



CITY OF OREGON CITY

CITY COMMISSION JOINT WORK SESSION WITH THE HISTORIC REVIEW BOARD

AGENDA

Commission Chambers, Libke Public Safety Facility, 1234 Linn Ave, Oregon City
Tuesday, January 11, 2022 at 6:00 PM

Typically there are no public comments at work sessions, but written comments are accepted by:

- *Email recorderteam@orccity.org (deadline to submit written testimony via email is 3:00 PM on the day of the meeting)*
- *Mail to City of Oregon City, Attn: City Recorder, P.O. Box 3040, Oregon City, OR 97045*

CONVENE WORK SESSION AND ROLL CALL

DISCUSSION ITEMS

1. Historic Preservation Program Discussion

ADJOURNMENT

PUBLIC COMMENT GUIDELINES

Complete a Comment Card prior to the meeting and submit it to the City Recorder. When the Mayor/Chair calls your name, proceed to the speaker table, and state your name and city of residence into the microphone. Each speaker is given three (3) minutes to speak. To assist in tracking your speaking time, refer to the timer on the table.

As a general practice, the City Commission does not engage in discussion with those making comments.

Electronic presentations are permitted but shall be delivered to the City Recorder 48 hours in advance of the meeting.

ADA NOTICE

The location is ADA accessible. Hearing devices may be requested from the City Recorder prior to the meeting. Individuals requiring other assistance must make their request known 48 hours preceding the meeting by contacting the City Recorder's Office at 503-657-0891.

Agenda Posted at City Hall, Pioneer Community Center, Library, City Website.

Video Streaming & Broadcasts: The meeting is streamed live on the Oregon City's website at www.orccity.org and available on demand following the meeting. The meeting can be viewed on Willamette Falls Television channel 28 for Oregon City area residents as a rebroadcast. Please contact WFMC at 503-650-0275 for a programming schedule.



CITY OF OREGON CITY

Staff Report

625 Center Street
Oregon City, OR 97045
503-657-0891

To: City Commission and Historic Review Board **Agenda Date:** 01/11/2022
From: Community Development Director Aquilla Hurd-Ravich

SUBJECT:

Historic Preservation Program Discussion

STAFF RECOMMENDATION:

None; discussion item only.

EXECUTIVE SUMMARY:

The City Commission and Historic Review Board (HRB) have scheduled a joint meeting to identify some of the successes and challenges facing historic preservation in Oregon City. As part of these discussions, please do not reference any specific application approvals or denials, even if they may be final. The purpose of this discussion is to talk generally about policy and procedures and not how any decision-making body has resolved any prior application.

Some examples of questions that this discussion might cover include:

- How might Oregon City improve and strengthen its historic preservation program?
- Is the program sufficiently descriptive, efficient and predictable for applicant use and for implementation by the HRB?
- Does the program strike the appropriate balance between owner interest and public preservation objectives?
- How does the mandatory 120-day decision making time limit impact historic preservation decisions within the City?

A memorandum has been prepared by Assistant City Attorney Carrie Richter with a brief history of historic preservation in Oregon City and additional discussion topics. The memo is included in the agenda packet.

BACKGROUND:

See memorandum from Carrie Richter with additional background information.



MEMORANDUM

TO: City Commission and Historic Review Board
FROM: Carrie Richter and Kelly Reid
DATE: January 5, 2022
RE: Historic Preservation in Oregon City

The City Commission and Historic Review Board (HRB) have scheduled a joint meeting to identify some of the successes and challenges facing historic preservation in Oregon City. This memorandum is intended to provide some background to inform that discussion and to identify some topics that might help to focus the effort. As part of these discussions, please do not reference any specific application approvals or denials, even if they may be final. The purpose of this discussion is to talk generally about policy and procedures and not how any decision-making body has resolved any particular application.

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- How might Oregon City improve and strengthen its historic preservation program?
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Historic Preservation in Oregon

Congress passed the National Historic Preservation Act of 1966 primarily to acknowledge the importance of protecting historic heritage throughout the country. The Act established a structure for nationwide historic preservation including the creation of the National Register of Historic Places - a list of resources with historic significance – and charged State Historic Preservation Offices (SHPOs) to implement the program. SHPO issues grants and incentives to Certified Local Governments (CLGs) who agree to assist with resource protection. the Act also establishes requirements for CLG participants, such as having a dedicated Historic Review Board and established procedures and protections for historic resources. In the early 1980s, the Oregon SHPO created a model preservation ordinance intended to implement the requirements for maintaining CLG status from a federal level, including issuing a “certificate of appropriateness” for any modification of historic resources, but the Act and its implementation by SHPO predated the adoption of statewide land use goals, particularly Goal 5, relating to historic preservation.

