

Chapter 5:
HISTORIC PRESERVATION AND ONGOING CITY ACTIVITIES

OBJECTIVE 3: HISTORIC PRESERVATION AND ONGOING CITY ACTIVITIES

To establish administrative procedures and criteria to promote preservation of significant older properties as a routine part of City-sponsored or assisted projects, programs, and regulatory activities.

Besides Chapter 4's preservation incentives and regulations which are mostly for private projects, there are other more direct preservation measures the City can take as part of City-sponsored or assisted projects and programs. The City can also increase preservation emphasis in ongoing regulatory activities, including code enforcement, and zoning and other discretionary permit approvals¹. These measures are set forth in the following policies and actions.

POLICY 3.1: AVOID OR MINIMIZE ADVERSE HISTORIC PRESERVATION IMPACTS RELATED TO DISCRETIONARY CITY ACTIONS.

The City will make all reasonable efforts to avoid or minimize adverse effects on the Character-Defining Elements of existing or Potential Designated Historic Properties which could result from private or public projects requiring discretionary City actions.

Policy 3.1 is a general policy which is expressed more specifically in this Chapter's other policies and their related actions.

1. "Discretionary" approvals or actions contrast with "ministerial" approvals, which are based only on the application of fixed standards or objective measurements and do not involve special discretion or subjective judgement by a City official or decision making body. Ministerial approvals include those for building permits and many demolition permits.

POLICY 3.2: HISTORIC PRESERVATION AND CITY-OWNED PROPERTIES

To the extent consistent with other Oakland General Plan objectives, the City will ensure that all City-owned or controlled properties warranting preservation will, in fact, be preserved. All City-owned or controlled properties which may be eligible for Landmark or Heritage Property designation or as contributors or potential contributors to a Preservation District will be considered for such designation.

Properties held by the City for purposes of subsequent disposition will be exempt from this policy but shall be subject to Policy 3.3.

This policy sets an example for owners of other potential Landmarks, Heritage Properties or Preservation District properties to have their properties similarly designated.

The City will prepare Intensive Survey identification and evaluation materials for existing or Potential Designated Historic Properties held by the City for subsequent disposition and provide this information to prospective developers of those properties to ensure that historic character is considered at the earliest stage of the planning and development process.

ACTION 3.2.1: DESIGNATED HISTORIC PROPERTY STATUS FOR CITY-OWNED PROPERTY.

Determine which City-owned or controlled Potential Designated Historic Properties are eligible as Landmarks, Preservation Districts, or Heritage Properties. Perform Intensive Survey evaluations for Potential Designated Historic Properties requiring such evaluations for eligibility determinations. Consider initiating designation of eligible properties.

Individual City-owned properties will be considered eligible for Landmark, Preservation District, and/or Heritage Property designation if they meet the eligibility criteria for these designations set forth in

Chapter 4, Policies 2.1 and 2.5 and, in the case of Landmarks and Preservation Districts, have been determined eligible for these designations by the Landmarks Board according to Article 4, Section I of the Board's Rules of Procedure (see Technical Report, Appendix F).

City-owned Potential Designated Historic Properties included in the Reconnaissance Survey which may be eligible for Heritage Property designation (e.g. those rated "C" and contributors to Areas of Primary or Secondary Importance), but which require Intensive Survey evaluations to confirm eligibility will have such evaluations expeditiously performed.

Staff will ask the Landmarks Board to consider initiating designation for all potentially eligible City-owned Landmarks and Preservation District properties and to consider designating all eligible City-owned Heritage Properties.

ACTION 3.2.2: HISTORIC PRESERVATION MANAGEMENT PROCEDURE FOR CITY-OWNED PROPERTIES.

Issue Administrative Instruction directing the Offices of Public Works, Parks and Recreation, General Services, Economic Development and Employment, and Housing and Neighborhood Development, and all other City departments responsible for designing, constructing, maintaining, leasing, or selling City-owned or controlled properties to ensure that these properties are managed in a manner consistent with Policy 3.2.

The management procedure should consider requiring that when City-owned existing or Potential Designated Historic Properties are sold, deed restrictions will be applied to the property ensuring a reasonable level of preservation.

POLICY 3.3: DESIGNATED HISTORIC PROPERTY STATUS FOR CERTAIN CITY-ASSISTED PROPERTIES.

To the extent consistent with other General Plan Goals, Policies and Objectives, as a condition for providing financial assistance to projects involving existing or Potential Designated Historic Properties, the City will require that complete application be made for such properties to receive the highest local designation for which they are eligible prior to issuance of a building permit for the project or transfer of title (for City-owned or controlled properties), whichever comes first.

However, Landmark or Preservation District applications will not be required for projects which are small-scale or do not change exterior appearance.

The City will prepare Intensive Survey identification and evaluation materials for existing or Potential Designated Historic Properties held by the City for subsequent disposition and provide this information to prospective developers of those properties to ensure that historic character is considered at the earliest stage of the planning and development process. Prior to final decision on the development permits or transfer of title on a City-owned or City-assisted project, the Landmark Preservation Advisory Board shall make a determination of eligibility for Historic Property designation within 30 days of referral. The Board's recommendation shall be transmitted to the decision making body for consideration in time for the final decision on the development or disposition of the property.

Any action by the City to transfer title on a Landmark eligible property shall be considered a form of "City-assistance" and subject to Policy 3.3.

ACTION 3.3.1: CITY ASSISTANCE CONTRACT PROVISIONS FOR DESIGNATED HISTORIC PROPERTY STATUS.

Develop a standard condition for City assistance contracts involving existing or Potential Designated Historic Properties requiring that application be made prior to project funding for these properties to receive the highest Designated Historic Property classification for which they are eligible. This condition will not apply to Landmark or Preservation District designation for projects which are small-scale or do not change exterior appearance.

Designation would not be effective until after project completion.

ACTION 3.3.2: SMALL-SCALE EXEMPT PROJECT DEFINITION.

Develop definition of small-scale projects to be exempt from Policy 3.3, Action 3.3.1 and Policy 3.6.

POLICY 3.4: CITY ACQUISITION FOR HISTORIC PRESERVATION WHERE NECESSARY.

Where all other means of preservation have been exhausted, the City will consider acquiring, by eminent domain if necessary, existing or Potential Designated Historic Properties, or portions thereof, in order to preserve them. Such acquisition may be in fee, as conservation easements, or a combination thereof.

