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# MAYOR & COUNCIL MEMORANDUM

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August 5, 2015

Subject: Discussion of Alternative Options for Historic Landmark Designations (City Wide)

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Issue – The preservation of properties of exceptional historical significance can help people to connect with the history of their community and illustrate the local significance of events or persons associated with the property, its architectural type or style, or information potential. Many cities have a process for locally designating Historic Landmarks in order to recognize and protect the subject properties. The current process for designation of Historic Landmarks in the City of Tucson is through a rezoning process following the same standard steps as other rezonings. Staff has been directed by Mayor and Council to do research and identify possible alternatives to the current process.

City Manager's Office Recommendation – It is recommended that the Mayor & Council direct staff as follows: (1) during the initiation of a Historic Landmark designation through a change in zoning, staff will focus on the eligibility criteria and not land use, and (2) that the Zoning Examiner, in reviewing the change in zoning, will provide separate findings regarding designation eligibility and the land use impacts of the designation. It is also recommended that a separate procedure be created under which an applicant who prefers to have a property designated as a Historic Landmark through self-imposed deed restrictions can do so by using a staff-designed model deed restriction that defines required processes for design reviews and demolition reviews which are parallel to those required for Historic Landmarks designated through changes in zoning. This option will be available only to properties that meet the same eligibility criteria for Historic Landmarks created through changes in zoning, and use of this model deed restriction will be a condition for official Mayor & Council designation of the Historic Landmark. Approval of both these options will create two possible paths for designation which have the same criteria for historic significance and the same types of protection.

Background – On March 18, 2014, Mayor and Council adopted Ordinance No. 11150 to streamline the administrative process of designating Historic Landmarks. The Valley of the Moon was the first designation request submitted under the new process. Mayor and Council adopted the Valley of the Moon Historic Landmark Designation on May 19, 2015. Mayor and Council held a study session on April 7, 2015 to discuss the Historic Landmark Ordinance. Mayor and Council directed staff to return in 90 days to allow alternatives to the current ordinance to be explored.

Present Consideration – Staff has completed a comparative analysis of the local Historic Landmark designation process employed by major cities in Arizona, including Phoenix, Tempe, Mesa, and Flagstaff. Comparable cities in the greater Southwest were also analyzed, including Albuquerque, NM, Santa Fe, NM, El Paso, TX, San Antonio, TX, Salt Lake City, UT, Denver, CO and Boulder, CO. Among the evaluated cities, Historic Landmark designations are usually processed by changes of zoning that add regulatory protections, including overlay zonings, or less often by honorific/non-regulatory recognitions. In Tucson, overlay zoning and other types of changes in zoning (rezonings) are the available processes for City Historic Landmark designations.

In all of the cities included in the comparative analysis, procedures for approving landmark designations involve specific steps. Potential landmarks are assessed and reviewed for compliance with eligibility criteria. Local governments often designate landmark status through the passage of an ordinance. A comparison of the Historic Landmark designation processes among the cities included in the analysis can be reviewed in Attachment A: Comparison of Historic Landmark Designation Process.

In Tucson, a property owner can submit an application to nominate a property for historic designation. Once the application is received, the process includes: 1) Completeness and eligibility review by city staff and the Tucson-Pima County Historic Commission (T-PCHC) Plans Review Subcommittee (PRS) to determine whether the application is complete and meets the criteria, which includes listing, or eligibility for listing, in the National Register of Historic Places; 2) Mayor and Council review recommendations from staff and T-PCHC PRS and decide to initiate the change of zoning process; 3) Submittal of a rezoning application and a public hearing before the Zoning Examiner on the merits of the application and recommendation to Mayor and Council; and, 4) consideration by Mayor and Council. As a rezoning, the public hearing before the Zoning Examiner must be scheduled no later than 70 days after the Historic Landmark rezoning application is submitted. As was seen in the case of the Valley of the Moon, providing meaningful public input can extend the time required for the Zoning Examiner to prepare a recommendation to Mayor and Council.

Most cities in Arizona, like Tempe and Mesa, consult with the Arizona State Historic Preservation Office and ensure that the nominated local historic landmark is eligible for individual listing in the National Historic Register of Historic Places. Tucson has 94 properties individually listed in the National Register, which—like National Register Historic Districts—are non-regulatory designations on private properties. Five of Tucson’s National Register Districts are also designated as City Historic Preservation Zones and five properties are designated as City Historic Landmarks, which are regulatory designations tied to the zoning code. Through the authority of the City of Tucson zoning code, local designations of Historic Preservation Zones and Historic Landmarks provide regulatory protections for historic properties. Most other cities in Arizona also designate local historic zones (sometimes called districts) and historic landmarks through changes in zoning. Those vary in scale from one city to another, although most cities do not set standards for the scale of a historic zone. Many Arizona cities have designated local preservation zones and historic landmarks on top of National Register Historic Districts and individually listed National Register properties. However, the boundaries of a National Register Historic District and a local preservation zone are not always congruent.

