

**OFFICE OF HISTORIC PRESERVATION  
DEPARTMENT OF PARKS AND RECREATION**

1725 23<sup>rd</sup> Street, Suite 100  
SACRAMENTO, CA 95816-7100  
(916) 445-7000 Fax: (916) 445-7053  
calshpo@parks.ca.gov  
www.ohp.parks.ca.gov



August 17, 2015

Honorable Robert Garcia and  
Members of the City Council  
City of Long Beach  
333 W. Ocean Boulevard  
Long Beach, CA 90802

Sent via email: [cityclerk@longbeach.gov](mailto:cityclerk@longbeach.gov)

Dear Mayor Garcia and Council Members:

**RE: AMENDMENTS TO CULTURAL HERITAGE COMMISSION ORDINANCE**

The Office of Historic Preservation has a long history with the City of Long Beach and its historic preservation program. In 1992, acting on the recommendation of the State Historic Preservation Officer (SHPO), the city's historic preservation program was certified by the National Park Service, meaning that the program met the intent of the National Historic Preservation Act. We have worked with the city's historic preservation program since that time. As a Certified Local Government (CLG) the city is required to seek the comments of the State Historic Preservation Officer before it amends its historic preservation ordinance.

The City and its Cultural Heritage Commission (CHC) are to be congratulated for taking on the task of assessing its historic preservation ordinance and recommending changes that would streamline the processes for designation of historic properties and reviewing proposed changes to historic properties. Before you are two versions of the draft amended ordinance, identical except for Section 2.63.060, Procedures for designation of a Landmark. The version put forth by the CHC, identified in the staff report as Version A, does not support property-owner consent. Version B, as put forth by city staff, would require the written consent of the property owner prior to initiating Landmark designation.

Other designation programs, including the National Register of Historic Places and the California Register of Historical Resources, both administered by the OHP, have established a somewhat hybrid program. Anyone can nominate a property for designation, the nomination process moves forward, a hearing before the State Historic Resources Commission is held, and if at that point the owner objects, the property is not listed. This approach does allow for the owners, the nominators, and OHP staff to have a discussion and dialog to address the implications of listing and the merits of listing in a public forum. At the end of the day, the property owner may object to listing, after public dialog has occurred. .

The OHP has been working with Long Beach since 1992 and we are not aware that owner consent has been a significant issue for the city. However, if in fact it has been an issue, we recommend that instead of reversing an approach to designation that has been largely working, the city take a much stronger and more active approach to providing the public in general with information about both the merits and restrictions of designation. In other words, enhance the public education part of the program to help alleviate the fear of designation.

Some years back the firm of Clarion Associates, a firm specializing in planning, land use regulations, and real estate consulting and valuation, prepared a publication for the OHP: *Drafting Effective Historic Preservation Ordinances: a Manual for California's Local Governments*. They have pointed out that "practical experience around the country shows that it is difficult to carry effective historic preservation program if owner consent is required" (p. 35). Historic preservation designation is a form of an overlay zone, and courts in general zoning cases have generally expressed concerns with consent provisions.

Historic preservation designation is supported by the 10<sup>th</sup> amendment of the U.S. Constitution (police powers of state and local governments), the California Constitution (Article 11, Local Government, Sec. 7) and California Statutes which allow local governments to regulate property under their prevue. In 1978, the U. S. Supreme Court found in Penn Central Transportation Co. v. New York City that the designation of a property and subsequent regulatory action to restrict use of that property was a legitimate role for the New York City Landmarks Preservation Commission and that denying demolition was not a taking. The U. S. Constitution, in both the 5<sup>th</sup> and 14<sup>th</sup> amendments, also provides for the protection of individuals. An effective program balances police power with due process expressed through understandable and accessible regulations.

We recommend that the City of Long Beach enhance its public education efforts regarding historic property designation, provide clear and straight forward regulations that ensure the rights of the individual and due process, and support Version A of the city's draft amended historic preservation commission.

If you have questions, please contact Lucinda Woodward, Supervisor of the Local Government Unit, at (916) 445-7028 or at [Lucinda.Woodward@parks.ca.gov](mailto:Lucinda.Woodward@parks.ca.gov).

Sincerely,



Julianne Polanco  
State Historic Preservation Officer

cc: Christopher Koontz and Cultural Heritage Commission  
Teresa Grimes, GPA Consulting