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 TO CONSTRUCTION

# Historic Resources Code Improvement Project Draft Issues and Options Paper – September 11, 2012

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## Project Website

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## I. Background and Project Overview

In an 8-month public process, this project will propose amendments to the Zoning Code to make it easier for property owners to make minor home improvements in the City’s historic and conservation districts. The first step of the public process is to identify the issues, provide context, and identify potential solutions for consideration.

### Schedule

July – Aug 2012	Problem identification, research and background	Check-in with Planning and Sustainability Commission, Historic Landmarks Commission, and the Development Review Advisory Committee
Sept - Oct 2012	Develop alternative concepts	Meetings with stakeholders
Nov – Dec 2012	Discussion Draft	Historic Landmarks Commission with public testimony
Jan 2013	Public Hearing	Planning and Sustainability Commission
Feb 2013	Public Hearing	City Council

### Background

Property owners in Historic and Conservation Districts are concerned about the fees and time involved for Historic Design Review. Fees for small home remodeling projects start at \$900, and the design review process can take from 6-8 weeks. The fees, in some cases, can be more than the cost of the job itself. As a result, some property owners decide to make exterior home improvements without going through historic design review, while others decide not to make improvements at all.

### Project Goals

- Improve the historic design review process to help preserve the historic character of Portland.
- Create a quicker, easier to understand, and more predictable review process for proposals with minor impacts on historic resources.

### What will this project do? (In Scope)

Under the City’s current regulations pertaining to historic resources, the majority of exterior alteration and development proposals are reviewed through Historic Design Review. While historic design review provides for flexibility and public dialogue, it also takes time and money on the applicant’s part. The overall purpose of this project is to reassess when historic design review is necessary and appropriate.

The following amendments will be explored, and others may be discussed, as the project moves forward:

1. Historic Resources Definitions – Clarify terminology related to historic resources regulations, including the terms “repair,” “maintenance” and “replacement.”
2. Redefine Historic Review Triggers/Exemptions – Determine the appropriate level of review in historic and conservation districts for the following:
  - a. minor alterations to structures;
  - b. alterations that are not visible from the public right-of-way.
3. Procedure Type – Create a land use review procedure with a shorter timeline and no local appeal. This could be a new land use review or a revision of the Type I procedure.

**What will this project not do? (Out of scope)**

A list of issues not addressed by this project is listed in Appendix A.

**Research**

City staff conducted research to inform this process by reviewing permit data over the past 18 months and conducting a survey of other cities in the country to help identify best practices. Below is a summary of the information collected. In addition, the issues on the following pages have numerous references to the research material as well. More detailed summaries of the data are available upon request.

Permit Data

Over the course of the past 18 months, Bureau of Development Services staff processed 179 land use cases related to historic resources. Of these cases, approximately 54 percent are outside the scope of this project (e.g. signs, commercial storefront remodels, radio frequency antennas, and other large scale remodels or new constructions that triggered the Type 3 Historic Design Review process). The remaining 46 percent, however, did fall within the scope of the project. These cases provide helpful focus for the minor code improvements contemplated in this project. A summary of the permit data is below:

**Table 1: Permit Data - November 1, 2010 to May 30, 2012**

<b>Review Categories</b>	<b>Number of Cases</b>	<b>Percent of Total</b>
Rear additions	24	12.9%
Windows – main facades	19	10.2%
Windows – basement	4	2.2%
Minor repairs	27	14.5%
Restoration	3	1.6%
Repair and maintenance	1	0.5%
Mechanical equipment	5	2.7%
Garages and other accessory structures	3	1.6%
Not in scope: signs, commercial building and storefronts, radio frequency facilities	100	53.8%
<b>Total</b>	<b>186*</b>	<b>100</b>

\*some cases fall into two categories. The total number of cases was 179.

Several themes emerge from the permit data, including:

- Approximately half of the cases reviewed by BDS could benefit from some form of code amendment;
- Creating exemptions or a minor review may encourage additions at the rear of a house where the impact is the least;
- Relatively few cases involve true restoration work;
- Although only 23 cases relate to windows, windows account for the bulk of inquiries to BDS staff; and
- Creating exemptions, standards, or minor review for window replacements under certain circumstances may help reduce time and cost for homeowners.

