Inventory, or essentially if they can “opt-out” of the Inventory. Because historic properties are protected under CEQA, the current Ordinance does not include a “stand-alone” “opt-out” provision which would allow property owners to simply remove their property from the Inventory at the owner’s discretion. However, the proposed draft Ordinance does include a process to re-evaluate a property’s historic rating in an effort to remove a historic classification. During this proposed re-evaluation process, if it is determined that the property no longer warrants historic consideration, then the property rating would be adjusted to reflect that the property is not historic.

It is important to note why an “opt-out” provision is not included in the proposed draft Ordinance. If a “stand alone” “opt-out” provision were incorporated into the draft, and the re-evaluation process was omitted from this process, then “opting out” alone would not be sufficient to discount the potential historic significance of a property. Therefore, if a project is submitted for development in the future, at that time, the project would still need to be reviewed by the City for historical impacts. The requirements of CEQA limit the flexibility of the City and ultimately reduce the City’s opportunity to provide a completely voluntary preservation program.

## **9. What if I disagree with the current property rating of my home?**

The current Ordinance does not provide a re-evaluation process for a property so at this time, there is not a defined method to change or remove an existing historic rating. However, as part of the review of the proposed draft Inventory, property owners who feel their proposed property rating is not correct, or that their property should not be considered historic, are encouraged to submit documentation (to the Planning Department) indicating why the proposed property rating is not accurate. Further, the proposed draft Ordinance provides (under Section 25.45.016) a defined process to evaluate the historic rating of a property and allows for an application to be submitted to either establish, elevate, downgrade or remove a property rating.

Specifically, the proposed process allows for a property owner, or the Director of Community Development to file an application to the Heritage Committee to evaluate the historic rating of the property through a publically noticed hearing. Neighbors within 300 feet and tenants within 100 feet of the subject property would receive notice of this hearing. During its review, the Heritage Committee may request that a historic assessment be prepared to evaluate the property at the cost of the City (currently proposed in the draft Ordinance). After consideration of all testimony and evidence presented at the public hearing, the Heritage Committee shall determine if the property should be classified as an “E”, “K” or “C”-rated property, or if the

property has no historic significance. This determination is appealable to the City Council. This new process, which is not currently provided in the current Ordinance, is important as it provides a property owner the understating of how their property is rated, or not, as a historic resource prior to moving forward with a discretionary project subject to CEQA.

#### **10. What if the Historic Inventory was Eliminated from the City’s Historic Preservation Program?**

The Historic Inventory is a list of properties that were identified through a historic survey in 1981 as being eligible for the City’s Historic Register. These properties were determined to have structures which have most retained their original appearance, and architectural integrity and which most represent the former character of Laguna Beach. The City began the process to update this Inventory in 2014, but the updated Inventory is still in draft form and has not been approved or adopted by the City. As noted above, an updated Inventory would be a valuable planning tool because, with regard to the properties surveyed, it provides some level of certainty. Specifically, it provides rebuttable presumption as to whether a property is or is not a historic resource. Properties identified on the Inventory as not being historic resources are presumed not to be historic resources that are entitled to protection under CEQA. Properties that are designated on the Inventory as historic resources are presumed to be historic resources that are granted protection under CEQA. The Inventory serves the purpose of giving advance notice to property owners and the City regarding historic resource status. If the City chooses to forgo completing the Inventory, that decision would have no impact whatsoever on whether any structure is or is not a historic resource. Instead, its elimination would mean that property owners and the City would have to conduct historical resource assessment from scratch for each project involving modifications to, or demolition of, structures over 45 years of age. This is time consuming and expensive, and the results may take many property owners by surprise. Simply put, elimination of the Inventory does not give a “free pass” for development; all future projects would still need to be reviewed by the City for historical resource impacts. Essentially, the homes that were on the Inventory would be reclassified into the “un-surveyed” group of homes more than 45 years of age.

