

## **HISTORIC PRESERVATION ORDINANCE**

### **17.##.010 Title**

This chapter shall be known as the Historic Preservation Ordinance of Alameda County.

### **17.##.020 Purpose**

The purpose of this chapter shall be to:

- A. Identify, protect, and encourage the preservation of significant architectural, historic, prehistoric and cultural structures, sites, resources and properties in the County;
- B. Ensure the preservation, protection, enhancement and perpetuation of historic structures, sites and other resources to the fullest extent feasible;
- C. Encourage, through public or private action, the maintenance or rehabilitation of historic structures, sites and other resources;
- D. Safeguard the County's historic resources, both public and private projects;
- E. Encourage development that sensitively incorporates the retention, preservation and re-use of historic structures, sites and other resources;
- F. Foster civic pride in the character and quality of the County's historic resources and in the accomplishments of its people through history;
- G. Provide a mechanism, through surveys, nominations and other available means, to compile, update and maintain a register of historic resources within the County;
- H. Protect and enhance the County's attraction to tourists and visitors;
- I. Provide for consistency with state and federal preservation standards, criteria and practices;
- J. Encourage new development that will be aesthetically compatible with historic resources;
- K. Make available incentive opportunities to preserve Alameda County's historic resources

### **17.##.030 Definitions**

For the purposes of this chapter, certain words and phrases shall be interpreted as set forth in this section unless it is apparent from the context that a different meaning is intended.

"Alameda County Register" or "Register" means the list of properties officially recognized as historically significant ~~register created~~ by Section 17.##.050 of this chapter.

"Board of Supervisors" or "Board" means the Board of Supervisors of the County of Alameda.

“Building official” means the building official designated in Chapter 15.08 of Title 15 of this code, and his or her designee(s).

“California Environmental Quality Act” means the California Public Resources Code Section 21000 et seq. as it may be amended. The California Environmental Quality Act may also be referred to in this chapter as “CEQA.”

“California Register” means the California Register of Historical Resources as defined in California Public Resources Code Section 5020.1 as it may be amended from time to time.

“California Register resource” means any resource designated on the California Register as it may be amended from time to time.

“Certificate of Appropriateness” means a permit approving an alteration to or demolition of a ~~landmark, or demolition of a~~ historic resource listed on the Alameda County Register or the demolition of a property otherwise eligible to be listed on the Alameda County Register pursuant to the provisions of this chapter.

“Commission” means the Parks, Recreation and Historical Commission

“Comprehensive Survey of Historic Sites” means the survey of historic resources throughout unincorporated Alameda County that was conducted in conjunction with the creation of this Ordinance.

“Contributing resource” means a resource designated as a contributing resource by the Board of Supervisors in accordance with this chapter.

“County” means the unincorporated areas of the County of Alameda.

“Cultural Resources Surveys” means the Cultural Resources Surveys done for the County, including the Preliminary Cultural Resources Surveys for the Ashland & Cherryland Districts, the San Lorenzo Area, and the East Valley Area; the Comprehensive Survey of Historic Sites; and any other surveys as they may be completed.

“Dangerous building” means an immediately dangerous building or structure as defined in Section 15.08.170 of the Alameda County Building code.

“Department” means the Alameda County Planning Department.

“Development project” for the purposes of this chapter means and includes the following:

1. The alteration, modification or rehabilitation of the exteriors of landmarks, contributing resources and non-contributing resources;
2. The alteration, modification or rehabilitation of interiors of landmarks and contributory resources where the interiors constitute “features or characteristics” as defined herein; or
3. New construction within a historic preservation district.

“Director” means the Director of the Planning Department of Alameda County.

DRAFT ORDINANCE AS RECOMMENDED BY THE PLANNING COMMISSION, OCTOBER 17, 2011

“Feature or characteristic” means fixtures, components or appurtenances attached to, contiguous with or otherwise related to a structure or property including landscaping, setbacks, distinguishing aspects, roof attributes, overlays, moldings, sculptures, fountains, light fixtures, windows and monuments. “Feature or characteristic” may include historically and/or architecturally significant interior areas that are accessible to or made available to the public, including, without limitation, areas commonly used as public spaces such as lobbies, meeting rooms, gathering rooms, public hallways, great halls, bank lobbies or other similar spaces. Interior areas that generally are not accessible to or made available to the public, but which occasionally may be visited by business invitees or members of the public, including those on a tour of a facility, do not constitute a “feature or characteristic” for purposes of this chapter.

~~“Historic resource” and/or “cultural resource” means, but is not limited to, any object, building, structure, site, area, place, or record which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of Alameda County. mean, for the purposes of environmental reviews related to CEQA and the County’s compliance with CEQA, those landmarks, contributing resources and historic preservation districts listed in the Alameda County Register. “Historic resource” and “cultural resource” shall also include those properties specified as a historic resource or cultural resource by CEQA, by the CEQA guidelines, or by any other provision of California law.~~

“Initiation of Designation” means the action taken, or the date on which such action is taken, to place a historic resource on the Alameda County Register, including the completion of an application by a property owner, a nomination by the Board of Supervisors, or an adoption of a resolution of intent to nominate by the Commission.

“Inventory of Potential Historic Resources” means the repository of information retained by the Planning Department regarding buildings that have been evaluated for historic significance through an official study. The Inventory includes the resources specified in the Alameda County Register, but also includes surveyed structures not yet found to be historic resources.

“Landmark” means a property in unincorporated Alameda County, or a County-owned building or property in an incorporated area of Alameda County, of exceptional historical or architectural value that is an example of an important style, type, or convention, or which are intimately associated with a person, organization, event, or historical pattern of major importance at the local level ~~any historic resources~~ designated as a landmark by the Board of Supervisors in accordance with this chapter.

“Listed historic resource” means any historic resource listed in the Alameda County Register in accordance with this chapter. “Listed historic resource” includes any resource designated by the Board of Supervisors as a landmark, contributing resource to a historic preservation district, or a structure of merit. “Listed historic resource” does not include a non-contributing resource in a historic preservation district.

“Mills Act” means California Government Sections 50280 et seq., as it may be amended from time to time.

“National Environmental Protection Act” means 42 U.S.C. Secs.4321 et seq., as it may be amended from time to time. The National Environmental Protection Act may be referred to in this chapter as NEPA.

DRAFT ORDINANCE AS RECOMMENDED BY THE PLANNING COMMISSION, OCTOBER 17, 2011

“National Historic Preservation Act” means 16 U.S. Secs. 470 et seq., as it may be amended from time to time.

“National Register of Historic Places” means the official inventory of districts, sites, buildings, structures and objects significant in American history, architecture, archeology and culture which is maintained by the Secretary of the Interior under the authority of the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq., 36 C.F.R. Sections 60, 63).

“National Register resource” means any resource listed in the National Register of Historic Places.

“Nominated resource” means a resource nominated for placement on the Alameda County Register as provided for in 17.##.080 of this chapter.

“Nomination” means a nomination for placement of a resource on the Alameda County Register pursuant to 17.##.080 of this chapter.

“Non-contributing resources” means all resources within a historic preservation district that are not identified as contributing resources. “Planning Commission” means the Planning Commission of Alameda County. The Planning Commission is always referred to in this ordinance as “the Planning Commission,” never as “the Commission,” which is reserved for the Parks, Recreation and Historical Commission.

“Preventative maintenance” means any work the sole purpose and effect of which is to correct deterioration, decay or damage.

“Resource” means any building, structure, site, area, place, feature, characteristic, appurtenance, landscape, landscape plan or improvement.

