

CITY OF SAN DIEGO
M E M O R A N D U M

DATE: January 10, 2013

TO: Historical Resources Board and Interested Parties

FROM: Kelley Stanco, Senior Planner

SUBJECT: **ITEM 10 – Revisions to Board Procedures to Eliminate Affirmative Motion Requirement**

In September 2008, the Historical Resources Board revised its Board Procedures to include Section II.C, “Formulating Designation Motions at Historical Resources Board Meetings” (Attachment 1). This section was added in response to concerns raised by the Board’s then-Deputy City Attorney that a motion made in the negative rather than in the positive created confusion for the public regarding the number of votes required to pass a motion to not designate a property.

In April 2010, the HRB again revised the Board Procedures, modifying and expanding Section II.C, which was divided into three sub-sections. Language was added requiring the Board to address how the property under consideration does or does not meet designation criteria based on the Criteria Guidelines, the Research Report and the Staff Report, as well as information offered in public testimony (Attachment 2).

Since the Board Procedures were amended to require an affirmative motion, unforeseen issues and confusion have resulted. Issues include difficulty in formulating a motion to designate with the required findings when no evidence has been presented to assist in the formulation of such a motion. In addition, the requirement creates confusion for members of the public in instances where a motion to designate is made and seconded, and then unanimously voted down. As a result, the Chair requested that the City Attorney’s office re-examine the need for an affirmative motion. The City Attorney’s office determined that an affirmative motion is not required or necessary, and advised that the Section could be stricken in its entirety.

On November 19, 2012, the Policy Subcommittee reviewed proposed revisions to Section II.C of the Procedures, which struck the Section altogether. The Subcommittee was in favor of removing the requirement for an affirmative motion and recommended that the revision be brought to the full Board; however, the Subcommittee had two questions. First, the Subcommittee questioned how many votes would be required if a motion was made to not designate a property. Second, the Subcommittee questioned whether the entire Section should be stricken, or only Section II.C.3, which is the only Section that requires an affirmative motion.

In regard to the number of votes required, the Municipal Code states only that, “The action to designate shall require the affirmative vote by six members of the Board.” All other actions of the Board, include an action to not designate would require only a simple majority of the members present.

In regard to whether Section II.C should be stricken in whole or part, staff has reviewed the Procedures again, and has determined that either option would be appropriate. Therefore, staff has prepared two options for the Board's review and consideration. Option 1 (Attachment 3) would strike Section II.C entirely, and the Board would simply be required to comply with the Municipal Code and Robert's Rules of Order. Option 2 (Attachment 4) would strike only Section II.C.3, leaving the first two subsections intact. Section II.C.1 of the Board Procedures states simply that it is expected that a motion in support of designation will be made, but does not require that a motion be in the affirmative. Section II.C.2 states that if there is a second to a motion to designate, the Board discussion shall address how the property meets designation Criteria. It should be noted that this is also a requirement of SDMC Section 123.0202(e), which states "The Historical Resources Board shall review the Research Report and shall make a decision on whether to designate a historical resource based on the criteria specified in, and consistent with the procedures of the Historical Resources Guidelines of the Land Development Manual."

In conclusion, staff recommends that the Board review Amendment Option 1, which would strike Section II.C of the Board Procedures in its entirety, and Amendment Option 2, which would strike only Section II.C.3 and approve either amendment option, which would eliminate the affirmative motion requirement.



Kelley Stanco
Senior Planner

KS/cw

- Attachments:
- 1.) HRB Board Procedures Section II.C, as Originally Added September 2008.
 - 2.) HRB Board Procedures Section II.C, as Amended April 2010.
 - 3.) Proposed Amendment to HRB Board Procedures, Option 1 (in full)
 - 4.) Proposed Amendment to HRB Board Procedures, Option 2 (Section II.C only)

3. The particular knowledge and expertise of a Board member who did not visit the site would contribute to the Board's understanding of the request.

C. Formulating Designation Motions at Historical Resources Board Meetings

It is expected that a Boardmember in favor of designation of a property as a historical resource will make a motion in support of designation and consistent with the Land Development Code regulations governing the designation process. If there is no second to a motion to designate a property as a historical resource or in the absence of a motion to designate a property as a historical resource, the Historical Resources Board Chair will call for a vote by the Board in favor of designation. This action will be taken to clarify the record relative to the Board's determination that a property does not meet the adopted designation criteria and the Board's lack of support for designation.