In addition to permit data, Bureau of Development Staff estimate that they receive approximately 150 inquiries each year from homeowners with questions about what types of work are considered repair and maintenance. It is anticipated that BDS workload could be reduced by clarifying certain definitions in the code.

#### Survey of Other Cities

Bureau of Planning and Sustainability staff conducted a survey of nine cities that have historic resource protection programs that offer lessons for Portland. The questions in the survey were specific to the issues outlined above in the “What will this project do?” section. The survey clearly shows that every jurisdiction is unique and has a different approach to protecting historic resources. The themes of their approaches are as follows:

- Repair and maintenance are largely exempt or reviewed administratively in one day;
- Temporary structures (e.g. wheelchair ramps) and foundation work are often exempted;
- Minor projects are defined and reviewed administratively (percentage of resource affected or under a certain square footage addition);
- Visibility from defined viewpoints is a factor in determining the level of review – facades visible from the street have a higher level of review;
- The level of review applied to window replacement varies depending on conspicuousness and type of materials used; and
- Restoration projects typically require administrative review.

## II. Discussion Issues

The purpose of an issue paper is to identify issues and explore potential solutions. This paper is intended to start a community conversation about potential minor code amendments that will make it easier for property owners to make home improvements in the City's historic and conservation districts. The issues are organized to follow the intended scope of work and are conceptual.

Staff has proposed conceptual options for potential code changes as well. Although not specifically stated, retaining the current code language is also an option for each issue. More discussion with stakeholders will be necessary before specific proposals are crafted. Starting with the concepts will hopefully facilitate a more thoughtful discussion about the current problems and the broad range of solutions. Your input will be important in crafting a detailed proposal for review by the Historic Landmarks Commission and Planning and Sustainability Commission later this fall.

### **A. When Historic Design Review is required**

#### **1. Accessory Structures - Should all structures in historic districts be subject to Historic Design Review unless specifically exempted?**

Background:

The primary purpose of Historic Design Review is to "...recognize and protect the region's historic and architectural resources, ensuring that changes to a designated historic resource preserve historic and architectural values and provide incentives for historic preservation." (PCC 33.846.010). Landmarks and individual properties in historic or conservation districts may include accessory structures, such as garages or masonry walls, but the City currently does not review new construction of accessory structures less than 300 square feet or alterations to accessory structures. However, inappropriate alterations to accessory structures can weaken the historic significance of landmarks and individual districts, and the current system also allows for inconsistent application of the code and general confusion about which structures are subject to review.

Options:

- a) Reduce the exemption for new construction of accessory structures to 200 square feet to be consistent with other building code exemptions.
- b) Identify specific accessory structures that would be subject to review.
- c) Expand the current scope of Historic Design Review to include all new construction and exterior alterations for accessory structures. New exemptions and alternative review procedures are proposed in other sections for certain alterations that have less impact on the historic significance of districts and individual landmarks. A combined approach of expanding review and identifying additional exemptions could provide more clarity and predictability for residents and property owners in historic districts, and is consistent with the practice of many other jurisdictions.

Note: Consistent documentation is not available for historic resources citywide; therefore staff may have to conduct field visits to evaluate proposals during the review process.

## **2. Interior light wells**

### **Background:**

Interior light wells are typically open air, exterior elevations of a building that do not face a street and/or are not visible from the right of way because of the building floor plan configuration. Additionally, interior light wells are generally located in 1-5 story masonry commercial buildings and serve a utilitarian function for venting mechanical equipment and other building systems uses. Due to the typical configuration of an interior light well, they generally have little or no impact on the historic resource and their design and compatibility with a historic context is not relevant or practiced over time.

### **Option:**

Exempt alterations to interior light wells from review.

## **3. Fire escape removal**

### **Background:**

Fire escapes are often located on street-facing facades, but they are not typically considered character-defining features. The City received approximately 12 requests to remove dangerous fire escapes over the past several years from the Fire Marshal and Inspectors. Typically they are deemed dangerous by the Fire Marshal, but there currently is no exemption from review.