This policy is expected to be applied only to the most important properties (e.g. existing or eligible Class 1 Landmarks) and primarily addresses two situations:

- (a) Where all of the following apply:
 - (i) the property is proposed for demolition to develop a different use;
 - (ii) relocation of the property is unacceptable to the City or infeasible; and
 - (iii) the applicant demonstrates that the existing property has no reasonable use or cannot generate a reasonable economic return, and that the development replacing it will generate such return.

- (b) Where the owner of a badly damaged or deteriorated property is unable or unwilling to rehabilitate it and the City determines either that the property is economically feasible for a new owner to rehabilitate or that the property is of such importance that the City's acquisition and disposition cost would appropriately exceed the property's market value. (See the discussion of substandard and public nuisance properties following Policy 3.12 and the related acquisition strategies in Actions 3.12.3 and 3.12.4)

It is expected that the City will resell the properties to new owners as soon as possible after acquisition. Such sale would be accompanied by deed restrictions to ensure that the property is preserved. Funding for both acquisition and rehabilitation could come from the Historic Preservation Revolving Fund (Action 2.6.7).

In some cases, acquisition methods such as receivership and bargain sales (See Action 3.12.4 discussion) may be alternatives to eminent domain.

ACTION 3.4.1: ORDINANCE FOR ACQUISITION BY EMINENT DOMAIN.

Enact ordinance for City acquisition of existing or Potential Designated Historic Properties by eminent domain.

Although the City may use eminent domain to acquire properties for historic preservation purposes and transfer to new owners, the City must still adopt a specific ordinance to avoid random or capricious use of this power.

The ordinance must be accompanied by procedures and criteria for City acquisition of an existing or Potential Designated Historic Properties as described in Action 3.4.2 below. Similar legislation, procedures, and criteria have been adopted as part of the City's program to acquire vacant houses through eminent domain (see Policy 3.12 discussion).

ACTION 3.4.2: ACQUISITION PROCEDURES AND CRITERIA.

Develop procedures and criteria for City acquisition of existing or Potential Designated Historic Properties, including procedures and criteria for using eminent domain where applicable.

This action relates to all historic preservation acquisitions by the City, whether or not eminent domain is involved.

The procedures and criteria should:

- (a) identify the circumstances where acquisition is appropriate (example: existing or potential Class 1 Landmarks but only where the expected proceeds from resale at least equal a specified percentage of the acquisition price);
- (b) where use of eminent domain is appropriate; and
- (c) set forth the acquisition procedure, including any special eminent domain procedures.

POLICY 3.5: HISTORIC PRESERVATION AND DISCRETIONARY PERMIT APPROVALS.

For additions or alteration to Heritage Properties or Potential Designated Historic Properties requiring discretionary City permits, the City will make a finding that: (1) the design matches or is compatible with, but not necessarily identical to, the property's existing or historical design; or (2) the proposed design comprehensively modifies and is at least equal in quality to the existing design and is compatible with the character of the neighborhood; or (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

For any project involving complete demolition of Heritage Properties or Potential Designated Historic Properties requiring discretionary City permits, the City will make a finding that: (1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or (2) the public benefits of the proposed project outweigh the benefit of retaining the original structure; or (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

This policy applies to both privately and publicly sponsored projects and is based on exemption and approval criteria originally developed as part of the City's Special Residential Design Review procedure for alterations and additions (see Technical Report, Chapter 4, Section G.1.a).

Policy 3.5 also modifies the original Special Residential Design Review exemption and approval criteria by:

- (a) allowing alterations or additions to match or be compatible with either the existing or historical design rather than just the existing design; this will add an incentive for restoring altered properties.
- (b) identifying the specific situations where compatibility with the property's existing or

historical design is not required, expressed by clauses (2) and (3) of the policy; these exceptions are similar to Finding (iii) in Table 4-2 Section (b) for alterations or new construction to Class 3 Landmarks but broader.

Landmarks and Preservation Districts are excluded from this policy since they have their own more specific and restrictive design criteria in Policy 2.4.

ACTION 3.5.1: DESIGN GUIDELINES FOR DISCRETIONARY PERMIT APPROVALS.

Amend existing design guidelines for non-Landmark or non-Preservation District design review applications to reflect Policy 3.5. Develop and adopt design guidelines for design review situations where no such guidelines presently exist.

In addition to the "Special" Residential Design Review provisions referred to above, the Zoning Regulations require "regular" design review for various situations. Design guidelines are provided for some of these situations, but not for others.

Action 3.5.1 will amend existing design guidelines to include Policy 3.5's requirement that the new design matches or is compatible with, but not necessarily identical to, the property's existing or historical design for projects involving Heritage Properties or Potential Designated Historic Properties. In all other cases, guidelines based on Policy 3.5 will be developed.

Action 3.5.1 excludes design guidelines for Landmarks and Preservation Districts since they are already provided by Action 2.4.1.

ACTION 3.5.2: STANDARD CONDITIONS FOR DISCRETIONARY PERMIT APPROVALS.

Develop standard conditions of approval that apply Policy 3.5 to projects requiring discretionary City permit approvals other than design review, and that require conformity with Action 3.5.1's design guidelines.

The conditions of approval would be necessary only when the project design does not conform with Policy 3.5's design provisions or is insufficiently detailed to allow a determination of conformity.

POLICY 3.6: HISTORIC PRESERVATION AND CITY-SPONSORED OR ASSISTED PROJECTS.

To the extent consistent with other Oakland General Plan provisions, City-sponsored or assisted projects involving an existing or Potential Designated Historic Property, except small-scale projects, will:

- (a) be selected and designed to avoid or minimize adverse effects on these properties and to promote their preservation and enhancement;
- (b) incorporate preservation efforts based in part on the importance of each property; and
- (c) be considered to have no adverse effects on these properties if they conform with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

The City will encourage applicants for City-assisted projects to submit proposals consistent with this policy.



Hanifin House, 1807 Martin Luther King, Jr. Way. Potential Class 2 Landmark adversely remodeled with City assistance. Would probably have been potential Class 1 Landmark prior to remodeling.