D. Reconsiderations

Reconsideration of Historical Resources Board votes may take place in accordance with Robert's Rules of Order and these procedures.

1. A matter may only be re-considered once.
2. Only votes of the HRB as decision-maker may be reconsidered. Votes of the HRB that are recommendations to a decision-maker cannot be reconsidered (e.g., recommendations on a project that requires a Site Development Permit for historical purposes cannot be reconsidered). Any referral from the City Council to re-hear a designation after an appeal has been filed and any re-initiation of designation proceedings, as found in the Municipal Code, are not subject to these reconsideration procedures.
3. A motion to reconsider may be docketed at the request of any member of the Board voting on the prevailing side of a vote. On or before 10 AM of the second Monday following any vote of the Board at a meeting, the Board member may direct the Secretary to prepare a docket item to consider and vote upon whether to reconsider the matter at a future public hearing. Staff shall make every effort to notify interested parties. The Board may only move to reconsider a previous vote if there are new facts, new or changed circumstances, or new laws that were not known and may have affected their decision. A docketed reconsideration in no way affects, relieves or suspends any interested party's responsibilities to file a timely appeal of a historical designation pursuant to Municipal Code Section 123.0203.

2. The availability of access to the site is limited and the historical elements are sufficiently documented and demonstrable to the Board through the use of graphic or other visual aids presented at or prior to the meeting; or
3. The particular knowledge and expertise of a Board member who did not visit the site would contribute to the Board's understanding of the request.

The procedures requiring Board Members to view resources prior to voting on the item does not apply to designation of interior spaces if photos with a key floor plan are provided for review of building interiors and staff conducts a site visit to verify nominated interior elements are adequately documented. In the rare circumstance when *only* an interior is being considered for designation, Board visitation would be required.

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2. If there is a second to a motion to designate a property as a historical resource, Board discussion shall address how the property under consideration does or does not meet designation criteria based on the adopted *Guidelines for the Application of Historical Resources Designation Criteria*, information and analysis provided in the Research Report and the Staff Report, as well as information offered in public testimony.
3. If there is no second to a motion to designate a property as a historical resource or in the absence of a motion to designate a property as a historical resource, the Historical Resources Board Chair will call for a vote by the Board in favor of designation. This action will be taken to clarify the record relative to the Board's determination that a property does not meet the adopted designation criteria and the Board's lack of support for designation.

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HISTORICAL RESOURCES BOARD PROCEDURES

Adopted October, 28, 2004

Revised September 28, 2006; January 24, 2008; September 25, 2008; April 22, 2010;
February 24, 2011; January 24, 2013

I. Meetings

A. Conduct of Meetings

Except as otherwise specifically noted herein, Robert's Rules of Order shall apply to the conduct of Historical Resources Board meetings.

B. Date and Time

Meetings of the Historical Resources Board generally occur on the fourth Thursday of each month, except as adjusted for holidays or other reasons. It is expected that meetings will generally begin at 1:00 PM and end by 5:00 PM. The Board shall be on legislative recess in the month of December unless sufficient business items require a meeting as determined by a simple majority vote of the Board members at a prior meeting.

C. Management of Agendas

The Historical Resources Board's purpose is to fulfill the role of evaluating and protecting historical resources within the jurisdiction of the City of San Diego. This role includes numerous diverse responsibilities. Board members are appointed to serve in a completely voluntary capacity. In order to ensure continued quality of life for individual Board members and to strive for reasonable agendas, the Board staff shall manage each month's agenda so that the number of items scheduled can be reasonably expected to be heard by the Board within the time allotted for meetings. Staff will recommend consent approval for designation of non-controversial properties when the applicant is in agreement with the staff recommendation and there are no speaker slips in opposition. On occasion, the necessary business of the Board may lend itself to additional or prolonged meetings, but these instances shall be kept to a minimum and shall follow the procedures below.