#### **11. Will the proposed draft Ordinance diminish my home’s value?**

It has been inferred by some that having a historic rating may diminish a property’s value for it may limit the development potential of a property. It is true that there may be some limitations on the types of improvements made to a historic property, but that varies widely upon the condition of the property and its historic value. However, current development subject to design review, for both historic and non-historic properties will often be less than the maximum allowed by the code because of localized conditions identified during the design review process. In some cases, there may even be tax advantages to having a historic property. What is important to understand is that the proposed draft Ordinance will not change the current historic status of any existing property. As previously noted, under CEQA, the City is required to review potential impacts to historic resources when any development application is submitted. Thus, today, even if your property does not have a historic rating, if you propose improvements that required a discretionary approval, pursuant to CEQA, the property can be identified as a historic resource. Currently, the Municipal Code provides design criteria stating that: “destruction or alteration to properties with historic significance, as identified in the City’s historic resources inventory or historic register, should be avoided whenever possible. Special

preservation consideration should be given to any structures over forty-five years old.” This review requirement was implemented in 1997 by state CEQA law.

The existing Ordinance only provides for a process to alter a property on the Historic Register, but does not provide for a process to alter a historic resource, which is not on the Register. This has become problematic for property owners, as during design review, after embarking on a substantial investment in project plan preparation, the property has been determined to be a historic resource. The proposed draft Ordinance outlines a process to identify historic resources earlier in the development process. Additionally, the draft Ordinance proposes to implement appeal procedures for these processes/determinations, which are not currently provided in the existing Ordinance.

## **12. Will I be able to update my historic property?**

Yes. Another misconception is that a historic property cannot be altered, thereby reducing development potential and reducing a property’s value. This is simply not true. Alterations are frequently approved for modifications to historic properties within the City. Subject to design review, additions exceeding fifty percent of the existing floor area are often approved for smaller cottages to provide a more functional and updated home. In some situations, these additions also include upper level additions, new garage structures etc.

## **13. What is the CURRENT process to remove a property from the Historic Register?**

Currently, removal from the Register can be initiated by the property owner or by the City and shall be subject to City Council approval with recommendation from the Heritage Committee. The decision to remove a property from the historic register shall be considered at a public hearing by the City Council and shall take into consideration repayment or restoration of any utilized historic benefits/incentives as set forth in Section 25.45.006 of this chapter when (a) the property owner or the City initiates a request to remove the property from the historic register; or (b) anytime unauthorized modifications to the historic property are made including demolition and partial demolition of an historic property.

The current Ordinance does not include any criteria for removal, and it does not indicate that the historic resource status would change as a result of this decision. However, the proposed draft Ordinance requires that a property be removed from the Register, only if it does not qualify as a historic resource. This is important because simply allowing for removal without reviewing the historic integrity of the property would be misleading, because pursuant to CEQA, if a project is submitted for development in the future, at that time, the project would still need to be reviewed by the City for historical impacts.

## **14. What is the PROPOSED process to remove a property from the Historic Register?**

The proposed Ordinance provides for the same process as the current Ordinance to remove a property (as noted above), however it is required that the application provide evidence that the property no longer retains its historic integrity and/or that the property does not meet any of the criteria listed in Section 25.45.006(C). A historic assessment may be requested as part of the application and will be paid for by the applicant. The decision to remove a property from the Register shall be considered at a public hearing by the City Council with recommendation from the Heritage Committee. Repayment of fees and benefits shall also be considered as in the current Ordinance.

As stated above, the proposed draft Ordinance requires that a property be removed from the Register, only if it does not qualify as a historic resource. Because subject to CEQA, if a project is submitted for development in the future, at that time, the project would still need to be reviewed by the City for historical impacts.

#### **15. What is the current Historic Register criteria?**

The current Ordinance notes that if you have been identified on the Inventory, the property is eligible to be placed on the Historic Register, subject to approval of the Heritage Committee. The Ordinance also provides that if a property was not listed on the historic inventory, but the owner desires inclusion of the property on the Historic Register, then an application can be made to the Heritage Committee. Any property considered for placement on the Historic Register must be at least fifty years old and the following criteria shall be used in consideration:

- (a) Structures that most retain their original appearance and architectural integrity using the rating system of “E,” “K” and “C” as described in the historic resources element of the general plan;
- (b) Structures that most represent character, interest or value as part of the heritage of the city;
- (c) The location as a site of significant historic event;
- (d) The identification with a person or persons or groups who significantly contributed to the culture and development of the city;
- (e) The exemplification of a particular architectural style or way of life important to the city;
- (f) The embodiment of elements of outstanding attention to architectural design, detail, materials or craftsmanship.