“Secretary of the Interior Standards” means the Secretary of the Interior Standards for Treatment of Historic Properties found at 36 C.F.R. 68.3, as it may be amended from time to time.

“Significant feature or characteristic” means a feature or characteristic identified by the Board of Supervisors as significant from a historical standpoint pursuant to 17.##.080 of this chapter.

“State Historical Building Code” means the State Historical Building Code as contained in Part 8 of Title 24 (California Building Standards Code) of the California Code of Regulations, as it may be amended from time to time.

“Structure of merit” means a resource designated as a structure of merit by the Board of Supervisors in accordance with 17.##.080 (C) of this chapter.

“Survey” means a process by which resources are documented for landmark, structure of merit, or historic preservation district consideration.

“Zoning code” shall mean Title 17 of the County code, as it may be amended from time to time.

**17.##.040 Cultural Resource Surveys**

A. The County will maintain a list of all surveys and will use the survey information to identify and protect potentially historic resources as outlined in this Ordinance. All surveys shall be prepared by or under supervision of an architectural historian satisfying the professional qualification standards for architectural historians specified in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.

B. Three Cultural Resource Surveys of portions of Alameda County were conducted prior to creation of this Ordinance:

1. Preliminary Cultural Resources Survey, Ashland & Cherryland Districts, San Lorenzo, Alameda County (April 1998);
2. Unincorporated San Lorenzo Historic Building Survey, Alameda County (November 2000); and
3. Historical and Cultural Resource Survey, East Alameda County (June 2005)

C. All properties evaluated in the above surveys, regardless of the conclusions as to their historic significance, will go into an Inventory of Potential Historic Resources. This Inventory shall also include the results of any future historic resource surveys, including historic resource evaluations done in conjunction with the completion of any Environmental Impact Reports (EIRs) or Negative Declarations prepared pursuant to CEQA in the County. The Planning Department shall take appropriate steps to ensure that the Inventory is properly maintained and regularly updated. The Planning Department shall also take appropriate steps to maintain and regularly update a list or compilation of resources within the County that are on the California Register of Historical Resources or the National Register of Historic Places, and to make the list or compilation available for public review and use.

**17.##.050 The Alameda County Register**

A. The list of landmarks, historic preservation districts, contributing resources and structures of merit shall be known, collectively, as the Alameda County Register.

B. Initially Within 180 days of the effective date of this ordinance, the following properties are considered eligible for inclusion on the Alameda County Register:

1. Properties deemed likely significant in previous surveys (properties rated "Y" in the Ashland & Cherryland survey, "1" in the San Lorenzo survey and "K" in the East Alameda survey) that, as part of the Comprehensive Survey of Historic Sites in unincorporated Alameda County, were verified to merit continued listing;
2. All landmarks, contributing buildings and historic preservation districts identified in the Comprehensive Survey that were not identified in any of the three previous surveys;
3. Properties identified by the Commission that meet the structure of merit criteria set forth below in 17.##080 (C) that were identified prior to the adoption of this Ordinance.

C. Owners(s) of ~~the~~ properties specified in subsection B ~~have been~~ shall be notified in writing that the Board of Supervisors ~~has intends to adopted a~~ Historic Preservation Ordinance and as a result their property could be included on the Alameda County Register if they so desire. The property owners shall be ~~were~~ notified in the manner specified in Section 17.##.120. Owner(s) of these properties that wish to add their property to the Alameda County Register must submit their written request consent to be added to the Register to the Planning Department within ~~180~~ (one hundred and eighty (180)) days of the adoption of this Ordinance. Upon receipt of the written request consent, the property shall be verified by the Director as acceptable by conducting a ~~cursor~~ review of County records and conducting a site visit to confirm that no alterations have been performed that would render the property ~~unworthy~~ ineligible for listing. If no written request consent to be added to the Register is submitted by the owner(s) of properties specified in Subsection B to the Planning Department, within one hundred and eighty (180) (one hundred and eighty) days of the adoption of this Ordinance, such properties will not be added to the Register unless they are subsequently nominated pursuant to follow the nomination procedures described in Section 17.##.080. Lack of receipt of consent by the Director pursuant to this subsection shall not constitute a denial of a nomination.

**17.##.060 Criteria and Requirements for Placement on, and Deletion from, the Alameda County Register**

The criteria and requirements for placement on, or deletion from, the Alameda County Register as landmarks, historic preservation districts, contributing resources or structures of merit are as follows:

~~A. Landmarks are intended to be properties in unincorporated Alameda County (or County owned buildings in an incorporated area of Alameda County) of exceptional historical or architectural value that are clearly eligible individually for the California Register of Historical Resources, including those that are especially fine examples of an important style, type, or convention, or which are intimately associated with a person, organization, event, or historical pattern of major importance at the local level or of moderate importance at the state or national level. A nominated resource shall be added to the Alameda County Register as a landmark if the Board of Supervisors finds, after holding the hearing(s) required by this chapter, that all of the requirements set forth below are satisfied:~~

1. The nominated resource meets one or more of the following criteria:
  - a. It is associated with events that have made a significant contribution to the broad patterns of the history of the County, the region, the state or the nation;
  - b. It is associated with the lives of persons significant in the County's past;
  - c. It embodies the distinctive characteristics of a type, period or method of construction;
  - d. It represents the work of an important creative individual or master;
  - e. It possesses high artistic values; or

f. It has yielded, or may be likely to yield, information important in the prehistory or history of the County, the region, the state or the nation.

2. The nominated resource has integrity of location, design, setting, materials, workmanship, feeling and association. Integrity shall be judged with reference to the particular criterion or criteria specified in subparagraph 1. ~~“(a)”~~ above;

3. The nominated resource has significance historically or architecturally, and its designation as a landmark is reasonable, appropriate and necessary to promote, protect and further the goals and purposes of this chapter.

4. The nominated resource has been evaluated by a qualified historical resources consultant who meets one or more of the Secretary of the Interior’s professional qualifications standards or who are certified by the Register of Professional Archaeologists, and the evaluator has submitted documents that provide evidence of the resources historical or architectural significance.

B. A geographic area nominated as a historic preservation district shall be added to the Alameda County Register as a historic preservation district if the Board of Supervisors finds, after holding the hearing(s) required by this chapter, that all of the requirements set forth below are satisfied:

1. The area is a geographically definable area;

2. The area possesses either:

a. A significant concentration or continuity of buildings unified by: a) past events; or b) aesthetically by plan or physical development; or

b. The area is associated with an event, person, or period significant or important to County history

3. The designation of the geographic area as a historic preservation district is reasonable, appropriate and necessary to protect, promote and further the goals and purposes of this chapter and is not inconsistent with other goals and policies of the County.

4. A historic preservation district shall have integrity of location, design, setting, materials, workmanship, feeling and association.

5. The collective historic value of the buildings and structures in a historic preservation district taken together is greater than the historic value of each individual building or structure.

6. The application is accompanied by a form bearing the signatures of at least fifty-one percent (51%) of all property owners within the area of the proposed district.

7. The Board finds that the addition of the district to the Register does not in any manner interfere, eliminate or otherwise obviate the identification, qualification, designation and

preservation requirements of the creation of Historic Preservation Districts pursuant to Chapter 20 of this Title.

C. A nominated resource shall be added to the Alameda County Register as a structure of merit if the Board of Supervisors finds, after holding the hearing(s) required by this chapter, that it satisfies one or more of the following criteria:

1. It represents in its location an established and familiar visual feature of the neighborhood, community or County; or
2. It materially benefits the historic, architectural or aesthetic character of the neighborhood or area; or
3. It is an example of a type of building that once was common but is now rare in its neighborhood, community or area; or
4. It is connected with a business or use which was once common but is now rare; or
5. It contributes to an understanding of the contextual significance of a neighborhood, community or area.

