



## Memo

DATE: JANUARY 25, 2018  
TO: REGULATORY SUBCOMMITTEE | HISTORIC PRESERVATION TASK FORCE  
FROM: WILL COOK, ASSOCIATE GENERAL COUNSEL  
RE: EXAMPLES OF PRESERVATION LAWS THAT EMPLOY TIERED DESIGNATION & REVIEW

For purposes of this preliminary summary, “tiered” designations are ones based on levels of historic significance that bear a direct relationship on the level of scrutiny applied to proposed demolitions or alterations. Tiers may also correspond to different types of regulation applied by a historic preservation commission depending on the characteristics of a particular historic district. In general, tiered designations are designed to promote flexibility in a preservation commission’s application of preservation regulations.<sup>1</sup> Representative examples of tiered approaches follow below. They do not include assessments about their effectiveness or success in application.

### Federal “Tiering”

As a threshold matter, federal law employs tiered review to the extent that there is a heightened duty to avoid harm to National Historic Landmarks pursuant to Section 110(f) of the National Historic Preservation Act, as opposed to the more flexible standard applied to properties listed or eligible for listing in the National Register of Historic Places which is the avoid, minimize, or mitigate adverse effects.

### United Kingdom

On the international level, England employs a National Heritage List, the official register of all nationally protected historic buildings and sites, scheduled monuments, protected wrecks, “heritage areas” such as registered parks and gardens, and battlefields. These resources are assigned “grades”—Grade I (“exceptional interest,” 2.5% of listings, few of which are homes), Grade II\* (“particularly important interest,” approximately 5.8%), and Grade II (“special interest,” approximately 92%)—based on their level of historic significance. England, Northern Ireland, and Scotland also have locally listed buildings—Grade A, B, or C, which likewise correspond to a resource’s level of significance. In general, the higher the grade, the higher degree of scrutiny applied to proposed alterations by the U.K. equivalent of a local historic preservation commission in consultation with national authorities. Stated another way, changes to Grade I buildings (and World Heritage Sites) should be “wholly exceptional” versus changes to Grade II buildings, which must be “exceptional.” Administration of the

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<sup>1</sup> Conservation districts that do not correspond to traditional forms of historic preservation regulation exceed the scope of this memorandum. Please note, however, that conservation districts could be used in tandem with traditional forms of historic preservation regulation to address different types of resources.

program, however, is highly nuanced. For example, the distinction between grades comes with a strong proviso. Listed buildings are listed for various reasons, and significance lies in different areas of their fabric, design, and associations. Furthermore, any proposed alterations are considered in the context of justification for the change and any concurrent heritage benefits. Thus, this might mean that proposed changes are unacceptable for a Grade II building, but might be permitted for a Grade I building. For example, removal of good 1930s paneling in a 1930s Grade II house may be considered more harmful than the loss of 1930s paneling in an 18<sup>th</sup>-century Grade I-listed house. For this reason, it is difficult to make definitive statements about it being easier to alter buildings of a lower grade.

### Ontario, CA

Ontario has a tier system that ranks historic resources based on their significance. The system is divided into three levels. When a historic district meets the criteria for a certain tier, a contributing structure within that district may also be considered as part of that tier as determined by the Historic Preservation Commission. For example, upon satisfaction of various criteria related to architecture and history, Tier I consists of properties which should not be demolished or significantly altered under any circumstance. Tier I properties represent the highest level of significance for historic or cultural properties. Tier II properties consist of properties where demolition should be avoided. In addition to satisfying additional criteria related to architecture and history, these include properties listed or eligible for listing in the National Register of Historic Places or California Register of Historic Resources, as well as properties listed in the City's List of Eligible Historical Resources. Tier III properties include those properties recognized as Designated Historic Landmarks by the Historic Preservation Commission. Demolition of these properties should be avoided where possible, but may be appropriate under certain circumstances.

### Palm Springs, CA

The City Council may designate historic sites or districts according to three classifications. Class 1 structures and sites—which qualify for local designation and may qualify for federal, state, or county designation—may not be modified nor objects removed without the approval of city council. Class 2 structures and sites—which qualify for local designation and may qualify for federal, state, or county designation—are eligible for receiving a plaque, but this classification is intended for use when the site is not occupied by a modern structure or use which is different than that of the historical period, or if the structure is not usable, nonconforming, or unrestorable. Class 3 structures and sites are those constructed before 1969 or where a construction date cannot be confirmed. Class 3 structures and sites are entitled to a 6-month stay of demolition, including an option by the historic preservation commission to reclassify the resource as Class 1 or Class 2.

