



# Planning Commission Work Session

PLANNING DIVISION  
COMMUNITY & NEIGHBORHOODS

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To: Salt Lake City Planning Commission  
From: Michaela Oktay, Planning Manager  
801-353-6003 or michaela.oktay@slcgov.com  
Date: September 28, 2016 Meeting  
Re: PLNPCM2016-00330–HLC Process & Recommendations Study. Work Session.

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**PURPOSE:** This memo is intended for a work session with the Planning Commission (PC) concerning a recent petition initiated by Mayor Biskupski. The petition requests that the Planning Division study and make any recommendations to amend the City's zoning ordinance as it pertains to the following:

1. Review the role and responsibilities of the Historic Landmark Commission when:
  - A. creating, designating and amending Local Historic Districts (LHDs) and or landmark sites; and,
  - B. reviewing and approving/denying development proposals within the overlay
2. Study and assess other communities relating to:
  - A. how they structure their local regulations,
  - B. standards of review,
  - C. decision making processes within their historic overlays
  - D. identify best practices to provide greater clarity, consistency, transparency and accountability.
3. Make recommendations to the Mayor and City Council for any changes to the City's zoning ordinance relating to
  - A. the role and responsibilities of the HLC,
  - B. standards and decision making processes within the overlay,
  - C. assemble a range of possible options for the City to consider within these areas.

On September 1, 2016 the Historic Landmark Commission (HLC) reviewed Staff's recommendation and options and this report includes their input and recommendations.

**ACTION NEEDED:** Commission Members are not asked to take formal action but to participate and comment on any aspect of the study, discussion or assessments included in the report including options and/or recommendations.

Any future zoning text amendments resulting from this study would be clarified, reviewed and initiated by the Mayor and/or City Council. Any proposed amendments to the code would follow the general text amendment process, including public input, review and recommendations from both the HLC and PC with final consideration and decision by the City Council. Once direction is given as to whether to change the ordinance or adopt certain recommendations in this report, the Planning Division will provide estimated costs where additional funding to implement the recommendations may be necessary or applicable.

**WHY HAS THE STUDY BEEN INITIATED:** The Mayor asked the Planning Division to take a comprehensive review of how zoning implementation is executed with regard to the *H Historic Preservation Overlay zoning district*.

Over the course of many years, the City has adopted strong policy goals with regard to historic preservation. The Community Preservation Plan and citywide Master Plans demonstrate strong support of Historic Preservation. There are other important goals of the City such as economic development, transit oriented development and affordable housing, etc. that are also important goals of the City and which may be in conflict with the goals of preservation in some site specific areas.

There has been some criticism and concern raised by applicants in reference to recent new development requests about the role, responsibilities and transparency of the decision-making process by the Historic Landmark Commission. There have been questions about the standards, processes and relevance of the design guidelines in such processes. Questions have been raised including which decision making body should hear an appeal relating to a Certificate of Appropriateness and on what grounds such an appeal is or should be based.

#### 2015 Legislative Session

During the last Legislative Session the Utah State Legislature enacted legislation changing the citizen initiated process for adopting Local Historic Districts statewide. During those discussions about that particular process, the City indicated to some legislators that we would review our entire process based on other concerns voiced about development approvals and decision making.

The overall intent is to:

- study the standards and processes,
- suggest any improvements that may improve predictability and transparency of the process,
- improve customer service,
- promote economic development and other pressing City goals, when policies may appear to be in conflict and when there may be a need to take action for the best interest of the City. This is consistent with the Community Preservation Plan which acknowledges that there can be, especially in times of economic prosperity, tensions and policy conflicts when preservation is involved, and
- endeavor to not only implement city-wide historic preservation policies but to also make suggestions for addressing situations in which multiple important policies may be in competition or conflict.

## **INTRODUCTION**

In 2005, the City Council requested the Planning Division conduct a similar analysis of the preservation program. The following history of the program is taken from that 2005 study.

The study begins by telling the story of Salt Lake City, efforts of its citizens over decades and how historic preservation has evolved in parallel with many other communities in the nation.

Salt Lake City (SLC) has a unique history culturally and in terms of physical layout. Salt Lake City is famous for its wide streets and large blocks, a result of LDS founder Joseph Smith's "Plat of Zion". After construction of the transcontinental railway, Salt Lake City developed much like other communities in the West, in that it absorbed an influx of newcomers from many cultures to contribute to its growth.

The City, its buildings and urban fabric reflect both its distinctive early roots and its integration into mainstream American culture. Salt Lake City is fortunate to have a rich architectural heritage, from Temple Square to Exchange Place, from the mansions of South Temple to workers' cottages of Central City's inner block courts.

The adoption of SLC's historic preservation ordinance in 1976 was an acknowledgement by City officials that the protection of this heritage was a worthy goal. Today approximately 4,700 properties fall under the aegis of the Historic Landmark Commission (HLC) and are protected by the "*H Historic Preservation Overlay District*" of the SLC



zoning ordinance.

The HLC's primary responsibility is executing the regulatory component of the overlay zone, ensuring that exterior alterations, new construction and demolition of "contributing" properties will be consistent with the historic appearance of a building or the surrounding neighborhood.

The administration of the ordinance places historic preservation in the political realm, where controversies abound and compromises are necessary. Historic Preservation is all about compromise: changing the use in an old building in order to preserve its economic viability, conserving selected neighborhoods while redeveloping in others, or retaining an irreplaceable landmark but accommodating contemporary needs in a compatibly-designed addition (Administrative Response to the City Council's Legislative Action, SLC Planning Division, 2004).

After providing a brief overview of the development of historic preservation, both nationally and locally, the following will address the study questions as outlined in Mayor Biskupski's petition.

## **OVERVIEW OF HISTORIC PRESERVATION IN SALT LAKE CITY**

"Historic Preservation is not a new concept in Salt Lake City. Numerous documents illustrate the local interest in saving historic sites dating back as early as the nineteenth century. It was expressed as advocacy in the reaction to the threat of demolition of a beloved landmark or outrage once the landmark was razed.

"But it wasn't until 1976 that the SLC adopted a preservation ordinance regulating alterations, demolitions, and new construction and adopted its first local historic district: South Temple. Since that time, City efforts for preservation have focused on administering the ordinance of the "*H Historic Preservation Overlay*", adoption of a *Community Preservation Plan*, updating Historic Surveys, and adoption of Design Guidelines for the City." (SLC Planning Division, 2004)

## **DEVELOPMENT OF HISTORIC PRESERVATION IN THE UNITED STATES**

"The development of historic preservation in SLC parallels that of thousands of communities across the United States. Interested citizens have rallied to protect historic buildings in this country since the early 1800s. But it was not until the 1960's that the existing framework of historic preservation at the national, state and local level took shape.

"In 1966, the *National Historic Preservation Act* was passed, establishing the National Register of Historic Places, State Historic Preservation Offices (SHPOs) and a review process to mitigate the effect of federal projects on historic sites. Preservationists however, realized that the true power and responsibility to preserve historic structures rested at the local level, where historic preservation could be implemented as an ordinance to achieve its role in furthering the health, welfare, and benefit to its citizens.

"The city of Charleston, SC, adopted the first historic preservation ordinance as part of its zoning code in 1931. Several other cities, including New Orleans and Boston quickly followed. During the 1960's the acceleration of demolitions, the escalating national environmental movement and the establishment of the federal preservation framework inspired hundreds of communities to adopt historic preservation ordinances as part of their zoning code. Throughout the 1970s and 1980s, preservationist devised and refined the tools needed to administer their regulations, such as preparation of design guidelines and the implementation of economic incentives.

