

CITY OF SAN DIEGO HISTORICAL RESOURCES BOARD

POLICY SUBCOMMITTEE

Monday, August 8, 2011, 3:00 PM to 4:00 PM
12th Floor Conference Room B
City Administration Building
202 C Street, San Diego, CA

The Policy Subcommittee is a subcommittee of the City of San Diego's Historical Resources Board. It is primarily composed of Historical Resources Board members who are interested in policy matters. In general, the Subcommittee is not a voting entity, but rather a forum for discussing issues and policy matters related to historic resources and their preservation. Comments at the meeting do not predispose future positions on any matter by the Historical Resources Board.

Members of the public will be allowed an opportunity to speak, for up to one minute each, at the end of the Subcommittee's discussion on an agenda item. Each member of the public is required to state their name and the organization (if any) that they represent prior to their one minute presentation.

MEETING AGENDA

1. Introductions
2. Public Comment (on matters not on the agenda)
3. Issues:
 - 3a. Stolen historic markers and plaques. The City has been made aware of a recent rash of stolen plaques and bronze markers. A Police Detective is investigating the matter. Staff and Subcommittee members will discuss current plaque requirements and whether a non-metal substitute material should be used in the future. Other issues related to plaques may also be discussed.
 - 3b. Municipal Code amendments to address violations involving historical resources. Staff will present proposed language to allow penalties collected for code violations involving historical resources to be placed in the Historic Preservation Fund. Draft language is attached.
 - 3c. HRB Subcommittee appointments. The Policy Subcommittee will consider appointments and reappointments to standing subcommittees. In addition, the Policy Subcommittee will appoint or reappoint Chairs of the subcommittees, as necessary. The HRB Procedures call for the Policy Subcommittee to approve appointments to subcommittees and for the full HRB to ratify those appointments. Due to staffing constraints, the Archaeology Subcommittee will meet quarterly rather than monthly to discuss Native American concerns related to development projects. Policy level issues, related to archaeology and cultural landscapes, will be referred to the Policy Subcommittee. Proposed Subcommittee information is attached.
4. Adjourn

Next Subcommittee Meeting will be on Monday, September 12, 2011 at 3:00 PM.

For more information, please contact Cathy Winterrowd by phone at (619) 235-5217 or email at cwinterrowd@sandiego.gov

**Article 2: Code Enforcement
Judicial and Administrative Remedies**

Division 8: Administrative Civil Penalties
*(“Administrative Civil Penalties”
added 8–10–1993 by O–17956 N.S.)*

§12.0801 Administrative Civil Penalties

Division 8 of Article 2 of Chapter 1 governs the administrative assessment of civil penalties for violations of the Municipal Code and applicable state codes.
(Renumbered from Sec. 13.0330, retitled to “Administrative Civil Penalties” and amended 8–10–1993 by O–17956 N.S.)

§12.0802 Declaration of Purpose

The Council finds that there is a need for alternative methods of enforcement of the San Diego Municipal Code and applicable state codes. The Council further finds that the assessment of civil penalties through an administrative hearing procedure for code violations is a necessary alternative method of code enforcement.

The administrative assessment of civil penalties established in Division 8 of this Article is in addition to any other administrative or judicial remedy established by law which may be pursued to address violations of the Municipal Code or applicable state codes.
(Renumbered from Sec. 13.0331, retitled to “Declaration of Purpose” and amended 8–10–1993 by O–17956 N.S.)

§12.0803 Authority

- (a) Any person violating any provision of the Municipal Code or applicable state code may be subject to the assessment of civil penalties pursuant to the administrative procedures provided in Sections 12.0804 through 12.0810 of this Division.
- (b) Each and every day a violation of any provision of the Municipal Code or applicable state code exists constitutes a separate and distinct violation.
- (c) Civil penalties may be directly assessed by means of a Notice and Order issued by the Director or affirmed by a City Manager’s Enforcement Hearing Officer. Civil penalties may be recovered by assessment of a Code Enforcement Lien pursuant to Division 2 of Article 3 of Chapter 1 or subsequent legal action brought by the City Attorney.

