



Staff Report

PLANNING DIVISION

To: Salt Lake City Planning Commission
From: Mayara Lima, Planning Manager-Zoning Administrator, mayara.lima@slcgov.com, 801-535-6141
Date: January 10, 2024
Re: PLNPCM2023-00336 – Enforcement on work without a COA

Zoning Text Amendment

MASTER PLAN: [Community Preservation Plan](#) & [Plan Salt Lake](#)

ZONING DISTRICT: Citywide, affecting the (H) Historic Preservation Overlay District

REQUEST:

Mayor Erin Mendenhall has initiated a petition for a zoning text amendment to address unlawful construction and demolition activities in the H Historic Preservation Zoning District Overlay. The purpose of the petition is to protect historic resources, which includes designated local historic districts and local landmark sites. The text changes are aimed at adding enforcement tools to prevent and counter potential code violations and at establishing a clear process to remedy alterations or demolition that occur without approval. The proposed changes will affect [Chapter 21A.34.020](#) and related provisions of Title 21A-Zoning.

RECOMMENDATION:

Forward a positive recommendation to the City Council regarding this proposal.

ATTACHMENTS:

- A. [ATTACHMENT A: Proposed Ordinance](#)
- B. [ATTACHMENT B: Zoning Amendments Considerations](#)
- C. [ATTACHMENT C: Public Process & Comments](#)

PROJECT DESCRIPTION

Historic designations are established by the City Council through a robust public process because they add value to the city. Contributing buildings in a historic district and landmark sites help to tell the story of our city, promote sustainable development, and create a sense of place. Given the significance of these resources, it is important to create and maintain effective tools to protect their historical integrity and architectural qualities. A Certificate of Appropriateness (COA), which is required prior to exterior work on a property located within the historic overlay, is the main

tool the city has to ensure the work is adequate and will not damage historical integrity. When work is done without such review, it puts historic resources at risk.

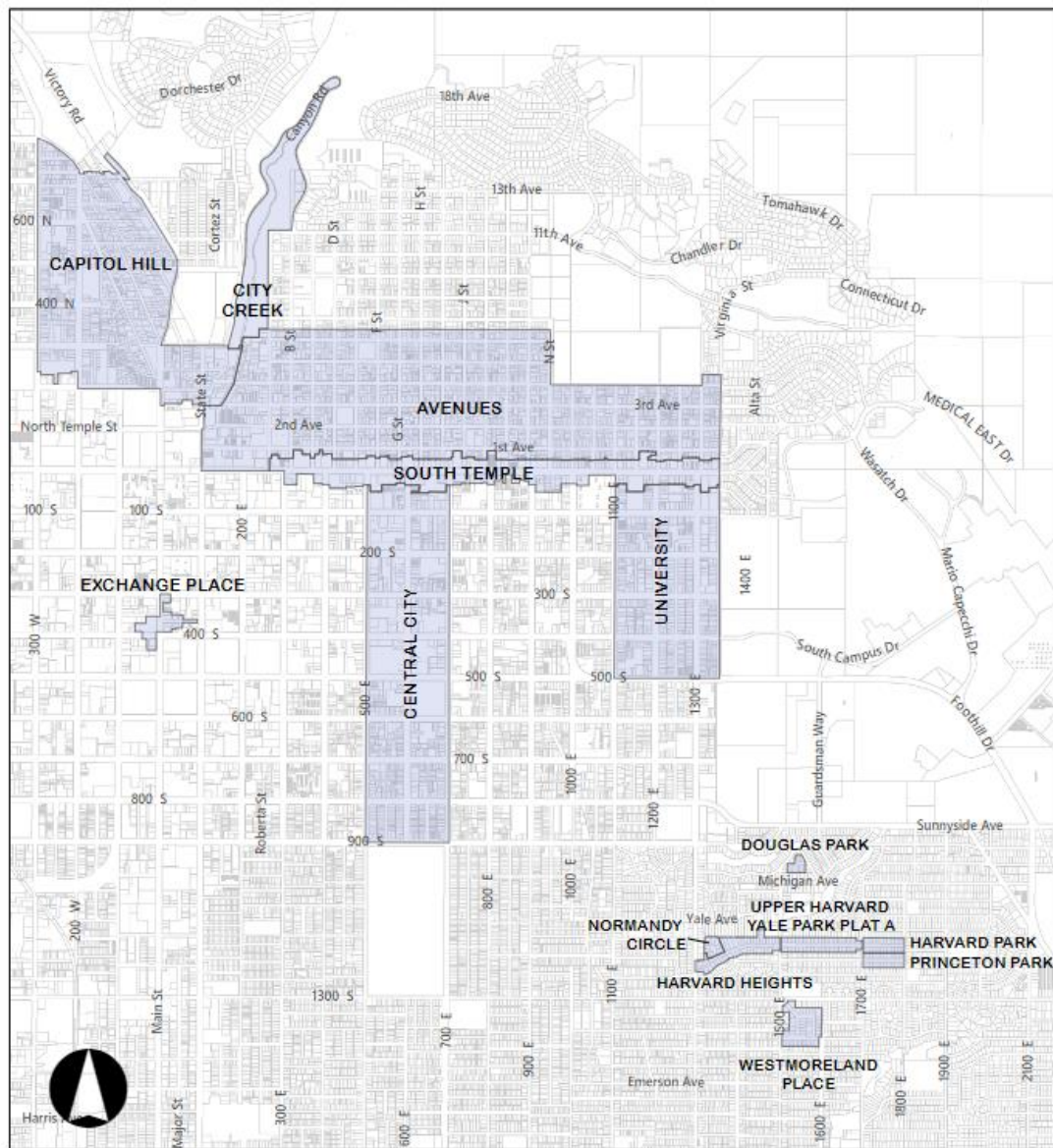


Figure 1 – Map of the Salt Lake City Local Historic Districts.