"The validity of a local ordinance was upheld in an influential Supreme Court Case, *Penn Central Transportation Corporation vs. City of New York* in 1978. In its decision, which ruled in favor of the City of New York's denial of the construction of a 50-story tower above Grand Central Station, the Supreme Court established the following:

- 1) Aesthetic considerations can be a basis for the government to use the police power.
- 2) Local preservation laws are nothing more or less than another form of land use regulation when economic impact is involved;
- 3) Owners must show that retaining a historic structure will deny them all reasonable economic use, not simply a diminution of value;

- 4) A municipality is not discriminating against a property owner by designation a landmark.

“Today, over 2,500 communities in the United State have historic preservation ordinances. There are 1,949 Certified Local Governments(CLGs). A CLG means that the municipality must pass a basic preservation ordinance with minimal provisions (model ordinance). There are 91 CLGs in Utah. According to the Utah State Historic Preservation Office, approximately 15 communities in the state have historic preservation ordinance with design review provisions. But only Logan, Ogden, Park City, and Provo have programs similar to SLC that are administered with professional staff.” (SLC Planning, 2004, updated 2016)

## **DEVELOPMENT OF PRESERVATION EFFORTS IN SALT LAKE CITY**

“As stated earlier, the SLC Council adopted its first ordinance in 1976, as allowed by the state enabling legislation. The City designated the first historic district, South Temple, and established the Historic Landmark Committee. Designation of the Avenues and Exchange Place historic districts quickly followed in 1978. By the time the City Council designated Capitol Hill as a local district, in 1984, much of the local historic presevation infrastructure was in place. The City provided financial incentives for rehabilitation of historic properties, which has since envolved into the City’s housing program.” (SLC Planning, 2004)

SLC Corporation responded to citizens’ demand for preservation:

- 1976 Adopted historic preservation ordinance
- 1979 Design guidelines adopted for renovation
- 1980 Hired first Preservation planner
- 1988 R/UDAT project (cited stronger anti-demolition code and utilizing historic buildings for downtown)
- 1993 Salt Lake City Strategic Plan identifies Historic Preservation as one of eight important aspects of implementing the City’s Vision.
- 1995 Rewrite of the entire zoning ordinance
  - Stricter anti-demolition ordinance
  - Historic Landmark Commission became a separate commission rather than advisory to the Planning Commission
- 1998 Futures Commission Report identifies preservation as a vital component of an exciting, livable city
- 1999 Design Guidelines updated (prepared by Winter and Company, nationally reound firm)
- 2006 White House recognized Salt Lake City as a “Preserve America” community
- 2006 Capitol Hill Historic District RLS Survey is updated
- 2006 South Temple Historic District RLS Survey is updated
- 2007 Avenues Historic District RLS Survey is updated
- 2007 American Planning Association named South Temple one of America’s “10 Great Streets”
- 2011 Preservation Program Philosophy statement adopted
- 2012 *Community Preservation (Master) Plan* adopted
- 2012 *Commercial Design Guidelines* adopted
- 2012 Local Historic District (LHD) Designation process updated
- 2012 *Residential Design Guidelines* updated & adopted
- 2012 Adaptive Reuse of Landmark Building code update
- 2013 Central City Historic District RLS Survey is updated
- 2013 *Sign Design Guidelines* adopted
- 2015 *Historic Apartment Building/Multifamily Design Guildlines* Adopted
- 2015 University Historic District RLS Survey updated
- 2015 *Plan Salt Lake* Adopted (Guiding principles for Preservation, Neighborhoods, Growth, & Housing)
- 2015 Yalecrest-Harvard Park, Princeton Park, Upper Harvard Yale Park Plat A, Normandie Circle, & City Creek Memory Grove Local Historic Districts designated
- 2016 Yalecrest-Harvard Heights Local Historic District designated
- 2016 Local Historic District (LHD) Designation process update (tranmitted, pending City Council action)
- 2016 Historic Parks and Open Space Design Guidelines (in progress)

## **PROPERTIES CURRENTLY PROTECTED BY THE HISTORIC PRESERVATION PROGRAM**

Since the adoption of the preservation ordinance in 1976, the city has established thirteen local historic districts (LHD). This includes approximately 4,500 properties in LHDs and the City has designated over 160 sites as local Landmark Sites. Since 2014, six new local historic districts have been adopted, mostly in the Yalecrest neighborhood and City Creek/Memory Grove (city owned).

The size of the preservation program and number of designated properties means that city planning staff review a high volume of applications for certificate of appropriateness (COA) applications each year. Since 2013 years, staff has reviewed approximately 330 COAs each year. Over 90% of those are approved at the Staff level and 50% of those were approved on-the-spot at the planning counter. The most complex or complicated cases go to the Historic Landmark Commission for its review and final decision. Of those reviewed by the HLC, 99% of those were issued a Certificate of Appropriateness.

### **ACTION ITEM #1. A.**

- 1. *Review the role and responsibilities of the Historic Landmark Commission when:  
A. *Creating, designating and amending Local Historic Districts (LHDs) and or landmark sites;****

The Historic Landmark Commission's role is to act as a recommendation body to the City Council on designation issues as these are legislative matters.

- 1) Designation of Local Historic Districts (LHDs) - (Legislative Matter)

The role of the HLC in creation of a local historic district is advisory to the City Council, the final decision making body. In 2012 the City updated and adopted a designation ordinance that included extensive outreach, research, review and discussions with the HLC, PC and City Council.

The 2012 updated process changes:

- Requires a Director's Report to City Council, to get City Council to "accept" and move the application forward
- Included a citizen initiated process for LHD designation
- Removed the HLC from the authority to initiate designation applications
- Changed so LHDs can only be initiated by property owners, the Mayor or City Council
- Created a robust public engagement process including individual outreach meetings between property owners and planning staff, open houses and public hearings with the HLC and PC
- Included a property owner "opinion ballot" prior to City Council's final consideration

The standards and factors considered for designation were rewritten and expanded upon. The HLC advises the City Council by providing a recommendation based on the findings relating to specific standards and factors. The standards reflect best practices used throughout the country when evaluating the historic integrity and considerations for designation, including proper boundaries for a district. The Planning Commission reviews the designation request and advises the City Council according to the zoning map amendments factors in the ordinance.

After preliminary public outreach, including at least one public hearing with both the HLC and PC, property owners can express their support or opposition for designation through a final opinion "ballot". The final transmittal to the City Council includes the application, the HLC and PC recommendations, and the ballot results. The City Council has the final decision making authority on the designation.

### 2015 LHD process update

In 2015 former Mayor Ralph Becker initiated a petition to further clarify and increase the transparency of the LHD designation process in the ordinance. Between 2014 and 2015 nine LHDs were processed. The City Council adopted some new local historic districts and applicants withdrew others where there appeared to be less support from property owners. During the 2016 State Legislative Session the State enacted statewide changes to the threshold of ballots required in order for City Council to pass a property owner initiated LHD designation. The Planning Division has processed a petition reflecting these State required changes as well as further clarification to the designation process. The petition is pending City Council review and decision.

