

**DATE:** January 28, 2010  
**TO:** Planning Commission  
**FROM:** Planning Manager  
**SUBJECT:** Historic Preservation Program

## **RECOMMENDATION**

That the Planning Commission reads and comments on this report.

## **SUMMARY**

This report outlines the core elements of the proposed Historic Preservation Plan to be presented for adoption by the Planning Commission and the City Council in early 2010. These elements include 1) the historic resources inventory, 2) the Historic Context Statement, 3) recommendations for amendments to the City's Historic Preservation Ordinance, 4) goals and objectives for historic preservation, and 5) incentives to encourage historic preservation. Circa, the City's consultant, has prepared the first three elements; staff has prepared the other two. Staff desires to receive input from the Planning Commission on all four elements to guide the development of the final Preservation Plan.

## **BACKGROUND**

In January of 2009, the City Council indicated that work on the City's Historic Preservation Ordinance was a priority, as it has been for several years, particularly related to *Land Use and Sustainability* priorities. On April 15, 2008, the City Council approved the selection of *Circa: Historic Property Development (Circa)*, to perform an historic resources inventory, to be accompanied by the Historic Context Statement (see draft statement, Attachment IV), and recommendations for amendments to the City's Historic Preservation Ordinance. Circa is preparing the final Context Statement and has completed the field work to support the draft survey/inventory.

The focus survey area (Attachment I) includes the Downtown historic core and its environs; this area contains by far the greatest concentration of Hayward's historic resources. This survey will assist in establishing a basis for identifying historic resources throughout the City. The Historic Context Statement will identify the significant periods of Hayward's historical development by which decisions about identification, evaluation, registration, and treatment of historic properties

can be made. In addition to identification of individual structures and sites, Circa has made recommendations regarding the establishment of historic districts.

Staff has also developed 1) a set of goals and objectives for approaching historic preservation in community planning and economic development; and 2) specific incentives to be considered to encourage historic preservation. Development of incentives will be relevant to encouraging property owners to allow their properties to be designated as historic sites. These items, along with Circa's contributions, will become part of the City's Preservation Plan. This Plan will provide Hayward with a "tool box" for preservation planning containing:

- Information on the merits of historic preservation;
- Background information relating to the physical character of the environment, its history, historic contexts and themes, historic/cultural resources, and past and current preservation activities;
- Preservation issues identified by the general public and government officials during the public meeting process;
- Preservation opportunities/resources available to individuals, organizations, and government agencies to further the goals and policies identified in the plan;
- Historic preservation vision statement and community preservation goals;
- Implementation strategies for preservation goals; and
- Provisions for periodic review and update.

## DISCUSSION

*Historic Resources Survey* – A historic resources survey is a process of systematically identifying, researching and documenting properties that reflect important themes in the City's growth and development, such as architecture, city planning, social history, ethnic heritage, politics, industry, transportation, commerce, entertainment, and others. Historic resources include buildings, structures, objects, cultural landscapes, natural features, and groupings of resources or areas that may be ripe for establishment of historic districts.

A survey typically begins with background research on the area to provide a basis to evaluate significance. A professional consultant, with the help of volunteers, then conducts field inspections to identify the resource's architectural, physical, and visual qualities and characteristics; assess the impacts of changes or alterations; and document overall condition through photography. These field inspections assess the exterior of resources and are conducted from the public right-of-way. Survey teams do not need to obtain access to private property, nor do they ask questions of property owners or residents.

Individual resources and districts are evaluated for significance in accordance with criteria established for listing in the National Register of Historic Places and the California Register of Historical Resources, as well as for local designation such as City Historic Structures, Sites or Districts; or Historic Preservation Overlay Zones (historic districts). Survey results (see sample page at Attachment III) identify resources eligible for designation as well as those that do not meet criteria for designation.

It is important to state that, although surveys identify and evaluate resources that may be eligible for designation, no actual designation results directly from survey activity. Designation by the City of Hayward and nominations to the California or National Registers are separate processes that include property owner notification and public hearings. However, it is also important to note that historic resources are protected under the California Environmental Quality Act (CEQA), whether or not they are officially designated in the City's register of historic places. This survey is a starting point for the creation of a local register of historic places and for the treatment of such resources in future planning and development efforts.