In 1974, Oregon adopted Statewide Land Use Goal 5, which requires that local governments inventory, evaluate and, if appropriate, protect a variety of resources, most importantly for this discussion – historic resources. Since many local governments had done that work as part of their roles as a CLG, many cities, including Oregon City, imported these efforts wholesale into their land use regulations in order to achieve compliance with Goal 5. The shortcoming of this approach is that the CLG model ordinance was never formally reviewed for compliance with Goal 5 as a land use planning program. Subsequently, in 2017, the Land Conservation and Development Commission (LCDC) adopted new Goal 5 rules that acknowledge the differences between how local governments must protect National Register listed resources under the federal program and locally designated landmarks under Goal 5, depending on the timing of designation and procedures provided. The SHPO has now promulgated a new model ordinance consistent with the new Goal 5 rules in 2019.

Another relevant historic preservation-related requirement resulted from a decision by the 1995 Oregon legislature to adopt an “owner consent” rule, which allows owners to opt-out of any type of historic designation proposal. The new 2017 rules acknowledge the obligations imposed on local governments in order to comply with owner consent as well.

Historic Preservation in Oregon City

Oregon City has had a Historic Review Program in place since the early 1980s, although the City’s preservation-related activity pre-dates the establishment of a program and included actions such as the designation of the Canemah District to the National Register in 1978. The City has been a CLG since 1986 and in that role, it adopted the SHPO’s model ordinance. Thus, Oregon City Municipal Code Chapter 2.28 set forth a distinct set of historic preservation-related procedures that came from the SHPO’s 1980s model ordinance, which was not integrated with the procedures that govern other land use reviews, as set forth in OCMC 17.50. This parallel set of procedures was removed in 2018, as part of the City’s more recent code rewrite effort.¹

Although the procedures governing historic review under the SHPO model in OCMC 2.28 have been replaced, the substantive standards by which reviews are conducted have not. The criteria for approving new construction and alterations include considerations such as: “the value and significance of the historic site,” “the general compatibility of exterior design, arrangement, proportion, detail, scale, color, texture and materials proposed to be used,” and “pertinent aesthetic factors” among other things. These criteria inject a very high degree subjectivity and value-laden policy determinations into the HRB review and, in the case of appeals, into review by the City Commission. The only sideboards for determining the appropriate parameters for these standards is set forth in the Guidelines for New Construction in Historic District document, otherwise referred to as the “Design Guidelines.”²

¹ One can see the many vestiges of the SHPO Model Ordinance where OCMC 17.40 talks about the requirement to obtain a “certificate of appropriateness” in advance of engaging in any new construction or alteration and yet in all other parts of OCMC Chapter 17, the parlance is to obtaining a “permit” such as a “conditional use permit” or a “design review permit.”

² In the case of reviewing an alteration or new construction within a historic district, the existing structure or surrounding buildings can provide context for determining what is appropriate. However, this becomes more difficult in cases where new construction is surrounded by buildings that are either not historic or are otherwise non-contributing.

As drafted and adopted by the HRB in 2006, the Design Guidelines were not initially intended to be regulatory.³ Rather, they were intended to offer “safe harbor” ... “to ease approval but also to allow new construction projects to be approved easily and quickly” but acknowledging that there may be times where the use of innovative designs or materials might also be allowed. P 3. Identifying the existing structure or surrounding context-appropriate mass, scale, design style and details should result in a project that mirrors character-defining elements without imitation. It was intended to be an iterative evaluation that was not constrained by statutory decision-making timelines, well-described review standards or extensive written findings that otherwise applied to land use decisions. Regardless of the intent of the original drafters of the Design Guidelines, in 2006, the City amended the code to mandate compliance with the Design Guidelines and, thus they became mandatory criteria for approving new construction and alterations. OCMC 17.40.060. Although this restricted some of the unbridled discretion, their adoption may have sown some confusion with applicants who read elements of the design guidelines as advisory.

Although the City has fairly regularly updated its historic inventory – an evaluation of those resources suitable for preservation protection, most recently in 2011, the City has not updated its Design Guidelines or OCMC 17.40.060 criteria since their initial adoption and as such, they do not mention the new Goal 5 rule requirements. Further, the program does not acknowledge or, perhaps, encourage some of the many values that have become more popular in preservation such as adaptive reuse, deconstruction rather than demolition, and the increased acknowledgment of the value and importance of preserving the heritage of under-represented groups which may exist only with respect to cultural heritage rather than architectural resources.

Precedent in Decision-Making

The role precedent plays in land use decision-making is a sliding scale depending on the standard at issue. Where a standard is extremely subjective, such as with historic review, how the standards will be applied will depend almost entirely on the facts of each case. Therefore, on one side of the sliding scale, evaluating applications that are subject to the historic overlay do not establish any precedent, assuming differences in approach are explained in findings. That said, uniformity in decision-making and explanation in the case of differences, inspires legitimacy and predictability into the program. It is often the case, particularly in historic preservation, that applicants will point to examples of the use of other materials or design elements as the basis for lobbying for the same treatment, even if it inappropriate in their particular case.