The key changes proposed include more notification letters from the City to increase transparency and clarity. A letter when an applicant begins to gather signatures, another when an official application is filed. The requirement for support at the point of application was raised from 15% to 33%. The changes to the threshold of supportive ballots and Council votes adopt an LHD also changed. The City Council can adopt an LHD by a simple majority on if 66% of the property owners' ballots returned are in support representing at least 50% of all the properties within the proposed district. If this is not the case, then the City Council would need a two-thirds majority to adopt the LHD. It also includes a "cooling off" period of four years if an application fails or is withdrawn.

### Designation Process and Criteria within the Zoning Ordinance

The establishment of a new local historic district or Landmark Site is a zoning map amendment. It includes placing the H Historic Preservation Overlay zoning district on properties that are determined to be appropriate for local regulation to preserve them. Currently, all of the information about historic preservation in the zoning ordinance is located in Chapter 21A.34, Overlay Zoning Districts including the designation process and standards for changes to properties within the zone. This has created a very long section of the zoning ordinance which can be confusing and difficult to navigate. All other zoning map changes are located in Chapter 21A.50, Zoning Amendments. In order to be consistent with zoning map changes and to make the historic preservation overlay chapter easier to navigate, it is proposed to relocate the designation criteria and process from chapter 21A.34 to Chapter 21A.50.

### **Recommendation-**

- **HLC and PC continue their roles as recommendation bodies to City Council.**
- **Move the designation section of the H Historic Preservation Overlay to Chapter 21A.50 relating to zoning map amendments.**

2) Designating or amending the boundaries of a Landmark Site- (Legislative Matter)The same process for designating or amending a local historic district applies with the designation or amendments to the boundaries of a Landmark Site. With a Landmark Site, however, there is only one property owner involved, rather than many in a local historic district. Therefore, processes such as balloting, etc., are not necessary as they would be where multiple owners are involved. The ordinance should be amended to clarify this process for designating and amending individual Landmark Sites.

### **Recommendation-**

- **The HLC and PC continue their roles as recommendation bodies to City Council.**
- **Fine tune the ordinance so that the process and criteria for designation of individual Landmark Site are clearer and more applicable.**

3) HLC review of zoning map amendments (Legislative matter)

The authority and jurisdiction of the HLC as outlined in the Salt Lake City Zoning Ordinance states that they:

*“Make recommendations when requested by the planning commission, the hearing officer or the city council, as appropriate, on applications for zoning amendments and conditional uses involving H historic preservation overlay districts and landmark sites;”*

As of late, members of recognized organizations (including community councils) have been commenting on key sites for redevelopment in Salt Lake City. A recent focus has been on proposed zoning map amendments within the H Historic Preservation Overlay.

Recent large scale projects that include zoning amendment requests within the H Historic Preservation Overlay have gone to the Planning Commission and the City Council for their review. Although there is no ordinance requirement to have the HLC involved in the review process of a zoning map amendment, prior to PC recommendation or City Council consideration. There may be instances where this should be required. The HLC could help identify issues or provide comments that may help the applicant understand preservation concerns, as well as inform the Planning Commission and City Council in their review and decisions on how the zoning amendment may affect historic preservation efforts or policies of the City.

The HLC is the commission with the expertise in design and matters of historic preservation. Their role is to encourage economic development and redevelopment within the scope of achieving preservation and maintaining compatible design without negatively affecting the historic and community fabric of local historic districts. Their input improves transparency and predictability and its recommendation on zoning map amendments is within their jurisdiction.

The early feedback / recommendation by the HLC, could provide some predictability for the applicant and community and guide the other review bodies and City Council on their final review and decision. It may help decrease the desire or need for development agreements. One concern that may be raised is that it may add time to the process. Timeliness in commission reviews would be essential.

The study of other communities in Utah supports this option. Park City, Ogden and Provo have their HLCs make recommendations to the City Council relating to rezoning requests.

At the September 1, 2016 meeting, the HLC expressed that zoning map amendments on properties affected by the H Historic Preservation overlay be reviewed first by the Historic Landmark Commission. They feel this would benefit the applicant and improve predictability as well as offer a recommendation from the body that would eventually review design of a development project.

**Recommendation-**

- **Strengthen the language in the Zoning Ordinance to require that the HLC review and provide recommendations to the Planning Commission regarding text amendments that may impact historic districts or Landmark Sites as well as review zoning map amendments in local historic districts or to Landmark Sites relating to how the change may impact the historic resources in the district or on the property.**

**ACTION ITEM #1.B**

**1. Review the role and responsibilities of the Historic Landmark Commission when:  
B. Reviewing and approving/denying development proposals within the overlay**

Staff has heard frustration from applicants that the standards are not clear, items for review are not predictable and that the Design Guidelines used to support those standards are also not predictable. Developers have expressed a willingness to go through a process with the expectation that there will be an approval after review. They also acknowledge the probability that they may have to make some design changes to their project to meet standards. However, when the process is less than clear there is mistrust and a sense that arbitrary decisions are being made. The perception and customer service experience should be one of reasonable predictability to get to an approval.

1) Historic Landmark Commission Responsibility and Authority

The HLC administers the regulations of the *H Historic Preservation Overlay zoning district*. The Historic Landmark Commission's role is administrative. They are also the final decision making body in issuing a Certificate of Appropriateness and for determinations of Economic Hardship. This is not the only overlay district in the Salt Lake City zoning ordinance. Other overlays include the Ground Source Water Protection overlay, Airport Protection overlay, Riparian Corridor overlay as well as eight other overlay zoning districts.

The overlays are intended to provide supplemental regulations or standards pertaining to specific geographic areas wherever these are mapped, in addition to "base" or underlying zoning district regulations applicable within a designated area. Whenever there is a conflict between the regulations of a base zoning district and those of an overlay district, the overlay district regulations shall control. Therefore, overlay zoning standards can allow for adjustments either less than or beyond what the base zoning regulations require, using the standards to guide any such decisions.

A Certificate of Appropriateness is required prior to the issuance of a building or demolition permit. A Certificate of Appropriateness is required within the *H Historic Preservation Overlay* for:

- exterior alterations to historic properties,
- new construction,
- relocations of historic buildings; and,
- demolitions

The HLC also has the jurisdiction and authority to approve certain "Special Exceptions" for properties located within an H historic preservation overlay district in conjunction with a COA application. Special Exceptions are also administrative matters and can relate to design or use. The HLC was granted the authority to approve Special Exceptions relating to design for properties in the H Historic preservation Overlay Zoning District in order to streamline approval time. The Planning Commission has the authority to grant Special Exception approvals outside of the H Historic Preservation Zoning District or where the Special Exception relates to use.

Special Exceptions authorized by the HLC include:

- building wall height;
- accessory structure wall height;
- accessory structure square footage;
- fence height;
- overall building and accessory structure height;
- signs pursuant to section 21A.46.070 of this title; and



- any modification to bulk and lot regulations of the underlying zoning district where it is found that the underlying zoning would not be compatible with the historic district and/or landmark site.

This streamlining of COAs with Special Exceptions was changed in 2012. Allowing the HLC this authority removes the need to go to another board, shortens the decision making time, and offers a predictable process for applicants or developers. Feedback from applicants and architects has been overwhelmingly positive. Some have said this Special Exception authority has made it easier to build in an historic district. That it is also an incentive to build a more compatible design in order to get relief or extra space needed while working within additional regulations.