### San Francisco, CA

San Francisco rates buildings according to five categories according to a Building Rating methodology determined by the "Preservation of the Past" section of the Downtown Plan, a component of the city's General Plan. These categories affect review of proposed alterations, demolition, and eligibility for the city's TDR program. The five categories are as follows:

- (a) Significant Buildings - Category I. Buildings that:
  - (1) Are at least 40 years old; and
  - (2) Are judged to be Buildings of Individual Importance; and

(3) Are rated Excellent in Architectural Design or are rated Very Good in both Architectural Design and Relationship to the Environment.

(b) Significant Buildings - Category II. Buildings

(1) That meet the standards in Section (a) above; and

(2) To which, because of their depth and relationship to other structures, it is feasible to add different and higher replacement structures or additions to height at the rear of the structure, even if visible when viewing the principal facades, without affecting their architectural quality or relationship to the environment and without affecting the appearance of the retained portions as separate structures when viewing the principal facades. The designation of Category II Buildings shall identify for each building the portion of the building beyond which such additions may be permitted.

(c) Contributory Buildings - Category III. Buildings that:

(1) Are located outside a designated Conservation District; and

(2) Are at least 40 years old; and

(3) Are judged to be Buildings of Individual Importance; and

(4) Are rated either Very Good in Architectural Design or Excellent or Very Good in Relationship to the Environment.

(d) Contributory Buildings - Category IV. Buildings that:

(1) Are located in a designated Conservation District; and

(2) Are at least 40 years old; and

(3) Are judged to be Buildings of Individual Importance, and are rated either Very Good in Architectural Design or Excellent or Very Good in Relationship to the Environment.

(4) Are judged to be Buildings of Contextual Importance and are rated Very Good in Architectural Design and/or Excellent or Very Good in Relationship to the Environment.

(e) Unrated Buildings - Category V. Buildings that are not designated as Significant or Contributory.

### Aspen, CO

Aspen has two historic preservation programs, Aspen Victorian and Aspen Modern (representing the two main time periods of historic development). Aspen Modern is a voluntary historic designation program, unlike Aspen Victorian, which resembles a traditional historic district model. Once a property is placed on the Aspen Modern map (1940s to 1970s), the regulations allow for a 120-day negotiation period between the city and the property owner about the potential benefits of seeking historic designation, including transferable development rights, but the owner can ask that his or her property be taken off the map for 10 years. Aspen Modern buildings do not require a certain age for listing, but may include a variety of criteria for inclusion on the inventory map, such as its design or connection to a specific person. No change is permitted during the negotiation period. Once a property is listed on either inventory, tailored standards and guidelines apply, depending on whether the building is listed as Aspen Victorian or Aspen Modern.

### St. Augustine, FL

St. Augustine recognizes properties that are local landmarks and/or listed on the NR (individual or contributing) with a higher level of scrutiny for demolition review. The city is currently working on a preservation master plan that makes a recommendation to consider properties with the following approach:

- Local: Historic district significant, historic district contributing, historic district non-contributing, landmark.
- NR: Historic district contributing, non-contributing, individually designated.

### St. Paul, MN

Although not stated expressly in the local ordinance, St. Paul has an example where a flexible approach to designation and preservation has been implemented. The Dayton's Bluff Historic District was established by local ordinance in 1992 and did not meet criteria for listing in the National Register of Historic places. However, citizens and planning staff recognized the social and economic characteristics of the neighborhood and developed local guidelines that didn't fully adopt the Secretary of the Interior Standards (such as when and how vinyl siding can be approved and used). This approach differs from other local St. Paul historic districts that are also listed in or certified for listing in the National Register.

### Charleston, SC

Charleston's historic preservation commission employs slightly different review standards depending on whether historic properties are located in the Old and Historic District, Old City District, or Historic Corridor District. Historic resources are also graded Category 1, 2, 3, and 4 on the city's Inventory Map. The Old and Historic District corresponds to the boundaries of the Charleston Historic District, a National Historic Landmark. The Old City District extends beyond the NHL district, but for the most part corresponds to an expanded National Register district boundary expansion. If a property is located in the NHL district (Old and Historic District), nothing visible from a public right-of-way may be altered or erected unless the Board of Architectural Review grants a Certificate of Appropriateness. No structure in the Old City District or Historic Corridor District—if older than 100 years old or listed in Categories 1, 2, 3, and 4 on the Inventory Map—may be altered without BAR approval. Noncontributing properties, therefore, do not require review. If a building in these two districts is 50 years old or listed in Categories 1, 2, 3, or 4 on the Inventory Map, then no change may take place unless the BAR acts or the period of postponement expires.