On the other side of the sliding scale are clear and objective standards that do not allow for the exercise of any discretion. Although this type of decision-making is most often discussed in reviewing applications for needed housing,⁴ the HRB-adopted policies do include a number of clear and objective standards such as repair and replacement of siding or windows, appropriate roof and fencing materials. There may be opportunities through code amendments to identify other opportunities for the use of clear

³ Again, using design guidelines as a “guide” to assist property owners to determine what might be appropriate was a recommendation from the SHPO model ordinance.

⁴ It is worth noting that historic preservation regulations are exempt from the need for “clear and objective” standards under state law.

and objective standards such as for solar, adaptive reuse opportunities, or other areas that might make sense.

Items for further discussion and consideration:

- Preservation grants might be available to update the program standards that might include amended Design Guidelines, the level of protections either in the form of incentives or regulations, and implementing new state laws and regulations at the local level.
- Might HRB to work with City staff to put together a work plan identifying available federal or state grants, the highest priority efforts, and timeline to tackle some of these efforts, perhaps as a result of the comprehensive plan update, as well?

The HRB Workload and Timing

In addition to changes in the laws affecting historic preservation, the work load of the City's HRB has also markedly changed as of late. In 2019, it reviewed 8 applications. In 2020, the number of reviews was 10. In 2021, the number doubled to 20.⁵ Whether this is a short-term result of the pandemic or a permanent trend is unclear but either way, this suggests that the HRB is being asked to do twice as much work as it has in the recent past.

The 5-member volunteer based Historic Review Board has had a standing scheduled public meeting once a month that was often cancelled due to lack of agenda items. Now with double the workload, HRB meetings include the review of at least two, and often three applications per hearing.

Notwithstanding this change in work load, final decisions on applications affecting historic resources must still be made within 120-days as required by state law. This means that it can take two or three months for the HRB to review an application, particularly with the need for major design changes, which is often required, given the subjective nature of the requirements. Given the pressure to make timely decisions, the HRB may feel the need to condition an approval rather than require redesign in advance, which can lead to confusion on the part of applicants in implementation and enforcement concerns when what is built does not reflect what the condition envisioned. Further, where HRB review requires multiple meetings, the Commission is left with very little time in which to consider an appeal.

One of the relief valves for this timing problem might be to encourage applicants to seek design advice where an applicant seeks HRB input on a proposal before filing an application or waives the 120-day deadline in exchange for obtaining such advice during the formal review process. Although the HRB does have a practice of offering informal design advice, the fact that only one applicant out of 18 sought design advice review in advance, suggests that the public may not know of it. Code amendments might

⁵ In greater detail, the 2020 HRB reviews included:

- Nine applications for New Construction or modifications to approved new construction projects
- Nine applications for Alterations to Historic Properties
- Two applications for Demolition
- Design Advice for one project

include adding design advice and perhaps some policies about waiving the 120-day rule in exchange. Updated review criteria or design standards might also help to reduce the overall work load.

Items for further discussion and consideration:

- Without citing any specific examples, what are the challenges of quasi-judicial decision-making from the HRB and City Commission's perspective?
- Have you heard concerns from the public or other owners regarding the process? Does it make sense to hold a listening session to hear achievements and/or concerns? Might this be rolled into a code amendment package that implements the comprehensive plan?

HRB Accomplishments in 2021

Although this list is typically included with the annual report presented by the HRB Chair to the City Commission, just a few of the HRB's accomplishments, in addition to the review of 20 applications, in 2021 include:

- Awarded three Local Preservation Grants for window repair
- Awarded the 2021 Ruth McBride Powers Preservation Award to Friends of the Ermatinger House and volunteers with the Clackamas County Historical Society
- Mailed out Historic Property Owners Welcome Packets to all historic property owners (550 total)
- Continued work on the Compatible Change Project to revisit and improve code for additions to noncontributing structures in McLoughlin Conservation District, and for the definition of major public improvements
- Adopted an HRB Policy for Murals on historic buildings

Conclusion

Just like Oregon City's heritage, regulation of historic resources in Oregon City goes back a long way. The City's preservation program should retain those parts of the program that work, but must also evolve in order to reflect current law and practice, as well as community values and priorities. It appears that a work plan is needed to understand the community objectives, with direct input from the HRB and the City Commission. This work plan might include updating existing regulations with the goal of making them easier for the public to understand and for the HRB to apply, to prioritize the inclusion of under-represented groups and to comply with state requirements. The City should also take some action with respect to HRB procedures to make decision-making more timely. These are all objectives that are achievable if elevated as part of the City's legislative policy agenda.