Special Exceptions have allowed for development that is compatible but may not have been allowed under the previous base zoning district regulations. Examples have been new single family houses on decades-vacant undersized lots, compatible but larger additions to houses, more height on existing or new buildings to accommodate for a special use, larger but more compatible and functional garages, extra wall height in locations where there are steep grade changes, and basic general relief from some base zoning standards when trying to accommodate for modernization of historic properties.

The code should be further clarified specifically with regard to the “general lot and bulk” exception. The purpose is to encourage compatible design under the overlay standards and in conjunction with the Special Exception standards. The objective is not to demand something special or better in terms of design. This has caused some confusion at the HLC and additional criteria for decisions and other possible SEs as an incentive should be explored as part of that effort. Other communities have relief for on-site parking for lower density new construction and to encourage adaptive reuse of historic buildings. This may be explored to encourage affordable housing and walkability in historic districts.

At the September 1, 2016 HLC meeting the commission discussed the Special Exception process as a huge carrot to encourage compatible development or redevelopment within the H Historic Preservation Overlay. They encouraged a way to publicize these benefits so more know this. They also had concerns that the Special Exception process demonstrate a net benefit and be a qualitative process.

### **Recommendation-**

- **Clarify the purpose, organization and criteria for Special Exceptions authorized by the HLC**
- **Explore allowances for additional modifications to regulations to incentivize preservation such as density changes, parking reductions and lot and bulk standards for adaptive reuse of landmark sites and for single-family new construction on a vacant site**

#### 2) Standards for Alterations

The ordinance has clear standards for rehabilitation based on best practices and ordinance language recognized by the National Trust for Historic Preservation and those used by the Secretary of the Interior of the National Park Service. Without the alteration standards (21A.34.020 G.) listed in the ordinance, SLC would not be able to be considered a Certified Local Government (CLG).

The standards are written in a manner to allow considerations of alterations in a reasonable manner. Every project is considered on a case by case basis. The rules are considered to be the gold standard in evaluating a project, and generally a project should both substantially comply and be in the best interest of the City and are listed in 21A.34.020 as follows:

1. *A property shall be used for its historic purpose or be used for a purpose that requires minimal change to the defining characteristics of the building and its site and environment;*
2. *The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided;*
3. *All sites, structures and objects shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create a false sense of history or architecture are not allowed;*
4. *Alterations or additions that have acquired historic significance in their own right shall be retained and preserved;*
5. *Distinctive features, finishes and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved;*
6. *Deteriorated architectural features shall be repaired rather than replaced wherever feasible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other structures or objects;*
7. *Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible;*
8. *Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural or archaeological material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment;*
9. *Additions or alterations to structures and objects shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired. The new work shall be differentiated from the old and shall be compatible in massing, size, scale and architectural features to protect the historic integrity of the property and its environment;*
10. *Certain building materials are prohibited including the following:*
  - a. *Aluminum, asbestos, or vinyl cladding when applied directly to an original or historic material.*
11. *Any new sign and any change in the appearance of any existing sign located on a landmark site or within the H historic preservation overlay district, which is visible from any public way or open space shall be consistent with the historic character of the landmark site or H historic preservation overlay district and shall comply with the standards outlined in chapter 21A.46 of this title.*

#### **Recommendation-**

- **Retain the existing standards for alteration**

3) Standards for New Construction (21A.34.020 H.)

The ordinance has general standards for “new construction”. The code requires that they are substantially complied with in terms of visual compatibility with the surrounding structures and streetscape and in the best interest of the city, the specific standards are as follows:

*1. Scale and Form:*

- a. Height and Width: The proposed height and width shall be visually compatible with surrounding structures and streetscape;*
- b. Proportion of Principal Facades: The relationship of the width to the height of the principal elevations shall be in scale with surrounding structures and streetscape;*
- c. Roof Shape: The roof shape of a structure shall be visually compatible with the surrounding structures and streetscape; and*
- d. Scale of A Structure: The size and mass of the structures shall be visually compatible with the size and mass of surrounding structure and streetscape.*

*2. Composition of Principal Facades:*

- a. Proportion of Openings: The relationship of the width to the height of windows and doors of the structure shall be visually compatible with surrounding structures and streetscape;*
- b. Rhythm of Solids to Voids in Facades: The relationship of solids to voids in the facade of the structure shall be visually compatible with surrounding structures and streetscape;*
- c. Rhythm of Entrance Porch and Other Projections: The relationship of entrances and other projections to sidewalks shall be visually compatible with surrounding structures and streetscape; and*
- d. Relationship of Materials: The relationship of the color and texture of materials (other than paint color) of the facade shall be visually compatible with the predominant materials used in surrounding structures and streetscape.*

*3. Relationship to Street:*

- a. Walls Of Continuity: Facades and site structures, such as walls, fences and landscape masses, shall, when it is characteristic of the area, form continuity along a street to ensure visual compatibility with the structures, public ways and places to which such elements are visually related;*
- b. Rhythm Of Spacing And Structures On Streets: The relationship of a structure or object to the open space between it and adjoining structures or objects shall be visually compatible with the structures, objects, public ways and places to which it is visually related;*
- c. Directional Expression of Principal Elevation: A structure shall be visually compatible with the structures, public ways and places to which it is visually related in its orientation toward the street; and*

*d. Streetscape; Pedestrian Improvements: Streetscape and pedestrian improvements and any change in its appearance shall be compatible to the historic character of the landmark site or H historic preservation overlay district.*

*4. Subdivision Of Lots: The planning director shall review subdivision plats proposed for property within an H historic preservation overlay district or of a landmark site and may require changes to ensure the proposed subdivision will be compatible with the historic character of the district and/or site(s).*

The standards for new construction are general in nature and have not been revised in decades. Research of other communities in Utah and the United States has shown that their standards seem to be clearer and address general topics in a way that aids in predictability to the applicant as to what will be evaluated and helps the commission in understanding its scope for consideration. The new construction standards could be expanded or modified so that they are clearer as to the intent and scope of each standard. There may be consideration for separate standards for single-family buildings, multi-family buildings and nonresidential buildings. This may offer more predictability and clarity and help both the HLC and the applicant feel more confident as to the main objectives when evaluating new projects.

Most new construction projects in the past decade have been for single-family buildings. The HLC is held to a high standard as the accountable body weighing its review and negotiations of design considerations to ensure that the designs meet the standards. It should be noted that although some projects may become more political than others, the public process and outcomes have been consistent and most new construction applications are approved. There were a couple multi-family buildings that were approved in the past few years which met with some criticisms from both the community and the City Council in terms of design. As a result the Planning Division was directed to draft Design Guidelines for multi-family buildings.

In 2015, the City Council adopted Design Guidelines for new Multi-family buildings to address this need and to offer guidance to applicants, designers and the HLC. The new Design Guidelines are quite extensive and offer comprehensive considerations. However, recently there have been some new construction projects approved on highly visible lots within the City that were complex and garnered a significant interest from the public. Review and negotiations between applicants, architects and the HLC was evident through the public process and it took several meetings to reach a design solution that met the standards for new construction in an historic district. The community was vocal; many in support of historic preservation issues and many in support of the new development's design. Through this process it became evident that the standards for new construction should be revised to better address new large scale buildings in historic districts to ensure design and scale are compatible within the district.

The City should always strive to evaluate what could be improved upon regarding any aspect of the process. This includes evaluation of voiced frustrations from the applicants and the public.