- (d) Civil penalties for violations of any provision of the Municipal Code or applicable state codes shall be assessed at a daily rate determined by the Director or Enforcement Hearing Officer pursuant to the criteria listed in Section 12.0805 of this Division. The maximum rate shall be \$2,500 per violation. The maximum amount of civil penalties shall not exceed \$250,000 per parcel or structure for any related series of violations.

(Amended 5-20-2003 by O-19177 N.S.)

§12.0804 Procedures—Notice and Order

- (a) Whenever a Director determines that a violation of one or more provisions of the Municipal Code or applicable state code has occurred or continues to exist, a written civil penalties Notice and Order may be issued to the Responsible Person.
- (b) The Notice and Order shall refer to all code sections violated and describe how each section is or has been violated.
- (c) The Notice and Order shall refer to the dates and locations of the violations.
- (d) The Notice and Order shall describe all remedial action required to permanently correct outstanding violations and establish time frames for completion.
- (e) The Notice and Order shall establish a daily amount of civil penalties. The Director shall determine the daily amount of civil penalties pursuant to the criteria in Section 12.0805 of this Division.
- (f) The Notice and Order shall identify a date when the civil penalties began to accrue and a date when the assessment of civil penalties ended, unless the violation is continuous. In the case of a continuous violation, there shall be an ongoing assessment of penalties at the daily rate established in the Notice and Order until the violations are corrected.
- (g) If a Director determines that the violations are continuing, the Notice and Order shall demand that the Responsible Person cease and desist from further action causing the violations and commence and complete all action to correct the outstanding violations under the guidance of the appropriate City Departments.
- (h) The Notice and Order shall enumerate any other consequences should the Responsible Person fail to comply with the terms and deadlines as prescribed in the Notice and Order.

- (i) The Notice and Order shall identify appropriate hearing procedures as required by Sections 12.0401 through 12.0413 of this Chapter.
- (j) The Notice and Order shall be served upon the Responsible Person by any one of the methods of service listed in Section 11.0301 of this Chapter.
- (k) The Notice and Order shall identify the factors used by a Director in determining the duration and the daily amount of civil penalties.
- (l) More than one Notice and Order may be issued against the same Responsible Person if it encompasses either different dates or different violations.
(“Procedures—Notice and Order” renumbered from Sec. 13.0334 and amended 8–10–1993 by O–17956 N.S.)

§12.0805 Determination of Civil Penalties

- (a) In determining the date when civil penalties started to accrue, a Director may consider the date when the Department first discovered the violations as evidenced by the issuance of a Notice of Violation or any other written correspondence.
- (b) The assessment of civil penalties shall end when all action required by the Notice and Order has been completed.
- (c) In determining the amount of the civil penalty to be assessed on a daily rate, a Director may consider some or all of the following factors:
 - (1) The duration of the violation.
 - (2) The frequency or recurrence of the violation.
 - (3) The nature and seriousness of the violation.
 - (4) The history of the violation.
 - (5) Whether the offense impacted environmentally sensitive lands, ~~or a~~ *historical resources* ~~or a~~ *designated historical resource, as defined in Chapter 11, Article 3, Division 1 of the Municipal Code.*
 - (6) The willfulness of Responsible Person’s misconduct.
 - (7) The Responsible Person’s conduct after issuance of the Notice and Order.
 - (8) The good faith effort by the Responsible Person to comply.

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- (9) The economic impact of the penalty on the Responsible Person.
 - (10) The impact of the violation upon the community.
 - (11) Any other factors that justice may require.
- (d) The City Manager has the authority to establish a penalty schedule for a Director to use as a guideline in determining the amount of civil penalties in appropriate cases. The Manager shall also establish procedures for the use of this penalty schedule.
(Amended 5-20-2003 by O-19177 N.S.)