This policy applies to all City-sponsored or assisted projects involving alteration, addition, demolition, or new construction to an existing or Potential Designated Historic Properties, except small-scale projects as defined by Action 3.3.2. The policy is similar to Policy 3.5, but is limited to City projects and uses a stricter standard -- the Secretary of the Interior's Standards -- as one of several possible criteria for avoiding or minimizing adverse effects on these properties. The Secretary of the Interior's Standards are in Chapter 4, Table 4-3.

Many City projects use Federal funds and are therefore already encouraged under Section 106 of the National Historic Preservation Act to conform with the Secretary of the Interior's Standards to help protect any existing or eligible National Register properties (see Technical Report, Chapter 4, Section A.2). Policy 3.6 extends the Standards to non-Federally funded City projects and to City projects that involve existing or Potential Designated Historic Properties that are not on or eligible for the National Register.

ACTION 3.6.1: EVALUATION AND SELECTION PROCEDURES FOR CITY-SPONSORED OR ASSISTED PROJECTS.

Develop or modify evaluation and selection procedures for City-sponsored or assisted projects that appropriately balance historic preservation with other priorities.

The procedures will generally seek to avoid adverse effects on an existing or Potential Designated Historic Properties related to City projects. If adverse effects were identified for a particular project, the procedure would encourage investigating alternatives which still meet project objectives. The basic procedures should be in an Administrative Instruction, but variations may be required for individual departments.

Under these procedures, projects which preserve or enhance an existing or Potential Designated Historic Property would receive priority over those which did not, assuming that all other evaluation factors were equal for both projects. Similarly, projects which adversely affected such properties would receive less priority than those which did not. Priorities would be based, in part, on the property's importance, with the more important properties receiving higher preservation priority than less important properties.

The project evaluation procedure will incorporate Action 2.6.6 (Economic Development and Housing and Neighborhood Development Project Selection Criteria giving priority to projects preserving Designated Historic Properties).

ACTION 3.6.2: DEVELOPMENT AND DESIGN ASSISTANCE FOR CITY-ASSISTED PROJECTS.

Amend, where necessary, informational publications for the City's development assistance programs to encourage projects which preserve or enhance existing or Potential Designated Historic Properties and avoid or minimize adverse effects on these properties. Provide development and design assistance to project applicants which includes preservation options where consistent with project objectives.

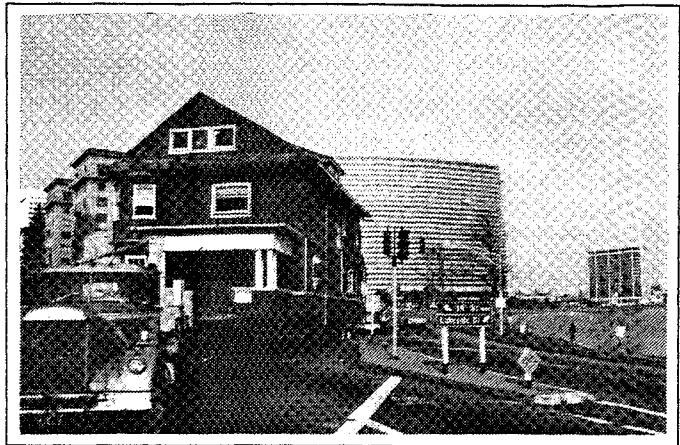
Development and design assistance has been offered on a limited basis as part of the City's economic development and housing rehabilitation programs, but generally has not encouraged historic preservation. Action 3.6.2 would use new and existing programs to advise property owners and developers of cost-effective historic preservation techniques. For projects adversely affecting an existing or Potential Designated Historic Properties, the programs would help applicants investigate preservation alternatives consistent with project objectives. New construction in existing or potential Preservation Districts would receive design assistance for maintaining compatibility with the District.

POLICY 3.7: PROPERTY RELOCATION RATHER THAN DEMOLITION AS PART OF DISCRETIONARY PROJECTS.

As a condition of approval for all discretionary projects involving demolition of existing or Potential Designated Historic Properties, the City will normally require that reasonable efforts be made to relocate the properties to an acceptable site.

This policy applies both to City-sponsored or assisted projects and to discretionary permit approvals.

The policy is already partly implemented as a standard condition of approval for most projects involving zoning permits and removal of any residential building. Under this condition, the applicant is normally released from the relocation requirement after 90 days if the applicant demonstrates to the satisfaction of the Director of City Planning that all reasonable efforts have been made to relocate the building and that these efforts have been unsuccessful.



Top: Houses on 16th Avenue across from San Antonio Park moved there by a private developer to meet a condition of approval for construction of a condominium at their old location in Adams Point.

Bottom: During move.

ACTION 3.7.1: PROPERTY RELOCATION PROCEDURES AND DESIGN GUIDELINES FOR ALL DISCRETIONARY PROJECTS.

Prepare property relocation procedures and design guidelines to be adopted by the Landmarks Preservation Advisory Board and City Planning Commission for existing or Potential Designated Historic Properties required to be relocated pursuant to discretionary City approvals.

The relocation procedure would define what constitutes "reasonable efforts" as stated in Policy 3.7 and the existing condition of approval. For example, the applicant might be required to publish a minimum number of newspaper advertisements and to post an "available" sign on the property.

The procedure would identify when the City itself would undertake building relocations. If the City moved a building for a private project, the applicant could be asked to contribute to the City what the applicant's demolition and other costs would otherwise have been had the building not been moved.

The design guidelines would encourage moving buildings into areas compatible with the building's historic or architectural character and encourage site plans similar to existing or historic site plans.

ACTION 3.7.2: PROPERTY RELOCATION PROCEDURES FOR CITY-SPONSORED OR ASSISTED PROJECTS.

Issue an Administrative Instruction establishing property relocation procedures for City-sponsored or assisted projects involving existing or Potential Designated Historic Properties.

The Administrative Instruction would require the sponsoring departments to (a) determine whether any existing or Potential Designated Historic Property must be removed from the project site; (b) determine whether the property is suitable for relocation according to criteria to be provided in the procedure; (for example, suitable properties might be limited to those relatively easy to move such as wood-frame buildings); and (c) arrange relocation of any

relocatable existing or Potential Designated Historic Property using Action 3.7.1.'s design guidelines.

ACTION 3.7.3: BUILDING RELOCATION ASSISTANCE PROGRAM.