The proposed draft Ordinance proposes to expand this criteria to clarify the criteria listed above and to better express the criteria that would be recognized under CEQA. The criteria proposed in the proposed draft Ordinance is listed below:

- a) It exemplifies or reflects special aspects, character, interest or value as part of the heritage of the city
- b) The property retains sufficient architectural integrity to continue to evoke the sense of place and time with which it is historically associated;
- c) The location as a site of significant historic event;
- d) The identification with a person or persons or groups who significantly contributed to the culture and development of the city;
- e) The exemplification of a particular architectural style or way of life important to the city;
- f) The embodiment of elements of outstanding attention to architectural design, detail, materials or craftsmanship.
- g) It represents the work of a notable builder, designer, architect, or artist;
- h) It has a unique location, a singular physical characteristic, or is an established and familiar visual feature of a neighborhood, community, or the city;
- i) It is one of the few remaining examples in the city, region, state, or nation possessing distinguishing characteristics of an architectural or historical type or specimen;
- j) It is a noteworthy example of the use of indigenous materials or craftsmanship.

## **16. What disclosure is required of the City for Historic Properties?**

Section 24.45.018 of the proposed draft Ordinance states that the City is required to provide language identifying that the property is, or may be a historic resource on any Real Property Report (RPR) prepared for a property listed on the Inventory, the Register or a pre-1955 property which has not been surveyed. The proposed draft Ordinance would require that the City provide something similar to the following on all Real Property Reports prepared for a property listed on the Inventory, the Register, or a structure constructed prior to 1955:

*The California Environmental Quality Act (CEQA) and the associated CEQA Guidelines require that a proposed discretionary development project, which proposes a substantial adverse change to a historic resource to be avoided or adequately mitigated to qualify for a CEQA exemption or mitigated negative declaration. An Initial Study is required to be prepared to document and support a proposed mitigated negative declaration. If the proposed project cannot be mitigated to below a level of significance, an Environmental Impact Report must be prepared and processed according to the City and CEQA processing guidelines prior to project entitlement review and consideration. Alterations proposed to this property will have to be evaluated for environmental impacts. To assist in doing so, a Historic Resources Assessment Report prepared by a qualified historic preservation consultant may be required in order to determine if any proposed change, alteration or relocation of the historic property on the property will be a substantial adverse change or a change to a historic resource.*

## **17. What will happen when I sell my property?**

Currently, a Real Property Report is required to be provided by a seller of any real property within the City. The proposed draft Ordinance does not propose to change this requirement. However, the proposed draft Ordinance does propose that the City disclose on the Real Property Report if a property is on the Inventory, the Register or if the structure was constructed prior to 1955, to help identify a potential historic resource at the point of sale. If at that time, a homeowner disagrees with the historic status of a property, a homeowner can request a rating evaluation. The proposed draft Ordinance, under Section 25.45.016, now provides a process to evaluate the historic rating of a home. At any time, a property owner may request that the Heritage Committee review the property's historic rating. This decision is appealable to the City Council. Ultimately, this means that at any time, like prior to a sale of the property, the historic rating can be determined. Currently, there is no such process.

## **18. What disclosure is required of real estate agents in the proposed/draft Ordinance?**

The current Ordinance does not require any agent disclosure for historic resources. Based on a recommendation of the Heritage Committee, Section 25.45.018 of the proposed draft Ordinance would require that when a real estate agent is listing a property on the Historic Register for sale, he or she must disclose in that listing if a property is listed on the Historic Register. No agent disclosure is required by City Ordinance for properties listed on the Historic Inventory or properties which have not been surveyed. The Municipal Code provides penalties for not providing a real property report. The proposed draft Ordinance does not implement any new penalties or fines.