§12.0806 Administrative Costs

A Director or Enforcement Hearing Officer is authorized to assess all reasonable costs. Costs may include, but are not limited to: staff time to investigate and document violations; laboratory, photographic, and other expenses incurred to document or establish the existence of a violation; and scheduling and processing of the administrative hearing and all actions. Any determination that documented costs are not reasonable must be supported by written findings.
(“Administrative Costs” added 8-10-1993 by O-17956 N.S.)
(Amended 2-26-2007 by O-19579 N.S.; effective 3-28-2007.)

§12.0807 Failure to Comply with Director’s Notice and Order

A Director shall request the City Manager to appoint an Enforcement Hearing Officer and to establish a date, time and place for the civil penalties hearing in accordance with Division 4 of Article 2 of Chapter 1 when the Responsible Person fails to comply with the terms of the Notice and Order. Failure to comply includes failure to pay the assessed civil penalties, failure to commence and complete corrections by the established deadlines or failure to refrain from continuing violations of the Municipal Code or applicable state codes.
(“Failure to Comply with Director’s Notice and Order” added 8-10-1993 by O-17956 N.S.)

§12.0808 Civil Penalties Hearing

- (a) The procedures for the civil penalties hearing are the same as the hearing procedures set forth in Division 4 of Article 2 of Chapter 1.
- (b) The Enforcement Hearing Officer shall only consider evidence that is relevant to the following issues: (1) whether the Responsible Person has caused or maintained a violation of the Municipal Code or applicable state code that existed on the dates specified in the Notice and Order; and (2) whether the

amount of civil penalties assessed by the Director pursuant to the procedures and criteria outlined in Section 12.0805 was reasonable.
(*“Civil Penalties Hearing” added 8-10-1993 by O-17956 N.S.*)

§12.0809 Administrative Enforcement Order

- (a) Once all evidence and testimony are completed, the Enforcement Hearing Officer shall issue an Administrative Enforcement Order which affirms or rejects the Director’s Notice and Order or which modifies the daily rate or duration of the civil penalties depending upon the review of the evidence. The Enforcement Hearing Officer may increase or decrease the total amount of civil penalties and costs that are assessed by the Director’s Notice and Order.
- (b) The Enforcement Hearing Officer may issue an Administrative Enforcement Order that requires the Responsible Person to cease from violating the Municipal Code or applicable state codes and to make necessary corrections.
- (c) As part of the Administrative Enforcement Order, the Enforcement Hearing Officer may establish specific deadlines for the payment of penalties and costs and condition the total or partial assessment of civil penalties on the Responsible Person’s ability to complete compliance by specified deadlines.
- (d) Enforcement Hearing Officer may issue an Administrative Enforcement Order which imposes additional civil penalties that will continue to be assessed until the Responsible Person complies with the Hearing Officer’s decision and corrects the violation.
- (e) The Enforcement Hearing Officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the Administrative Enforcement Order.
(*“Administrative Enforcement Order” added 8-10-1993 by O-17956 N.S.*)

§12.0810 Failure To Comply With The Administrative Enforcement Order

- (a) Upon the failure of the Responsible Person to comply with the terms and deadlines set forth in the Administrative Enforcement Order, the Director may use all appropriate legal means to recover the civil penalties, administrative costs and obtain compliance with the Administrative Enforcement Order.
- (b) After the Enforcement Hearing Officer issues an Administrative Enforcement Order, the Director shall monitor the violations and determine compliance.
(*Renumbered from Sec. 13.0336, retitled to “Failure To Comply With The Administrative Enforcement Order” and amended 8-10-1993 by O-17956 N.S.*)

Article 3: Recovery of Code Enforcement Penalties and Costs

Division 4: Recovery of Civil Penalties

(“Cost Recovery” added 10-7-1991 by O-17694 N.S.)

*(Retitled to “Recovery of Civil Penalties”
on 8-10-1993 by O-17956 N.S.)*

§13.0401 Recovery of Civil Penalties

(a) The Director may collect all civil penalties and related administrative costs by the use of all appropriate legal means, including referral to the City Treasurer and the recordation of a Code Enforcement Lien pursuant to the procedures set forth in Division 2, Article 3 of Chapter 1. If unable to collect the obligation, the Director or City Treasurer may refer the obligation to the City Attorney to file a court action to recover these penalties and costs.