D. Special or Extended Meetings; Cancellation of Meetings

The Board may set additional special meetings, cancel meetings or extend the length of current or future regular meetings, as needed, based on the affirmative vote of a majority of the Board members present at the meeting where the motion is made. The length of an upcoming Board meeting may also be extended, a special meeting may be set, or a regular

meeting may be cancelled by staff, with the agreement of the Board Chair, and with appropriate notification to Board members and the public, in compliance with the Brown Act.

E. Board Member Attendance

Historical Resources Board members are expected to attend all regular and special Board meetings, and meetings of subcommittees to which a Board member is appointed. Board member attendance shall conform to any adopted Council Policy governing City Boards and Commissions. Absences are recorded in the minutes of regular and special meetings for purposes of reporting to the State Office of Historic Preservation in the annual report, and to the Mayor and City Council prior to re-appointments. Board members are encouraged to notify staff of expected absences prior to meetings if possible. Any Board member who finds he or she is unable to attend meetings on a regular basis should re-consider his or her ability to serve on the Board.

F. Recusals and Abstentions

Any Historical Resources Board member may abstain from voting on an action of the Board after stating the reason for the abstention in discussion before the vote occurs. Recusals for reasons of conflicts of interest should be stated during the appropriate time on the agenda, but in no case after a motion on a Board action has been made and seconded. Board members are encouraged to contact the Deputy City Attorney one week prior to the Board meeting to ascertain whether or not a potential conflict of interest exists.

G. Quorum

1. The Historical Resources Board consists of 11 members. The San Diego Municipal Code requires a quorum of six Historical Resources Board members in order to conduct business.
2. Historical designation requires six votes in favor of the motion. In the event there are not six Board members present who are eligible to vote on a designation request, the item would be trailed to the next available meeting.
3. All actions of the Board, other than designation requests, shall be approved by vote of a simple majority of the members present.

H. Presentation Time Limits

Presentations by members of the public to the Historical Resources Board shall be limited to three minutes for individual speakers, and eight minutes per side for organized presentations. These times may be adjusted by the Board Chair based on the length of the agenda, complexity of the item and/or the number of submitted speaker slips.

II. Business of the Board

A. Processing of Designation Requests Submitted by Members of the Public

Designation requests submitted by members of the public (that have not been referred by the Mayor, a City Department, or by action of the City Council or Historical Resources Board) will be accepted by Board staff on a first come, first served basis. Staff shall review the applications and reports for consistency with the adopted Report Guidelines and Requirements and the *Guidelines for the Application of Historical Resources Designation Criteria* as workload capacity allows and in the order received. Once deemed to be complete and adequate, staff shall schedule a request for the next available regularly scheduled Board meeting. There is no expectation or requirement that all designation requests submitted by members of the public will be processed and recorded in time for the Mills Act to take effect within a certain period of time. Designation requests will be scheduled with other business of the Board in accordance with agenda management procedures contained herein. The effective date of any Mills Act agreement, and subsequent County Tax Assessor's valuation, shall be in accordance with state law requirements.

B. Site Visits for Potential Historical Designations

Site visits to nominated sites is beneficial in the designation process as they increase the knowledge and understanding of the resource in its physical setting. Only Historical Resources Board members who have conducted a site visit for a property under consideration may vote on the designation, unless a site specific waiver is approved by the Board. Approval of a waiver of the site visit shall be by vote of a majority of the Board members present at the meeting. A motion to waive the site visit requirement shall state that one of the following factors exists:

1. A physical visit to the site would not significantly contribute to an understanding or appreciation of the historicity of the proposed site; or

2. The availability of access to the site is limited and the historical elements are sufficiently documented and demonstrable to the Board through the use of graphic or other visual aids presented at or prior to the meeting; or
3. The particular knowledge and expertise of a Board member who did not visit the site would contribute to the Board's understanding of the request.

The procedures requiring Board Members to view resources prior to voting on the item does not apply to designation of interior spaces if photos with a key floor plan are provided for review of building interiors and staff conducts a site visit to verify nominated interior elements are adequately documented. In the rare circumstance when *only* an interior is being considered for designation, Board visitation would be required.