The city's zoning and building code enforcement is equipped to address work without permits but lacks the necessary tools or fines to account for the illegal demolition and permanent damage of historic resources. This deficiency could result in an increase or incentivize unlawful alterations and illegal demolitions. Unlike typical code violations that can be reversed through replacement, repair or maintenance, once all or part of a historic building is removed, its value is lost

permanently. No replica can recreate the original materials, craftsmanship, and cultural value that provide authenticity and historical context to the individual resource. Because of the higher risk, enforcement of violations in the historic overlay requires a more tailored approach.

To address this issue and strengthen Salt Lake City's preservation efforts, this text amendment proposes a more robust process that would serve to prevent and counter violations in the historic overlay, as well as send a clear and consistent message regarding historic preservation. The proposal would make the following changes to the Zoning Ordinance:

1. Create an enforcement subsection within the historic overlay (21A.34.020):

The subsection would reference the enforcement chapter in the Zoning Code ([21A.20](#)) and lists additional consequences for work conducted in violation of the historic overlay provisions.

2. Prohibit redevelopment of a property when a principal building is demolished without approval unless the proposal is for reconstruction:

A contributing principal building or landmark site demolished without a COA would require reconstruction. A certificate of noncompliance would be issued and recorded against the property following the violation to prevent redevelopment for 25 years unless the applicant proposes to reconstruct the demolished structure.

3. Establish a reconstruction process:

The reconstruction would have to follow specific standards to ensure the new building is true to the size, proportions, and features of the original structure. The applicant would be required to enter into a legally binding restrictive covenant to acknowledge the reconstruction, prohibit future demolition and major alterations for 25 years and ensure that the terms are carried with the land. This process would be consolidated with the recently adopted standards for reconstruction of carriage houses in landmark sites.

4. Prohibit a property owner from requesting a change of status based on a violation:

The city would require that any work done without a COA be undone if retroactive approval is not possible. In the case of an irreversible alteration, a request to administratively change the historic status from contributing to noncontributing based on work done without a COA would be rejected. That is, regardless of the alterations, the structure will still be reviewed as a contributing. This restriction would limit the property owner from further harmful alterations or a full demolition. A change of status would still be possible through a district survey update, subject to Council approval.

5. Clarify that self-imposed conditions are not eligible for Economic Hardship:

Language added to the Economic Hardship process would disqualify cases where hardship is related to owner's financial ability to rehabilitate a property, lack of due diligence, or self-imposed conditions, such as demolition by neglect, intentional destabilization of the structure or enforcement of a violation.

6. Coordinate with other city code sections that relate to reconstruction and enforcement:

Other sections would be amended to allow nonconforming use and noncomplying structures to be restored in case of reconstruction ([21A.38](#)) and to create a reconstruction definition ([21A.62.040](#)).

The proposed amendments are intended to have a deterrent effect, particularly to property owners hoping to receive a more lenient review after work is completed. It would also send the message that work in violation of the code will not be rewarded with the redevelopment of the site. Reconstruction would force the property owner to incur costs and would result in an outcome unfavorable to the violator. Ultimately, this text amendment brings city regulations into alignment with preservation objectives and enhances enforcement tools.

APPROVAL PROCESS AND COMMISSION AUTHORITY

The proposal is a zoning text amendment that affects properties located within the H Historic Preservation Zoning District Overlay. Since the overlay is under the purview of the Historic Landmark Commission (HLC), staff is presenting and requesting HLC to make a recommendation to city council on January 4, 2024. The proposal also needs to receive a recommendation from the Planning Commission. Both commissions can forward the proposal to the city council for adoption as is, with modification to any aspect of the proposal, or recommend that the proposal not be adopted.

KEY CONSIDERATIONS

The key considerations listed below were identified through the analysis of the project:

1. Limitations of current enforcement tools
2. Research and analysis of other tools available
3. City goals and policies
4. Comments from HLC and PC during briefings

Consideration 1: Limitations of current enforcement tools

In general, the city uses civil penalties to ensure property owners comply with zoning and building code regulations. [Chapter 21A.20](#) directs zoning enforcement, outlining procedures for the city to notify a property owner of a violation and establishing civil fines. The chapter indicates that if violations are not corrected by the citation deadline, fines are to be \$25 per day per violation for residential properties and \$100 per day per violation for other uses. Criminal penalties set by State Code are also possible, but rarely pursued because criminal charges require involvement from the court system.

As prescribed in the code, after Civil Enforcement receives a complaint and an inspector verifies on site that a violation occurred, the city issues a notice of order and/or a stop-work order to block the continuation of the work. A notice of order notes the specific violation and provides a timeframe for the property owner to seek appropriate approvals. Fines start if approval is not sought out and a certificate of noncompliance may be recorded against the property to make sale or finance difficult and to notify future owners. Fines stop when approval is granted, and the certificate is removed. This process generally works when illegal work is undone or approved after the fact. It does not in the case of demolition of a contributing building or landmark site, which cannot be undone.

Sections [21A.34.020](#).J and K contain specific standards for the demolition of a landmark site and of a contributing building. These are high standards that intentionally make it difficult to demolish historic resources. To retroactively review the demolition of such resources would create a difficult situation for the city. A review based on a historic building that no longer exists through this process could only result in 1) a denial of a demolition with no opportunity for a resolution and a potential regulatory takings¹ challenge in court; or 2) a demolition approval that would reward the property owner by ending fines and allowing subsequent new construction. Neither outcome is in the city's and the public's best interest.

In summary, the current enforcement tools available do not offer a satisfactory resolution when a violation involves the demolition of contributing buildings or landmark sites. This flaw is, however, not unique to Salt Lake City. Other cities nationwide and even internationally have similar challenges in integrating historic preservation within the parameters of zoning and land use regulations. Examples from other cities show that unlawful demolition occur overnight or on the weekend to deliberately delay city action, or by activities that intentionally or unintentionally exceed an approved scope of work. To prevent a major loss like this in our city, it is essential to seek new tools to address it before it happens.