At the September 1, 2016 HLC meeting the commission discussed that scale and mass are the biggest issues with new construction projects. The commission may be being portrayed as inconsistent when in fact they are trying to be as accommodating as possible while ensuring that a final project meets the standards.

#### **Recommendation-**

- **Clarify and revise the “New Construction” standards.**
- **Explore new standards/factors for consideration for multi-family buildings and /or other building types.**

4) Standards for Demolition and Economic Hardship

In 1995, the standards for demolition of contributing structures and Landmark Sites were strengthened and gave the Historic Landmark Commission the authority to deny demolition requests. Until that time, the Commission could only delay the demolition of important historic structures for up to five months. In addition to the more stringent criteria for demolition, a provision for Economic Hardship was included in the code so applicants had the ability to demolish a structure if the denial of the demolition would lead to a “regulatory taking” of the property. In general, a regulatory taking means that denying demolition would result in no reasonable economic use or value of the property which could be in violation of the US Constitution.

Although there are few applications for demolition in local historic districts, where there have been, the provisions and process of the demolition ordinance, including the economic hardship process have proven to be problematic and unclear. The Planning Division began a rewrite of the demolition ordinance with review and input by the Historic Landmark Commission and Planning Commission but final revisions and reviews are still pending. Due to other preservation priorities, such as new local historic districts in the Yalecrest Community and the large number of applications for Certificates of Appropriateness, the Division has not had the staffing resources to continue to process this petition.

One of the provisions of the draft ordinance would allow for demolition where it is found that there is a “Special Merit Exception.” A Special merit Exception is where the proposed reuse of the property has a significant benefit to the City or to the community that would outweigh the goals of preservation for that particular property.

**Recommendation-**

- **Identify the processing and adoption of revisions to the Demolition and Economic Hardship provisions of the H Historic Preservation Overlay Zone as a priority.**

5) Design Guidelines

Design Guidelines assist with interpretation and consistency when evaluating these standards. The Salt Lake City Zoning Ordinance defines their use:

*DESIGN GUIDELINES: The design guidelines provide guidance in determining the suitability and architectural compatibility of proposed maintenance, repair, alteration or new construction while at the same time, allowing for reasonable changes that meet current needs of properties located within the historic preservation overlay district. For architects, designers, contractors and property owners, they provide guidance in planning and designing future projects. For city staff and the historic landmark commission, they provide guidance for the interpretation of the zoning ordinance standards. Design guidelines are officially adopted by city council.*

Standards for any zoning process are subjective in nature. However, as useful as design guidelines may be, their use individually will depend on the project. Guidelines are helpful in that they are flexible and offer consistency in advice. The downside of guidelines is that in using them, there is a more complicated analysis involved correlating with how complicated the proposed project may be. The Design Guidelines are not ordinance standards. This has sometimes led to criticisms or challenges by applicants on decisions for controversial projects when guidelines are recommended as part of the conditions of approval. The main criticism is that they are “not clear” nor legally binding.

For instance, a new garage, new fence and an addition may be proposed. Each individual aspect of that project should be weighed against the standards. If the work is considered “in conflict” with a

standard, there is generally a design guideline that will offer advice on how the work may be done in a more appropriate manner to meet the standard.

Because the HLC is made up of several members and they discuss key issues about a project, there may be members of the Commission that do not agree in their discussions or evaluations. The same occurs with the Planning Commission when discussing matters before that body. One may believe there is a negative impact to a street, another member may not. However, after a discussion and findings are made, the final motion, vote and decision represents the Commission.

Historic Preservation is nuanced and arguably more complicated in its design review than other planning processes. If there is a manner in which to make the decision making process more predictable, this should be explored.

The benefit of keeping the design guidelines as advisory to interpretation of the standards allows flexibility but may be less predictable for applicants. Staff performs a detailed analysis and provides the HLC with a report and recommendation for approval. Staff highlights key issues and identifies applicable design guidelines that help identify whether a particular standard is met.

Staff has also heard frustration about how the standards for new construction interface and correspond with the newly adopted Design Guidelines for multi-family construction. Due to the complicated review of some new construction projects it is imperative that the standards are clear, items for review are predictable and that the DGs used to support those standards are also predictable.

The discretion lies within the decision of the HLC. However, this flexibility can also be misconstrued as unpredictability. As with other Commissions, the Historic Landmark Commission could review a project as proposed and determine whether it meets the standards or, with the flexibility it now has the authority to use, it can work with an applicant to suggest modifications that will bring the project into compliance with the standards. What may be identified as unpredictable, may be the Historic Landmark Commission's desire to work with applicants to get projects to a point where it meets the desire of the applicant as well as the standards.

Perhaps further language and guidance strengthening the use of the Design Guidelines would resolve the issue of their use, improve predictability and the strength of the DGs in the decision making process. Other communities within Utah and the United States have done so in their ordinance.

### **Recommendation-**

- **Clarify the role of Design Guidelines in decision making increasing predictability and consistency.**
- **Simplify the design guidelines so there are fewer of them and they are easier to use, to address predictability and by insuring that there is a logical connection between the standards and the guidelines.**
- **Retain the HLC's ability to work with applicants to make modifications to projects to find solutions that both meet the needs of the applicant as well as the standards.**

#### 6) HLC Training

There has been some criticism raised that the HLC practices “Design by Committee.” Staff and the HLC endeavor to and should be evaluating a project as proposed. As a design review board, there are often suggestions that can improve a project, however those suggestions or mandates must be tied back to the Design Guidelines and associated standards. The HLC’s task is to take the project as designed, evaluate it, and determine whether it meets the adopted standards. The HLC can approve, approve with conditions or deny the application.

Planning Division Management is charged with ensuring that HLC is trained, at a minimum, once a year on any and all aspects of decision making. The HLC is a volunteer board of professionals with expertise in preservation. They must and should have regular training so that they are managing meetings in a proper manner and making legally defensible decisions. Any perception of working outside of their authority should be addressed. A City land use attorney and Planning Manager attend each HLC meeting to identify any irrelevant discussion or to guide the Commission in its scope of review. However, the Planning Division must regularly schedule and train the HLC members so that they can operate confidently.

#### **Recommendation-**

- **Salt Lake City Planning Division should hold training sessions with the HLC on policies and procedures, roles, and decision making authority at least once a year or more often as requested by the HLC.**

#### 7) HLC & Staff Decisions

Salt Lake City’s HLC is considered to be an independent administrative decision making body. Planning Staff can act as the HLC’s designee and has the authority to approve certain COAs and Special Exceptions if they are considered minor in nature or affect noncontributing buildings/sites.

The approval process under the auspices of the HLC’s authority is three tiered:

1. Over-the-Counter approvals: Same day
2. Administrative: Staff (2-10 days)
3. HLC review: HLC (monthly public hearing, approximately 30-45 days)

The HLC sees the most complex projects, generally 10% of the total number of applications each year. These include new construction of principal structures, demolition of contributing structures or Landmark sites, substantial alterations or difficult enforcement cases. Of those projects that go to the HLC, 99% are approved. Those not approved are generally cases where work was done without permits, under enforcement and deemed inappropriate.

Salt Lake City has an informal process to encourage property owners or developers to consult with the Planning staff or to hold an informal work session prior to a public hearing with the HLC. During the work session, members are to discuss projects according to the standards and only do so in a public setting to guarantee transparency. The work session is a tool used in Utah and across the United States. The HLC’s authority requires them to administer the regulations adopted by the City Council. This administrative function focuses the Commission to ensure that the project meets adopted standards, rather than making decision based on public clamor or political pressures, which in turn, helps ensure that best preservation practices are followed. It provides integrity to the process and consistency in decision making.