### **Option:**

Although staff may provide guidance in the repair of holes from removed fire escapes, an exemption is warranted.

## **4. Wheelchair ramps**

### **Background:**

Property owners sometimes need to install wheelchair ramps due to a disability. This is an equity issue. In addition, aging in place is an emerging issue for the city. Ramps are often installed without a permit and become a violation after a complaint is filed.

### **Option:**

Exempt temporary wheelchair ramps from review. Permanent wheelchair ramps will continue to be subject to review.

## **5. Storm windows**

### **Background:**

Storm windows are distinct from windows. Storm windows that are typically wood and fit neatly into the existing frame have little or no impact on the historic resource. Storm windows that are typically metal, extrudes from the frame, and are screwed into the resource may have an impact on the resource.

### **Option:**

Potentially exempt storm windows that have little or no impact on the historic resource.

## **B. Alternative Review Procedures**

### **General Procedure Options**

The City currently uses a variety of procedures to process applications (summarized in Table 2). The Historic Design Review process generally uses Procedure Types I, II and III; demolitions are processed through a Type IV Procedure and are not included in this summary. The current process may provide a disincentive to pursue projects that are relatively minor in scope or involve restoration of resources, because of the time and cost associated with the procedures, or may incent property owners to complete work without a review and permit. A shorter review process than is currently required could encourage the review of small projects with the same results as the current process (PCC 33.846.060).

**Table 2: Current Procedure Types**

<b>Procedure Type</b>	<b>Decision Maker</b>	<b>Days to Decision</b>	<b>Notice</b>	<b>Appealable at local level</b>	<b>Appealable to LUBA</b>	<b>Historic Design Review Examples</b>
<b>Type I</b>	Staff	45	Property owners within 100 ft of site.	No	Yes	Signs < 150 sf
<b>Type II</b>	Staff	56	Property owners within 150 ft. of site; Associations within 400 ft of site	Yes	Yes	Exterior alterations <\$396,200 to a structure that is not a landmark
<b>Type III</b>	Local review body (e.g. landmarks)	103	Property owners within 400 ft. of site; Associations within 1000 ft of site	Yes	Yes	Exterior alterations >\$396,200 to a structure that is not a landmark

Note: In addition to the above land use review procedures, the City uses other review procedures and methods to process administrative decisions, such as a zoning confirmation letter.

#### Options:

- a) A new administrative process with no local appeal. This process would be similar to documentation of a non-conforming use. This process would require more objective standards by which a proposal could be evaluated, and would not involve public notice. This option appears to be most appropriate in situations when the proposal is for true restoration (see discussion below).
- b) A new land-use procedure type with a 21-day comment period and no local appeal. The new land use review procedure type would be most valuable for small proposals that require some discretionary scrutiny but can almost always be approved.

Both of these reviews would tend to create a path of least resistance that leads to a desirable outcome, and may also offer an opportunity to incentivize these options by setting up a framework to eventually reduce or eliminate fees.

## 1. Window repair and replacement

Background:

Window repair is currently exempt and no change is proposed. Window restoration is addressed in the next section.

Property owners wishing to replace their existing windows or sashes made up 10 percent of the applications processed between November 2010 and May 2012. In these cases, the property owner must demonstrate that the existing windows were either non-historic or damaged beyond repair, otherwise the number of reviews would be significantly higher. Windows are an important attribute of a historic resource and historic preservation places a high value on retaining and repairing original windows. However, this value sometimes conflicts with a homeowners desire to install new windows with potentially greater energy efficiency and functionality.

Windows were often cited by other jurisdictions as a controversial issue and each one crafted different approaches. Denver uses a minor review when only 1-3 windows that are not on a primary facade or do not have significant character are being replaced. New Orleans applies a two-tiered system of review to windows, depending on visibility and preservation priorities, and new windows must be compatible and fit into historic openings. Charlotte, N.C. exempts windows and door openings on rear and side elevations that are not substantially visible from the public right-of-way.