D. A nominated resource shall be added to the Alameda County Register as a contributing resource if the Board of Supervisors finds, after holding the hearing(s) required by this chapter, that it satisfies one or more of the following criteria:

1. The nominated resource is within a historic district;
2. The nominated resource either embodies the significant features and characteristics of the historic district or adds to the historical associations, historical architectural qualities or archaeological values identified for the historic district;
3. The nominated resource was present during the period of historical significance of the historic district and relates to the documented historical significance of the historic district;
4. The nominated resource either possesses historic integrity or is capable of yielding important information about the period of historical significance of the historic district; and
5. The nominated resource has important historic or architectural worth, and its designation as a contributing resource is reasonable, appropriate and necessary to protect, promote and further the goals and purposes of this chapter.

**17.##.070 Deletions from the Register**

An application to delete a listed historic resource from the Alameda County Register may be approved if the Board of Supervisors finds, after holding the hearings required by this chapter, that the listed historic

resource no longer meets the requirements set forth above; provided that where a landmark, historic preservation district or structure of merit is proposed for deletion due to a loss of integrity, the loss of integrity was not the result of any illegal act or willful neglect by the owner or agent of the owner.

**17.##.080 Procedures to Nominate Resources for Placement or Deletion from the Alameda County Register**

A. The following parties shall have the authority to nominate a resource for placement or removal from the Alameda County Register as landmarks, historic preservation districts, contributing resources or structures of merit:

1. ~~The Owner or any combination of owners(s) of the of the historic resource proposed for designation, or an authorized agent or, in the case of a historic preservation district, no less than fifty-one percent (51%) of property owners within the area of the proposed district.;~~
2. The Parks, Recreation and Historical Commission, subject to the consent of the property owner pursuant to Section 17.##.120.;
3. ~~The Board of Supervisors. However, no nomination for placement on the Alameda County Register as a landmark, or structure of merit shall proceed without the authorization of the property owner.~~

B. If designation is initiated by the owner, an application for designation shall be made to the Planning Department through submittal of the prescribed application form accompanied by a non-refundable filing fee as set forth in the schedule of fees established by resolution of the Board of Supervisors and supporting documentation including, but not limited to, State of California Department of Parks Recreation 523 series forms or other historic resource inventory forms as may be approved by the State. Such documentation must be prepared by an individual who meets the professional qualification standards published by the National Park Service in the Federal Register (Code of Federal Regulation, 36 CFR Part 61), as determined by the State Office of Historic Preservation. ~~At the time of submission of their application for designation shall be deemed, the owner must provide written consent by the owner to the designation on a form supplied by the County. If an application is determined to be incomplete, it shall be returned to the applicant and the applicant may re-submit the application with the documentation necessary to complete it without an additional filing fee.~~

C. ~~The Parks, Recreation and Historical Commission may initiate the designation of landmarks, historic preservation districts, contributing resources or structures of merit nominations by adopting a resolution of intent to consider a nominate. in either The Commission may adopt a resolution of intent to nominate on its own motion, or at the request of the Planning Department, or at the request of members of the public. The Board of Supervisors may nominate landmarks, historic preservation districts, contributing resources or structures of merit by adopting a resolution identifying the nominated resource and transmitting its resolution to the Parks, Recreation and Historical Commission. The Parks, Recreation and Historical Commission shall adopt a resolution of intent to consider nominations for resources nominated by the County Board of Supervisors. If Any resolution of intent to designate nomination is initiated by the Board of Supervisors or the Parks, Recreation and Historical Commission, such action must be based upon the same documentation that would be required of an owner's application for initiated designation~~

DRAFT ORDINANCE AS RECOMMENDED BY THE PLANNING COMMISSION, OCTOBER 17, 2011

and preliminary findings that the resource potentially meets the criteria for either -a landmark, structure of merit, historic preservation district or contributing resource provided in Section 17.##.060. The Planning Department ~~or the Clerk of the Board of Supervisors~~ shall notify the owner and the occupants of the property by certified mail 30 days prior to the ~~Parks, Recreation and Historical Commission or Board of Supervisors~~ meeting when the subject property of the resolution of intent to nominate shall be considered for nomination regarding the initiation of the designation and shall request written consent for designation from the owner on a form supplied by the County. The request for written consent for designation shall inform the property owner of the process to be pursued pursuant to Section 17.##.100 and the right of the property owner to grant or withhold consent regarding nominations by the Commission. Notice of public meetings shall follow the guidelines established in Section 17.##.120 of this Ordinance.

D. The Board of Supervisors may initiate designation of landmarks, historic preservation districts, contributing resources or structures of merit by adopting a resolution identifying the resource to be nominated and transmitting its resolution to the Commission. The Commission shall consider recommendations to the Board regarding a proposed nomination pursuant to Section 17.##.100. If designation is initiated by the Board of Supervisors, such action must be based upon the same documentation that would be required of an owner's application for designation and findings that the resource potentially meets the criteria for either a landmark, structure of merit, historic preservation district or contributing resource provided in Section 17.##.060. The Clerk of the Board of Supervisors shall notify the owner and the occupants of the property by certified mail 30 days prior to the Board of Supervisors meeting regarding the initiation of the designation and shall request written consent for designation from the owner on a form supplied by the County. The request for written consent for designation shall inform the property owner of the process to be pursued pursuant to Section 17.##.100 and the a on the Board that result should that the property owner may advise the Board of the owner's their granting or withholding of consent. Notice of public meetings shall follow the guidelines established in Section 17.##.120 of this Ordinance.

~~D. If the application is determined to be incomplete, it shall be returned to the applicant and the applicant requested to submit the documentation necessary to complete the application. No additional filing fee will be required.~~

E. The application, resolution of intent to nominate, or nomination shall indicate the parameters of the historic resource that is being nominated with specificity, specifying including any related structures or landscape that is to be included for consideration.

F. The owner of a historic resource proposed for designation may notify the Planning Director in writing of their support of, or objection to, consent, or withholding consent, to the proposed designation at any time after initiation, but and prior to a final designation by the Board.

G. A request to delete a listed resource from the Register will be initiated in the same manner and using the same procedure as was followed to nominate a potentially historic resource. The action shall result from new information, the discovery of earlier misinformation or change of original circumstances, conditions or factors that justified the designation. Notice of removal of a listed resource shall be sent to the same persons or other parties as set forth in Section 17.##.120 and the resolution shall be repealed or amended accordingly.

**17.##.090 Nominated Resource Protections Pending Final Decision**

A. Subject to the time limits set forth in Subsection B ~~below~~, any nominated resource proposed for consideration as a landmark or contributing resource shall be considered to be a landmark or contributing resource for purposes of 17.##.160 herein, and it shall be subject to the restrictions and protections of 17.##.160 as if it were a landmark or contributing resource. Any geographic area proposed for consideration as a historic preservation district shall be considered to be a historic preservation district for purposes of 17.##.160 herein, and the resources located within the proposed historic preservation district shall be subject to the restrictions and protections of 17.##.160 as if they were located within a historic preservation district.

B. The restrictions of Subsection A ~~above~~ shall apply for a period of one hundred eighty (180) days from the date of a nomination by the Board of Supervisors or adoption by the Commission of a resolution of intent to ~~consider a nomination of~~ a property as a landmark, a contributing resource or a property within a historic preservation district. After one hundred eighty (180) days have elapsed from the date of the ~~resolution of intent~~ initiation of designation, if the Board of Supervisors has not adopted an ordinance designating the nominated resource as a landmark, contributing resource or historic preservation district, the restrictions and protections established by Subsection A ~~above~~ shall no longer apply unless the Board of Supervisors has adopted an ordinance to extend the one hundred eighty (180) day limit to consider the nomination.