In the Arizona cities, the process used to designate a landmark is a change in zoning, which by state statute requires notification to surrounding property owners and opportunities for public input. In Tucson, the Zoning Examiner holds a public hearing for the Historic Landmark designation like all other changes in zoning. Public notification and participation take place in all the cities, and Tucson, Mesa, Flagstaff, and Salt Lake City also hold a neighborhood meeting prior to the public hearing. Tucson, Tempe, Mesa, Flagstaff, and Salt Lake City also allow the public to formally file a protest against the proposed change in zoning for historic landmark designation.

Review authorities for changes in zoning provide recommendations to the applicable city councils prior to final public hearings and actions. The types of reviewing authorities vary by city. In Tucson, the Zoning Examiner is the reviewing authority, whereas some cities use their Planning and Zoning Commission, and in the smallest communities the elected city councils or county

boards conduct the reviews and hold the hearings for changes in zoning themselves. In Arizona, the state delegates authority for zoning changes to local governing bodies, which may choose to have an intermediate hearing officer (like our Zoning Examiner) or to serve in that role themselves. Recommendations by review authorities may include conditions for the applicant to address before any subsequent review. Some examples of conditions are sound mitigation or limitations on hours of operation.

Honorific/non-regulatory designation is the recognition of the landmark with available financial incentive benefits and does not create regulations requiring design review of alterations/additions or approval of demolition. A change of zoning is an amendment to the map and/or text of a zoning ordinance to effect a change in the zoning district. The City of Tucson Historic Landmark Designation does not change the permitted uses of the underlying zone. The process of overlay zoning is added to the underlying zoning of a specific property. The zoning classification for applicable properties is updated in city records. The legislative body adopts a set of findings intended to protect certain critical features and resources in addition to the adopted ordinance.

Other possible paths to protection for a Historic Landmark include a deed restriction or conveyance of a conservation easement to the City or another entity. Those paths will not provide protections that are enforceable through the authority of the zoning code. However, it would be possible for City staff to track deed restrictions and conservation easements and withhold demolition or building permits on historic properties without evidence of releases from deed restrictions or conservation easements, or approvals through accepted review processes.

The City can design a model deed restriction and/or a model conservation easement that define a required design review process, including directing that reviews be conducted by the Plans Review Subcommittee of the Tucson-Pima County Historical Commission (parallel to the design review process for Historic Landmarks designated through changes in zoning), and stipulating that national historic preservation standards will be applied during design reviews. The model deed restriction and/or easement could also stipulate that permits for demolitions and partial demolitions of landmarked historic properties would be subject to the same review process and approval criteria as apply to Historic Landmarks designated through changes in zoning. Use of the City's eligibility criteria for zoning-protected Historic Landmarks and use of the model deed restriction/easement could be a requirement for eligibility for official Historic Landmark recognition by the City.

Summary of Recommended Options--To further streamline our current Historic Landmark rezoning designation process, Mayor and Council can initiate a text amendment to the Unified Development Code, providing that during the initiation of a Historic Landmark designation, reviewing staff will focus on the eligibility criteria and not land use; and direct that the Zoning Examiner provide separate findings regarding designation eligibility and the land use impacts of the requested zoning designation. This approach would not remove the requirement for public notification and public hearings, or preclude the public from raising land use issues, but those issues would be addressed separately in the Zoning Examiner recommendations to Mayor and Council. Additionally, the Mayor and Council could direct the Zoning Examiner to limit findings regarding land use in Historic Landmark rezonings to the land use impacts that might result from the Historic Landmark rezoning itself, rather than reviewing and reporting on pre-existing land use issues.

The other paths to protection such as deed restrictions or conservation easements would provide honorary recognition with no requirements for public notification or input. However, the same eligibility criteria and protections could apply if the city withheld permits for exterior alterations, additions, and demolitions on properties 1) designated and registered as historic landmarks by the Mayor and Council and 2) which have recorded deed restrictions or conservation easements, unless it is provided evidence of releases from deed restrictions or conservation easements, or approvals through accepted review processes. Application of the same designation criteria and review processes as apply to Historic Landmarks created through rezonings could be conditions included in model deed restrictions and conservation easements required to be used for this path to designation. This route to Historic Landmark designation would be less expensive and quicker to achieve the same goals. City staff monitoring of a relatively limited list of historic landmarks designated through this alternative path is possible by flagging in the City computer system (GIS and PRO). It would have much more than honorific protection, and be almost as effective as rezoning, without the associated statutory process required for rezonings.