Figure 3 – Former courthouse with cultural significance for black community partially demolished overnight without permits in Troy, Ohio

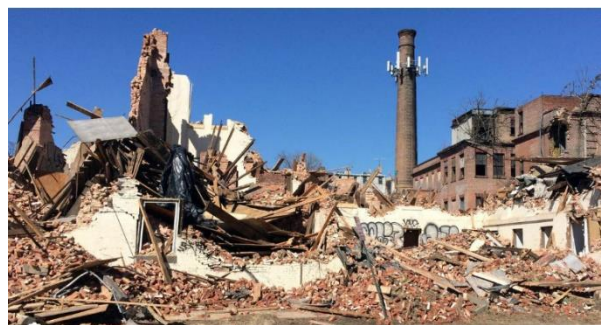


Figure 2 - Former St. Vincent's Infant Asylum, in Upton Baltimore demolished over the weekend without permits.

Consideration 2: Research and analysis of other tools available

According to the National Trust for Historic Preservation, one of the key components of a preservation ordinance is the use of fines and other penalties for violations. The use of both monetary and non-monetary punishment may be advantageous because fines alone could be seen as the cost of doing business. In researching for this text amendment, staff found many variations of fines and penalties. The list below provides a small sample of what was found. Many other cities

¹ A regulatory taking means when governmental regulations limit the use of private property to such a degree that the landowner is effectively deprived of all economically reasonable use or value of their property.

have similar ordinances that specify fines and penalties for violation of preservation regulations, in particular unlawful demolition.

Denver – After unlawful work, the commission may order that a structure be returned to its prior condition. This may include ordering the reconstruction of a structure that was demolished to replicate as closely as possible the original structure.

New Orleans - The State of Louisiana and City of New Orleans recently increased the maximum amount a property owner can be fined for illegally demolishing a historic structure from \$10K to \$25K or 15% of a structure's assessed value, whichever is greater.

Pasadena – Illegal demolition requires reconstruction. No building or construction-related permits shall be issued for a period of 5 years following the date of demolition or complete reconstruction.

Philadelphia – An illegally demolished structure must be restored to its appearance prior to the violation. Restoration is in addition to any other penalty or remedy.



Figure 4 – The Boise Historic Preservation Commission voted unanimously to deny demolition and require reconstruction of 1912 home effectively demolished after work exceeded remodel approval.

This text amendment does not address fines because another petition, initiated by the Building Services Division, is simultaneously being processed to amend Title 18 and Section 21A.20. That amendment would reflect some of the desired improvements for fines, including:

- Create fines for failure to obtain a certificate of appropriateness for full or partial demolition of a contributing structure or landmark site, the new fines would be \$250 per day. *This is a new fine.*
- Increase fees for registration to board a building to \$14,000. Currently the fee is \$1,560.
- Create an enhanced fee for boarded contributing structures of \$14,850. *This is a new enhanced fee for contributing structures.*
- Create stop-work order violation fines of \$250 per day. *This is a new fine.*
- Increase general fines for violations to \$50-\$200 per day depending on the violation. *Currently these fines are \$25-\$100 per day.*

In combination with the increase in fines to a level that is legally and administratively feasible, staff determined that requiring reconstruction was an appropriate non-monetary punishment for a demolition violation. This solution would incur additional costs and result in an unfavorable outcome to the violator while allowing the property to be reused. The required covenant would serve to ensure that reconstruction is maintained and not just seen as an additional cost. Staff

proposed a 25-year period that the reconstructed structure must be maintained without major modifications. The proposed timeframe was determined based on many of the exterior materials of a house, such as siding and roofing, needing replacement after 20 or 30 years. If the owner does not seek reconstruction, the property would still be blocked from redevelopment for the same amount of time.

Additionally, the proposed text amendment clarifies the process for reviewing other work done without a COA. Work that can be made to comply may be approved after the fact, while work that is inappropriate must be undone. This is already current practice in the city and would be formally codified. Irreversible work, which cannot be undone without compromising the structural integrity of the building and that could ultimately render the property noncontributing, may be acknowledged, but staff would reject a change of status based on such violation. A change of status would still be possible through a district survey update, subject to Council approval. This approach is consistent with how other cities handle historic preservation violations.

Consideration 3: City goals and policies

As mentioned previously, the proposed amendment brings regulations into alignment with the city's preservation goals. More specifically, the proposed text amendment would support the goals and policies found in the zoning ordinance and the following plans:

Community Preservation Plan (adopted in 2012)

This plan adds context, detail, and direction for implementing the broad outlines of the city's adopted preservation philosophy. To develop a comprehensive preservation toolbox, the plan mentions the importance of ensuring *"broader and more robust range of policy and regulatory tools is available to effectuate that vision"* which includes reviewing *"opportunities to fine-tune existing regulatory programs -- for example, to address concerns related to demolition and economic hardship"*. New tools to preserve and stabilize the city's historic resource are supported by the following policies:

Policy 2.1.a: Ensure the long-term viability of existing local historic districts.

Policy 3.3a: Align preservation-related City regulations with the goals and policies of this plan.

Policy 3.4a: Continue to broaden the range of regulatory tools available to encourage the preservation of historic properties.

Additionally, the plan directs the program administration and *"building capacity moving forward"*. It specifically lists *Enforcement of Regulations and Approvals*, acknowledging that code enforcement for historic projects is challenging, but indicating that inadequate enforcement can result in a perception that projects completed without approval will receive more lenient review. To implement the vision, it sets forth:

Policy 4.2d: Ensure preservation regulations are enforced.

Program regulations need to be enforced to ensure applicable regulations and review process are adhered to and that the City is sending a clear and consistent message in support of historic preservation and community character preservation.