C. Listed historic resources proposed for deletion from the Alameda County Register shall be subject to the restrictions and protections of 17.##.160 unless and until a final decision is made by the Board of Supervisors to delete the listed historic resources from the Alameda County Register.

**17.##.100 Nomination Hearing by the Parks, Recreation and Historical Commission**

The Commission shall conduct ~~a public hearing or hearings on nominations for placement designation on, or proposals for deletion from,~~ the Alameda County Register. At the conclusion of ~~the hearing(s)~~, the Commission shall make a recommendation to the Board of Supervisors on the nomination or proposal.

A. Notice of the hearing shall be provided pursuant to Section 17.##.120.

B. ~~1.-~~A hearing on ~~the an~~ application for ~~designation~~ shall be scheduled and a recommendation made by the Commission ~~to the Board of Supervisors shall be made~~ within sixty (60) days of the date that the application is determined to be complete. If the Commission does not act within the timeframe, the owner may request that the ~~proposed designation~~ proposal be transmitted directly to the Board of Supervisors for its determination.

~~2.-~~C. A hearing on a property subject to a Commission resolution of intent to nominate shall be scheduled and a recommendation made by the Commission, ~~or~~ within sixty (60) days of the date that the Commission ~~or Board of Supervisors~~ initiated ~~the a~~ proposed designation or proposal for deletion. If the Commission does not ~~cannot~~ act within the timeframe, the owner may request that the proposed

DRAFT ORDINANCE AS RECOMMENDED BY THE PLANNING COMMISSION, OCTOBER 17, 2011

designation be transmitted directly to the Board of Supervisors for its determination, otherwise the nomination for placement shall be considered denied pursuant to Section 17.##.140.

~~3D.~~ A hearing on a nomination proposed ~~nomination~~ by the Board shall be scheduled and a recommendation made by the Commission within sixty (60) days of the date that the Board initiated a proposed designation or proposal for deletion. If the Commission does not act within the timeframe, either the owner or the Board may request that the proposed designation be transmitted directly to the Board of Supervisors for its determination, otherwise the nomination for placement shall be considered denied pursuant to Section 17.##.140.

~~CE.~~ A staff report concerning the historic resource under consideration for placement or deletion from the Register shall be provided to the Commission. The report shall address the significance and integrity of the historic resource(s) as it relates to the designation criteria, provide other relevant information, and include a recommendation concerning the application and the basis therefore. The staff report shall also state whether the owner(s) of the property ~~supports or objects~~ have consented or withheld consent to the proposed action.

~~DE.~~ In the event of a nomination or proposed deletion of a historic preservation district, the ~~Planning Department shall also send a copy of the hearing notice to the Secretary of~~ Director shall also notify the Planning Commission. The Planning Commission ~~may~~ shall have at least 30 days to review the proposed designations and boundaries of the historic preservation district, or the proposed deletion, and may forward its recommendations to Commission for the Commission's consideration. Failure of tThe Planning Commission ~~to~~ may provide comments, however lack of comments by the Planning Commission -shall neither~~not~~ prevent the Commission from acting on the nomination or proposed deletion nor preclude any actions by the Planning Commission authorized under Chapter 17.20.

~~EF.~~ Any recommendation for placement or deletion form the Register initiated by the Parks, Recreation and Historical Commission shall be supported by a preponderance of the evidence that the historic resource meets or no longer meets the designation criteria for one of the registration categories set for the in Section 17.##.060. The Commission shall also include in their analysis whether or not the owner has ~~provided granted or withheld~~ written consent to the designation. If the owner has not granted written consent to the designation of a property- placement of the property on the Register, which is the subject of a Commission resolution of intent to nominate, the Commission may not act to recommend a nomination shall not adopt a resolution of intent to nominate.. In the event of a non-recommendation due to a lack of consent, the Commission shall make such a finding and transmit the non-recommendation to the Board.

~~FHG.~~ The Commission secretary shall transmit to the Board of Supervisors the Commission's recommendations on inclusion(s) on or deletion(s) ~~to or~~ from the Alameda County Register.

**17.##.110 Action by the Board of Supervisors on Amendments to the Register**

A. Within ~~630~~ days of the receipt of the transmittal by the Clerk of the Board of Supervisors of an action by -the Commission pursuant to Section 17.##.100, or as soon as practicable, the Board of Supervisors shall hold a public hearing thereon, and The Board may adopt, modify or reject the action(s) recommended by the Commission, however, if the owner of the subject property has not provided written

~~consent to the designation prior to the action by the Board~~ if the Board is considering a non-recommendation of the Commission, the historic resource shall not be placed on the Alameda County Register except by unanimous vote~~action by the Board of Supervisors.~~ In the alternative, the Board of Supervisors may refer the proposed action(s) to the Commission for further hearings, consideration or study. ~~The historic resource shall not be placed on the Alameda County Register if the owner does not provide written consent to the designation prior to the action by the Board of Supervisors.~~ Adoption of any inclusion on or deletion from the Alameda County Register shall be made by uncodified ordinance which shall contain findings of fact in support of each designation. The uncodified ordinance shall identify significant feature(s) or characteristic(s) of resources added to the Alameda County Register, and shall identify contributing resources and non-contributing resources in a historic preservation district.

B. Notice of public hearing shall be provided in accordance with Section 17.##.120. In addition, notice shall be published once not less than ten (10) days before the hearing in a newspaper of general circulation.

C. A historic resource placed on the Register shall be subject to the provisions set forth in this chapter.

### **17.##.120 Notice of Public Hearing**

A. Notice of public hearings shall be provided as manner described below:

1. Written notice shall be given not less than ten (10) days prior to the hearing to the following individuals:

a. The owners~~(s)~~ of the nominated resources~~(s)~~ or the owners~~(s)~~ of the listed resource proposed for deletion, as shown on the latest tax roll. In the case of a nomination or proposal for deletion regarding a historic preservation district, the notice shall be provided to all property owners within the proposed district or the district proposed for deletion, as shown on the latest tax roll.

b. Where the resource is proposed for inclusion on, or deletion from the register as a landmark, all property owners within five hundred (500) feet of the resource, as shown on the latest tax roll. In the case of a nomination regarding a historic preservation district, the nomination notice shall be provided to all property owners within the proposed district and to all property owners whose property abuts property proposed for inclusion in the historic preservation district.

c. Anyone who has in writing to the Commission secretary requested notice of the nomination.

2. If designation is initiated by the Commission or Board of Supervisors, notice shall be sent by certified mail to all owners and occupants of the subject property~~s~~(s) at the address shown on the most current property tax roll of Alameda County. Such notice shall be in addition to the requirements outlined in subsections (a), (b) and (c) ~~above of~~ this subparagraph.

3. The County may in its discretion provide additional notice beyond that specified in this section.

B. The form and contents of the public hearing notice must conform to the standards described below:

1. Common address and assessor's parcel number, if any, of the nominated resource or the resource proposed for deletion;
2. A general explanation of the proposed designation or proposed deletion.
3. The date and place of the public hearing or hearings before the Commission.

### **17.##.130 Notice of Action by the Board of Supervisors**

A. Following adoption by the Board of Supervisors of the resolution placing or removing the resource(s) on the Alameda County Register, a copy of the findings shall be sent by first class mail to the owner(s) and occupants of the designated resource(s). Staff shall also notify the Parks, Recreation and Historical Commission and any agency or department of the County requesting such notice.

