



# REVISED Planning Commission **STAFF REPORT**

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*Bob Spears, Vice-Chair*  
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*Leslee Hinton, Commissioner*  
*John Hutt, Commissioner*  
*William Pevsner, Commissioner*

*Vincent Gonzalez, Director*  
*Planning & Community Preservation*

DATE: November 17, 2016

TO: Planning Commission

FROM: Vincent Gonzalez, Director – Planning and Community Preservation

**SUBJECT: MUNICIPAL CODE TEXT AMENDMENT 16-05 (MCTA 16-05). AN AMENDMENT TO CHAPTER 17.60.056 “DISCRETIONARY DEMOLITION PERMIT” TO REVISE THE DEMOLITION PERMIT REQUIREMENT OF SINGLE-FAMILY HOMES AND DUPLEXES**

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## **SUMMARY**

The Discretionary Demolition Permit, codified under Chapter 17.60.056 of the Sierra Madre Municipal Code, was adopted by the City Council on March 10, 2015 establishing a discretionary review process for the demolition of single-family houses and duplexes 75-years and older.

Concerns have been raised by the Planning Commission and community regarding the practical application of the Discretionary Demolition Permit process specific to the requirement to obtain a historical resource evaluation report and the 25% construction exemption requirement. A draft ordinance illustrating a modified discretionary demolition permit process for residential structures of 75-years of age or older is provided for discussion by the Planning Commission. A redline version of the ordinance is attached as Exhibit A.

The Commission also discussed the issuance of penalties, to determine if they should be revised. Staff surveyed four San Gabriel Valley cities to determine penalties imposed for the demolition in part or in whole of single-family dwellings without a permit. The results of the survey are attached to this report as Exhibit B.

## **BACKGROUND**

The purpose of a discretionary demolition permit is to insure that potential historic resources are properly evaluated before they are altered or removed. This is applicable to single-family dwellings and duplexes 75-years and older prior to the date of the application. In order to determine if a property meets the requirements as a

historical resource in accordance with Section 15064.5 of the California Environmental Quality Act (CEQA), a historical resource evaluation report is prepared by a qualified architectural historian. The conclusions of the report will determine if the property qualifies as a historical resource at the State, Federal, or local levels.

In evaluating a potential historic property, several criteria are employed including an analysis of architectural and historical significance, as well as specific evaluations as to whether the subject property meets the various requirements for it to be considered historic. These requirements may include the age and rarity of the design, significance of an architect, builder or owner/resident of the property along with how the structure relates to its historic context, how much of its own architectural integrity has survived as well as whether non-historic alterations can be easily reversed.

### ***CEQA Analysis***

In addition to Sierra Madre code, the California Environmental Quality Act (CEQA) also impacts the historic preservation process. CEQA applies to **discretionary** projects undertaken by private parties. A discretionary project is one that requires the exercise of judgement or deliberation by a public agency in determining whether the project will be approved, or if a permit will be issued. A common discretionary decision is the consideration of a conditional use permit. Aside from decisions pertinent to a project that will have a direct physical impact on the environment, CEQA also applies to decision that could lead to indirect impacts, such as making changes to local codes, policies, and general and specific plans. Judgement or deliberation may be exercised by the staff of permitting agency or by a board, commission, or elected body.

The current ordinance institutes that a demolition permit for structures over a certain age are discretionary, as well as linking the demolition request to a development application will make those projects subject to CEQA, pending various exceptions or categorical exemptions. For example, minor alterations, reports, maintenance and even demolition and replacement of an existing residence (which has not been deemed a historic resource) are all categorical exemptions from CEQA. Similarly, minor exterior alterations or additions which cannot be seen from the public right of way, repairs, maintenance and replacement of windows, doors, siding, roofing, etc., with like-kind materials, where a discretionary permit is required, are all categorically exempt actions under CEQA even for a designated historic resource. By contrast, demolition of a historic resource requires CEQA review, and most likely, an Environmental Impact Report (EIR).