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2. Only votes of the HRB as decision-maker may be reconsidered. Votes of the HRB that are recommendations to a decision-maker cannot be reconsidered (e.g., recommendations on a project that requires a Site Development Permit for historical purposes cannot be reconsidered). Any referral from the City Council to re-hear a designation after an appeal has been filed and any re-initiation of designation proceedings, as found in the Municipal Code, are not subject to these reconsideration procedures.
3. A motion to reconsider may be docketed at the request of any member of the Board voting on the prevailing side of a vote. On or before 10 AM of the second Monday following any vote of the Board at a meeting, the Board member may direct the Secretary to prepare a docket item to consider and vote upon whether to reconsider the matter at a future public hearing. Staff shall make every effort to notify interested parties. The Board may only move to reconsider a previous vote if there are new facts, new or changed circumstances, or new laws that were not known and may have affected their decision. A docketed reconsideration in no way affects, relieves or suspends any interested party's responsibilities to file a timely appeal of a historical designation pursuant to Municipal Code Section 123.0203.
4. Once docketed, a motion to reconsider must be introduced by a Board member who was on the prevailing side in the original vote. The motion can be seconded by any Board member who was present during the original vote. The motion is debatable, and affected parties or any member of the public for or against the reconsideration shall be given the opportunity to testify on that issue only.
5. All eligible Board members present may vote on the motion. However, six affirmative votes of those Board members who had participated in the original vote are required to pass the motion to reconsider.
6. If the motion to reconsider passes, the matter underlying the motion shall be docketed for a new hearing as soon as practical. All required public noticing shall be completed for this future hearing. The hearing shall be conducted in accordance with the applicable provisions of the San Diego Municipal Code and these procedures.

D. Historical Resources Board Recommendations to Decision-Makers

When the Historical Resources Board is taking action on a recommendation to a decision-maker, the Board shall make a recommendation on only those aspects of the matter that relate to the historical aspects of the project. The Board's recommendation action(s) shall relate to the historical resources section, recommendations, findings and mitigation measures of the final environmental document, the Site Development Permit findings for historical purposes, and/or the project's compliance with the Secretary of the Interior's Standards for Treatment of Historic Properties. If the Board desires to recommend the inclusion of additional conditions, the motion should include a request for staff to incorporate permit conditions to capture the Board's recommendations when the project moves forward to the decision maker.

E. Processing of Historical District Nominations

Before any historical district may be established, staff shall review the draft district documents and determine that they are complete. The complete draft district documents shall be scheduled for a Historical Resources Board Policy Subcommittee meeting to introduce the district materials. A second meeting (and additional meetings if necessary) shall be scheduled after the Subcommittee members have reviewed the draft district materials in order to obtain Subcommittee input. Once the Policy Subcommittee's review is complete and they concur that the draft district materials are ready for Board consideration, staff shall include the district nomination on the next available Historical Resources Board agenda. The processing of the district nomination shall comply with the Historical Resources Board Policy 4.1, Historical Districts, and all applicable provisions of the Land Development Code and Land Development Manual.

III. Subcommittees

- A. The HRB may establish subcommittees to further the efficient conduct of business as necessary.
- B. Standing subcommittees which meet on a regular basis may include Policy, Archaeology, and Design Assistance. Standing subcommittees generally provide input to staff and applicants and do not make recommendations to the Board. Exceptions are for the Policy Subcommittee which may make recommendations to the Board on policy issues, and make final decisions regarding annual Historic Preservation Award recipients. Each subcommittee may establish procedures for meeting efficiency.
- C. Ad hoc subcommittees may also be established on an as-needed basis. Ad hoc subcommittees may be stand alone subcommittees of the Board, combined subcommittees including representation from other agencies, or subcommittees of other agencies with Board representation by one or more Board members. Ad hoc subcommittees typically provide the Board with recommendations related to the purpose for which the subcommittee was established.
- D. Standing subcommittees will meet at a pre-established time on a monthly or bi-monthly basis. Any subcommittee meeting may be canceled for lack of business or quorum. The standing subcommittee meetings are subject to the requirements of and shall comply with the Brown Act.
- E. Membership on the standing subcommittees shall strive to match expertise and interests to the extent possible, but shall also strive to allow maximum participation by Board members. The minimum number of Board members appointed to any standing subcommittee shall be three, and the maximum shall be five. Appointments to the standing subcommittees, including chair appointments, shall be made once a year, or as vacancies occur, by the Policy Subcommittee, and ratified by a majority vote of the Board at the next available Board meeting. The Chair of the Board, as appointed by the Mayor or Board, is automatically the Chair of the Policy Subcommittee. Establishment of stand alone or ad hoc subcommittees and appointments to any subcommittee shall be by a majority vote of the Board at a regular or special Board meeting.