Plan Tucson Considerations – This item relates to the Element of *Tourism & Quality of Life*. Specifically, this item is supported by the following policy:

TQ4 - Promote and preserve Tucson's cultural heritage and historic resources, including archaeology, architecture, performance, art, landmarks, and events.

Financial Considerations – N/A

Operating Cost and Maintenance Input – N/A

Legal Considerations – The City Attorney's Office has approved this memorandum.

Respectfully submitted,



Albert Elias  
Assistant City Manager

ED/JM/ah  
PLANNING AND DEVELOPMENT SERVICES DEPARTMENT

Attachment:  
A - Comparison of Historic Landmark Designation Process

# Comparison of Historic Landmark Designation Process

Attachment A

	Tucson, AZ	Phoenix, AZ	Tempe, AZ	Mesa, AZ	Flagstaff, AZ	Albuquerque, NM	Santa Fe, NM	El Paso, TX	San Antonio, TX	Salt Lake, UT	Denver, CO	Boulder, CO
<b>Designation Process</b>												
Honorific Recognition	-	-	-	-	-	✓	✓	-	-	-	✓	✓
Change of Zoning	✓	*	-	✓ <sup>1st</sup>	*	-	-	-	✓	-	-	-
Overlay Zoning	✓	✓	✓	✓ <sup>2nd</sup>	✓	-	-	✓	-	✓	-	-
<b>Eligibility Criteria</b>												
Exceptional Significance	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Listed on National Register	✓	-	✓	✓	-	✓	✓	✓	✓	✓	-	-
Only Within Historic District	-	✓	-	-	✓	-	-	-	-	-	-	-
<b>Initiation</b>												
Property Owner	✓	✓	✓	✓	✓	✓	-	✓	✓	✓	✓	✓
Council or Commission	✓	✓	✓	-	✓	✓	-	✓	✓	✓	✓	✓
Public	-	-	-	-	-	-	-	✓	✓	-	✓	-
<b>Submittal Requirement</b>												
Preliminary Assessment with Staff	✓	✓	✓	✓	✓	✓	-	✓	-	✓	✓	✓
Inventory & Survey Packet	✓	✓	-	-	-	-	-	-	✓	✓	-	✓
Address Conditions from Reviews	✓	-	✓	✓	✓	✓	-	-	-	✓	-	-
<b>Public Notification and Participation</b>												
Notice within X feet	300	600	300	500	300	300	100	200	200	-	-	500
File a Protest	✓		✓	✓	✓	-	-	-	-	✓	-	-
Neighborhood Meeting	✓	-	-	✓	✓	-	-	-	-	✓	-	-
<b>Reviews and Recommendations</b>												
Area Committee	-	✓	-	-	-	-	-	-	-	-	-	-
Historic Commission <sup>PH</sup>	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Hearing Officer <sup>PH</sup>	✓	*	-	-	-	-	-	-	-	-	-	-
Planning and Zoning Commission <sup>PH</sup>	-	✓	✓	✓	✓	-	-	✓	✓	✓	-	-
City Council <sup>PH</sup>	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
<b>Final Action</b>												
Adopt Ordinance	✓	✓	✓	✓	✓	✓	-	✓	✓	-	✓	✓
Adopt Set of Findings	✓	✓	-	-	-	✓	-	-	-	-	-	✓
Update Zoning Classification	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	-	-
Referenced Code	Unified Dev. Code <a href="#">Section 5.8</a>	Zoning Ordinance <a href="#">Chapter 8</a>	City Code <a href="#">Chapter 14A</a>	Zoning Ordinance <a href="#">Chapter 23 and 74</a>	City Code <a href="#">10-30.30.040</a>	Code of Ordinances <a href="#">14-12-7</a>	Land Development <a href="#">Article 14-5.2 (L)</a>	Code of Ordinances <a href="#">Chapter 20.20</a>	Unified Dev. Code <a href="#">Article VI</a>	City Code <a href="#">21A.34.020</a>	Municipal Code <a href="#">Chapter 30</a>	Municipal Code <a href="#">9-11-3</a>

<sup>PH</sup> - Public Hearing

\* - Change of Zoning occurs in prior process, i.e. Establishing a Historic District.