



**City Process of Changing a Historic District
Contributing Structure to Non-contributing**
by Council Member Chris Wharton - November 2023

**1. What is the current process for changing a contributing structure to non-contributing?
Does the proposed text amendment to the ordinance change that?**

There are currently two ways the historic status (contributing or noncontributing) of a structure could be changed and the proposal maintains these two options. I've discussed these in more detail below:

- **Historic Status Determinations:** This process is for individual properties in certain circumstances. The current process to verify the historic status (for properties that were inadvertently missed) or change the historic status of an individual structure in certain circumstances from contributing to non-contributing (or vice versa) is done with an administrative interpretation in accordance with the procedures in Chapter 21A.12. The zoning administrator is currently authorized to render interpretations of the provisions of title 21A and of any rule or regulation issued pursuant to it. A contributing/non-contributing status determination primarily deals with analysis of the historical record, and therefore, the historical record constrains this type of determination. The proposal does not change this; it mirrors it and codifies the process as well as the specific considerations that are looked at with this type of interpretation.
- **Updates to Historic Surveys:** This process is for re-surveying all the properties within a local historic district. All of the city's local historic districts have associated historic resource surveys at the reconnaissance level. As a best practice and consistent with policies outlined in the City's adopted Community Preservation Plan, surveys should be updated every 5-10 years; the proposed text amendment essentially puts this process into our zoning ordinance.

There are generally two types of historic resource surveys the city deals with, Reconnaissance level survey and Intensive level survey. Reconnaissance level is a broad-brush look at a study area to indicate what is potentially historic. This type of survey is designed for dealing with large groups of buildings rather than for single sites. Intensive level surveys are a deeper dive into the history of the property and its owners, and in-depth documentation of the property's physical appearance over time. Both of these surveys are conducted in line with the Utah State Historic Preservation Office requirements and guidelines.

Historic resource surveys provide an understanding of which properties should be protected and how to incorporate preservation goals into community planning efforts. A survey generally consists of a written report summarizing the history, development patterns, physical character of the study area along with an inventory of all properties and a historic status rating (contributing or noncontributing) for each property accompanied by maps, photographs and recommendations. The survey will also identify periods of significance for the district –anything outside of the identified period of significance is rated as out of period which is noncontributing. Current survey information is needed to capture changes within the district and allow for the continuing evaluation (and modification if necessary) of district boundaries and lists of contributing structures over time.

Accurate information on properties and districts helps ensure that the time and resources of the historic preservation program are efficiently and directed to the appropriate locations. Surveys should be updated periodically to address new properties that may now be considered contributing due to their age (generally 50 years or older). Updates to historic resource surveys could also expand the period of significance and therefore, it's possible that some properties that were rated out of period (which is noncontributing) in a previous survey could become contributing if their construction date falls within the expanded period of significance, the structure retains historic integrity, and an update to the survey is adopted by the city council.

In the proposed text amendment, updates to historic resource surveys would be a city council level decision and would have a public process leading up to City council decision with public hearings with the planning commission and the historic landmark commission.

Any structures that are changing historic status from a previous survey are to be clearly identified in the updated survey report for the city council's consideration. It's important to note that updates to a historic survey cannot change the existing boundaries of a local historic district –that can only be done with an amendment; but a survey update could inform future proposed boundary changes.

*The period of significance is the period when the historic events associated with the district occurred. This period must reflect the dates associated with the collection of properties within the district. There may be multiple periods of significance associated with a local historic district.

Is there currently any notification requirement for demolition of a non-contributing structure? Yes, notice of demolition of a noncontributing building currently requires a notification period of 12 days and notice is within 85 FT. The proposal maintains the 12-day noticing period but the current distance is not consistent with any of our noticing distances so the proposal is to notice abutting properties, and properties across the street (which is probably very similar to properties that would be noticed with 85 FT anyway).

What is new with the proposal is the information that is required to be in the notice which includes a vicinity map, photograph, date of construction, historic status of property, where the application can be inspected by the public and the date when the planning director will issue a certificate of appropriateness for demolition.

Do you have an estimate of how many non-contributing structures have been demolished in the past few years? From 2020-current, 11 Certificates of Appropriateness have been issued for demolition of noncontributing buildings.

Related notes: The standards for a certificate of appropriateness and in some cases the process, differs between contributing buildings and noncontributing buildings. The demolition of noncontributing buildings is currently an administrative review and decision process, and the proposal does not change that.

Noncontributing buildings do not contribute to the local historic district meaning these structures do not retain historic integrity as defined by the national park service, and major character defining features have been so altered as to make the historic form, materials or details indistinguishable and such alterations are irreversible.