Investigate establishing a building relocation assistance program to (1) provide a building relocation revolving loan fund, (2) identify City-owned or controlled land as building relocation sites, (3) provide lists of buildings available to be moved, and (4) facilitate City permit and utility company approvals.

Most private lenders refuse to finance building relocation projects until after a building is on a new foundation. A building relocation revolving loan fund would help remove this obstacle. The loan would be limited to the actual cost of relocation -- the move itself, overhead utility clearances, and new foundations -- and would not include any follow-up rehabilitation work. The loan would normally be refinanced as soon as the building is on a permanent foundation.

Building relocations are also discouraged by the need to find suitable sites on short notice. The assistance program could identify available vacant City-owned or controlled lots and provide lists of non City-owned vacant lots from tax assessment rolls.

The program could also provide lists of buildings available to be moved. At a minimum, the lists should include buildings required to be moved for City-sponsored or assisted projects or as a condition of approval for City permits. The lists could also include buildings that are simply unwanted by their owners.

Formulation and distribution of the vacant lot and available building lists should be coordinated with the Oakland Association of Realtors and other private sector development organizations. Copies of the lists should be available at the permit counters and at the Offices of Economic Development and Employment and Housing and Neighborhood Development.

Reserving some City-owned parcels exclusively for move-ons should be considered, especially parcels within existing or potential Preservation Districts.

Helping coordinate City permit and utility company approvals should also be considered. The complexity of obtaining these approvals is frustrating to most developers and contributes to the general lack of developer interest in building relocation projects. These approvals usually involve numerous and sometimes independent entities including: the Building Services Department for the actual moving permit and related building permits; Pacific Gas and Electric Company, Cable Oakland and Pacific Bell for utility line drops; the Traffic Engineering and Parking Division for the moving route approval and arranging closure of the route to through traffic and on-street parking; and the Office of Parks and Recreation for trimming any obstructing street trees. Approvals by the City Planning Department, the East Bay Municipal Utility District, and Caltrans are also sometimes necessary.

ACTION 3.7.4: BUILDING RELOCATION PERMIT REGULATIONS.

Review building relocation permit procedures to determine whether they can be simplified and made more expeditious.

These procedures may be unnecessarily complex. For example, a City Manager hearing is required for any proposed relocation. Hearing notices are sent to all owners of property within 150 feet of the existing site and the relocation site. This requirement may warrant revision, since hearings are not held for most new construction and may be unnecessary for building relocations. The requirement that a moved building meet all current code provisions may also warrant revision.

POLICY 3.8: DEFINITION OF "LOCAL REGISTER OF HISTORICAL RESOURCES" AND HISTORIC PRESERVATION "SIGNIFICANT EFFECTS" FOR ENVIRONMENTAL REVIEW PURPOSES.

For purposes of environmental review under the California Environmental Quality Act, the following properties will constitute the City of Oakland's Local Register of Historical Resources¹:

- 1) All Designated Historic Properties, and
- 2) Those Potential Designated Historic Properties that have an existing rating of "A" or "B" or are located within an Area of Primary Importance.

Until complete implementation of Action 2.1.2 (Redesignation), the Local Register of Historical Resources will also include the following designated properties: Oakland Landmarks, S-7 Preservation Combining Zone properties, and Preservation Study List properties.

Complete demolition of a Historical Resource will normally be considered a significant effect that cannot be mitigated to a level less than significant and will, in most cases, require preparation of an Environmental Impact Report.

A proposed addition or alteration to a Historical Resource that has the potential to disqualify a property from Landmark or Preservation District eligibility or may have substantial adverse effects on the property's Character-Defining Elements will normally, unless adequately mitigated, be considered to have a significant effect. Possible mitigation measures are suggested in Action 3.8.1.

See Appendix A for definition of "Character Defining Elements".

1. Any property listed on the California Register of Historical Resources or officially determined to be eligible for listing on the California Register of Historical Resources is also considered a "Historical Resource" pursuant to Section 21084.1 of the California Environmental Quality Act.

ACTION 3.8.1: INCLUDE HISTORIC PRESERVATION IMPACTS IN CITY'S ENVIRONMENTAL REVIEW REGULATIONS.

Include Policy 3.8's definitions of "Local Register of Historical Resources" and historic preservation "significant effect" in the City's Environmental Review Regulations.

Amend the Regulations to include specific measures that may be considered to mitigate significant effects to a Historical Resource. Measures appropriate to mitigate significant effects to a Historical Resource may include one or more of the following measures depending on the extent of the proposed addition or alteration².

- 1) Modification of the project design to avoid adversely affecting the character defining elements of the property.
- 2) Relocation of the affected Historical Resource to a location consistent with its historical or architectural character.

If the above measures are not feasible, then other measures may be considered including, but not limited to the following:

- 3) Modification of the project design to include restoration of the remaining historic character of the property.
- 4) Modification of the project design to incorporate or replicate elements of the building's original architectural design.
- 5) Salvage and preservation of significant features and materials of the structure in a local museum or within the new project.
- 6) Measures to protect the Historical Resource from effects of on-site or other construction activities.
- 7) Documentation in a Historic American Buildings Survey report or other appropriate format: photographs, oral history, video, etc.

- 8) Placement of a plaque, commemorative marker, or artistic or interpretive display on the site providing information on the historical significance of the resource.
- 9) Contribution to a Facade Improvement Fund, the Historic Preservation Revolving Loan Fund, the Oakland Cultural Heritage Survey, or other program appropriate to the character of the resource.

The City is developing new "Environmental Review Regulations" to replace the "Statement of Objectives, Criteria, and Procedures for Implementation of the California Environmental Quality Act", required by the State. The regulations will require adoption of "Thresholds of Significance" for all types of environmental impacts, including historic preservation impacts. Policy 3.8 provides the definition of historic preservation "significant effect" to be used in the Thresholds.

2. Per the provisions of the California Environmental Quality Act, determination of whether mitigations are adequate to reduce a significant effect to a Historical Resource to a level less than significant will be determined by the lead agency on a case by case basis.

POLICY 3.9: CONSISTENCY OF ZONING WITH EXISTING OR ELIGIBLE PRESERVATION DISTRICTS.

- (a) Unless necessary to achieve some other Oakland General Plan goal or policy which is of greater significance, the base zone of existing or eligible Preservation Districts shall not encourage demolition or removal of a district's contributing or potentially contributing properties nor encourage new construction that is incompatible with these properties.
- (b) The City will always consider including a historic preservation component in areawide or specific plans. As part of any amendment to the Zoning Regulations, the impact on historic properties will be evaluated.