**19. What incentives are proposed for historic properties in the proposed draft Ordinance:**

The current Ordinance provides incentives only to properties on the Historic Register. The proposed draft Ordinance provides an expanded list of incentive and would offer incentives not only to properties on the Register, but also to properties on the Inventory. Below is a comparison list of the incentives that were recommended by the Heritage Committee, which are included in draft Section 25.45.008:

Historic Category	Current Ordinance	Draft/Proposed Ordinance
<b>Historic Register</b>	<ul style="list-style-type: none"> <li>· residential parking reductions</li> <li>· commercial parking reductions</li> <li>· building and planning fees refunded</li> <li>· historic building code exemptions</li> <li>· setback flexibility</li> <li>· density bonuses in DTSP and LBP</li> <li>· historic plaque eligible</li> <li>· Mills Act (E/K rated properties)</li> <li>· Non-conforming building exemptions</li> </ul>	<ul style="list-style-type: none"> <li>· residential parking reductions</li> <li>· commercial parking reductions</li> <li>· building and planning fees refunded</li> <li>· historic building code exemptions</li> <li>· setback flexibility</li> <li>· rear setback flexibility</li> <li>· density bonuses in DTSP/LBP, <b>R-2 and R-3 zones</b></li> <li>· free historic plaques</li> <li>· Mills Act (E/K rated properties)</li> <li>· <b>Expanded non-conforming, major remodel exemptions</b></li> <li>· Historic Plaques</li> <li>· Bed and Breakfast Incentives</li> </ul>
<b>Historic Inventory (C/K/E- Rating)</b>	None	<ul style="list-style-type: none"> <li>· residential parking reductions</li> <li>· commercial parking reductions</li> <li>· building and planning fees refunded</li> <li>· historic building code exemptions</li> <li>· setback flexibility</li> <li>· rear setback flexibility</li> <li>· density bonuses in DTSP/LBP, <b>R-2 and R-3 zones</b></li> <li>· free historic plaques</li> <li>· <b>Expanded non-conforming, major remodel exemptions</b></li> </ul>

## 20. What is the process to modify the exterior of a historic or potentially historic property?

Historic Category	Current Ordinance	Draft/Proposed Ordinance
The Historic Register (C/K/E rating)	Exterior changes (except minor exterior modifications) require design review approval, based on a recommendation from the Heritage Committee. If a historic assessment is required, then it is paid for by the property owner. [Section 25.45.008]	No changes are proposed to this section, with the exception that the "minor exterior modifications" are re-defined as "in-kind replacement of historically appropriate materials". [Section 25.45.010]
The Historic Inventory (C/K/E rating)	Not addressed, no additional review required under the current Ordinance. However, in order to comply with CEQA, staff has been requiring a historic assessment for exterior modifications. If a project is subject to design review, then a recommendation of the Heritage Committee is also obtained.	Substantial alterations <sup>1</sup> require design review approval, based on a recommendation from the Heritage Committee. If a historic assessment is required, then it shall paid for by the City. [Section 25.45.012]
Pre-1955 structure that has not been rated	Not addressed, no additional review required. However, this has become problematic as CEQA requires that projects be reviewed for environmental impacts prior to a discretionary approval. Given this, for projects requiring design review, staff has been working to obtain historic assessments (paid for by the property owner) to determine if a proposed project would create a substantial change to the environment. Since this requirement is not outlined in the current Municipal Code, it has posed problems for recent design review projects, as architectural plans have been completed prior to obtaining an assessment.	When an application is submitted to substantially alter a pre-1955 structure, the director shall make a determination of whether the property is eligible to be classified as an "E", "K" or "C"-rated property. In making this determination, the director may apply the eligibility criteria and factors specified in Section 25.45.006(C). The director may also request that a historic assessment at the cost of the City be prepared to evaluate the property. (1) If the director finds that the property may be eligible to be classified as an "E" or "K"-rated property or as a neighborhood property ("C"-rated), then the proposed exterior modifications shall be forwarded to the Heritage Committee for a rating review (as prescribed by draft Section 24.45.022) to determine the appropriate rating of the property. Once a rating is determined, then the proposed project would follow the review procedures set forth in 25.45.012. (2) If it is determined by the director that the property does not warrant historic consideration, then a notice of this determination will be sent to tenants within 100 feet, and property owners within 300 feet of the subject property. (3) Any decision rendered by the director, which concludes that a property does not contain any historic significance, may be appealed to the Heritage Committee. Any decision of the Heritage Committee may be appealed to the City Council.

1. Substantial alteration means demolition, destruction, relocation, or alteration such that the significance and integrity of a historical resource would be impaired. This would include any act or failure to act that destroys, removes, or relocates, in whole or part, a historical resource in such a way that its historic or architectural character and significance are materially altered. Major Remodels, as defined in section 25.08.024, are considered "substantial alterations". Examples of insubstantial alterations can be found in draft Ordinance Section 25.45.004.