Noncontributing structures may also include those rated out of period (generally less than 50 years old), and therefore, they are not representative of a period of significance in a historic resource survey. Certainly, there is value in existing noncontributing buildings, as well as older buildings outside of our historic districts and there is currently a text amendment in process to offer zoning incentives for adaptive reuse and preservation of existing building.

Regulating noncontributing and contributing buildings the same way under the H Historic Preservation Overlay standards is not appropriate since one of the goals of the overlay standards is to preserve historically contributing buildings. The standards for alterations of a contributing building are meant to encourage the beneficial use of the building while protecting the building's contributing status. Regulations for noncontributing buildings are really about compatibility with the historic district/historic context since the building itself isn't historically contributing in terms of the overlay standards.

Although the state regulations are separate from city zoning regulations, it's important to note that noncontributing buildings are also not eligible for historic tax credits.

by Council Member Chris Wharton - November 2023



COUNCIL STAFF REPORT

CITY COUNCIL of SALT LAKE CITY

TO: City Council Members

FROM: Brian Fullmer
Policy Analyst

DATE: November 14, 2023

**RE: Text Amendment Related to Historic Preservation Overlay District
PLNPCM2023-00123**

Item Schedule:

Briefing: October 17, 2023
Set Date: October 17, 2023
Public Hearing: November 7, 2023
Potential Action: November 14, 2023

BRIEFING UPDATE

One person spoke during the November 7, 2023 public hearing noting the robust public process for identifying building status in historic districts during building surveys. The proposal does not include an opportunity for public input if a building's status is changed from contributory to non-contributory. The commenter requested that the City require some notification of proposals to change a building's status.

The Council closed the public hearing and deferred action to a future meeting.

The following information was provided for the Council briefing and public hearing. It is included again for background purposes.

BRIEFING UPDATE

During the October 17, 2023 briefing Council Members expressed general support for the proposed text amendment and removing unnecessary barriers to the public for minor modifications.

Under the proposal certificates of appropriateness could be denied at the staff level. Planning staff noted that a property owner who did not agree with the denial could appeal the decision to the City's Appeals Hearing Officer.

When asked about protections for non-contributing structures that still add character to a neighborhood, Planning explained that if alterations which rendered the building non-contributing can be removed, there



Consideration 1 – Historic Resource Survey Updates

Each local historic district in the city has an associated historic resource survey which summarizes the study area and includes an inventory of each property, along with its contributory/non-contributory status. The Community Preservation Plan has policies to update resource surveys every 5-10 years. The proposed text amendment includes putting this process into the zoning ordinance. Updates to historic resource surveys would then be a decision made by the City Council, with public hearings at the Historic Landmark Commission and Planning Commission.

The City will soon issue a request for proposals to contract with consultants who will update several historic resource surveys. Surveys are more useful the more current they are. Time, maintenance, and changes to properties can impact the historic integrity of a property and whether its contributory status should be updated.

Consideration 2 – Historic Status Determinations

The proposed text amendment includes a process and standards for historic status determinations. The Zoning Administrator has authority to interpret zoning code standards and has issued historic status determinations for individual properties when there are questions about the historic status. The proposed text amendment puts this process into the zoning ordinance.

There are instances where a timely determination of a property's historic status is needed. Some examples are when a property is missed in a survey, is not given a historic status rating or rated incorrectly and needs to be reconsidered. These determinations can be initiated by the property owner or the Planning Director.

If a property had alterations that are considered non-reversible, its status may change from contributory to non-contributory. On the other hand, if alterations to a building made it non-contributory and those alterations were removed, the building's historic status may be changed to contributory. Some examples of buildings that had historic status review are included on pages 6-7 of the Planning Commission staff report.

Consideration 3-Compliance with City Goals, Policies, and Master Plans

Planning staff reviewed the proposed text amendment against the following City goals, policies, and master plans and found the proposal are consistent with the City's Historic Preservation Plan.

- *Preservation Philosophy (Resolution 53 of 2011)*
- *Community Preservation Plan (2012)*
- *Central Community Master Plan (2005)*
- *Avenues Master Plan (1987)*
- *Capitol Hill Master Plan (2001)*
- *Downtown Master Plan (2016)*
- *Plan Salt Lake (2015)*

ZONING TEXT AMENDMENT STANDARDS

Planning staff reviewed the proposed text amendment against the following criteria *City Code* says the City Council should consider. Please see Attachment B (pages 10-11) of the Planning Commission staff report for additional information.