See Action 3.9.1 below for explanation of "eligible Preservation Districts".

The existing zoning in many existing and potential Preservation Districts is not consistent with the Districts' character. This sometimes encourages removal of historic properties and development of incompatible new uses. For example, some districts that contain predominantly one-family houses may be zoned for high density apartments.



16th Street between Brush and West Streets. Mostly medium density neighborhood eligible for possible Class 2 Preservation District designation, but zoned for high density apartments.

ACTION 3.9.1: ZONING STUDY AND POSSIBLE ZONING AMENDMENTS.

Identify which potential Preservation Districts are eligible for Preservation District designation. Review the zoning requirements of each existing or eligible Preservation District to identify (a) any characteristics of the existing zoning inconsistent with preservation of the district's contributing or potentially contributing properties; (b) any zoning text changes, including creation of new zones, which should be adopted to remove such inconsistencies; and (c) specific zoning map changes needed for each area. Enact any recommended zoning text and map changes.

The identification of eligible Preservation Districts would be based on the Guidelines for Determination of Preservation District Eligibility (see Policy 2.2(d) and (e) and Action 2.2.1). Existing and eligible Districts would then be reviewed to determine if there are any characteristics of the existing zoning which are inconsistent with preservation of each District's contributing or potentially contributing properties.

POLICY 3.10: HISTORIC PRESERVATION IN RESPONSE TO EARTHQUAKES, FIRES OR OTHER EMERGENCIES.

In the event of an earthquake, fire, flood, or other similar unforeseen event affecting existing or Potential Designated Historic Properties, the City will take all reasonable steps to prevent additional adverse effects on these properties and to promote their rapid repair without endangering public safety or contributing to additional property damage. Prevailing code for such repair will be the Oakland Building Code; the Uniform Code for Building Conservation where permitted under state law; and, for qualified historical buildings, the State Historical Building Code.²

This policy is partly based on the City's existing Earthquake Repair Ordinance and the City's hazard abatement response following the 1989 Loma Prieta Earthquake and 1991 Oakland Hills Fire. Unlike some communities, Oakland did not order wholesale demolitions of buildings damaged in the 1989 earthquake, but instead mostly relied on stabilization or removal of only those building elements which presented immediate hazards, coupled with temporary sidewalk barricades and similar treatments to protect passersby from possible falling debris.

Using the State Historical Building Code and similar alternative codes will promote Policy 3.10's rapid repair provision by reducing construction scope and costs and enhancing economic feasibility. The possibility of major adverse changes to Character-Defining Elements due to strict code compliance will also be reduced.

ACTION 3.10.1: REVIEW AND POSSIBLE AMENDMENT OF EMERGENCY RESPONSE DOCUMENTS.

Review and, where necessary, amend or supplement the City's Emergency Plan, Departmental Operations Manuals, Earthquake Repair Ordinance, and related documents and programs to ensure adequate protection for existing and Potential Designated Historic Properties following an earthquake, fire, flood, or similar unforeseen event.

The Emergency Plan, Departmental Operations Manuals, and Earthquake Repair Ordinance are the City's primary disaster response documents. Specific protective measures which will be included in these and related documents as part of Action 3.10.1 are:

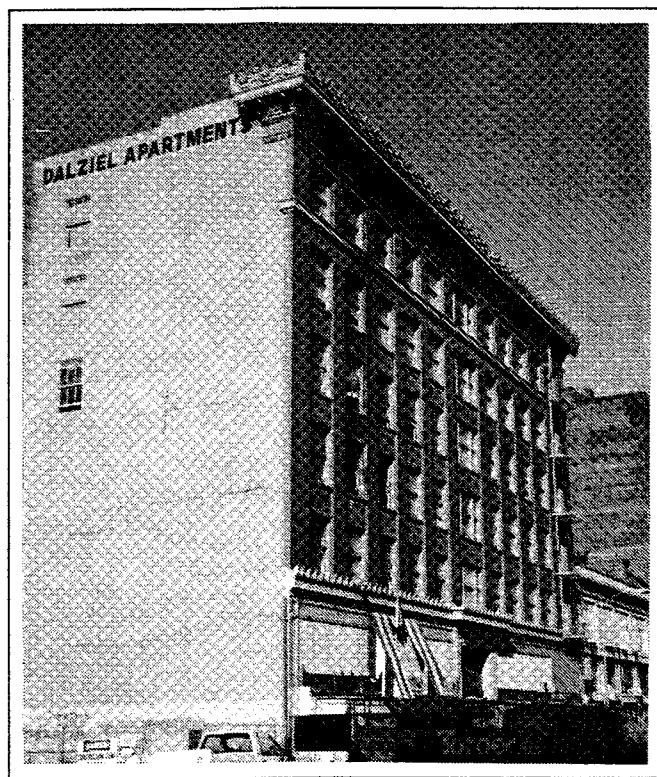
- (1) where structural issues are involved, investigation of damaged properties by structural engineers or other qualified design professionals with expertise in the repair and retrofit of older buildings;
- (2) procedures to stabilize and/or isolate damaged structures in order to safely allow further investigation of the structures; and
- (3) financial assistance programs to assist owners' rehabilitation studies and repair efforts where necessary.

These measures are already partly incorporated into the City's disaster response procedures, but not in their entirety and generally not in written form.

2. Many of the proposals in Policies 3.10 and 3.11 and in related actions and discussion are derived from: John F. Merritt (California Preservation Foundation), History at Risk – Loma Prieta: Seismic Safety and Historic Buildings, 1990, 16-19.

Probably Oakland's greatest problem responding to the 1989 earthquake was providing financial assistance for building repair, especially in downtown and West Oakland. Owners of many of these buildings could not obtain private financing for repairs. The buildings are therefore still vacant, are increasingly derelict, and may eventually require demolition.

Possible funding sources to help finance repairs are redevelopment tax increments and special tax assessment districts to issue bonds.



Owners of many earthquake-damaged buildings have not been able to obtain private or public financing for repairs.