Plan Salt Lake (adopted in 2015)

Under the guiding principle Preservation, the plan aims at *"Maintaining places that provide a foundation for the city to affirm our past"*. The plan recognizes preservation as an important

component of community character and sense of place and mentions preservation tools to protect assets that are uniquely historic and best represent the story of the City's past. Initiatives relevant to this text amendment include:

- #1. Preserve and enhance neighborhood and district character.
- #3. Retain areas and structures of historic and architectural value.
- #4. Integrate preservation into City regulation, policy, and decision making.

Neighborhood Plans

Applicable neighborhood plans also mention the protection of historic resources.

[Central Community Plan](#) (adopted in 2005)

Historic Preservation goal: Preserve the community's architectural heritage, historically significant sites and historic neighborhoods.

Historic Preservation policies:

- Policy HP-1.0 Central Community gives high priority to the preservation of historic structures and development patterns.
- Policy HP 2.0 Use building codes and regulations to support preservation.

[Avenues Plan](#) (adopted in 1987):

Historic Preservation goal: Encourage preservation of historically and architecturally significant sites and the established character of the avenues and South Temple Historic Districts.

[Capitol Hill Plan](#) (amended in 2001):

Historic Preservation goal: Provide for the preservation and protection of historically and architecturally important districts as well as the quality of life inherent in historic areas.

Historic Preservation policies:

- Promote fullest and broadest application of historic preservation standards and design guidelines, especially relative to new construction, so that historic neighborhood fabric, character and livability are not compromised.

The proposed text amendment is consistent with these plans because it seeks to improve enforcement and enhance protection to the city's historic resources.

Consideration 4: Feedback from HLC and PC during briefings

The proposal was presented to the Historic Landmark Commission on November 2, 2023, and to the Planning Commission on November 8, 2023, to gather initial feedback. The following is a summary and response to the main comments and concerns raised:

1. Are there examples of unlawful demolition in Salt Lake City?

Fortunately, the city has not seen many complete demolitions without approval in the historic district. However, there are projects that exceeded, intentionally or unintentionally, the scope of work approved in a COA. There are also examples of illegal demolition of noncontributing buildings and buildings outside of the historic districts. In addition to the documented cases, staff occasionally respond to questions from the public about the consequences of doing work without a COA, including demolition.



Figure 5 – Contributing house in the Avenues Local Historic District was severely damaged in 2017 after interior demolition resulted in the destabilization of the structure.



Figure 6 – Noncontributing building in the Capitol Hill Local Historic District was demolished without a COA and permit in 2022.

2. What are the tools available to address boarded buildings?

Civil Enforcement is responsible for boarded buildings. Text amendment PLNPCM2023-00868, initiated by the Building Services Division, is proposing to increase fines for boarded buildings among other things. Additionally, the City Council requested staff to study addressing the intentional lack of maintenance of a building over time of properties in the historic district, also known as willful neglect. The provisions added through this text amendment would serve as the foundation for any potential ordinance changes to address willful neglect of historic structures.

3. Should the restrictive covenant prohibit demolition of the reconstructed structure for more than 25 years?

The 25-year mark is proposed because after 20 or 30 years of construction, major exterior materials of a house, such as siding and roofing, would need replacement. The Commissions could recommend a longer period. It is worth noting that after 50 years, the structure would be eligible to receive contributing status if standards of historic value and integrity are met.

4. Is there statistical evidence on the effectiveness of penalties in deterring zoning violations?

The proposal is based on what other cities do and the state of Utah allows in terms of zoning and land use regulations. The research from other cities indicates that monetary penalties alone generally do not deter zoning violations; rather, a combination of fees and limiting development potential are more effective.

5. Is requiring reconstruction legal? Could it be considered a regulatory taking? Could the cost of reconstruction be considered an excessive fine?

Our research, which involved consultation with city attorneys, indicated that requiring reconstruction after unlawful demolition is not prohibited by state or federal law and the requirement would not be considered a regulatory taking because the owner would be allowed an economically reasonable use of the property. Even though the exterior of the reconstructed building must look the same as the original, no specific land use is prescribed. The previous use and any other use permitted in the district would be allowed on the property. The cost of reconstruction is a result of a situation created by the violator, meaning, a self-imposed condition that could have been avoided had the owner followed city code. Staff also believes the punishment is proportional to the action of demolishing a historic resource.

6. Would this become an incentive to reconstruct the same structure but fit modern needs?

While that is a possibility, most cases of unlawful demolition occur because the owner wants to develop something different. Demolition is often driven by aesthetics or by the greater development potential that the underlying zoning district permits. For example, if a historic resource is a single-family in a zone that allows multifamily, the property owner may be interested in completely redeveloping the site to build a denser development. Reconstruction requires thorough research of the original structure which takes substantial time, expertise, and money. As such, it would likely cost more to demolish and reconstruct than to repair and modify a contributing building.

7. What are the best practices regarding reconstruction? How far does a replica have to go and is it ethical to imitate?

Reconstruction is rarely recommended because of the potential for historical error. However, the proposal follows the National Park Service (NPS) standards and guidelines for reconstruction. To accurately replicate a structure, an applicant would have to undertake extensive research to document the original building features. When it comes to the replica, the use of original building materials is preferable, but if not available, substitute materials may be considered. The shape and proportions of the building, design of exterior features and architectural detailing must be recreated as closely as possible to the original. Speculation will be kept to a minimum and designs that were not executed historically will not be approved. Staff recognizes that reconstruction will be essentially new construction, therefore, new methods of construction are allowed, and current building and fire codes will need to be met. Staff believes that reconstruction that provides a public benefit and follows NPS standards is ethical.

8. How does the proposal clarify other violations that are less than a demolition?

Based on the feedback received, staff added a provision clarifying that any work done without a COA would need after-the-fact approval or be undone. If undoing the alteration would further damage the structure, the alteration would be acknowledged but any request to administratively change the historic status from contributing to noncontributing based on such work would be rejected.