Factor	Finding
Whether a proposed text amendment is consistent with the purposes, goals, objectives, and policies of	Complies

The attachment contains documentation regarding that there is no notification regarding a change in contributory status in an historic district. Currently there is not even a process in the ordinance. The proposal before the Council establishes one for the first time. It does not include notification; that is intentional. The Planning Division wants to be able to change the status quickly based on requests from property owners. (There is an expedited process for demolition for dealing with a hazardous building. The issue is not about hazards to the public.)

Why does this matter? - Because the contributory/non-contributory status of a building in an historic district is the core of the City's land use regulation. If the building is non-contributory, then the City will approve its demolition. The requirements for new construction in an historic district are different from those for additions and modifications to contributory structures. I keep saying, "Contributory status is at the core of land use regulation in historic districts."

- Because the determination of a building's status is not obvious and requires specific expertise. Even then there are disagreements. In my opinion, the building on the southeast corner of 300 S/600 E retains sufficient features to be considered contributory. Two of the members of the Landmarks Commission agreed with me publicly earlier this month. The building is designated noncontributory as a result of work completed without a permit and is going to be demolished.

- Because the Central City Historic District will be disproportionately affected by the lack of public process due to the City's previous decisions about land use in Central City, the transit corridor on 400 S, and the fact the neighborhood was redlined historically resulting in poor maintenance and less than optimal remodeling of surviving structures.

The ordinance below outlines current Public Notice requirements. -notification requirements which the Council adopted last spring in 21A.10.015 A There is no requirement to notify the community council, property owners within 300 feet, or even abutting property owners. Note that there is a requirement to notify regarding demolitions of contributory structures. If the status of the building changes to noncontributory prior to the request for demolition, then obviously the notification on the request for demolition is a formality.

21A.10.015: PUBLIC ENGAGEMENT:

The purpose of the public engagement process is to inform the public of certain land use projects early in the process, provide a reasonable timeframe for feedback on a proposal, and establish a process to hear from the public prior to making a decision on a particular land use project.

A. Land Use Projects Subject to Public Engagement: The following are considered land use projects for purposes of this chapter and are subject to the public engagement process and requirements herein:

1. Request for an alley/street closure or vacation;
2. Amendments to Title 21A;
3. Conditional use applications;
4. Design review applications, subject to review by the planning commission as provided in Chapter 21A.59;
5. Applications to demolish one or more landmark sites or contributing structures located within a local historic district;
6. Master plans, including amendments, to be adopted by the city council;
7. Requests for certificates of appropriateness required for new construction of principal structures, except for single family and two family dwellings;
8. Planned development applications;
9. Zoning map amendment.

Public Concerns regarding the proposed text amendment to the historic overlay zone proposed by the Planning Division include:

The amendment proposes codification of an entirely inadequate and legally questionable process for changing the contributory status of a building – that is, the process for delisting a building from protections afforded by the historic overlay.

The current typical process for a building to be designated as contributing as part of a local historic district involves the adoption of a Reconnaissance Level Survey (“RLS”). Adoption of an RLS (which involves a review of every building sited in a local historic district) is subject to a full formal public process, with multiple opportunities for the public to provide comment and input to recommending commissions before it is ultimately voted on by the City Council.

In this manner, adoption of a RLS and listing a building as contributory is subject to a full and robust legislative public process. Moreover, **once adopted RLS becomes part of City ordinance determining which buildings are afforded protection as contributory structures.**

The proposed text amendment does not afford the same public process for changing the contributory status of a structure – that is, delisting the building from protections associated with the historic overlay.

Indeed, the proposal allows this consequential action to be done administratively by the zoning administrator without any attendant public process or review (even by the Landmarks Commission).

If listing a building as contributory is a legislative action, certainly delisting a building would also be considered a legislative action, and as such should be afforded the same robust public process. Moreover, it is legally questionable whether a legislative action of this nature (that is, changing the contributory status of a building), which would in effect be a modification of adopted City ordinance, can even be delegated to the Planning Staff as proposed. Indeed, the enactment and amendment of zoning ordinances is fundamentally a legislative act under applicable Utah state law, and legislative decisions may not be delegated to other bodies.

Recently, the contributory status of several buildings has been changed administratively by the zoning administrator, without notice of review by the public or the landmarks Commission, allowing for the eventual demolition of the structure.

The Planning Division seemingly intends to codify this completely inadequate process into ordinance.

We ask the City Council to critically review the text amendment proposal with the above in mind, and recommend denial to various policymakers that will be deciding on this proposal unless a more robust public process is introduced in connection with changing the contributory status of a structure.

Thank you.

Signed by a number of concerned Salt Lake City citizens