Other disaster response measures for an existing or Potential Designated Historic Properties which the City should investigate include:

- (i) Consider City-sponsored financial assistance to owners to pay for rehabilitation feasibility studies, rehabilitation plans, and temporary structural stabilization.
- (ii) Consider stabilization or complete repair of damaged buildings by the City with placement of a "friendly lien" on the property, which would be removed when reimbursement arrives from the Federal Emergency Management Agency (FEMA), other government assistance programs, or conventional private loans.
- (iii) Consider requiring owners who decide to demolish or adversely alter a damaged building to clearly demonstrate the economic infeasibility of returning the building to service or performing nonadverse repair alternatives.
- (iv) Consider reducing or waiving permit fees for repair of existing and Potential Designated Historic Properties.
- (v) Consider waiving or modifying zoning requirements, where appropriate, to facilitate repair.
- (vi) Consider requiring owners who cannot afford to repair a property to make a good faith effort to sell the property to someone who can.
- (vii) Consider City acquisition of the property using eminent domain, if necessary, following the procedures and criteria developed by Action 3.4.2.
- (viii) Consider storage for future reuse of any brick, terra cotta or other difficult to replace materials that fell off or were removed.

POLICY 3.11: HISTORIC PRESERVATION AND SEISMIC RETROFIT AND OTHER BUILDING SAFETY PROGRAMS.

- (a) The City's building safety programs, including seismic retrofit programs, will seek to preserve existing or Potential Designated Historic Properties and their Character-Defining Elements. Where changes to such elements are unavoidable to achieve code compliance or other City-mandated modifications, the City will encourage owners to design the changes in a manner which minimizes visual impacts.
- (b) Prevailing codes for the City's building safety programs when applied to existing or Potential Designated Historic Properties will be the Oakland Building Code; the Uniform Code for Building Conservation where permitted under state law; and, for qualified historical buildings, the State Historical Building Code.

Building components critical to fire and life safety or which create unhealthy conditions must normally meet current code standards and may therefore require periodic replacement or retrofit. Policy 3.11 addresses these requirements in a manner similar to Policy 3.10's response to emergency-related hazards and is especially relevant to current efforts to encourage seismic reinforcement of unreinforced masonry buildings (see Technical Report, Chapter 4, Section E.4).

Despite availability of the State Historical Building Code and other alternative codes, some changes to Character-Defining Elements of older buildings may still be required to meet fire, life safety, and similar requirements. In these cases, Policy 3.11 requires that the changes be designed to minimize adverse effects on Character-Defining Elements.

ACTION 3.11.1: REVIEW BUILDING CODES AND RELATED DOCUMENTS.

Review and, where necessary, amend or supplement the Oakland Building Code, Fire Code, Housing Code, and other relevant City codes, documents, and programs to ensure adequate protection for existing and Potential Designated Historic Properties as part of mandated building safety programs. Ensure that this protection is incorporated into any future programs.

Such protection will include: (1) where structural issues are involved, review of structural evaluations and designs by structural engineers or other qualified design professionals with expertise in the repair and retrofit of older buildings; and (2) financial assistance where necessary.

ACTION 3.11.2: DESIGN GUIDELINES FOR BUILDING SAFETY PROGRAMS.

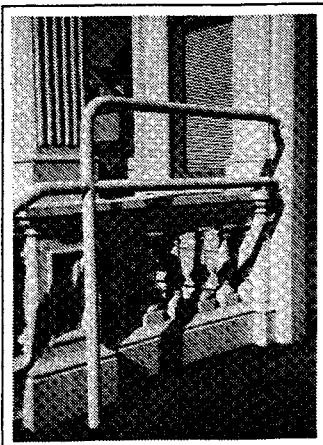
Prepare design guidelines to minimize changes to Character-Defining Elements due to code compliance or other City-mandated modifications.

Code Compliance, Seismic Safety and other Office of Planning and Building staff would use the design guidelines to suggest specific code compliance measures. The guidelines could be part of the Design Guidelines for Landmarks and Preservation Districts (Action 2.4.1).



Changes to meet code requirements sometimes unnecessarily destroy historic fabric.

Top: New wrought iron guardrail installed to meet 42-inch height required by the Building and Housing Codes.



Left: A better approach is to retain the approximately 30-inch historic guardrail and supplement it with a new or extended guardrail to meet code requirements.

POLICY 3.12: HISTORIC PRESERVATION AND SUBSTANDARD OR PUBLIC NUISANCE PROPERTIES.

Before requiring vacation or demolition, the City will take all reasonable actions to repair or rehabilitate existing or Potential Designated Historic Properties which have been determined to be substandard or public nuisances under the Oakland Dangerous Buildings Code, the Oakland Housing Code, the Blight Ordinance, the Earthquake Repair Ordinance, or any other City code or ordinance. In cases where such properties are already vacant or an immediate hazard, such repair or rehabilitation will occur expeditiously to prevent further deterioration or to abate the immediate hazard.

Buildings which are unsafe, deteriorated, abandoned, and/or have serious violations of Oakland's building and housing codes can be declared substandard, ordered vacated, and, if also declared public nuisances, ordered rehabilitated or demolished. This can be done either by the City's Building Official under the Oakland Dangerous Buildings Code or the Earthquake Repair Ordinance, or by the Housing Division Official and the Housing Advisory and Appeals Board under the Oakland Housing Code or Blight Ordinance. The Housing Code's abatement procedures are the most frequently used. Under the Blight Ordinance they can be applied to both residential and nonresidential properties. Similar procedures are set forth in the Earthquake Repair Ordinance for earthquake damaged buildings. City demolitions are accompanied by liens on the property to eventually reimburse the City's demolition costs (see discussion of these procedures in the Technical Report, Chapter 4, Sections G.3 and G.4).

In recent years, almost all demolished buildings were vacant or abandoned at the time they first came to the City's attention. Many vacant buildings have owners who are either unable, unwilling or simply not interested in maintaining the properties. If not adequately secured, vacant buildings usually deteriorate quickly and valuable fixtures are stolen.

The rapid deterioration cycle resulting from building vacation or abandonment has been the biggest source

of historic building losses in Oakland since at least the mid-1970s. Many of these demolished buildings would have been feasible to rehabilitate had they not become vacant or had they been reoccupied or adequately secured soon after vacation.



Simpson House, 524 23rd Street. Vacant for only a few months in 1988-89 before it was occupied by vagrants, had architectural fixtures stolen, and was burned and demolished.