### Columbia, SC

Columbia has three categories of resources: landmark, architectural conservation districts, and design protection areas. Columbia's Historic Preservation Division has responsibility for approving Certificates of Design Approvals for alterations to historic buildings of sites. A separate design review process for Columbia's historic and design districts is administered by the Design/Development Review Commission and the design review staff. Secretary of the Interior Standards apply to landmark reviews only. Columbia also employs a Buildings and Sites List that groups properties according to three groups. Group I listings include structures or site that represent material visual history and are either rare, exemplary, or of national importance, and which require conservation and restoration on original sites. Group II listings include structures or sites which constitute a delineation of Columbia's visual history to a lesser degree than those of Group I, but are not necessarily unique or may have local importance only. Where at all possible, Group II resources "should be preserved on their original sites," possibly by "adaptive reuse." Group III consists of structures which "round out and extend" the material-visual history of Columbia when added to Groups I and II, and represent characteristics that are "interesting locally," "somewhat unusual," or "mediocre" but in danger of becoming extinct locally, or "too decrepit or destructively

modified to constitute a prime historic document.” If possible, Group III resources should be preserved by “adaptive reuse, although not necessarily on their original sites.”

### Chicago, IL

Chicago employs a type of color-coded tiering that corresponds to zoning and the city’s demolition delay ordinance. Completed in 1995, the Chicago Historic Resources Survey (CHRS) was an over decade-long research effort to survey of all of Chicago’s buildings, objects, structures, and sites constructed in the city prior to 1940. The survey identified approximately 9,900 properties that were considered to have some historic or architectural importance. A color-coded ranking system was used to identify historic and architectural significance relative to age, degree of external physical integrity, and level of possible significance. Buildings and structures coded “red” or “orange” (unless designated as a Chicago Landmark or located within a Chicago Landmark District) are subject to the City of Chicago’s Demolition Delay Ordinance. “Red” buildings and structures possess some architectural feature or historical association that made them potentially significant in the broader context of the City of Chicago, the State of Illinois, or the United States of America. About 300 properties are categorized as "Red" in the CHRS. “Orange” properties possess some architectural feature or historical association that made them potentially significant in the context of the surrounding community. About 9,600 properties are categorized as "Orange" in the CHRS.

The Demolition-Delay Ordinance, adopted by City Council in 2003, establishes a hold of up to 90 days in the issuance of any demolition permit for certain historic buildings in order that the Department of Planning and Development can explore options, as appropriate, to preserve the building, including but not limited to landmark designation. The ordinance applies to buildings rated “red” and “orange” in the Chicago Historic Resources Survey. These buildings are designated on the city's zoning map. The delay period starts at the time the permit application is presented to the department’s Historic Preservation Division offices and can be extended beyond the original 90 days by mutual agreement with the applicant. The purpose of the ordinance is to ensure that no important historic resource can be demolished without consideration as to whether it should and can be preserved.

### New Orleans, LA

New Orleans employs a complex “Building Ratings Guide.” Ratings correspond to the historical or architectural significance of properties and determine what will be permitted within local historic districts or at local landmarks. Categories include buildings of national importance, buildings of major architectural importance, buildings of architectural importance, important buildings that have been altered, buildings that contribute to the scene, and unrated buildings. Buildings are professionally ranked according to historic significance in three categories: (1) Significant (resources that are of national importance or major state, regional, or local significance and which retain the highest degree of architectural and historical merit), (2) Contributing (resources which are integral components of the city because they are historically or architecturally significant), or (3) Non-Contributing (resources which are not historically or architecturally significant).

### Dallas & Ft. Worth, TX

The cities of Dallas and Fort Worth each have one or more areas designated as “demolition delay” areas, which apply to old structures that have not been formally designated as historic

landmarks by the passage of an ordinance by the city council. In addition, Dallas has passed a separate ordinance for each landmark and district, and these ordinances are custom-tailored to the landmark or district. Some ordinances are quite lengthy and detailed. For example, the ordinance for the Swiss Avenue Historic District is much more demanding than the ordinance for the Tenth Street Historic District. Thus, each (or almost each) district's ordinance is different, but it is not formally a "tiered approach."