CEQA does not apply to ministerial projects. A **ministerial** project is one that requires only conformance with a fixed standard or objective measurement and requires little or no personal judgement by a public official as to the wisdom or manner of carrying out the project. Generally, ministerial permits require a public official to determine only that the project conforms to applicable zoning and building code requirements and that applicable fees have been paid. Some examples of projects that are generally ministerial include roof replacement, interior alterations, and landscaping changes. In the City of Sierra Madre, demolitions on non-designated property are currently

ministerial actions; however, as noted above, there is a categorical exemption for the demolition of a non-designated property and replacement of an existing structure even where demolition and replacement requires discretionary review.

The bulleted items below provide a brief overview regarding the impact of CEQA, including applicable **categorical exemptions** to designated resources:

- Requests for permits for repair and maintenance of the exterior of the structure are categorically exempt from CEQA review;
- Requests for permits to replace windows, doors, siding, roofing, etc., to the exterior with like-kind or similar appearance materials are categorically exempt from CEQA review;
- Request for permits to add an addition to the exterior which cannot be seen from the public right of way and which does not exceed 50% of the existing structure or 2,500 square feet (whichever is less) are categorically exempt from CEQA; and
- Requests to demolish a designated structure must comply with CEQA and likely will require an EIR.

### ***Proposed New Local Rules Regarding Demolitions***

Staff believes that an important change can be made to the zoning ordinance that would require an application for a discretionary demolition permit to demolish any portion of a structure 75-years and older to obtain a historical resource evaluation report and to eliminate the 25% construction exemption.

A discussion regarding this proposal is discussed in the Analysis section of the report below.

## **ANALYSIS**

### ***Exemptions***

Code Section 17.60.056.F–Discretionary Demolition Permit creates an exception to the requirement to prepare a written historic assessment or report, for projects demolishing up to or less than 25% of the exterior walls of the structure, when all of the following conditions exist:

- a. The demolition is required for an addition/alteration to the structure that is permitted by code;
- b. The addition is permitted at the same time as the required demolition;
- c. Neither the demolished portion of the structure nor the addition impacts the original front façade of the structure; and
- d. The site plan and all required permits for the remodel have been approved by the applicable city reviewing authority.

The Code also exempts demolition of interior walls for the purpose of remodel, repair or maintenance as specified:

Removal and replacement, subject to any required permits, of exterior windows, doors, roof covering, foundation, architectural details and other structural or decorative elements deemed by the director of planning and community preservation to be minor alterations, where the materials used for maintenance and replacement do not alter the appearance, size or character of the existing structure.

The exemption also applies to any proposed demolition of a structure constructed less than seventy-five years old.

The Commission may consider making the following changes to Section 17.60.56:

- Subsection B: Add the “removal of exterior siding” to the definition of demolition
- Subsection F: Eliminate the 25% exemption from the discretionary demolition permit ordinance.

The changes are shown as underline strikeout in Exhibit A attached to the staff report.

### ***Penalties for Demolition without a Permit***

The Commission also discussed the issue of penalties, to determine if they should be revised. In Chapter 15.04.115–Section 105.7 Demolition Permits, the current penalty for demolishing a structure without a permit is considered a misdemeanor, and upon conviction shall be punishable by a fine of not more than one thousand dollars or by imprisonment in the city jail for not more than one hundred eighty days, or by both such fine and imprisonment. The penalty applies to any person, firm, or corporation.

Staff surveyed four San Gabriel Valley cities to determine what penalties are imposed for the demolition in part or in whole of single-family dwellings without a permit. The results of the survey are attached to this report as Exhibit C.

### ***Penalties for Contractors***

The Commission may also consider penalties imposed on building contractors who demolish a structure without a permit.

## **PUBLIC NOTICE PROCESS**

This item has been noticed through the regular agenda notification process. Copies of this report are available at the City Hall public counter, the Sierra Madre Public Library, and on the City’s website.

## **ENVIRONMENTAL**

The project qualifies for an exemption from the California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations as it can be seen with certainty that there is no possibility the adoption of this Ordinance may have a significant effect on the environment, because it will impose greater limitations on development in the City and protect the aesthetic character of Sierra Madre, thereby serving to reduce potential significant adverse environmental impacts.