As an alternative to demolition or attempting to negotiate property acquisition from uncooperative owners, the Housing Code was amended in 1980 to allow the City to acquire vacant properties by eminent domain for resale to new owners who would rehabilitate them. However, the program's results have been limited, due primarily to the highly deteriorated condition of most properties by the time the City considers acquisition and the excessive time required once acquisition is initiated.

In the past, the Oakland General Plan has promoted rehabilitation of all deteriorated properties; Policy 3.12 adds special acquisition and rehabilitation efforts for existing and Potential Designated Historic Properties. Policy 3.12 also implicitly mandates the City to act promptly when dealing with owners who clearly cannot be relied on to rehabilitate these properties on their own.

Specific approaches for implementing Policy 3.12 are in the following Actions:

ACTION 3.12.1: HOUSING CODE PROCEDURES AND NOTICES.

Investigate amending the Oakland Housing Code and existing code violation notices to emphasize rehabilitation over demolition as the preferred violation abatement method and to advise of City rehabilitation assistance programs.

Existing violation notices imply that demolition and rehabilitation are equally acceptable alternatives. This sometimes results in owners demolishing buildings which might have been feasible to rehabilitate and which the City might have acquired for rehabilitation under the procedures described in Action 3.12.3.

Before sending out the initial code violation notices, the City should preliminarily determine the property's feasibility for rehabilitation. Where rehabilitation appears feasible, the initial notices would emphasize rehabilitation as the preferred abatement mechanism. If the owner did not proceed with rehabilitation, the City would then consider acquisition and other preservation measures before suggesting demolition as an option.

ACTION 3.12.2: INCENTIVES FOR RETURNING VACANT PROPERTIES TO SERVICE.

Investigate ways to encourage owners of vacant substandard or public nuisance properties to return the properties to service.

A recently implemented measure is the charging of reinspection fees if inadequate action has been taken within a prescribed time period (usually 30 days) to correct code violations.

Additional incentives for returning vacant buildings to service should be investigated. Examples include priority for City-sponsored rehabilitation assistance and automatic City initiation of Heritage Property designation to allow use of the State Historical Building Code.

ACTION 3.12.3: EARLIER PROPERTY ACQUISITIONS.

Consider acquisition of existing or Potential Designated Historic Properties declared as substandard or public nuisances earlier in the Housing Code enforcement process.

Although the Housing Code permits the City to initiate acquisition of vacant property through eminent domain within 30 days after a property has been declared substandard and vacated, acquisition in practice is not initiated until after a property has been declared a public nuisance. Public nuisance properties are generally much more deteriorated than substandard properties and are often determined infeasible for rehabilitation. Initiating acquisition as soon as possible after a property is declared substandard should increase the numbers of properties which could be acquired and rehabilitated.

Acquisition of substandard properties which are not yet vacant should also be considered. This would require amending the Housing Code.

ACTION 3.12.4: ADDITIONAL PROPERTY ACQUISITION AND THIRD-PARTY TRANSFER METHODS.

Investigate additional property acquisition and third party transfer methods for existing or Potential Designated Historic Properties which are substandard or public nuisances. Such methods should include but not be necessarily limited to bargain sales, receivership programs, and property tax foreclosures.

These methods may be better alternatives to the existing eminent domain procedure for acquiring properties from owners who are unable or unwilling to rehabilitate or sell them.

Bargain sales involve sale or transfer of a property to a nonprofit organization at a cost below the fair market value. The seller can recoup some of the difference between the sale price and the fair market value by treating this difference as a charitable contribution. There are various nonprofit housing development organizations in Oakland who could qualify as buyers in bargain sales.

Receivership enables a court to appoint a public agency or a nonprofit organization as a receiver for properties violating building codes. The receiver can make repairs, collect rents and place liens on the property to pay for the repairs, and acquire the property through foreclosure if the liens are unpaid. Receivership usually takes less time to implement than eminent domain.

Property tax foreclosures. In some states, property foreclosures and sales for delinquent property taxes have been effective for transferring abandoned buildings to new owners who will rehabilitate them. In California, property taxes must be delinquent five years before foreclosure begins. The sale process generally requires an additional year. The City has the right of first refusal to buy tax delinquent properties.

ACTION 3.12.5: REPAIR BY CITY WITH LIENS.

Investigate amending the Housing Code to allow the City to correct violations and place liens on substandard or public nuisance properties.

Occasionally, the City will order buildings vacated for relatively easy to correct code violations, such as heating systems which are unable to maintain a 70°F temperature. The vacations are usually ordered because under the Housing Code, the City has no other way to force repairs.

Direct City correction of code violations accompanied by a lien should be considered as an alternative.

ACTION 3.12.6: SUBSTANDARD AND PUBLIC NUISANCE HISTORIC PRESERVATION ABATEMENT PROCEDURES AND CRITERIA.

Develop criteria and procedures for determining under what circumstances the City would either (a) repair and lien an existing or Potential Designated Historic Property declared substandard or public nuisance, (b) acquire the property, using eminent domain if necessary, or (c) take other direct action. Consider an administrative abatement schedule for Housing Code violations to determine whether owners are progressing satisfactorily in correcting violations and whether, in the absence of satisfactory progress, the city should take further action.

The criteria for determining appropriate action for each property should be based on such factors as the property's historical or architectural importance; the ability and likelihood of the owner to rehabilitate the property; the property's condition and feasibility for rehabilitation; and, where the City would be providing rehabilitation loans, the extent to which the City would be willing to allow the loan to exceed the property's value after rehabilitation.

An administrative abatement schedule for Housing Code violations should also be investigated. Housing Code violations must be abated within 30 to 75 days after issuance of an abatement order. However, this time period is unrealistically short for properties requiring major rehabilitation. The 30 to 75-day limit is often, therefore, unenforced and, in the absence of a more reasonable alternative time standard, excessively slow rates of rehabilitation progress are sometimes tolerated. In these cases, an administrative abatement schedule could be used to determine whether rehabilitation is proceeding satisfactorily and at what point the City should directly initiate repair or acquisition of a property or take other action.

POLICY 3.13: SECURITY OF VACANT PROPERTIES.

Vacant or abandoned existing or Potential Designated Historic Properties shall be adequately secured in order to prevent unauthorized entry, theft, or property damage.