B. A certified copy of the resolution, a complete legal description of the resource(s), and the effective date of the designation or removal of the resource(s) shall be recorded in the records of the County Recorder. Failure to record with the County Recorder does not invalidate the requirements of this chapter.

C. A disclosure statement, in a form prescribed by the Planning Director, shall be recorded for all historic resources included on the Register. This statement shall be included in any future transfer or sale documents.

### **17.##.140 Frequency of Nominations**

When a nomination for placement of a resource on the register has been denied, no new nomination for placement of the same or substantially the same resource may be filed or submitted for a period of three years from the effective date of the final denial of the nomination, except that an owner of a resource may file a new nomination following the passage of one year from the date of final denial. Where a nomination for deletion of a listed historic resource from the register has been denied, no new application to delete the same listed historic resource may be filed or submitted for a period of one year from the effective date of the final denial.

### **17.##.150 Proposed Demolition or Relocation of Buildings or Structures that are At Least Fifty Years Old**

~~Historical resources are recognized as part of the environment under the California Environmental Quality Act (Public Resources Code Sections 21001(b) and 21084.1 and Title 14, California Code of Regulations Section 15064.5). For environmental review purposes under CEQA, the screening of demolition permit applications is required to identify designated historic properties, and properties with potential historic significance. A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. The fact that a resource is not listed in the National, State or Alameda County Register does not preclude a lead agency~~

DRAFT ORDINANCE AS RECOMMENDED BY THE PLANNING COMMISSION, OCTOBER 17, 2011

from determining whether the resource may be eligible for listing in an historical resource for purposes of this section. The screening of demolition permits shall be conducted as prescribed by this chapter.

A. If a permit is sought to demolish or relocate a building or structure that was constructed at least fifty (50) years prior to the date of application for demolition or relocation, and that building or structure is not currently on the Register, and is not the subject of a pending nomination to the Register, the permit application shall be referred to the Planning Director to allow the director to make a preliminary determination of whether the structure meets the criteria of a landmark. For purposes of this section, a building or structure for which a building permit was issued and construction commenced not less than fifty (50) years prior to the date of application for a demolition or relocation permit shall be ~~considered to have been constructed not less than fifty (50) years ago~~ subject to this Section, regardless of when the construction was completed, and regardless of whether the building or structure was thereafter expanded, modified or otherwise altered. Absent sufficient evidence to the contrary, the date of issuance of the building permit shall be considered to be the date on which construction commenced.

B. A request to demolish a structure over fifty (50) years in age shall be made to the Planning Department through submittal of the prescribed application form accompanied by a non-refundable fee as set forth in the schedule of fees established by resolution of the Board of Supervisors and supporting documentation as determined by the Planning Department.

1. Within forty-five (45) days of receipt of a complete application to demolish or relocate a building or structure as specified under subsection A of this section, the Planning Director shall make a preliminary determination of whether the building or structure is eligible for listing on the Register. In making this preliminary determination, the Planning Director shall apply the eligibility criteria and factors specified in Section 17.##.080. ~~The Planning Director shall find that the building or structure is eligible for consideration for listing on the Register if the director finds that there is a reasonable likelihood that the building or structure will be placed on the Alameda County Register following completion of the notice and hearing requirements of this chapter.~~

2. The Planning Director shall notify the property owner of the preliminary determination by first-class, prepaid mail. Failure of the Planning Director to act within the forty-five (45) day period shall be considered to be a determination that the structure is not eligible for listing on the register. For purposes of this section, the decision shall be considered to have been made on or before the date of mailing of the notice.

3. The effects of the preliminary determination are provided below:

a. If the Planning Director determines that the building or structure is eligible for consideration for listing on the Register, the applicant shall be informed that a certificate of appropriateness is required for such demolition. Review of the proposed demolition shall then proceed according to the certificate of appropriateness review procedures outlined in 17.##.160.

b. If the Planning Director determines that the building or structure is not eligible for listing on the Alameda County Register, the permit to demolish or relocate the building or structure shall be issued without further restrictions under this chapter.

### **17.##.160 Certificate of Appropriateness**

A certificate of appropriateness is required for any alteration, relocation or demolition of a landmark, structure of merit or contributing resource within a historic preservation district. A certificate of appropriateness is also required for new construction on a site occupied by a landmark, structure of merit, contributing resource, or within a historic preservation district. Approval of such work shall be required even if no other permits or entitlements are required by the County. The issuance of a certificate of appropriateness is not required for preventative maintenance or interior work that does not affect the appearance of the exterior. ~~For the purpose of this chapter, "preventative maintenance" means any work, the sole purpose and effect of which is to correct deterioration, decay or damage.~~

### **17.##.170 Certificate of Appropriateness-Application**

The owner or authorized representative shall file an application for a certificate of appropriateness with the Planning Department on forms provided by the department for such purpose. The application shall be accompanied by material required in application forms and a non-refundable filing fee as set forth in the schedule of fees established by resolution of the Board of Supervisors. As soon thereafter as practicable after the application is deemed complete, the application shall be forwarded to the Parks, Recreation and Historical Commission for its review ~~and recommendation~~ at a public hearing.

### **17.##.180 Certificate of Appropriateness-Review Procedures**

~~A.~~ A. The Commission may review and make recommendations ~~shall have the authority to recommend to the Planning Director or designee the approval, approval with conditions, or denial of~~ regarding a filed certificate of appropriateness, except for those projects classified as "small projects" under Section 17.##.200. The required public notice of the Commission hearing on the review and recommendation of a certificate of appropriateness shall be provided according to the provisions outlined in Section 17.##.120. At such hearing, the applicant and other interested parties shall have the right to present evidence regarding the application for the certificate of appropriateness. The Commission may continue the public hearing until its next regular meeting or may defer action after closing the public hearing until its next regular meeting. Final action by the Commission shall not be deferred longer than 90 days after the date on which the ~~public hearing on the certificate of appropriateness was initially held~~ filed.

~~BA.~~ BA. The Commission may recommend approval of the certificate of appropriateness ~~as requested, or recommend approval with changes which may be necessary to enable the applicant to meet the required permit findings,~~ or it may recommend denial of the application. ~~The~~ Any recommendation of the Commission shall be in writing and shall state the findings of fact and reasons relied upon to reach the recommendation, and such recommendation shall be forwarded to the Planning Director.

~~CB.~~ The department director shall act on the certificate of appropriateness application within 105<sup>[AR1]</sup> ~~days~~<sup>[MJ2]</sup> of after the date the certificate of appropriateness was filed. ~~the hearing at which the recommendation was made by the Commission.~~ The decision of the Planning Director shall be final unless appealed as provided for in Section 17.##.250.

### **17.##.190 Certificate of Appropriateness-Permit findings**

The historical resources included in the Register, and resources deemed eligible for inclusion pursuant to criteria set forth in this Chapter, are presumed to be historically or culturally significant, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant.

One or more of the following findings are required for the approval of a certificate of appropriateness:

A. The certificate of appropriateness has been conditioned upon all alterations complying with the Secretary of the Interior's Standards for the Treatment of Historic Properties and the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings, and with the California Historical Building Code and the California Health and Safety Code Section 18950 et seq., as amended, and applied to the project by the Building Official;

B. The proposed alteration, relocation or demolition would not destroy or have a significant adverse affect on the integrity of the designated resource, and the resource will retain the essential elements that make it significant;

C. In the case of any proposed alteration that includes detached new construction on the parcel occupied by the designated landmark, contributing resource or within the historic preservation district, the exterior features of such new construction would not have a significant adverse affect or be incompatible with the exterior features of the designated resource(s).