While the Preservation Plan, including the Historic Context Statements (Attachment IV), incorporates the City as a whole, the survey primarily covered the Focus Survey Area (Attachment I) and identified resources dating before approximately 1959; approximately 3,800 properties in this area were surveyed. This period encompasses the earliest remaining built resources in Hayward and ensures that, when the project is completed, resources generally 50 years of age or older have been surveyed. This survey is not intended to be an exhaustive survey of all potential resources within the current City of Hayward boundaries, since it was determined that the concentration of structures built prior to 1946 and the integrity of those structures as historic resources throughout the remainder of the City is quite low, the best use of consultant resources would be served by conducting a more-detailed survey in what was the extent of pre-war Hayward. The Preservation Plan will provide a "tool-box" that will enable City staff to evaluate other properties as necessary throughout the City.

Circa has recorded the survey results in an Excel spreadsheet (see sample page at Attachment III) and documented the appropriate information on the State Department of Recreation Historic Resources Inventory forms, in accordance with the procedures established by the State Office of Historic Preservation. Copies of these forms will be sent to the State Office of Historic Preservation. Information on surveyed properties will be accessible from the Planning Division and the City web site. Circa developed a scale of integrity, specific to Hayward's historic resources, that is indicated on the survey forms by H (High), M (Moderate) or L (Low), as follows:

High - Properties that exhibit an excellent degree of integrity of design, materials, feeling, workmanship, and setting. Such properties retain, to a high degree, original materials and features including exterior siding and window materials, architectural detailing and stylistic features. Their general setting and physical context is intact. These properties may have modest alterations or additions that have had little impact on the historic integrity of the property. Approximately 185 structures were found to have a High level of integrity. These resources would likely be the best candidates for Hayward's list of historic resources.

Moderate - Properties that exhibit a moderate degree of integrity of design, materials, feeling, workmanship and setting. Such properties retain approximately 50% or more of the building's original materials and features including one or more of the following: exterior siding and window materials, architectural detailing and stylistic features. Their general setting and physical context is intact. These properties may have alterations or additions but the general form, massing and original stylistic features of the property – the basic elements that allow it to

communicate its historic character - remain intact. Approximately 500 structures were found to have a Medium level of integrity.

Low - Properties that exhibit a low or negligible degree of integrity of design, materials, feeling workmanship and setting. Properties with low integrity are properties with two or more of the following: removal and replacement of original windows with modern sash (vinyl or aluminum, usually), complete siding replacement, significant alterations to the setting/physical context and/or notably incompatible or out of scale additions. Approximately 620 structures were found to have a Low level of integrity.

The undertaking of a citywide survey provides a great deal of information for property owners and agencies regarding proper preservation planning and methodologies. The following recommendations are respectfully submitted for follow-up action in future years:

- Evaluate the three potential historic districts: this requires further research, expansion or reduction of proposed district boundaries and completion of district records. Due to age and local interest it may be best to prioritize the district evaluation and begin with the Upper B Street neighborhood first.
- In 5-10 years, a range of new properties will be over 50 years old. Conduct a supplementary survey to identify and evaluate structures, sites and objects not evaluated in this survey because they did not yet meet the age requirement. This will require special consideration regarding the evaluation of subdivisions built during the 1950s and later.

Historic Districts – While completing the survey, it became clear that there were several areas where a concentration of potential resources was located. Survey and evaluation identified three potential historic districts within the City of Hayward. An historic district “possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development”. All three of the potential historic districts possess a high level of physical integrity of a certain architectural style(s), period, and historic context to warrant further investigation.

As of the writing of this report the potential historic districts include Upper B Street, Prospect Hill, and Lower B Street. Circa believes that it is important for the City to first work toward designation of the Upper B Street district as it contains the City’s foremost concentration of historic resources and could be subject to degradation due to changes to its contributing resources. Further research and investigation is necessary to confirm boundaries and historic association of all three districts. Circa will be finalizing the boundaries of the Upper B Street District as part of its scope of work. However, additional staff and/or consultant resources will be necessary to do so for the Prospect Hill and Lower B Street Districts.

Historic Preservation Ordinance – The City of Hayward desires to provide its property owners and citizens with local legislation that reflects the values and commitment of the community regarding historic preservation. To that end, clear and precise direction must be provided in the form of zoning and ordinances that communicate this information. Regarding preservation practices, the Historic Context Statement, City-wide Survey, Preservation Ordinance, and, if added, the Historic Element

of the General Plan, provide what is referred to as a "preservation tool kit". This "tool kit" must be concise and coherent, useful, and fair.

The National Trust for Historic Preservation describes the importance of local legislation:

Preservation ordinances are local laws through which owners of historic properties are usually prohibited from demolishing their property, or making major alterations to it, without local government approval. Such restrictions are comparable to the many zoning and housing subdivision regulations in place across the country. While restrictions in preservation ordinances are imposed primarily to protect a community's heritage, they often protect homes and businesses against the devaluing effects of unsightly or inappropriate development on nearby properties.