## **RECOMMENDATION**

Staff is seeking direction from the Planning Commission regarding the amendments included in this report. A draft ordinance illustrating a modified discretionary demolition permit process for residential structures of a specified age and penalties is also attached for discussion only and further direction.

Attachments (3):

- Exhibit A – Chapter 17.60.056-Discretionary Demolition Permit (redline)
- Exhibit B – City Survey of Penalties Imposed for Demolition without Permit

# EXHIBIT A

Chapter 17.60.056  
Discretionary Demolition Permit  
(Redline Ordinance)

## 17.60.056 - Discretionary Demolition Permit.

- A. Purpose. The purpose of a discretionary demolition permit procedure is to insure that potential historic resources are properly evaluated before they are altered or removed.
- B. Definition. For purposes of this section, "demolition" is defined as the destruction and removal, in part or in whole, of the foundation, exterior walls, exterior siding, or roof structure, including supporting members of a single-family dwelling or a duplex.
- C. No single-family dwelling or duplex which was constructed seventy-five years or more prior to the date of the application for review shall be demolished without a discretionary demolition permit.
- D. Procedure: Any application for a discretionary demolition permit shall be accompanied by (i) a written historic assessment or survey completed by a qualified historic preservation consultant selected from the list maintained by the city which concludes that the property proposed to be demolished is not classified under the California Historic Resource Codes 1 to 5 - eligible for local listing or designation, or a contributor to an existing or potential district and (ii) an application for replacement development project consistent with the standards and requirements of the applicable zoning district, and (iii) an affidavit of posting of a sign at least three feet by four feet in size, located in a conspicuous place on the property abutting a public street or alley, identifying the property as the subject of an application for a demolition permit. Both the discretionary demolition permit and the application for the replacement development project shall be reviewed concurrently and no discretionary demolition permit shall be approved unless and until the replacement development project is approved.
  - 1. The reviewing body for a demolition permit and accompanying replacement development project which would not require a conditional use permit or variance under [Section 17.60.030](#) is the planning director.
  - 2. The reviewing body for a demolition permit and an accompanying replacement development project which would require a conditional use permit or variance ~~or minor conditional use permit~~ is the planning commission.
- E. A discretionary demolition permit may be approved if the reviewing body makes one of the following determinations: No discretionary demolition permit shall be approved unless the reviewing body determines one of the following:

1. The residential structure proposed to be demolished is neither designated on the local list of historic resources nor eligible for designation as an individual resource or contributor to a district or potential district, and the replacement development project is approved; or
  2. The city engineer or building official or his or her designee has provided a written determination that demolition is necessary to immediately abate an imminent hazard to public safety.
- F. Exceptions. The following applications do not require a discretionary demolition permit:
- ~~1. Demolition of up to twenty-five percent or less of the exterior walls of the structure, when all of the following conditions exist:~~
    - ~~a. The demolition is required for an addition/alternation to the structure that is permitted by code;~~
    - ~~b. The addition is permitted at the same time as the required demolition;~~
    - ~~c. Neither the demolished portion of the structure nor the addition impacts the original front façade of the structure; and~~
    - ~~d. The site plan and all required permits for the remodel have been approved by the applicable city reviewing authority.~~
  1. Demolition of any interior walls of any structure for the purpose of remodel, repair or maintenance, subject to any required permits;
  2. Removal and replacement, subject to any required permits, of exterior windows, doors, roof covering, ~~foundation, exterior siding,~~ architectural details and other structural or decorative elements deemed by the director of planning and community preservation to be minor alterations, where the materials used for maintenance and replacement do not alter the appearance, size or character of the existing structure;
  3. Any proposed demolition of a structure constructed less than seventy-five years from the date of the applications, which is subject to the provisions of [Section 15.04.115](#);
  4. Any proposed demolition of a historic landmark which is subject to the provisions of [Section 17.82.090](#);
  5. The director may rely on definitions and permitting processes in the municipal code to consider circumstances which do not meet the exact criteria defined in exceptions 1—5 above, to determine that a specific case meets the intent of one or more of the exceptions.