D. There is no feasible alternative that would avoid the significant adverse affect on the integrity of the designated resource. The owner shall provide facts and substantial evidence demonstrating that there is no feasible alternative to the proposed alteration or demolition that would preserve the integrity of the designated resource. In the case of demolition, up to a six-month waiting period may be imposed by the Board of Supervisors from the date of the Commission hearing at which the Commission recommendation was made.

### **17.##.200 Certificate of Appropriateness-Small Project Review**

A. Applicants may obtain a certificate of appropriateness by going through small project review if the proposed alteration or demolition is determined eligible for such review. After the application for small project review is deemed complete by the Planning Department, the department director or designee shall evaluate the application within ten working days to determine its eligibility for small project review which includes the following:

1A. Demolition or removal of non-contributing features, including, but not limited to, non-contributing additions, garages, accessory structures or incompatible, previously replaced windows, doors or siding material;

2B. Any undertaking that does not change exterior features, including but not limited to, re-roofing if the roofing material is compatible in appearance, color and profile to the existing or original roofing material;

3C. Replacement of windows and doors if the proposed replacements match the existing or original windows and doors;

4D. Addition less than 200 square feet proposed for side or rear elevations; and

5E. Any other undertaking determined by the department director or designee to not materially alter the features or have an adverse effect on the integrity of a landmark.

B.F. If the proposed alteration or demolition meets the small project review eligibility criteria and is deemed to be consistent with the Secretary of the Interior's Standards, the department director or designee may approve the certificate of appropriateness and notify the Commission of such action. If a certificate of appropriateness is granted under small project review, no public hearing shall be required.

C.G. If the proposed alteration or demolition does not meet the small project review eligibility criteria and/or is not consistent with the Secretary of the Interior's Standards, the department director or designee shall forward the application to the Commission for its review and recommendation according to the standard certificate of appropriateness process. No hearing shall be required on the decision by the Planning Director to elevate the review of a certificate of compliance to the Commission, and this decision of the Planning Director shall be final and shall not be subject to appeal.

### **17.##.210 Certificate of Appropriateness-Permit Expiration**

A. Unless extended pursuant to subsection (C) of this section, a certificate of appropriateness for the demolition of a building or structure shall expire at the end of one hundred and eighty (180) days from the date of issuance of the certificate of appropriateness unless a demolition permit or a building permit for the demolition work has been obtained and exercised. For purposes of this section, the term exercised means substantial expenditures in good faith reliance upon the permit. The burden of proof in showing substantial expenditures in good faith reliance upon the permit shall be placed upon the permit holder.

B. Unless extended pursuant to subsection (C) of this section, a certificate of appropriateness for other than a demolition shall expire at the end of three years from the date of issuance unless a building permit has been obtained and exercised for the project or, if no building permit is required for the work, the work has physically commenced. For purposes of this section, the term "exercised" means substantial expenditures in good faith reliance upon the building permit. The burden of proof in showing substantial expenditures in good faith reliance upon the building permit shall be placed upon the permit holder.

C. Applications for extensions shall be handled in the manner described below:

1. Except as provided in subsection (C)(2) of this section, one or more extensions of a certificate of appropriateness may be granted for a cumulative total extension period of five years upon application to the Planning Director filed no later than thirty (30) days prior to expiration. The application for extension of a certificate of appropriateness shall be subject to staff review under the general direction of the Planning Director.

2. A certificate of appropriateness for the demolition of a building or structure may be extended for a period of up to an additional forty-five (45) days upon application to the Planning Director filed no later than thirty (30) days prior to expiration. The application for extension of a certificate of appropriateness shall be subject to staff review under the general direction of the Planning Director or his or her designee.

D. An application for a modification to a final approval of a certificate of appropriateness application or a condition of approval of a certificate of appropriateness application shall be heard and/or considered in the same manner and by the same body as the original certificate of appropriateness application.

#### **17.##.220 Certificate of Appropriateness-Permit Revocation**

The Planning Director or designee may, in writing, revoke a certificate of appropriateness for reasons of 1) non-compliance with any terms or conditions of the certificate of appropriateness; or 2) finding of fraud or misrepresentation used in the process of obtaining the certificate of appropriateness.

#### **17.##.230 Notification by the Building Official**

The building official shall forward to the Planning Department all applications for permits or other entitlements in which all or part of the work to be performed thereunder is subject to the review of the Commission or Planning Department.

#### **17.##.240 County Projects**

A. Except as provided ~~hereinbelow~~, the provisions of this chapter requiring hearing(s) before the Commission or Planning Department shall apply to development projects involving, or requests for demolition or relocation of, landmarks, structures of merit or contributing resources which are owned by the County, including public projects within the Alameda County national historic landmark, historic preservation district; provided that the Commission or Planning Department shall make a recommendation to the County Board of Supervisors or other County decision-making body, entity or person, rather than issuing a decision. When acting on County projects, the Board of Supervisors or other County decision-making body, entity or person shall apply the same standards, and make the same findings, required by this chapter for private projects.

B. The Board of Supervisors may, by resolution or ordinance, exempt from review by the Planning Department or Commission individual County projects or categories of County projects.

#### **17.##.250 Appeals**

A. Any interested person who is dissatisfied by the decision of the department director ~~their designee or the Parks, Recreation and Historical Commission~~ may appeal the determination to the Board of Supervisors. Appeals shall be submitted in writing not more than 10 days following the date the action was taken by the ~~department director, their designee, or the Commission.~~ The appeal may be taken by any property owner or other person aggrieved ~~or by an officer, department, or Board or Commission affected~~ by the order within a said ten-day period, by filing with the Clerk of the Board of Supervisors a

notice of appeal that specifying the grounds for such appeal. The appellant shall pay a nonrefundable filing fee as set forth in the schedule of fees established by resolution of the Board of Supervisors.

B. The Board of Supervisors shall give written notice of the time and place for hearing any appeal. Such notice may be published and shall be given to the applicant, to the appellant, to the agency which made the order appealed, and to any other persons requesting such notice and depositing with the Clerk of the Board a self-addressed, stamped envelope to be used for this purpose

C. Within 30 days of the notice to appeal, or as soon thereafter as is practicable, the Board of Supervisors shall hold a hearing on the appeal and shall sustain, modify or overrule any order brought before it pursuant to subsection A of this chapter.

### **17.##.260 Dangerous Buildings and Immediately Dangerous Buildings, Structures or Resources**

The building official shall notify the Planning Director upon designation of any listed historic resource or any nominated resource as a substandard, dangerous, or immediately dangerous building, structure or resource.

### **17.##.270 Demolition and Abatement —Listed Historic Resources**

A. The provisions of this chapter shall not be construed to regulate, restrict, limit or modify the authority of the County and the building official or his or her designee(s) as specified below, to issue demolition or other permits under the building code set forth in Title 15 of this code for the abatement of any nominated resource or any listed historic resource determined to be immediately dangerous, and a threat to public health and safety.

B. Only such work that has been found reasonably necessary as determined by the County's building official to correct the unsafe or dangerous condition may be performed pursuant to this subsection.