A preservation ordinance can protect individual landmarks only, entire historic districts, or both landmarks and districts. To ensure that new buildings blend in with their older neighbors, preservation ordinances typically regulate the design of new construction as well as changes to existing structures.

The authority to regulate private property through historic preservation and land-use laws, such as the Zoning Ordinance, is derived from the states' police powers. Virtually every state has delegated these powers to the local governments in their jurisdictions and empowered them to regulate development affecting historic sites.

The City of Hayward adopted an Historic Preservation Ordinance (Chapter 10, Article 11 of the Municipal Code) in 1989 (Attachment VI). Circa recommends that Hayward update its Ordinance to address the following:

- the review of development projects and building permit applications for potential impacts on historical resources;
- the means for reviewing the alteration or modification of potential historical and designated historical resources;
- the procedures for reviewing requests for demolition of potential historical and designated historical resources; and
- provisions for the use of incentives of designated historical resources.

Historic Preservation Incentives – Economic incentives foster the preservation of residential neighborhoods and the revitalization of downtown commercial districts. A wide variety of local, state and federal incentives are available for property owners who appropriately repair and rehabilitate historical resources, rather than turn to demolition and new construction. The use of any incentive that involves City resources would first be brought back to the City Council to analyze its benefits and costs.

Local Incentives – Local governments throughout California can preserve and promote their historic and cultural properties by providing financial incentives and removing disincentives to encourage owners to rehabilitate their buildings. Potential incentives include waiving or reducing building permit fees, waivers for zoning and parking requirements, low interest loans, grants, tax

breaks, and special assessment districts to generate funds. The formation of historic residential districts such as Historic Preservation Overlay Zones (HPOZs) has been proven to create economic value in neighborhoods.

The Hayward Area Historical Society is an important component in the protection and preservation of the area's architectural legacy and cultural history. The Society provides educational programs, tours, lectures, and workshops on history, architecture, and the benefits of historic preservation. Assistance may be available to help building owners restore their historic properties with consultation and referral services. A neighborhood website may provide area contacts, services, and guidance for preservation, rehabilitation, and maintenance projects. Advocacy to save endangered buildings may include purchasing neglected properties and returning them to productive use. Such programs may involve grant programs for low-income homeowners.

Mills Act Property Tax Abatement Program - The Mills Act Property Tax Abatement Program is the single most important preservation incentive program in California for the restoration and preservation of qualified historic buildings by private property owners. Enacted in 1972, the Mills Act legislation grants participating local governments (cities and counties) the authority to enter into contracts with owners of qualified historic properties when those owners actively participate in the restoration and maintenance of their historic properties while receiving property tax relief. Each jurisdiction individually determines the criteria and requirements for participation.

The Mills Act allows local governments to design preservation programs to accommodate specific community needs and priorities for rehabilitating entire neighborhoods, encouraging seismic safety programs, contributing to affordable housing, promoting heritage tourism, or fostering pride of ownership. Local governments have adopted the Mills Act because they recognize the economic benefits of conserving resources and reinvestment as well as the important role historic preservation can play in revitalizing older areas, creating cultural tourism, building civic pride, and retaining the sense of place and continuity with the community's past.

A qualified historic property is a property listed on any federal, state, county, or city register, including the National Register of Historic Places, California Register of Historical Resources, California Historical Landmarks, State Points of Historical Interest, and locally designated landmarks. Owner-occupied family residences and income-producing commercial properties may qualify for the Mills Act program, subject to local regulations.

A formal agreement, generally known as a Mills Act or Historical Property Contract, is executed between the local government and the property owner for a minimum ten-year term. Contracts are automatically renewed each year and are transferred to new owners when the property is sold. Property owners agree to restore, maintain, and protect the property in accordance with specific historic preservation standards and conditions identified in the contract. Periodic inspections by city or county officials ensure proper maintenance of the property. Local authorities may impose penalties for breach of contract or failure to protect the historic property. Mills Act contracts stay with the property when transferred. Subsequent owners are bound by the contract and have the same rights and obligations as the original owner who entered into the contract. The Mills Act program is especially beneficial for recent buyers of historic properties and for current owners of

historic buildings who have made major improvements to their properties.

Mills Act participants may realize substantial property tax savings of between 40% and 60% each year for newly improved or purchased older properties because valuations of Mills Act properties are determined by the Income Approach, rather than by the standard Market Approach. The income approach, divided by a capitalization rate, determines the assessed value of the property. In general, the income of an owner-occupied property is based on comparable rents for similar properties in the area, while the income amount on a commercial property is based on actual rent received. Because rental values vary from area to area, actual property savings vary from county to county. In addition, as County Assessors are required to assess all properties annually, Mills Act properties may realize slight increases in property taxes each year. The State Board of Equalization has provided guidelines for county assessors for use in assessing properties under the Mills Act.