(“Recovery of Civil Penalties” renumbered from Sec. 13.0337 and amended 8-10-1993 by O-17956 N.S.)

§13.0402 Code Enforcement Civil Penalties Fund

Civil penalties collected pursuant to this Division shall be deposited in the Code Enforcement Civil Penalties Fund as established by the City Manager for the enhancement of the City’s code enforcement efforts and to reimburse City Departments for investigative costs and costs associated with the hearing process that are not paid by the Responsible Person. Civil penalties deposited in this fund shall be appropriated and allocated in a manner determined by the City Manager. The City Auditor shall establish accounting procedures to ensure proper account identification, credit and collection.

(“Code Enforcement Civil Penalties Fund” renumbered from Sec. 13.0338, retitled and amended 8-10-1993 by O-17956 N.S.)

§13.0403 Historic Preservation Fund

Civil penalties collected pursuant to this Division for violations of the Historical Resources Regulations within Chapter 14, Article 3, Division 2 of the San Diego Municipal Code shall be deposited in the Historic Preservation Fund established pursuant to City Council resolution R-305067, adopted July 7, 2009. Civil penalties deposited in the Historic Preservation Fund shall be appropriated and allocated in a manner determined by the City Manager in accordance with City Council resolution R-305067. The City Auditor shall establish accounting procedures to ensure proper account identification, credit and collection.

§13.0425 Cancellation of Code Enforcement Lien

Once payment in full is received for the outstanding civil penalties and costs or the amount is deemed satisfied pursuant to a subsequent administrative or judicial

order, the Director shall either record a Notice of Satisfaction or provide the property owner or financial institution with the Notice of Satisfaction so they can record this notice with the County Recorder's office. The Notice of Satisfaction shall include the same information as provided for in the original Code Enforcement Lien as described in section 13.0203(e). Such Notice of Satisfaction shall cancel the Code Enforcement Lien.

("Cancellation of Code Enforcement Lien" added 10-7-1991 by O-17695 N.S.)

Article 3: Land Development Terms

(Added 12-9-1997 by O-18451 N.S.)

Division 1: Definitions

(“Definitions” added 12-9-1997 by O-18451 N.S.)

§113.0101 Purpose of Definitions

The purpose of this division is to provide clear and concise definitions of words and phrases that have meanings specifically related to the Land Development Code and to apply these terms in a consistent way throughout the Land Development Code.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§113.0102 Identification of Definitions

Each word or phrase that is defined in this division appears in the text of the Land Development Code in italicized letters.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§113.0103 Definitions

Designated historical resource means a *historical building, historical district, historical landscape, historical object, or historical structure, important archaeological site or traditional cultural property* which has been designated by the Historical Resources Board pursuant to Land Development Code Chapter 12, Article 3, Division 2, is included in the City of San Diego Historical Resources Board Register, or has been listed in or determined to be eligible for listing in the California Register of Historic Resources or the National Register of Historic Places.

Historical building means a construction that possesses historical, scientific, architectural, aesthetic, or cultural significance that was created principally to shelter human activity (such as a house, barn, *church, hotel*, or similar construction).

Historical district means a significant concentration, linkage, or continuity of sites, buildings, *structures*, or objects that are united historically, geographically, or aesthetically by plan or physical *development* and that have a special character, historical interest, cultural or aesthetic value, or that represents one or more architectural periods or styles in the history and *development* of the City.

Historical landscape means a modified feature of the land that possesses historical, scientific, aesthetic, cultural, or ethnic significance to a neighborhood or community.

Historical object means a construction of historical, scientific, aesthetic, cultural, or ethnic significance that is usually by design or nature movable and primarily artistic in nature or relatively small in scale and simply constructed (such as *signs*, light fixtures, and *street* or garden furniture).

Historical resource means a *designated historical resource, historical building, historical structure, historical object, important archaeological site, historical district, historical landscape, or traditional cultural property.*

Historical structure means a functional construction that possesses historical, scientific, architectural, aesthetic, or cultural significance, usually made for purposes other than sheltering human activity (such as large-scale engineering projects, water control systems, transportation systems, mine shafts, kilns, ovens, lighthouses, and radio telescopes).