### **17.##.280 Dangerous Buildings-Deletion from Register**

A. When an individually listed resource on the Register, or portion thereof, has been lawfully demolished, removed or disturbed pursuant to any provisions of this chapter, the Clerk of the Board upon notice from the Planning Director, shall cause the resource, or portion thereof, to be deleted from the Register. Upon deletion, the provisions of this chapter shall not be considered to encumber any remaining property on which the resource was located. Landmark(s) in which a majority of the significant feature(s) and characteristic(s) are destroyed by natural disaster(s), acts of God or other similar events not attributable to the willful or intentional action of the owner or owner's agent, shall be considered lawfully demolished, removed or disturbed for the purposes of this section.

B. When a listed historic resource in a historic district, or portion thereof, has been lawfully demolished, removed or disturbed pursuant to any provisions of this chapter, the Clerk of the Board upon notice from the Planning Director, shall cause such listed historic resource, or portion thereof, to be downgraded to a noncontributing resource in the historic district. Listed historic resource(s) in a historic district in which a majority of the significant feature(s) and characteristic(s) are destroyed by natural disaster(s), acts of God

or other similar events not attributable to the willful or intentional action of the owner or owner's agent shall be considered lawfully demolished, removed or disturbed for the purposes of this section.

**17.##.290 Preservation Incentives**

In order to further the goal of historic preservation in Alameda County and the purposes of this Chapter, the Commission shall develop economic and other incentive programs to support the preservation, maintenance, and appropriate rehabilitation of designated Landmarks and recommend to the Board of Supervisors the adoption and implementation of such programs.

**17.##.300 California State Historical Building Code**

The building official is authorized to use and shall use the California Historical Building Code for projects involving landmarks and contributing resources. The Parks, Recreation and Historical Commission and the Planning Director are authorized to and shall utilize the California Historical Building Code for preservation projects.

**17.##.310 Mills Act Contracts**

A. Mills Act (California Govt. Code §§ 50280, et seq.) contracts granting property tax relief shall be made available by the County only to owners of properties listed in the Alameda County Register (either as landmarks or as contributing resources within historic preservation districts), as well as properties located within the County that are listed in: the National Register of Historic Places (either as individual listings or as contributing properties within National Register historic preservation districts); or the California Register of Historical Places. Such owners may qualify for property tax relief if they pledge to rehabilitate and maintain the historical and architectural character of the property for a minimum ten-year period. Properties that have been previously listed on the above-mentioned register(s), but that have been removed from the register(s) and are no longer listed, shall not be eligible for a Mills Act contract with the County.

B. Mills Act contracts shall be made available pursuant to California law. The Planning Department shall make available appropriate Mills Act application materials.

C. Mills Act contract applications shall be made to the Planning Department, who shall, within sixty (60) days of receipt of a completed application, prepare and make recommendations on the contents of the contract for consideration by the Board of Supervisors. A fee for the application, to cover all or portions of the costs of the preparation of the contract in the amounts set by Board of Supervisors resolution may be charged.

D. The Board of Supervisors shall, in public hearing, resolve to approve, approve with conditions, or deny the proposed contract. Should the Board of Supervisors fail to act on the proposed contract within one year of its receipt of the proposal, the proposal shall be deemed denied.

E. A Mills Act contract application that has failed to be approved by the Board of Supervisors cannot be resubmitted for one year from the date of County Board of Supervisors action, or where the Board of

Supervisors fails to take action, within one year from the date that the application is deemed denied pursuant to Subsection D above.

### **17.##.320 Other Government-Sponsored Incentive Programs**

The County shall make available information to owners of historic resources information about local, State, and Federal incentives programs.

### **17.##.330 Minimum Maintenance Requirements**

A. The owner, lessee or other person legally in possession of a listed historic resource shall comply with all applicable codes, laws and regulations governing the maintenance of property. Every historic resource shall be maintained in good repair by the owner or such other person who has legal possession or control thereof, in order to preserve the historic resource against decay and deterioration to the greatest extent practicable. It is the intent of this section to preserve from deliberate or inadvertent neglect the exterior features of listed historic resources and the interior portions thereof when such maintenance is necessary to prevent deterioration and decay of the exterior. Listed historic resources shall be preserved against such decay and deterioration and shall remain free from structural defects through prompt corrections of any of the following defects:

1. Façades that may fall and injure members of the public or damage property;
2. Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports;
3. Members of ceilings, roofs, ceiling and roof supports or other horizontal members which sag, split or buckle due to defective material or deterioration;
4. Deteriorated, crumbling or loose exterior plaster.
5. Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations or floors, including broken windows or doors;
6. Defective or insufficient weather protection for exterior wall covering, including lack of paint or other protective covering;
7. Any fault or defect in the building which renders it structurally unsafe or not properly watertight.

B. If the Commission has reason to believe that a historic resource is being neglected and subject to damage from weather or vandalism, the Commission shall direct the Planning Department to meet with the owner or other person having legal custody and control of the resource and to discuss with them the ways to improve the condition of the property. If no attempt or insufficient effort is made to correct any noted conditions thereafter, the Commission may, at a noticed public hearing, make a formal request that the Planning Department or other appropriate department or agency take action to require corrections of defects in the subject resource in order that such resource may be preserved in accordance with this article.

**17.##.340 Enforcement and Penalties**

The code enforcement manager and building official, and designees, are hereby authorized to enforce the provisions of this chapter, and, in addition to all other powers available to them in the enforcement of this chapter. The County Counsel is authorized to take such legal actions as are lawfully available. A certificate of appropriateness shall not be issued for the demolition of a historic resource because of the failure of the owner to comply with the provisions of this section.

A. No person shall cause, willfully or otherwise, by action or inaction, alteration of, environmental change to, damage to or demolition of any significant feature(s) or characteristic(s) of a landmark or all or portion of a historic preservation district, or other listed historic resource, or National Register resource or California Register resource without first having obtained a proper County authorization for same.

B. Any person who violates a requirement of this chapter or fails to obey an order issued by the Commission or comply with a condition of approval of any certificate or permit issued under this chapter shall be guilty of a misdemeanor.

C. For purposes of this chapter, each daily violation shall be considered a new and separate offense.

D. Any alteration or demolition of a historic resource in violation of this chapter is expressly declared to be a nuisance and shall be abated by restoring or reconstructing the property to its original condition prior to the violation. Any person or entity that demolishes or substantially alters or causes substantial alteration or demolition of a structure, in violation of the provisions of this chapter, shall be liable for a civil penalty.

E. Alteration or demolition of a historic resource in violation of this chapter shall authorize the County to issue a temporary moratorium for the development of the subject property for a period not to exceed twenty-four months from the date the County becomes aware of the alteration or demolition in violation of this chapter. The purpose of the moratorium is to provide the County an opportunity to study and determine appropriate mitigation measures for the alteration or removal of the historic resource, and to ensure measures are incorporated into any future development plans and approvals for the subject property. Mitigation measures as determined by the Planning Department and Commission shall be imposed as a condition of any subsequent permit for development of the subject property.

F. In the case of demolition, the civil penalty shall be equal to one-half the assessed value of the historic resource prior to the demolition. In the case of alteration, the civil penalty shall be equal to one-half the cost of restoration of the altered portion of the historic resource. Once the civil penalty has been paid, building and construction permits and/or a certificate of occupancy may be issued.

G. The County Counsel may maintain an action for injunctive relief to restrain a violation or cause, where possible, the complete or partial restoration, reconstruction or replacement of any structure demolished, partially demolished, altered or partially altered in violation of this chapter.

**17.##.350 Additional Penalties**

The penalties provided for in this chapter are designated as non-exclusive, and are in addition to any other remedies the County may have.

**17.##.360 General Provisions**

Judicial review of any final decision under this chapter shall be filed within thirty (30) days of the date of the decision, and review shall be pursuant to Section 1094.5 of the Code of Civil Procedure.