State Historical Building Code - One of California's most valuable tools for the preservation of historic resources is California's State Historical Building Code (SHBC). The SHBC protects California's architectural heritage by recognizing the unique construction problems inherent in historic buildings and offering an alternative code to deal with these problems. The SHBC provides alternative building regulations for the rehabilitation, preservation, restoration, or relocation of structures designated as historic buildings. SHBC regulations are intended to facilitate restoration or accommodate change of occupancy so as to preserve a historic structure's original or restored architectural elements and features.

While the Code provides for a cost-effective approach to preservation, it also provides for occupant safety, encourages energy conservation, and facilitates access for people with disabilities. The SHBC recognizes and endorses the need – on a case by case basis – to find and adopt reasonable alternative or reasonable levels of equivalency for situations where strict compliance with established statutes or regulations would negatively affect an historic resource's historic appearance or jeopardize its economic viability.

Planning and Zoning Incentives - Local municipal codes and ordinances can provide incentives to preserving and protecting historic properties within a community. Historic preservation ordinances, planning and zoning variances, and exceptions can all recognize the importance of protecting historic resources while providing leeway in modern code requirements and developmental pressures. It should also be noted that all qualifying historic properties may implement the alternative measures provided under the California Historical Building Code.

Planning, zoning, and construction incentives can streamline the permitting process and provide flexibility in meeting zoning and building code requirements for adaptive reuse projects that convert underutilized commercial buildings into more productive uses such as loft type residential uses. Potential incentives include:

- Waiver, reduction, or reasonable alternatives to parking requirements;
- Civil penalties to any person or entity who fails to maintain any qualified historic building;
- Exclusion of basement and attics from floor area ratio calculations;
- Transfer of development rights;
- Density or floor area bonuses;

- Coordination between city agencies to guide, assist and facilitate the adaptive reuse implementation through a project facilitating team that help the project through design, permitting and construction processes;
- Many non-compliant site conditions such as building height, parking, floor area and setbacks may be permitted without requiring a variance;
- Residential density requirement may be waived;
- Construction guidelines may provide some flexibility in meeting structural and fire and life safety compliance requirements; and
- Conversion of existing buildings to privately-owned residential use may not necessarily trigger disabled access requirements in the residential use area, however disabled access would still be required in areas used by employees and that are open to the general public.

Federal Rehabilitation Tax Credits - The Federal Historic Preservation Tax Incentives program is one of the nation's most successful and cost-effective community revitalization programs. The program fosters private sector rehabilitation of historic buildings and promotes economic revitalization. It also provides a strong alternative to government ownership and management of such historic properties. The Federal Historic Preservation Tax Incentives are available for buildings that are National Historic Landmarks, that are listed in the National Register, and that contribute to National Register Historic Districts and certain local historic districts. Properties must be income-producing and must be rehabilitated according to standards set by the Secretary of the Interior.

The Historic Preservation Tax Incentives have proven an invaluable tool in revitalizing communities and preserving the historic places that give cities their special character. The Incentives generate jobs, both during the construction phase and in the spin-off effects of increased earning and consumption. Rehabilitation of historic buildings attracts new private investment to the historic core of cities and is crucial to the long-term economic health of many communities. Enhanced property values generated by the incentives program result in augmented revenues for local government through increased property, business and income taxes. Historic Preservation Tax Incentives also create moderate- and low-income housing in historic buildings. The various financial incentives may be used together to minimize rehabilitation costs. In California, the Mills Act can be linked with federal tax incentives provided by the Tax Reform Act of 1986. Federal affordable housing tax credits may also be used with these incentives.

Current tax incentives for preservation, established by the Tax Reform Act of 1986, include:

- 1) A 20% tax credit for the certified rehabilitation of certified historic structures. The credit is available for properties rehabilitated for commercial, industrial, agricultural, or rental residential purposes, but it is not available for properties used exclusively as the owner's private residence. A certified historic structure is a building that is listed individually in the National Register of Historic Places or a building that is located in a registered historic district and certified by the National Park Service as contributing to the historic significance of that district. A certified rehabilitation is a rehabilitation of a certified historic structure that is approved by the NPS as being consistent with the historic character of the property and, where applicable, the district in which it is located. The NPS assumes that some alteration of the historic building will occur to provide for an efficient use. However, the

project must not damage, destroy, or cover materials or features, whether interior or exterior, that help define the building's historic character. Commercial properties that retain a high level of integrity could be good candidates for this program.