Options:

- a) Identify specific window replacements that would be exempt from Historic Design Review.
- b) Create a new administrative process with no local appeal, as described on page 6.
- c) Allow window replacement through standards.
- d) Create a new land-use procedure type with a 21-day comment period and no local appeal, as described on page 6.

Note: Any standards or a shorter review would need to consider the window profile, configuration, size and opening, and potentially materials. Additionally, the above options could be different on different sides of the house based on visibility from the right of way, as described on page 9.

## 2. Restorations

Background:

Portland does not currently define restoration. The National Park Service uses the following definition:

*Restoration is defined as the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.*

A very small percentage of the historic reviews processed between November 2010 and May 2012 were for restoration work intended to bring the structure back to original historic conditions. Restoration projects require extensive historic documentation and are more expensive and involved than typical remodels or new construction. However, restorations are critical to the historic integrity of the structure and/or the historic district.

Options:

- a) Identify specific restorations that would be exempt from Historic Design Review.
- b) Apply standards to restorations.
- c) Create a new administrative process with no local appeal, as described on page 6.
- d) Create a new land-use procedure type with a 21-day comment period and no local appeal, as described on page 6.

Note: Restorations are typically more complicated to review than proposals for minor alterations, so a shorter process may not be feasible.

### **3. Minor Alterations**

Background:

Alterations are physical changes to a structure or site, other than normal maintenance and repair or total demolition. The Portland Zoning Code does not currently distinguish between minor and major alterations, and in a historic district all alterations are considered eligible for Historic Design Review, unless exempted, to ensure the resource's historic value is considered prior to or during the development process [PCC 33.445.320].

Many other jurisdictions require a lesser level of review for minor projects or process minor alterations through administrative procedures. Adopting a similar approach in Portland would help direct limited staff and property owner resources to projects that have more impact on the historic significance of a resource. There are two aspects to consider in this topic: how would minor alterations be defined, and how would they be treated in the Zoning Code.

Options for identifying what alterations would be considered minor:

- a) Create a definition for "minor alteration" that provides guidance and can be applied by staff through a process (see options below).
- b) Create a specific list of guidelines or standards that provide guidance to property owners, and can be applied by staff through a process (see options below).
- c) Create a list of alterations that would be considered "minor". San Francisco recently adopted a list of minor alterations that are processed through an administrative procedure, that includes ordinary maintenance and repair, limited investigative work and front stairways and railings, among other things.

Options for how to treat minor alterations in the zoning code:

- a) Exempt minor alterations from Historic Design Review.
- b) Create a new administrative process with no local appeal, as described on page 6.

- c) Apply standards to minor alterations.
- d) Create a new land-use procedure type with a 21-day comment period and no local appeal, as described on page 6.

**4. Alterations not visible from the Right of Way**

Background:

Fourteen percent of the reviews processed between November 2010 and May 2012 were additions that were either not visible or minimally visible from the public right-of-way. These alterations were primarily rear additions to existing single family homes in the Irvington Historic District. Staff has been evaluating the rear of the building [least visible to the public] with a more flexible compatibility approach than if a street-facing addition were being proposed. This type of approach typically applies to reviewing alterations to properties in historic districts. Proposals for changes to individually designated historic landmarks are reviewed with attention to all facades. While attention and expertise is still applied to matching roof slopes, compatible materials and patterning, the primary focus has been to limit the new addition’s visibility from the street. This methodology is consistent with other jurisdictions, as well as at the State and Federal level, and encourages alterations on the house facade with the least impact the historic structure and district. This also helps focus limited staff resources to review proposals that have the greatest impact on historic resources (i.e. most visible to the public) for restoration and minor alterations.

Options:

- a) Identify alterations that would be exempt from Historic Design Review.
- b) Create a new administrative process with no local appeal, as described on page 6.
- c) Apply standards for alterations not visible from the public right of way.
- d) Create a new land-use procedure type with a 21-day comment period and no local appeal, as described on page 6.