IV. Administrative Matters

A. Annual Report

An annual report shall be prepared on behalf of the Board by staff as required by the Certified Local Government agreement between the City of San Diego and the Office of Historic Preservation, and Section 111.0206(d)(7) of the San Diego Municipal Code. A final draft report shall be scheduled for Board consideration and comment no later than the November Board meeting of each year. Staff shall transmit the final annual report to the Office of Historic Preservation (OHP) by December 31 of each year, or in accordance with the deadline established by OHP. Copies of the final annual report shall also be transmitted to Board members, as well as to the Mayor and City Council.

B. Annual Historic Preservation Awards

Each year the Board may present Awards of Excellence recognizing outstanding achievement in the field of historic preservation. The awards shall be presented during the month of May, which is annual historic preservation month. Presentation of the awards may occur at a special meeting event of the Board or during the regular monthly meeting. Applications for nominations from the public shall be available from February 1 through the first Friday of April of each year. The Policy Subcommittee shall consider the nominated recipients at the April Subcommittee meeting, and shall determine which recipients in which categories shall receive awards. Staff shall make every effort to contact the recipients and invite them to the award presentation. Award Certificates of Excellence shall be presented to each recipient at the award presentation meeting.

C. Appeals of Designations

For designations appealed to the City Council, staff shall notify the Board of the docketed hearing date as soon as practical. Board members are encouraged to attend the appeal hearing to speak on behalf of the Board's action.

D. Chair Represents Board

The Chair of the Board or their designee may represent the full Board at meetings when identified as the Chair or designee speaking on behalf of the Board.

E. Election of a Vice-Chair

Annually, in March at the regularly scheduled monthly Board meeting, or as needed to fill a vacancy, the Chair of the Board shall make a motion to nominate a Boardmember to serve as the Vice-Chair. The motion must be seconded and a majority vote in the affirmative of Boardmembers present is required to elect a Vice-Chair. If desired, a Second Vice-Chair may be elected in the same manner, following the election of the First Vice-Chair. The role of the Vice-Chair is to conduct the monthly meeting, if the Chair is unavailable. The role of a Second Vice-Chair would be to conduct the monthly meeting, if the Chair and First Vice-Chair were both unavailable.

F. Distribution of Materials to Board Members and the Public

Copies of all materials relating to matters on the Agenda (materials) that are to be distributed to the Historical Resources Board and made available to the general public shall be provided to Board Staff three weeks prior to the scheduled meeting. Staff shall strive to distribute materials to the Board no later than 10 business days prior to the meeting. Board Staff shall make materials available to the general public at the same time as distributed to Board members by having one printed copy of the materials available for review on the 5th Floor of the City Administration Building and mailing a printed copy to interested groups and individuals for a reasonable fee upon written request. In addition, the Agenda and Supporting Staff Reports shall be posted on the City of San Diego's website.

Supplemental distribution of meeting materials to Board members shall occur on a limited basis at the discretion of Board Staff and with the consent of the Board Chair and under no circumstances later than 72 hours prior to the meeting. Any supplemental materials shall be made available to the general public at the same time as distributed to Board members and in the same manner as described above. Materials that are provided at the time of the noticed HRB meeting will be stamped with a disclaimer stating that Board members may not be able to thoroughly review and consider these materials.

V. Amendments to Procedures

- A. Amendments to these procedures shall be by majority vote of the Board.
- B. The Policy Subcommittee shall review proposed amendments to these procedures and make a recommendation prior to consideration by the full Board.

2. The availability of access to the site is limited and the historical elements are sufficiently documented and demonstrable to the Board through the use of graphic or other visual aids presented at or prior to the meeting; or
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