- 2) A 10% tax credit for the rehabilitation of non-historic, non-residential buildings built before 1936.

A tax credit differs from an income tax deduction. An income tax deduction lowers the amount of income subject to taxation. A tax credit, however, offsets the amount of tax owed. In general, a dollar of tax credit offsets the amount of income tax owed by one dollar.

Historic Preservation Issues, Goals, Objectives, and Actions – The commitment to a broad historic preservation program is expressed by its goals. Staff proposes the issues, goals, objectives, and actions, as shown in Attachment V, be considered as part of the Preservation Plan. These goals are ambitious and seek to maximize the City's exposure to historic preservation benefits. The issues that drive the goals are 1) a comprehensive planning vision for Hayward; 2) historic resource identification and designation; 3) the legal basis for historic preservation in Hayward; 4) coordinating zoning, land use, and growth management; 5) defining public-sector responsibilities; 6) incentives for historic preservation; 7) marketing Hayward; and 8) the relationship between preservation and education. Staff would appreciate comments from the Commission regarding these issues and goals.

The City's General Plan will likely be subject to an update beginning 2012. While some of the action items may be enacted prior to the update, it is recommended that a new Historic Element be developed to contain the following:

- Design guidelines for contextual infill projects (new construction in an historic district or adjacent to an historical resource).
- Incentives for Historic Preservation: Promote the protection of historic properties through utilization of incentives, because listed historic structures and districts raise property values and improve the character of the community.
- Develop property owner assistance strategies: Investigate funding sources for the preservation of historic properties as well as available tax-incentive programs, to include the Federal Tax Credit for Historic Properties and the Mills Act.
- Preservation Education: Educate property owners on appropriate rehabilitation procedures. Make information about the Secretary of the Interior's Standards, design review, incentives for historic preservation, and other related programs available to property owners.

## **ECONOMIC IMPACT**

There is broad agreement that the benefits of historic preservation outweigh the costs. More specifically, the economic costs of preservation are outweighed by the benefits – both economic and cultural – of a robust historic preservation sector. It has been demonstrated time and again that individual historic preservation projects are, under certain conditions, comparable economically to

projects involving new construction—in other words, preservation can pay. New construction is not necessarily less expensive or more profitable than rehabilitation. “If no demolition is required, a major commercial rehabilitation will probably cost from 12 percent less to 9 percent more than the cost of comparable new construction with the typical building cost saving being about 4 percent. On the other hand, if new construction requires incurring the costs of razing an existing building, the cost savings from rehabilitation should range from 3 percent to 16 percent.”<sup>1</sup>

Perhaps the most-often asked economic question regarding historic preservation is whether the designation and public regulation of historic districts and landmarks increases or decreases the economic value of the properties designated. The economics literature clearly comes down in favor of a positive effect of historic districting on property values. Virtually every analysis that has been done on the economic impact of historic district protection has indicated that values have maintained at worst, and usually are enhanced, because of historic district status.

Another important set of questions relates to the effects of historic preservation as an economic development tool. Does public policy stimulating or investing in historic preservation yield positive fiscal benefits for the public sector? Such questions are often approached by performing economic impact studies. The question posed by economic impact studies is what effect investment in historic preservation activity has on the economy of a particular region. In other words, these studies ask the question, “Does preservation pay?” on more than a project-by-project basis. A significant number of these studies have been undertaken across the U.S., and the answer to this question is a resounding “yes” – historic preservation yields significant benefits to the economy.

## **FISCAL IMPACT**

Certain Historic Preservation Incentives and Actions may present fiscal impacts to the City, which may or may not be offset by the overall economic benefits. Further information will be provided prior to adoption of specific incentives or action programs.

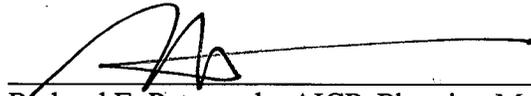
## **NEXT STEPS**

It is anticipated that a public meeting to unveil the survey and to present the elements of the Preservation Plan contained herein will be held in January and February 2010. Public hearings before the Planning Commission and the City Council are anticipated to be held in March and April, respectively.

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<sup>1</sup> *Donovan Rypkema: The Economics of Rehabilitation (1991)*

Prepared and Recommended by:



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Attachments:

Attachment A - Focus Survey Area Map – Parcels by Year Developed

Attachment B - City Map – Parcels by Year Developed

Attachment C - Sample Survey Results Page

Attachment D - Draft Historic Context Statements

Attachment E - Issues, Goals, Objectives and Actions

Attachment F - Current Historic Preservation Ordinance