Transparency and predictability can be improved through “work sessions.” Applicants have begun to request the HLC hold more work sessions. These allow the applicant an opportunity to have an informal discussion with the HLC about any aspect of a project prior to staff

recommendation or a final decision. The expectations of the purpose of the work session need to be clarified for the applicant, staff and the HLC. Work Sessions seem to improve predictability and decrease the need for multiple public hearings by allowing digestion of complex projects and free exploration of ideas prior to a public hearing and decision.

Options to hold more meetings can allow for more opportunities for HLC decisions and work sessions, but this is difficult when only the minimum numbers of members have been appointed. Timely appointment of new members is very important. In addition, because of the specialty of the Commission's purview, it is important that at least some members have background experience in design, construction, preservation and legal fields. It is not as important to have representatives on the Commission that represent all geographic areas of the City.

At the September 1, 2016 HLC meeting the commission discussed the issue of many applicants not being fully prepared for the work session; that some projects were inappropriate; and there is a need for more structure and response by the applicant folded into the work session where they present. This should be done within the framework of historic preservation and the standards or the zoning ordinance. The burden is on the applicant to make their case and a work session is not merely a formality. It is an opportunity to lead to very successful projects through a thorough dialogue. It was mentioned that it was important for the HLC not to change course after a thorough discussion.

#### **Recommendation-**

- **Work with HLC and draft a "Work Session" expectations template**
- **Consider holding HLC meetings twice a month**
- **Ensure the appointment of members to the HLC is done in a timely manner to ensure there is a quorum at each meeting so the meeting can be held.**

#### 8) Staff Approvals

Staff approves 90% of all COA applications. Of those, 50% are approved the same day at the Planning Counter. The remaining 50% are slightly more complex and those cases are sent to an assigned Planner who can generally approve the application within approximately 2-10 days. If the application is deemed complete they can proceed through the process.

Applications that are not complete cause significant delays to the applicant and frustration about the process. Although best efforts are made to address this at the time of submission, the capacity of the Planning Division to comprehensively review and create brochures, and update the website to help applicants know what to submit is an ongoing issue. Privately generated petitions take priority when establishing workload priorities in the Planning Division. However, customers need a list of items required for an application to increase the predictability as to whether what they request can be approved. Allocating funding to hire a consultant to make recommendations and implement those recommendations relating to the branding of the historic preservation program, clarify processes and improve the general user experience would help the division in order to improve the customer experience.

#### **Recommendation-**

- **Revisit internal processes/materials (applications, brochures, website, etc.) to ensure that the public gets the information needed to submit complete applications which will lead to a quicker review of a project**
- **Hire a consultant to identify ways to improve the customer service experience for applicants and to educate the general public about Historic Preservation**
- **Clarify the submittal requirements for applications.**



9) Property Owner and Public Education

One of the complaints heard by Planning Staff is that a property owner or applicant did not know their property was located within a local historic district prior to doing work on the structure. Although most construction work requires a building permit and applicants are notified at that point, in some instances, the contractor or property owner fails to obtain a building permit prior to starting the work and an alert citizen will report the issue to the Civil Enforcement Team. At this point, it is difficult to find solutions to remedy issues that could have been avoided had a building permit been obtained prior to starting the work.

Immediately after the designation of a local district or Landmark Site, the Planning Division works with the County Recorder's Office to place a notice on the deed of each property designated locally for historic preservation. However, property owners may still not be aware of the designation. The Planning Staff has also, periodically, sends a notice to each owner of property informing them of the local district and what that means. There are other types of information that could also be used to better inform owners that their property is within a local historic district. This may include a yearly notice, unique permanent signage at the borders of the district or other similar means to help identify the local historic districts. Any of these types of projects would require the allocation of money to fund these types of programs.

**Recommendation-**

- **Provide an annual allocation of funds to the Planning Division to identify local historic districts and inform property owners of the various aspects of the preservation program.**

**ACTION ITEM #2.**

***Study and assess other communities within and outside Utah relating to:***

- ***How they structure their local regulations,***
- ***Standards of review,***
- ***Decision making processes within their historic overlays and***
- ***Identify best practices to provide greater clarity, consistency, transparency and accountability.***

1) How other Cities Structure their Local Regulations

Salt Lake City is a Certified Local Government (CLG). This is considered a best practice because it is preservation through partnership. Local, State, and Federal governments work together to help communities save the irreplaceable historic character of places. Through the certification process, communities make a local commitment to historic preservation. This commitment is key to America's ability to preserve, protect, and increase awareness of our unique cultural heritage found in the built environment across the country. As a CLG, funding and technical assistance from the Federal Government and State are provided to the City.

The CLG program is jointly administered by the National Park Service (NPS) and the State Historic Preservation Offices (SHPOs). The certification process has to be approved by the NPS. Salt Lake City meets the following CLG goals:

- Establish a qualified historic preservation commission.
- Enforce appropriate State or local legislation for the designation and protection of historic properties. This is primarily done through the Salt Lake City zoning ordinance.

- Maintain a system for the survey and inventory of local historic resources.
- Facilitate public participation in the local preservation program, including participation in the National Register listing process.
- Follow additional requirements outlined in the State's CLG Procedures. SLC is an active partner in the Federal Historic Preservation Program. Certification allows SLC opportunities for funding, technical assistance, and other preservation successes.
- **Funding:** States receive annual appropriations from the Federal Historic Preservation Fund. States are required to give at least 10% of their funding to CLGs as subgrants. These grants can fund a wide variety of projects including: surveys, National Register nominations, rehabilitation work, design guidelines, educational programs, training, structural assessments, and feasibility studies, etc. Since Salt Lake City became a CLG, the City has received thousands of dollars for its preservation program. The money has been spent on tools such as historic surveys of properties, creating nominations for districts and sites to the National Register of Historic Places, and for education and training.
- **Technical Assistance:** As a CLG, communities have direct access to SHPO staff for assistance with their commission, building assessments, surveys and nominations, and general preservation assistance. State staff and NPS offer regular training for CLGs as well, an added benefit of the partnership. Each SHPO has a designated CLG Coordinator.
- **Sustainability:** Historic preservation has proven economic, environmental, and social benefits. Studies show that historic districts maintain stable and in many cases have higher property values, less population decline, more walkability and greater sense of community.

SLCs CLG status demonstrates our community's commitment to saving what is important from the past for future generations. As a CLG, a community demonstrates a readiness to take on successful preservation projects, making our community able to compete for new opportunities.

There are **91 CLGs in Utah** according to the National Park Service. They include Alpine, American Fork, Beaver, Beaver County, Bluffdale, Bountiful, Box Elder County, Brigham City, Cache County, Carbon County, Castle Dale, Cedar City, Centerfield, Centerville, Cottonwood Heights, Delta, Draper, Duchesne, Duchesne County, Emery, Emery county, Enterprise, Ephraim, Eureka, Fairview, Farmington, Ferron, Fillmore City, Grand County, Grantsville, Green River, Gunnison, Hanksville, Heber City, Helper, Holladay, Hurricane, Hyrum, Kanab, Layton, Leeds, Lehi, Lindon, Logan, Manti, Mapleton, Mendon, Midvale, Midway, Morgan County, Moroni, Mount Pleasant, Murray, Ogden, Orem, Panquitch, Park City, Parowan, Payson, Pleasant Grove, Price City, Provo, Richfield, Richmond, Riverton, Rockville, St. George, Salina, Salt Lake County, San Juan County, Sandy, Sanpete County, Santa Clara, Scipio, South Jordan, Spring City, Springdale, Springville, Summit County, Syracuse, Taylorsville, Tooele City, Torrey, Uintah County, Utah county, Washington, Weber County, Wellsville, West Bountiful, and Willard.