STAFF RECOMMENDATION

As presented in this staff report, the city's enforcement tools currently available are not effective in preventing unlawful demolition of historic resources. It also does not offer a satisfactory way to resolve such violation. The proposed text amendment creates new tools to deter and address illegal activities in a similar fashion as other cities nationwide have done. The proposal is consistent with the city's preservation goals and complies with the factors to consider for zoning

text amendments. Therefore, staff recommends that the Historic Landmark Commission forward a positive recommendation to the City Council regarding this proposal.

NEXT STEPS

The city council has the final decision-making authority on all zoning amendments. The zoning ordinance authorizes the Planning Commission to make recommendations to the city council on zoning amendments. The Planning Commission may make modifications to the proposed amendments, direct staff to make changes, or forward a recommendation to the city council on the proposal as is.

The recommendations of the Historic Landmark Commission and Planning Commission and any requested changes will be sent to the City Council, who will hold a briefing and additional public hearing on the proposed changes. The City Council may make modifications to the proposal and approve or decline to approve the proposed changes.

If ultimately approved by the City Council, the changes would be incorporated into the zoning ordinance.

ATTACHMENT A: Proposed Ordinance

Note of clarification: Underline indicates new text.

~~Strikethrough~~ indicates deleted text.

Amending 21A.34.020 (Zoning: Overlay Districts: H Historic Preservation Overlay District)

21A.34.020: H HISTORIC PRESERVATION OVERLAY DISTRICT:

- A. Purpose Statement
- B. Applicability
- C. Local Historic Designation, Amendments or Revocation
- D. Historic Status Determination
- E. Certificate of Appropriateness Required
- F. Procedures for Issuance of a Certificate of Appropriateness
- G. Standards for Alteration of a Landmark Site, Contributing Structure or New Construction of an Accessory Structure
- H. Standards for New Construction or Alteration of a Noncontributing Structure
- I. Standards for Relocation
- J. Standards for Demolition of a Landmark Site
- K. Standards for Demolition of a Contributing Principal Building
- L. Economic Hardship Determination
- M. ~~Reconstruction of a Carriage House on a Landmark Site~~
- N. Enforcement

Amending 21A.34.020.E.1 (Zoning: Overlay Districts: H Historic Preservation Overlay District: Certificate of Appropriateness Required)

- 1. A certificate of appropriateness shall be required for all of the following:
 - a. Any exterior alteration to the property or any structure on the property unless specifically exempted under Subsection 21A.34.020.E.2;
 - b. New ~~E~~construction;
 - c. Relocation of a structure or object on the same site or to another site;
 - d. Demolition; and
 - e. Reconstruction

Amending 21A.34.020.F.2 (Zoning: Overlay Districts: H Historic Preservation Overlay District: Procedure for Issuance of Certificate of Appropriateness)

- 2. Historic Landmark Commission Authority: The following shall only be decided by the historic landmark commission:
 - a. Substantial alteration or addition to a landmark site or contributing site, building, and/or structure;
 - b. New construction of a principal building in the H Historic Preservation Overlay District;
 - c. Relocation of a landmark site or contributing principal building;
 - d. Demolition of a landmark site or contributing principal building;
 - e. Economic hardship determination;
 - f. ~~Reconstruction of a carriage house on a landmark site;~~ and
 - g. Applications referred by the planning director.

Adopting 21A.34.020.F.3.c (Zoning: Overlay Districts: H Historic Preservation Overlay District: Procedure for Issuance of Certificate of Appropriateness: Submission of Application)

c. Reconstruction Application Requirements: In addition to the general application requirements listed above, applications for reconstruction shall include drawings and photographs of the original structure that justify the dimensions and details of the proposed structure. The applicant shall provide documentation that indicates the original structure's approximate:

- (1) Location on the site and the estimated setbacks.
- (2) Building footprint, including shape and size.
- (3) Roof shape, slope and details.
- (4) Building height, including wall height and roof height.
- (5) Openings, including location, arrangement, size and details of any window or door openings. For reconstruction of carriage house, include carriage entries.
- (6) Exterior building materials.

Amending 21A.34.020.F.6 (Zoning: Overlay Districts: H Historic Preservation Overlay District: Procedure for Issuance of Certificate of Appropriateness)

6. Administrative Decisions: The planning director or designee shall approve, conditionally approve, or deny the application for a certificate of appropriateness based upon written findings of fact. The decision of the planning director or designee shall become effective upon issuance of the certificate of appropriateness or of the findings and order in the case of an administrative denial.

Amending 21A.34.020.L.3.c (Zoning: Overlay Districts: H Historic Preservation Overlay District: Economic Hardship Determination: Procedure for Determination of Economic Hardship)

c. Finding of Economic Hardship: If after reviewing all of the evidence presented by the applicant and the advice/testimony of the planning director's appointed qualified expert, and if the historic landmark commission finds that the applicant has presented sufficient information supporting a determination of economic hardship, then the historic landmark commission shall approve the demolition. In order to show that all beneficial or economically viable use cannot be obtained, the historic landmark commission must find that all of the following are met:

- (1) The contributing principal building or landmark site cannot be economically used or rented at a reasonable rate of return in its present condition or if rehabilitated;
- (2) The contributing principal building or landmark site cannot be put to any reasonable beneficial use in its present condition, or if rehabilitated; ~~and~~
- (3) Bona fide efforts during the previous year to sell or lease the contributing principal building or landmark site at a reasonable price have been unsuccessful; and
- (4) The hardship is not a mere reduction in economic value of the property, is not caused by the owner's financial ability to rehabilitate a property, is not caused by the owner's lack of due diligence to rehabilitate a property, or by any other self-imposed condition, such as demolition by neglect, intentional destabilization of the structure or a violation outlined in 21A.34.020.N.3.