When vacant or abandoned buildings are inadequately secured, they usually deteriorate rapidly and are eventually destroyed (see Policy 3.12 discussion). The City has programs to secure vacant buildings, but these programs have often been inadequate to prevent building damage.



Owner-installed building security measures which the City has considered acceptable are often ineffective, create blight, and attract vandals, arsonists and other criminals.

ACTION 3.13.1: SECURITY PROCEDURE STUDY.

Review and revise where appropriate, existing security procedures and methods for both City-owned and privately-owned properties.

Additional security measures which the City might consider include:

(a) acting promptly to secure at least the most important existing and Potential Designated Historic Properties;

- (b) using dependable locks on doors and windows and ensuring that the doors and windows are kept closed and locked;
- (c) keeping premises free of trash and regularly trimming grass and shrubbery.
- (d) installing burglar alarms in the most important an existing or Potential Designated Historic Properties;
- (e) removal and storage of valuable fixtures for safekeeping;
- (f) ensuring that fire alarms and fire sprinklers remain in service;
- (g) establishing a regular monitoring program of at least the most important secured properties to check for and discourage break-ins;
- (h) greater use of Police or Fire Department security orders to accelerate the building security process, which usually takes about 20 days;
- (i) continuing the operation of electrical systems (which are now ordered shut-off when buildings are vacated) so that lights can be left on and the building appears less abandoned (the U.S. Department of Housing and Urban Development uses this approach as an alternative to board-ups for vacant properties it acquires through foreclosures); and
- (j) erecting security fences, where necessary, without leaving gaps between fence sections and ensuring that fence gates are kept closed and locked.

POLICY 3.14: COMMERCIAL REVITALIZATION PROGRAMS.

The City will give special consideration to areawide commercial revitalization efforts which preserve or enhance significant numbers of existing or Potential Designated Historic Properties.

Since the 1970s, the City's Office of Economic Development and Employment has operated a Neighborhood Commercial Revitalization (NCR) program which includes assisting rehabilitation of commercial buildings. Projects funded under this program and similar areawide commercial assistance programs have generally not emphasized historic preservation, although many NCR projects have been located in potential Preservation Districts.

ACTION 3.14.1: HISTORIC PRESERVATION COMMERCIAL REVITALIZATION PROJECT IDENTIFICATION AND PROMOTION.

Identify those commercial areas, including areas in the Central District, having significant numbers of existing or Potential Designated Historic Properties and which may benefit from revitalization programs. As part of ongoing commercial revitalization efforts, encourage property owners and business people in these areas to investigate revitalization projects which preserve or enhance these properties.

The identification of areas having significant numbers of an existing or Potential Designated Historic Properties would be mostly based on the Reconnaissance and Intensive Surveys.

ACTION 3.14.2: CALIFORNIA MAIN STREET PROJECTS.

Investigate establishing California Main Street projects or similar projects.

The California Main Street Program is designed to revitalize traditional urban commercial centers based on historic preservation principals. The program's urban pilot program was especially designed for medium-size cities like Oakland (see Technical Report, Chapter 4, Section E.1.) Oakland has not yet participated in the program.

Under Action 3.14.2, such participation would be investigated as a regular option for each City-sponsored commercial revitalization project involving districts with significant numbers of existing or Potential Designated Historic Properties. For commercial areas interested in establishing a Main Street project, the City would assist owners and business people in submitting Main Street applications and in project operations.

OBJECTIVE 4: ARCHEOLOGICAL RESOURCES

To develop databases identifying existing and potential archeological sites and adopt procedures for protecting significant archeological resources.

POLICY 4.1: ARCHEOLOGICAL RESOURCES.

To protect significant archeological resources, the City will take special measures for discretionary projects involving ground disturbances located in archeologically sensitive areas.

Construction and other ground disturbance activities can damage or destroy archeological sites. Oakland and most other communities have generally relied on environmental review to protect them. If it is believed that a project or activity could damage significant archeological resources, mitigation measures are typically incorporated into the project as part of the environmental review process.

Archeological resources can be either "prehistoric" or "historic". Prehistoric archeological resources in Oakland are sites and artifacts associated with Oakland's original aboriginal inhabitants, while historic archeological resources relate to the early and mid-nineteenth century Spanish-Mexican period, the subsequent early phases of pioneer settlement, and development of early ethnic and social groups and industry.

Policy 4.1 seeks to protect both known and undiscovered archeological sites by requiring archeological protection procedures for discretionary ground disturbance activities located in archeologically sensitive areas. These procedures will include:

- (a) **Mapping areas possessing high prehistoric or historic archeological potential.**
- (b) **Archival studies for new development or other activities involving ground disturbance within areas of high archeological potential.** The archival studies and later site-specific investigations listed in steps (c)-(e) would be performed only for ground disturbance activities. If an archival study determines that resources may still exist, step (c) would be taken.
- (c) **Determination of whether the ground disturbance activity could damage archeological materials.**
- (d) **Surface reconnaissance by archeologist.** This step would only be necessary if, as determined by step (c), the proposed development involves ground disturbance to the depth of any possible remaining archeological materials.
- (e) **Subsequent actions.** If the results of the surface reconnaissance were positive, several options would be available. One option would be to have an archeologist observe the project excavation with authority to stop work for the conduct of further investigations if archeological materials appear. Another option would be to perform limited archeological excavations prior to construction to determine more conclusively whether archeological materials are present.

ACTION 4.1.1: ARCHEOLOGICAL SENSITIVITY STUDY.

Conduct a Citywide archeological sensitivity study to identify which portions of the City and which types of specific sites are sufficiently likely to contain significant archeological materials to warrant further site-specific investigations.

A citywide study would be the most efficient way for conducting step (a) under Policy 4.1 above. The study would require an archeological consultant and funding sources would need to be identified.

ACTION 4.1.2: ARCHEOLOGICAL PROTECTION CRITERIA AND PROCEDURES.

Establish criteria and interdepartmental referral procedures for determining when discretionary City approval of ground-disturbing activities located in archeologically sensitive areas should be subject to special conditions to safeguard potential archeological resources.

The criteria and procedures could follow the steps listed above under Policy 4.1. The procedures should be coordinated by the City Planning Department since it is responsible for environmental review and archeological assessments are usually part of environmental review. The referral procedure would advise other City departments when projects should be referred to the City Planning Department for archeological assessment.