Important archaeological site means a site or location of past human occupation with significant subsurface deposits, where important prehistoric or historic activities or events occurred, that possesses unique historical, scientific, cultural, religious, or ethnic value of local, regional, state, or federal importance. *Important archaeological sites* include:

- (a) Archaeological sites listed in the City of San Diego Historical Resources Board Register or listed in or determined to be eligible for listing in the California Register of Historical Resources or in the National Register of Historic Places;
- (b) Areas of past human occupation where important prehistoric or historic activities or events occurred (such as villages or large camps); and
- (c) Locations of past or current traditional religious or ceremonial observances as defined by California Public Resources Code Section 5097.9, et seq., and protected under Public Law 95-341, the American Indian Religious Freedom Act (such as burials, pictographs, petroglyphs, solstice observation sites, and sacred shrines).

Traditional cultural property means a locale which has been, and may continue to be, of religious, mythological, economic, or social importance to an identifiable ethnic group. This includes sacred areas where religious ceremonies were or are practiced or that are central to a group's origins as a people (such as a mountain, river, or cave). Also included are areas where plants or other materials were or are gathered for food, medicine, or other economic purposes.

- (c) If a deviation for demolition or removal of a *designated historical resource* or a contributing *structure* within a *historical district* is approved, the *applicant* shall obtain approval for new *development* on the same *premises* before issuance of a Demolition/Removal Permit.

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)

§143.0270 Administrative Guidelines

The City Manager is authorized to promulgate and publish Historical Resources Guidelines and other support documents to be located in the Land Development Manual, as necessary to implement this division. These administrative guidelines shall serve as baseline standards for processing Construction Permits, Neighborhood Development Permits, and Site Development Permits issued pursuant to this division.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§143.0280 Violations and Remedies

The provisions of this division shall be enforced pursuant to Chapter 12, Article 1, Division 2 (Enforcement Authorities for the Land Development Code) and the Historical Resources Guidelines of the Land Development Manual.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

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.

PROPOSED
HISTORICAL RESOURCES BOARD
SUBCOMMITTEE ROSTERS

August 8, 2011

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| POLICY SUBCOMMITTEE |
| • Meets 2 nd Mon. of the month at 3:00pm |
| John Lemmo, Chair |
| Priscilla Berge |
| Ann Woods |
| Mike Baksh |
| <i>vacant</i> |

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| DESIGN ASSISTANCE SUBCOMMITTEE |
| • Meets 1 st Wed. of the month at 4:00pm |
| Alex Bethke, Chair |
| Gail Garbini |
| Linda Marrone |
| Ann Woods (<i>beginning January 2012</i>) |
| <i>Architect position – once appointed</i> |

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| ARCHAEOLOGY SUBCOMMITTEE |
| • Meets Quartely -- 2 nd Monday of August, November, February, May at 4:00pm |
| Michael Baksh, Chair |
| Priscilla Berge |
| Gail Garbini |
| <i>Native American – once appointed</i> |

A. Proposed revision to the Archaeology Subcommittee agendas:

The Archaeology Subcommittee is a subcommittee of the City of San Diego's Historical Resources Board. It is primarily composed of Historical Resources Board members who have expertise or are interested in pre-contact and historic archeology and Native American cultural resources-landscapes. The Subcommittee is not a voting entity, but rather a forum for discussing issues and solutions related to historic resources and their preservation. Comments at the meeting do not predispose future positions on any matter or project by the Historical Resources Board.

B. Proposed revision to the Policy Subcommittee agendas:

The Policy Subcommittee is a subcommittee of the City of San Diego's Historical Resources Board. It is primarily composed of Historical Resources Board members who are interested in policy matters. In general, the Subcommittee is not a voting entity, but rather a forum for discussing issues and policy matters related to historic resources and their preservation, including policy issues related to cultural landscapes and archaeological resources. Comments at the meeting do not predispose future positions on any matter by the Historical Resources Board.