**17.##.370 Fees**

The Board of Supervisors may, by resolution, establish the fee(s) for submission of the nomination, and all other applications and submissions made pursuant to this chapter. In the absence of a Board of Supervisors resolution, the Planning Department may establish the fee and charge schedule.

**17.##.380 County Code References**

All references in this chapter to sections of this code shall incorporate those sections as such sections may be amended from time to time.

**17.##.390 Severability**

Should any section or other portion of this chapter be determined to be unlawful or unenforceable by a court of competent jurisdiction, the remaining section(s) and portion(s) of this chapter shall be considered severable and shall remain in full force and effect.

**17.##.400 Other laws**

There are many other laws, regulations and ordinance that apply to land use, development, and construction activities. The provisions of this Historic Preservation Ordinance are intended to be in addition to and not in conflict with these other laws, regulations and ordinances. If any provision of this Historic Preservation Ordinance conflicts with any duly adopted and valid statutes of the federal or state government of the State of California, the federal and state statutes shall take precedence.

**PROPOSED REVISIONS TO CHAPTER 17.20, “HP DISTRICTS”**

**17.20.040 Requirements**

In order to be classified in the HP district, at least part of the property or one of the structures on the property must be:

- A. Listed on the Alameda County Register, or otherwise specifically recognized by the Alameda County General Plan; or
- B. Designated a Point of Historic Interest or State Historical Landmark, or be eligible for or listed on the National Register of Historic Places, California Register of Historical Resources, or some state or federal inventory of historical resources; or
- C. Of special importance due to its historical association, basic architectural merit, its embodiment of a style or special type of construction, or other special character, interest, or value.

In addition, establishment of any HP district, and regulations adopted therein, shall be consistent with Section 17.20.010, Intent.

**17.20.060 Procedure—Referral to Parks, Recreation and Historical Commission**

The petition for reclassification or the land use and development plan shall be referred to the County Parks, Recreation, and Historical Commission for recommendation. The recommendation shall include a determination as to whether or not the property meets the requirements of Section 17.20.040, whether or not reclassification to an HP district is an appropriate means of preserving the property, and whether or not the proposed uses and any proposed alterations to the property are detrimental to its historical value. The Parks, Recreation, and Historical Commission may also make recommendations to the Planning Commission as to appropriate modifications in the proposal, including the boundaries of the district. The Parks, Recreation, and Historical Commission review shall be completed and transmitted to the Planning Commission within sixty (60) days of receipt, or such longer time as may be agreed to by the Planning Commission, or the above determination shall be made by the Planning Commission.

**PROPOSED REVISIONS TO CHAPTER 2.86, “PARKS, RECREATION AND HISTORICAL COMMISSION”**

**2.86.020 Commissioners—Terms, Appointment, Qualifications**

A. The Commission shall consist of nine (9) members appointed by the Board of Supervisors. The Supervisor representing District 5 shall appoint one representative and the Supervisors representing Districts 1, 2, 3, and 4 shall appoint two representatives each. The current fifteen member Board shall transition to a nine member Board by attrition, or by action taken by the Board of Supervisors. A nine member body shall be in place by 2012.

B. The members of the Commission shall be residents of the County.

C. Each member of the Commission shall have demonstrated interest and experience in either historical preservation or recreation.

1. At least two Commission members are encouraged to be appointed from among professionals in the disciplines of history, architecture, architectural history, Planning, pre-historic and historic archeology, folklore, cultural anthropology, curation, conservation, and landscape architecture or related disciplines, such as American studies, American civilization, engineering, or cultural geography, to the extent that such professionals are available in the community.

2. Commission membership may also include lay members who have demonstrated special interests, knowledge, or competence in historic preservation.

**2.86.021 Board—Term of Office, Vacancies**

The members of the Commission shall serve at the pleasure of the Board of Supervisors and shall have terms of four years. Their terms shall be staggered so that no more than four terms expire in any one year, and so that no supervisor makes more than one appointment in one year, except to fill an unexpired vacancy. No one member shall serve more than three successive four-year terms. Any vacancy on the Commission shall be filled by the Board of Supervisors; persons appointed to fill vacancies shall serve for the unexpired term of the persons they succeed. The Board of Supervisors shall act within sixty (60) days to fill a vacancy.

**2.86.070 Commission—Duties and Powers**

In addition to those responsibilities conferred to it within Title 17 of the Alameda County Ordinance Code, the powers and duties of the Commission shall be to:

A. Participate in historic preservation activities in the County, and to ensure that all historical resources are recognized as such;

B. Assist in the coordination of the activities of the various local and regional park districts and departments to provide a balanced park and recreation program in the County and to avoid unnecessary duplication of facilities;

- C. Foster public participation in matters pertaining to historic preservation and recreation;
- D. Coordinate with, and make recommendations to, other governmental agencies regarding historic preservation and recreation matters;
- E. Conduct studies and surveys of historic properties in the unincorporated areas of Alameda County;
- F. Provide to the Board of Supervisors recommendations regarding the acquisition, preservation, public display, and disposition of sites, buildings, documents and artifacts pertaining to the historical and cultural heritage of Alameda County;
- G. Support, initiate or collaborate with other organizations to promote and enhance knowledge of the history and cultural heritage of Alameda County;
- H. Review all requests for historical zoning and advise the Planning Commission and the Board of Supervisors as to the historical significance of the property in question. On request, it shall advise other public agencies and private groups as to the historical significance of properties in the County;
- I. Review and make recommendations on land development applications for properties located within "HP", Historic Preservation Districts;
- J. Review nominations for inclusion and proposals for deletion from the Alameda County Register of Historic Resources;
- K. Compile, maintain and update information in the Alameda County Register of Historic Resources;
- L. Review and make recommendations on certificates of appropriateness;
- M. Maintain a directory of parks and historical resources located within the County;
- N. Review all legislation relative to historical resources and report its recommendations to the Board of Supervisors. The Commission also may take its own stand supporting or opposing legislation.
- O. Review and advise the Board of Supervisors, or other appropriate agency, regarding all requests for County funds for parks, historical facilities or programs. The Commission shall advise the Board of Supervisors on distribution of other funds which are available to the County, including bond act funds. The Commission also shall assist the coordination of applications for funding from others sources, such as the land and water conservation fund, between the various local, regional and County agencies, and shall advise the Board of Supervisors as to interest of the County affected by the dispersal of any such funds;
- P. Advise the County on reviews called for under the California Environmental Quality Act, National Environmental Protection Act, and National Historic Preservation Act on actions affecting historic resources in Alameda County;
- Q. Make recommendations to the Board of Supervisors, the Planning Commission, County departments, or any other entity, for purposes of providing historic preservation incentives, including, without

limitation, procedural, economic and tax incentives, acquisition of property, development rights, preservation easements, conservation easements, land use, zoning, development restrictions, penalties and sanctions, fee adjustments, and negotiated settlements;

R. Assume duties assigned to the Commission by the Board of Supervisors pursuant to the certified local government provisions of the National Historic Preservation Act of 1966, or duties that may be assigned to the Commission through any agreement(s) approved by the Board of Supervisors. This shall include undertaking review and comment upon those projects on which the County, as a certified local government, has an obligation or opportunity to provide review and comment under the National Historic Preservation Act, including but not limited to private and public projects undertaken within Alameda County involving one or more landmarks or historic preservation districts;

S. Review applications for Mills Act contracts;

T. Foster and promote the preservation of historic records;

U. Adopt a historic preservation plan or element; and

V. Carry out any other duties dealing with historical resources, recreation and parks in the County which the Board of Supervisors may from time to time assign to it.