

July 29, 2019

To: City Commission
From: Kelly Reid, AICP, Planner and Carrier Richter, Deputy City Attorney
Re: Chapter 17.40 Code Amendment

The purpose of this memo is to explain how the proposed amendment to Chapter 17.40 fits in with our overall preservation program, our status as a Certified Local Government, designated by the State Historic Preservation Office, and our obligation to protect resources designated on the National Register of Historic Places, including the Canemah Historic District.

Oregon City protects historic resources by regulating alterations to existing resources and new construction within historic districts under the standards set forth in OCMC 17.40.060. The diagram below explains how these reviews are handled:

Figure 1. Historic Review: Two Types

Alterations to Existing Resources and additions < 30% of the original structure:

If alteration requires discretionary decision-making:

- Type III review by HRB w/ appeal to CC
- Subject to Design Guidelines for Alterations

If extent of alteration is limited and falls within the identified HRB policies:

- Type I review by staff
- Subject to the clear and objective HRB policies

New Construction in Historic Districts including additions >30% of the original structure:

- Type III review by HRB w/ appeal to CC
- Subject to Design Guidelines for New Construction

Chapter 17.40 of the Municipal Code: Historic Overlay, refers to the Design Guidelines for Alterations, for New Construction, and to the HRB Policies. None of these are themselves codified, but OCMC 17.40 gives the authority to regulate pursuant to all of them.

As currently codified, OCMC 17.40.060(K) provides that the alteration of fences and alterations to non-contributing structures within the Canemah Historic District may be subject to HRB-adopted policies through an “administrative procedure” and then goes on to provide for mailed and published notice of these types of decisions, provides a 10-day period, and if a hearing is requested within the 10 day period the HRB must consider the proposal within 45 days. This notice and hearing structure set out in subsection (K) is not an “administrative procedure.” Rather, an “administrative procedure” is outlined in OCMC 17.50.030(A) - Type I staff decision subject to clear and objective standards where no notice or opportunity for hearing is provided.

As a result, the proposed amendment to OCMC 17.40 removes the contradictory language making clear that alteration proposals that fall within the scope of an adopted HRB policy are subject to Type I administrative review. In addition, this amendment removes the list of HRB policy topics thereby allowing the HRB discretion to add to or retract the HRB regulated topics as appropriate. This amendment relates solely to procedures applicable to HRB policy decisions and does not make any changes to historic design review criteria or the design guidelines.

Although the basis for the codified conflict is not entirely clear, it appears that the code was amended in the late 1980s when HRB policies were first adopted to include these procedures, and then again in later years, without removing contradictory text.

We recommend staff level review for alterations set forth in the HRB policies for a few reasons:

- 1) Timeliness and efficient decision-making: Where the HRB has determined that there are certain alterations to an existing building that should be allowable in all circumstances, decision-making authority should be delegated to staff as they can issue a permit within 1 to 5 days of a request rather than the time and cost of going through a burdensome Type III hearing.
- 2) The current version of the HRB policies is written to be completely clear and objective, with no discretion for decisions. It is misleading to ask for public comment and testimony at a hearing when application of the policies to a particular proposal do not require the exercise of any policy judgment or discretion.
- 3) The creation and updates to the HRB Policies includes robust community outreach and engagement. Therefore, the community and affected property owners have sufficient opportunity for input during the writing of the Policies, not in the application or enforcement of the Policies.
- 4) If an applicant does not wish to proceed with the alteration activity prescribed in an HRB Policy, they are free to file an application for a certificate of appropriateness through a Type III procedure and ask the HRB to approve the alteration request.

The proposed code amendment has been reviewed by the State Historic Preservation Office. This is important because Oregon City is a Certified Local Government, which is a status that is given to local jurisdictions that carry out a preservation program and protect historic resources designated on the National Register. Oregon City has been a CLG since February 1986 and was the first CLG in Oregon along with the City of Salem. SHPO indicated that it had no comments on the amendment itself, and stated that the proposal meets the requirements for retaining Oregon City's Certified Local Government status.

The proposed amendment also does not have an impact on the status of the Canemah Historic District. Many local jurisdictions have administrative review processes for minor exterior alterations to historic structures. The HRB has spent the last nine months updating the HRB Policies, identifying areas where the adoption and regulation of alterations through clear and objective standards makes sense, and has recommended adoption of the policy revisions unanimously. The Policies are written to ensure that exterior alterations remain compatible with the character of our districts and meet the Secretary of Interior Standards for alterations to historic properties.