M. Reconstruction of a Carriage House on a Landmark Site:

1. ~~Applicability: The reconstruction of a historic carriage house is allowed if the following criteria are satisfied:~~
 - a. Reconstruction after demolition without a certificate of appropriateness: If a landmark site or contributing structure is demolished without a certificate of appropriateness, an application for reconstruction will be considered in accordance with the provisions of this Subsection.
 - b. Reconstruction of a carriage house on a landmark site: An application for the reconstruction of a historic carriage house is allowed subject to the provision of this Subsection and if the following criteria are satisfied:
 - ~~a.(1)~~ The carriage house is located on property and address are a landmark site. For the purpose of this section, any site that has been further subdivided since the construction of the last principal building on the site shall be considered part of the landmark site.
 - ~~b.(2)~~ Documentation has been provided that indicates a carriage house associated with the historic period of the landmark site existed on the site. Documentation may include any property related record, prior survey, photographs, site plans, or similar records. It is the responsibility of the applicant to provide the necessary documentation and justification for the proposed dimensions and details of the carriage house that is proposed to be reconstructed. Documentation shall provide sufficient detail to estimate the approximate details of the carriage house, including:
 - ~~(1) The approximate location of the carriage house on the site and estimated setbacks;~~
 - ~~(2) The approximate footprint shape and size;~~
 - ~~(3) The approximate shape, slope, and details of the roof of the structure proposed to be reconstructed;~~
 - ~~(4) The approximate height of the structure in feet, based on the scale of existing buildings or structures that are also visible in historic documentation or the dimensions of the historic building materials, if available. The approximate height shall include wall height and roof height; and~~
 - ~~(5) The location, arrangement, size, and details of any window or door, including carriage entries.~~
2. ~~Application Requirements: An application to reconstruct a historic carriage house shall be considered an application for new construction and include all the application requirements for new construction in this section and documentation requirements in Subsection 1.b above. Modifications authorized: The following modifications are authorized for reconstruction in accordance with this Subsection:~~
 - a. Density: The qualifying provisions for density found in the minimum lot area and lot width tables of the zoning district do not apply to the proposed reconstruction, and in the RMF-30 zoning district, the minimum lot size per dwelling unit does not apply.
 - b. Multiple buildings on a single parcel: If the reconstruction results in multiple buildings on a single parcel, the buildings are allowed without each building having street frontage.
3. Compliance with additional codes: An application for reconstruction shall comply with all applicable codes, regulations and engineering standards that have been adopted by the State of Utah or the city.

4. Approval Standards: In considering an application for a certificate of appropriateness involving reconstruction, the historic landmark commission shall grant the certificate if it find the project complies with all of the following standards ~~An application to reconstruct a historic carriage house shall be subject to the following standards. An application shall be approved if the following standards are complied with:~~
 - a. ~~Reconstruction shall only be used to depicts only~~ vanished or non-surviving portion of a property ~~when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture;~~
 - ~~b. Reconstruction will~~ and includes measures to preserve any remaining historic materials, features, and spatial relationships;
 - ~~e.b. The Rreconstruction will be based on the is an~~ accurate duplication of historic features and elements substantiated by documentary or physical evidence. When evidence is not available, rather than on conjectural designs may be allowed if supported by research of similar structures of the same era as the original structure, or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color, and texture;
 - ~~dc. Proposed d~~ Designs that were never executed historically will not be allowed, constructed or considered;
 - d. The proposed structure replicates the size, shape, location, orientation, material and design of the original structure.
 - e. The proposed structure replicates character defining features and details of the original structure.
 - ~~e. The proposed carriage house shall match the footprint size, shape, and location on the property based on the historic documentation provided by the applicant. Historic documentation shall be used to approximate the location and dimensions of the structure;~~
 - ~~f. The the carriage house shall match the approximate roof shape of the original carriage house;~~
 - ~~g. The entryways into the house, including reconstructed entryways for carriages, shall approximately match historic entryways commonly found on carriage houses from the same era as the original carriage house; and~~
 - ~~h. Impacts to adjacent properties, including but not limited to solar access, noise, light trespass, refuse storage, and mechanical equipment locations, parking locations, have been mitigate or can be mitigated through the site layout, appropriate buffering, and/or building designs.~~
4. Complying With Additional Codes: An application approved under this section shall comply with all applicable codes, regulations and engineering standards that have been adopted by the State of Utah or the city.
5. Additional requirements for reconstruction of a carriage house on a landmark site:
 - a. Subdivision Prohibited: Further subdivision of the property after approval of a reconstruction under this section is prohibited and portions of Section 21A.38.060 authorizing subdivisions of lots with more than two principal buildings shall not be applicable.
 - b. Updated Intensive Level Survey: If reconstruction is approved, the applicant shall provide the city an updated intensive level survey to document the changes to the landmark site.

- c. ~~6.~~ Allowed Uses After Reconstruction: The following uses shall be allowed in a reconstructed carriage house approved under this section:
- ~~a(1).~~ A single-family dwelling, regardless of lot area, lot width or street frontage;
 - ~~b(2).~~ Any accessory use authorized in the underlying zoning district or overlay district; or
 - ~~e(3).~~ Accessory dwelling units subject to the applicable regulations for accessory dwelling units.
6. Restrictive covenant for reconstruction after demolition: In the case of a reconstruction after demolition without a certificate of appropriateness, the property owner shall enter into a legally binding restrictive covenant, the form of which shall be approved by the city attorney. The restrictive covenant shall be recorded on the property with the Salt Lake County Recorder prior to issuance of a certificate of appropriateness for the reconstruction required pursuant to 21A.34.020.N.3. The restrictive covenant shall, without limitation:
- a. Acknowledge the required reconstruction;
 - b. Prohibit demolition and major alterations to the reconstructed structure for 25 years from the date of the issuance of the certificate of occupancy, transferrable to any future property owner;
 - c. Identify the nature of the approval and any conditions thereof;
 - d. Require compliance with all applicable regulations; and
 - e. Identify the city's remedies for any violation of the covenant.
7. Historic status for reconstruction after demolition: Following reconstruction, the zoning administrator shall issue a historic status determination in accordance with section 21A.34.020.D, indicating the historic status of the reconstructed structure as noncontributing. Any future historic resource survey or status determination shall evaluate the reconstructed structure on its own merits. Modifications Authorized: In considering a proposal to reconstruct a carriage house under this section, the historic landmark commission may modify the following standards upon finding that the proposal complies with the applicable standards:
- a. ~~Minimum lot area when the lot does not contain the minimum lot area for an additional dwelling unit;~~
 - b. ~~Modifications to Sections 21A.36.010 and 21A.36.020; and~~
 - c. ~~Any authorized modification identified in Section 21A.06.050.~~
8. ~~Updated Intensive Level Survey Required: If approved, the applicant shall provide the city and updated intensive level survey to document the changes to the site.~~