Although there are 91 CLGs in Utah, not every community has an ordinance with design review. The following is a comparison of structures of selected cities preservation programs most similar to SLC and other cities throughout the nation.

2) Standards of review of Cities use in their preservation programs

As noted previously, not all preservation programs across the country have design review and therefore, they do not have standards on which to analyze projects. However, most do and they, like Salt Lake City, mainly follow the Secretary of the Interior's Standards for Rehabilitation as formulated by the National Park Service.

When it comes to review of new construction, staff agrees that Salt Lake City's standards of review should be revised to be easier to understand and to ensure that the standards will guide the project to a desired outcome. In its review of other cities, staff has identified other ordinances and standards that may be applicable to use in Salt Lake City.

Referring to standards relating to the demolition of historic resources, the Historic Landmark Commission and Planning Commission have both reviewed draft revisions to this ordinance and it will

be finalized and transmitted to the City Council as one of the next major preservation projects from the Planning Division.

**Recommendation-**

- **Finalize the revisions to the Demolition and Economic Hardship ordinance as a priority**
- **Revise the new construction standards. This may require the Council to allocate funds to hire a consultant to complete this work in a timely manner.**

3) Decision Making Processes within Historic Overlays

Approval Authority

One of the questions raised is whether the Historic Landmark Commission should have final approval authority of Certificates of Appropriateness in the H Historic Preservation Overlay Zone. Prior to 1995, the HLC was a sub-committee of the Planning Commission. A member of the PC attended and participated at all HLC meetings. Decisions at that time were ratified at the following PC meeting, most often as consent items. Any appeals following the PC meeting then went to the City Council.

At the recommendations of the Rural/ Urban Design Assistance Team (R/UDAT) and as part of the 1995 zoning ordinance re-write, the HLC became a full independent commission. Appeals of its decisions (administrative matters) continued to be considered by the City Council. In 1996, the HLC decisions were then redirected to the newly created Land Use Appeals Board.

The process of requiring Planning Commission ratification of Historic Landmark Commission decisions was changed after criticisms from the development community and citizens frustrated with the length of the process, having to obtain approval from both the HLC and the PC, with City Council being the appeal authority. The decision to make the HLC a full decision Commission streamlined the process.

“The HLC’s November 6, 1992 “zoning rewrite position paper” also notes another reason to change the committee’s status:

The Historic Landmark Committee is composed of architects, landscape architects, and people who have expertise in and are concerned with historical preservation. The Planning Commission is comprised primarily of individuals whose expertise lies in the area of land use and land use regulations. It does not make sense to have a commission review the work of a committee when the committee has far greater expertise in historic preservation than the PC. If an action for the Historic Landmark Committee is to be reversed, it should be on a political basis, not a preservation basis. Therefore, the body that reviews Landmark’s decisions should be a political body; i.e. the City Council. It therefore seems reasonable to make the Historic Landmark Commission responsible to the City Council.’ (SLC Planning. 2004)”

In 1995, the Historic Landmark Commission became a full design review commission and the Planning Commission operated as the land use authority. This has been the authority structure for the past 21 years.

The National Trust discusses the practice of independent commissions. It advises keeping administrative decisions out of the political realm. The legislative act of creating the standards is still in the hands of the City Council. However, the HLC, as the commission with preservation and design expertise is charged with following the standards without political pressures. How it currently is structured is that the standards are supported by adopted Design Guidelines. Decisions must be made with regard to the standards and there must be substantial evidence in the record when making sound legal decisions. The Commission is accountable to ensure the standards are met and the design guidelines help ensure

consistency in decision making.

#### Comparison to other Utah Communities

HLC as the final decision making authority- Logan, Ogden, Park City and Provo preservation programs and are structured similarly to SLC's with regard to final decision making authority on administrative matters.

Advisory-Murray and St. George's Commissions have an advisory role on administrative matters. They provide recommendations to the Mayor/City Council who are the final decision making bodies.

#### Comparisons to Cities in the United States

Final Decision Making Authority- Albany, OR, Albuquerque, NM, Alexandria, VA, Austin, TX, Boise, ID, Boston, MA, Chicago, IL, Denver, CO, Detroit, MI, Dubuque, IA, Lake Forest, IL, Los Angeles, CA, Milwaukee, WI, Minneapolis, MN, New York, NY, Pasadena, CA, Phoenix, AZ, Portland, OR, Savannah, GA, San Antonio, TX, San Francisco, CA, Santa Fe, NM, Seattle, WA and Springfield, IL's regulations authorize their Historic Commissions final approval authority on administrative matters.

Salt Lake City is consistent with most other cities in Utah in its decision making structure for decisions on administrative matters. Murray, St. George and other cities in Utah have less comprehensive ordinances either because they are small communities, they may not have the number of cultural resources locally designated, preservation policies adopted or staff resources compared to Salt Lake City and other larger cities in Utah.

In studying and comparing other cities in the nation, including guidance from the National Trust for Historic Preservation, SLC is consistent with other cities within the nation in terms of a Historic Landmark Commission being structured as the final decision making body on design review and other administrative matters in local historic districts. .

SLC is consistent in both the state and country by operating an independent commission with members that are required to have professional expertise in certain areas such as architecture, engineering, construction, history, law, real estate and so forth to ensure that informed decisions are made from members who have a diversity of backgrounds. This is a best practice in terms of a commission of experts making design decisions for historic sites. In researching other communities within Utah and best practices within the nation, it would not be a best practice to move the HLC to an advisory role. Design review is an administrative function and there is an appeal structure in place if the decision is determined to be arbitrary or capricious.

In balancing the need for community engagement and streamlining approvals, keeping these decisions with one commission reduces confusion of review by two bodies. The HLC as the appropriate expertise board has functioned well and maintains predictability as there isn't another board accountable for reviewing that decision. It reduces the need for further public hearings, reducing processing time. The HLC as a full commission also keeps the decision making on the matter based on fact and reduces the threat of public clamor or politics from affecting the approval, as decisions are based on whether or not a standard is met. This recommendation is based on the administrative matters balancing transparency, consistency, timeliness and accountability of the HLC to the standards adopted by the City Council.

As stated above and past history in SLC has demonstrated that having the HLC function as an advisory board on administrative matters slowed the approval process down and took final decision making away from the body with the most expertise to make those decisions. At the time it was likely that policies, standards and design guidelines may not have been in place to help the Commission make its decisions. However, as a subcommittee of the Planning Commission it did provide the opportunity for a second board review of the project.

However, in examining the advisory function there were downsides to this. The second board meeting introduced unpredictability in the process, namely a new board of individuals starting a fresh review of a

matter already reviewed by a previous board. Secondly, it added waiting time with an additional required meeting or meetings. This ran contrary to streamlining measures, where if a project is meeting the standard it should be approved quickly. Thirdly, there was a question of the composition of boards, that the design and historic expertise board should be charged with making those focused decisions. Not mentioned is the confusion when two boards, one with the expertise doing the recommending and the final decision making board having less expertise in making the final decision.