Note: For any change, visibility from the right-of-way may need to be determined for individual cases, based on many factors (e.g. landscaping, fencing) and variations for different approaches for size and massing, repair and maintenance, restoration, new construction and demolition will need to be considered. The nominating document will also need to be referenced for guidance.

**C. Terminology**

**1. Chapter Titles**

Background:

Changing the chapter titles would make would make terminology more consistent, and take into account their non-protective provisions, such as historic resource designations and the granting of incentives.

Option:

33.445 Historic Resource ~~Protection~~ Overlay Zone      33.846 Historic Resource Reviews

## 2. Design vs. Historic Resource Treatment terminology

Background:

The current terminology used in chapters 33.445 and 33.846 is Design Guidelines and Historic Design Review. This terminology implies that the review of alterations to historic resources is the same as the review of architectural designs. However, architectural design and historic preservation are distinct disciplines with very different concerns and approaches, which is reflected with separate overlay chapters in the Zoning Code and separate overseeing commissions. The emphasis in federal, state and most other local historic preservation programs is on the appropriateness of proposed historic treatments rather than on other design considerations (e.g. the roof pitch of an addition to a historic structure should generally match that the existing roof, rather than be determined purely by design preference, independent of historic context).

Option:

Change the terms Design Guidelines and Historic Design Review to Historic Resource Treatment Guidelines and Historic Resource Treatment Review in chapters 33.445 and 33.846 to clarify the focus on appropriate historic treatments in these two chapters.

## 3. Definitions

Changes to the following code definitions are proposed for clarification and to coordinate with other changes that are being considered as part of this code improvement project. Specific language will be developed with stakeholder input as other code changes are explored.

### Definitions proposed to be added

Character-Defining Feature  
 Contributing Resource  
 Conservation District  
 Demolition  
 Historic Resource Treatments

- Preservation
- Rehabilitation
- Restoration
- Reconstruction

Interior Alteration  
 Maintenance  
 Repair  
 Replacement

### Modifications of existing definitions

Historic Context  
 Historic District  
 Historic Landmark  
 Historic Resource  
 Historic Resources Inventory

### Definitions proposed to be removed

Historic Ensemble & Historic Landmark  
 Tree  
 ESEE Analysis  
 Historic Value  
 Renovation Plan

## Appendix A – Issues Out of Scope

The following issues were identified by city staff and stakeholders. These issues were not included in the scope of the project due to their complexity and level of controversy. The short timeframe and limited resources of this project does not allow for a thorough public discourse that would be required to address these issues.

1. Does the removal of a Historic Resource designation require a separate procedure, or could it be accomplished using the "designation" review process?
2. Should the approval criteria for historic resource designations mirror those for listing in the National Register of Historic Places?
3. Historic District - Should Portland's description of the historic resource designation type Historic District align with the definition used by the National Register of Historic Places?
4. Should Portland's description of the historic resource designation type, Historic Landmark, align with the eligibility criteria used by the National Register of Historic Places?
5. Should the approval criteria for all Historic Resource Treatment Reviews be the *Secretary of the Interior's Standards for the Treatment of Historic Property – Rehabilitation*?
6. Should all new development proposals in single-dwelling zones, typically residential historic districts, trigger Type III Historic Resource Treatment Review procedure?
7. Should all regulatory references to the Historic Resource Inventory be removed from the Zoning Code?
8. Should consideration be given to the value of historic resources in the public right-of-way (e.g. street trees and historic infrastructure), especially if they define the character of historic districts?
9. Should Conservation Districts be re-categorized as Design Zones, advanced to Historic District status, or left alone?
10. Should the category of Conservation District be moved to a separate chapter in the Zoning Code?
11. Should the Conservation Landmarks designation category be eliminated and owners of existing Conservation Landmarks be offered the opportunity to have their properties designated as Historic Landmarks?

Also not included in the scope are the following:

1. Revising the Bureau of Development Services' Historic Design Review fee structure
2. Updating the City's Historic Resource Inventory
3. Creating or updating design guidelines for historic or conservation districts – including adopting the Secretary of Interior's Standards for Rehabilitation
4. Reorganizing the Bureau of Development Services' historic design review website