Adopting 21A.34.020.N (Zoning: Overlay Districts: H Historic Preservation Overlay District)

- N. Enforcement: Any property on which work is done without a certificate of appropriateness when such is required under 21A.34.020, shall be subject to the enforcement process established in Section 21A.20. As applicable, the city shall have the following additional remedies as set forth below:
- 1. Any work done in violation of this chapter, and which does not comply with or cannot be made to comply with the standards of this chapter shall be undone. The structure or site shall be restored to its condition prior to such unlawful alteration to the greatest extent possible without further damage.
 - 2. A request for historic status determination as outlined in 21A.34.020.D to change the status from contributing to noncontributing based on work done without a certificate of appropriateness shall be rejected.

3. In the case of demolition of a contributing principal structure or local landmark site without a certificate of appropriateness, a certificate of noncompliance will be issued and recorded against the property prohibiting redevelopment for 25 years unless the proposed redevelopment is for reconstruction as permitted by 21A.34.020.M.

Amending 21A.38.040.H.5 (Zoning: Nonconforming Uses and Noncomplying Structures: Nonconforming Uses: Modifications to Nonconforming Uses)

5. Deterioration ~~Or~~ Destruction ~~Of~~ Structure ~~W~~with ~~Aa~~ Nonconforming Use: Restoration of a deteriorated, damaged or destroyed structure and continuance of a nonconforming use shall be subject to the following:
 - a. If a building or structure that contains a nonconforming use is allowed to deteriorate to a condition that the structure is rendered uninhabitable as determined by the building official and is not repaired or restored within one year after written notice to the property owner that the structure is uninhabitable, the nonconforming use will cease to be legal.
 - b. If a building or structure that contains a nonconforming use is voluntarily razed, or is required by law to be razed, the nonconforming use shall not be resumed.
 - c. If a property owner has voluntarily demolished seventy five percent (75%) or more of the perimeter wall length and area dimensions of the exterior walls and/or total floor area of a structure, the structure shall not be restored.
 - d. A nonconforming use may be restored when reconstruction is approved according to the provisions of 21A.34.020.M.1.a.
 - ~~d.~~ e. If a building or structure that contains a nonconforming use is involuntarily destroyed in whole or in part due to fire or other calamity and the structure or use has not been abandoned, the nonconforming use may be resumed and the building or structure may be restored to the condition prior to the destruction, provided such work is reasonably pursued in a time frame determined by the building official after such calamity.

Amending 21A.38.050.G (Zoning: Nonconforming Uses and Noncomplying Structures: Noncomplying Structures)

- G. Deterioration, Damage ~~Or~~ Destruction ~~Of~~ Noncomplying Structure: Restoration of a deteriorated, damaged or destroyed noncomplying structure shall be subject to the following:
 1. If a noncomplying structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable as determined by the building official and is not repaired or restored within one year after written notice to the property owner that the structure is uninhabitable, the noncomplying structure status will be lost and requires either complete demolition or compliance with the standards of the zoning district in which the structure is located.
 2. If a property owner or authorized representative voluntarily demolishes a noncomplying structure or the noncomplying structure is required by law to be razed, the structure shall not be restored unless it is restored to comply with the regulations of the zone in which it is located. Demolition of a noncomplying structure includes any act or process that destroys or removes seventy five percent (75%) or more of the perimeter wall length and area dimensions of exterior walls and/or total floor area of a structure.
 3. A noncomplying structure may be restored when reconstruction is approved according to the provisions of 21A.34.020.M.1.a.

- 3.4. If a noncomplying structure is involuntarily destroyed in whole or in part due to fire or other calamity and the structure or use has not been abandoned, the structure may be restored to its original condition with respect to building footprint, setback, height and other noncomplying dimensional standards of the zoning district in which the structure is located, provided such work is started within one year, unless a longer time frame is approved by the building official, after such calamity.

Amending 21A.62.040 (Zoning: Definitions: Definitions of Terms)

RECONSTRUCTION (AS IT APPLIES TO PROPERTIES WITHIN THE H HISTORIC PRESERVATION OVERLAY DISTRICT): The act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

Adopting a “Reconstruction” fee in the Consolidated Fee Schedule.

Service		Fee	Additional Information	Section
	<u>Reconstruction</u>	<u>\$2,982</u>	<u>See also fee for required public notices (21A.10.010 E)</u>	<u>21A.34.020</u>

ATTACHMENT B: Zoning Amendments Considerations

21A.50.050: A decision to amend the text of this title or the zoning map by general amendment is a matter committed to the legislative discretion of the city council and is not controlled by any one standard. In making a decision concerning a proposed text amendment, the City Council should consider the following:

1. Whether a proposed text amendment is consistent with the purposes, goals, objectives, and policies of the city as stated through its various adopted planning documents;

Finding: Complies

Discussion:

The text amendment seeks to improve enforcement and enhance protection to the city's historic resources. As discussed in [Key Consideration 3](#), the proposal complies with purpose, goals, objectives and city policies. The proposal is consistent with the [Community Preservation Plan](#), [Plan Salt Lake](#), and applicable neighborhood plans.