Administrative matters by their nature should not be political. Administrative standards are met or they are not. Conflicts between boards further lead to appeals which put an administrative matter unnecessarily into the political realm of a required City Council decision. This had a citywide impact of reducing the City Council's time to address other important topics of City Business.

Nationwide best practice recommends reviewing administrative matters based on fact and legally sound decisions. This is similar to other administrative decisions such as those made by the PC including conditional uses, planned developments, special exceptions, etc. Salt Lake City could change back to the system of having another entity ratify its decisions (such as the Planning Commission, Mayor, Council, Planning Director) but for all of the reasons noted, above, the Planning Division does not recommend this change.

### **Recommendation-**

- **Retain the HLC as a full decision making body to historic preservation issues and development projects within the H Historic Preservation Overlay zone.**

#### 4) Appeals of Decisions

As stated above, the decision was made to eliminate the City Council as an appeal board and instead use a Land Use Appeals Board. In 2012, the City Council adopted an ordinance that eliminated the Land Use Appeals Board (and the Board of Adjustment) and replaced those bodies with an Appeals Hearing Officer. This is the process today. The Appeals Hearing Officer is an attorney trained in land use law and who is charged with ensuring that the decision of the Commission was not made in error, procedural due process was followed and that substantial evidence was made in the record demonstrating the decision was made according to the standards. The Appeals Hearing Officer has the discretion to uphold the Commission decision, send it back to the Commission for further review or to reverse the decision entirely. Since the Appeals Hearing Officer process was established, three HLC cases have been appealed. All of the decisions were upheld by the Appeals Hearing Officer. The idea of whether appeals from the Historic Landmark Commission should be to the City Council has been raised.

Although most communities in Utah compare in terms of roles on decision making structure, the appeal body for decisions within and outside of Utah vary according to jurisdiction. Some decisions are appealed straight to a Zoning Board of Appeals (such as a Board of Adjustment) or an Appeals Hearing Officer similarly to SLC. Some must appeal to the State Historic Preservation Office or to the respective Civil Court. With this appeal process, these administrative matters are not politicized, they are reviewed on legal findings of fact.

The following study and comparison is of Utah and other communities in the United States relating to appeals of decisions of their respective Historic Landmark Commissions.

#### Comparison to other Utah Communities

- Appeal to City Council-Provo
- Appeal to Hearing Officer-Murray, SLC
- Appeal to Mayor-Ogden, Provo (demolitions only)

- Appeal to Zoning Board of Appeals-Logan, Park City, Provo, St. George

Further appeals of these decisions generally proceed to district court.

#### Comparisons to Cities in the United States

- Appeal to City Council- Albany, OR, Albuquerque, NM, Alexandria, VA, Boise, ID, Dubuque, IA, Lake Forest, IL, Los Angeles, CA, Milwaukee, WI, Minneapolis, MN, Pasadena, CA, Phoenix, AZ, Santa Fe, NM, Springfield, IL San Francisco, CA
- Appeal directly to Court-Chicago, IL, Denver, CO
- Appeal to Hearing Officer-Portland, OR, Seattle, WA,
- Appeal to Mayor- Savannah, GA (demolition only)
- Appeal to Planning Commission-Austin, TX,
- Appeal to State Historic Preservation Office (SHPO)-Detroit, MI
- Appeal to Zoning Board of Appeals-Boston, MA, San Antonio, TX, Savannah, GA (admin matters)

Further appeals of these decisions generally proceed to court as outlined in each State's respective rules for civil procedures.

Some appeals in cities go straight to the City Council, to the Mayor or to the Planning Commission. Previously in this document, the history of appeals to the City Council has been discussed. The conclusion of this report is that the decision making processes in SLC with regard to the Historic Landmark Commission works well and the decision making structure maintains its integrity.

There are isolated incidences where there are highly political projects or multiple city policies in competition where "calling up" an item before either the City Council or the Mayor may increase accountability in terms of decisions made in the "best interest of the city." This could create such a mechanism that it may allow elected officials to step in and override an administrative decision based on a finding that although a process and standards were followed, there may be an overriding or immediate need to intervene on an isolated matter. The downside to this is that there may be enormous political pressure on elected officials to use this measure unnecessarily to usurp a commission's or a hearing officer's decision. A recommendation would be to consider a "call up" procedure, ensure the decision follows deliberate criteria and that the scope of overriding an administrative decision is for special circumstances justified as in the best interest of the City.

#### **Recommendation-**

- **Continue sending appeals to the Appeals Hearing Officer.**
- **Identify whether the City Council would be interested in a "call up" option relating to historic preservation matters.**

#### **ACTION ITEM #3.**

##### a. Underlying Zoning

Most of the requests to demolish contributing structures or Landmark Sites stem from the fact that underlying zoning in local historic districts may allow for more intensive land uses than currently exist on the lot where the historic resource is located. There may also be conflicting policies in adopted master plans relating to preservation and other important City goals. As identified in the *Community Preservation Plan*, the Planning Division should study the underlying zoning and boundaries of some local historic districts to see if they are appropriate.

The Master Plans do encourage redevelopment and there are some conflicting policies in adopted master plans relating to preservation and other City policies. A recent example is a site south of Trolley Square. The Master Plan called for consideration and the need for redevelopment on a parking lot site within a local historic district. These situations seem more apparent in the Central City historic district where historic preservation, transit oriented development, economic development and other policies may be in conflict in certain parts of the district. Planning Division Staff has not been able to address this ongoing issue due to staffing resources and other priorities.

#### **Recommendation-**

- **Study zoning in local historic districts to discourage development pressure and promote preservation where appropriate and resolve issues where other adopted policies for the area may conflict with historic preservation policies.**
- **Hire a consultant to conduct these studies and make recommendations if this is determined to be a high priority**

#### b. Local Incentives

Currently historic tax credits are offered and administered through the State Historic Preservation Office (SHPO) in the form of state or federal tax credits for properties in the National Register Districts or in the National Register. In addition, the Utah Heritage Foundation provides low interest loans to any property owner of a structure eligible for the National Register in Salt Lake City that meets the criteria for appropriate rehabilitation work. However, Salt Lake City itself does not have any financial incentives programs for property owners in local historic districts. The City's program currently is regulatory only; the rules without any incentives. Types of programs that may be feasible, that are used in other states municipalities, could include a revolving loan program only for owners in local historic districts, small grants, freezing of property taxes for a specific number of years, sales tax rebates, etc. The main benefit would be to offer a monetary incentive to achieve historic preservation goals in the City for those with property in local historic districts which may increase the desire of property owners to support local historic preservation efforts.

A consultant may be able to identify, under current State law, what types of incentives are available or could be developed for Salt Lake City.

#### **Recommendation-**

- **Secure funding to hire a consultant to identify various ways that Salt Lake City could provide unique local incentives for those who own property within the H Historic Preservation Overlay Zone.**
- **Implement a local incentive program for historic preservation in Salt Lake City as identified in the Preservation Plan. This could be in the form of grants, loans, property tax abatement, or other incentives.**

#### **NEXT STEPS/TIMELINE**

The Planning Division will check in with the Mayor, the Historic Landmark Commission, the Planning Commission and City Council throughout the rest of the year to continue the discussion of the study and

recommendations. The results of this project will culminate in a final list of recommended changes to regulations and processes to improve the historic preservation program in the City.