2. Whether a proposed text amendment furthers the specific purpose statements of the zoning ordinance.

Finding: Complies

Discussion:

The proposal furthers the purpose of the H Historic Preservation Overlay District ([21A.34.020.A](#)), more specifically:

- #1. Provide the means to protect and preserve areas of the City and individual structures and sites having historic, architectural or cultural significance;
- #3. Abate the destruction and demolition of historic structures;
- #4. Implement adopted plans of the City related to historic preservation;

In addition, it aligns with the Zoning Amendment Purpose Statement ([21A.50.010](#)):

The purpose of this chapter is to provide standards and procedures for making amendments to the text of this title and to the zoning map. This amendment process is not intended to relieve particular hardships nor to confer special privileges or rights upon any person, but only to make adjustments necessary in light of changed conditions or changes in public policy.

The proposal makes adjustments in light of changed conditions, or noted deficiencies, related to enforcement of the historic overlay provisions.

3. Whether a proposed text amendment is consistent with the purposes and provisions of any applicable overlay zoning districts which may impose additional standards;

Finding: Complies
Discussion: <p>The proposed amendment impacts the H Historic Preservation Overlay District and are consistent with the standards and purpose of that overlay zone.</p>
4. The extent to which a proposed text amendment implements best current, professional practices of urban planning and design.
Finding: Complies
Discussion: <p>As discussed in Key Consideration 2, the enforcement tools added in this text amendment are based on current and best practices recommended by recognized historic preservation organizations and methods used by other cities. The proposed amendment ultimately brings city regulations into alignment with preservation objectives and enhances enforcement tools. The intent of the proposal is to act as a deterrent and avoid the loss of historic resources. It also safeguards the preservation program and the city from a potential difficult situation due to the limitation of our enforcement tools available (see Key Consideration 1).</p>

ATTACHMENT C: Public Process & Comments

Public Notice, Meetings, Comments

The following is a list of public meetings that have been held and other public input opportunities related to the proposed project since the petition was initiated:

- October 3, 2023: All Salt Lake City recognized organizations were sent the required 45-day notice for the proposed text amendment.
- October 10, 2023: An online open house webpage was posted to provide additional information on the petition.
- October 23, 2023: The planning division sent out public outreach to stakeholders.

Commission Briefing & Hearings

Staff presented preliminary draft proposal to the Historic Landmark and Planning Commissions to introduce the request, gather feedback, identify key issues, and answer questions.

- November 2, 2023: Historic Landmark Commission
- November 8, 2023: Planning Commission

Staff is presenting the final proposal to the Historic Landmark Commission on January 4, 2024.

Notice of the public hearing for the proposal included:

- December 22, 2023: HLC public hearing notice posted on City and State websites and Planning Division listserv.
- December 29, 2023: PC public hearing notice posted on City and State websites and Planning Division listserv.

Public Input:

Staff received one letter with comments from the Sugar House Community Council. The letter is attached to this staff report.



October 31, 2023

TO: Salt Lake City Planning Commission

FROM: Judi Short, Vice Chair and Land Use Chair
Sugar House Community Council

RE: PLMPCN2023-00336 Enforcement on Work Without a Certificate of Appropriateness

This proposal is to prevent unlawful construction or demolition activities in local historic districts, or landmark sites. We agree with the recommendation that we should have enforcement tools available to prevent and counter potential violations in the local historic districts and to local historic landmark sites.

We should have a clear process to remedy alterations or demolition that occur without approval. And we should have standards that require that if a contributing structure is demolished without City permits, it shall be reconstructed as it was prior to unlawful demolition. But, this shouldn't be just lip service. There should be a clear penalty written into the ordinance. Too many times, we let people get off Scott free, we need to stop that. We agree with the language in the Proposed ordinance

We ask that you approve this request.

Attachment

Comments from Committee Members

Comments Certificate of Appropriateness

Contact Email

rdavis2655@gmail.com

Commentor Street Address

1564 E Blaine Ave. SLC 84105

Your Comments for the Planning Commission

I am supportive of the proposal to prevent unlawful construction or demolition of buildings in local historic districts or landmark sites in Salt Lake City. Requiring a Certificate of Appropriateness is a good idea. It will ensure that the remodel of an historic building or the replacement of a structure that was removed in the past, such as a carriage house, results in a structure being built that is appropriate for the site. The demolition of a building on a landmark site will also require a certificate of appropriateness. This is a very good idea. These proposed changes will help maintain and protect the historical and architectural integrity of Salt Lake City's historic properties.

I don't see what the penalties are for noncompliance. I assume they are spelled out in sections that aren't included in the Proposed Text Amendment. But if not, that needs to be added to the ordinance.

Commentor First Name

Lynn

Commentor Last Name

Schwarz

Contact Email

lsbx101@gmail.com

Your Comments for the Planning Commission

I am in favor of the proposed changes to the H Historic Preservation Overlay District Ordinance regarding work done without a Certificate of Appropriateness. There seems to be a great emphasis on Carriage Houses. Section M3c speaks to the need for use of documentary evidence for the reconstruction of a structure rather than conjecture, but does not seem to provide a solution if this evidence does not exist. I also approve of the provision stating that no subdivision will be allowed after approval of a reconstruction. The use of a 25 year restrictive covenant after reconstruction of a contributing structure demolished without a Certificate of Appropriateness to prohibit demolition or alteration of the reconstructed building is also welcome. Enforcement is, of course, always an issue and I hope that there is a robust structure to both find and fine offenders. And these fines have to be meaningful enough to be a deterrence. I would also like to see a provision that when a structure gains Historic Designation the owner must acknowledge in writing that they have been notified by Salt Lake City about this Ordinance. I would also like to see a corresponding mechanism for existing Historically designated structures so that ignorance can never be used as an excuse for violating the Ordinance.