- G. An applicant who does not qualify for a discretionary demolition permit under subsection E or H of this section may seek a certificate of economic hardship pursuant to [Section 17.82.100](#).
- H. Burden of Proof on Applicant. Before any demolition permit is granted, the application shall show, to the reasonable satisfaction of the body considering such matter, the existence of the following facts:
  - 1. That the structure proposed for demolition:
    - a. Has no local, state or national historic significance as determined by the historic resources survey pursuant to subsection D.1 above; or
    - b. Is deemed to be eligible for local listing or designation under the California Historic Resource Codes 1 to 5, or a contributor to an existing or potential district, and all environmental review has been conducted that will allow the project to proceed, with identified mitigation measures, including, but not limited to construction of a replacement structure in substantially similar architectural style and façade, maintenance of a plaque, photographs and/or publication describing the original structure and its local, state or national historic value, or other mitigation measures described in the environmental review document;
  - 2. That the proposed demolition activities will not unreasonably interfere with the use, possession and enjoyment of surrounding and adjacent properties;
  - 3. That there is a demonstrated need for the demolition activity requested;
  - 4. That the result of the demolition activity is consistent with the objectives of the general plan; and
  - 5. That the public interest, convenience, and necessity require that the demolition activity be undertaken at the location requested.
- I. Appeal.
  - 1. Any person may appeal a decision of the planning director to the planning commission pursuant to [Section 17.60.115](#).
  - 2. Any person may appeal a decision of the planning commission to the city council pursuant to Sections [17.60.120](#) and [17.60.130](#).

(Ord. No. 1363, § 2, 3-24-15)

# EXHIBIT B

City Survey of Penalties  
Imposed for Demolition without Permit

<b>City of Sierra Madre</b>
Penalty for Demolition without a permit.
Any firm, person or corporation demolishing a structure without a permit shall be guilty of a misdemeanor, and upon conviction of any such person shall be punishable by a fine of not more than one thousand dollars or by imprisonment in the city jail for not more than one hundred eighty days, or by both such fine and imprisonment.
Penalty for Demolition of historic Structure.
If a structure that is deemed to be a historic resource is demolished without a permit: Violator must, within one year of the demolition, completely rebuild the demolished structure to pre-existing condition and shall provide a surety bond in an amount equal to the replacement value, as determined by the department of planning community preservation; OR no building or construction permits shall be issued or development allowed for 5 years from the date of the demolition if the structure was eligible for listing on the local, state, or Federal Registry of Historic Resources.
<b>City of Pasadena</b>
Penalties for demolition without a permit (including demolition by neglect).
1. <b>Designated historic resource.</b> If a designated historic resource is demolished without a Certificate of Appropriateness as required by this Chapter or a Demolition Permit, and is not restored or reconstructed as required by Subsection A., above, no building or construction-related permits shall be issued, and no permits or use of the property shall be allowed, from the date of demolition for a <b>period of five years</b> .
2. <b>Eligible historic resource.</b> If an eligible historic resource is demolished without a Certificate of Appropriateness as required by this Chapter or a Demolition Permit, and is not restored or reconstructed as required by Subsection A., above, no building or construction-related permits shall be issued for a <b>period of four years</b> .
3. <b>All other structures.</b> If a structure not classified as a designated or eligible historic resource, or noncontributing building in a landmark district, is demolished without a Certificate of Appropriateness, or a Demolition Permit, no building or construction-related permits shall be issued for a <b>period of 12 months</b> . This penalty applies solely to illegal demolition of primary structures on a site and does not apply to accessory structures.
<b>City of South Pasadena</b>
Consequences upon demolition without a permit.
1. Demolition, relocation, significant alteration or removal of any improvement, site or natural feature subject to the provisions of this article without obtaining a certificate of appropriateness is a misdemeanor and is further hereby expressly declared to be a nuisance, and <b>shall be abated by reconstructing or restoring the property to its original condition</b> prior to the performance of work in violation of this article whenever possible. The owner of the property, within thirty days of notice from the director of planning that demolition, relocation, significant alteration or removal has been performed in violation of this article shall <b>execute and record a covenant in favor of the city to do such reconstruction or restoration within one year</b> of the date of such notice. The form of the covenant shall be subject to approval by the city attorney, and shall run with the land. Upon

application to the commission, the time may be extended by the commission, if the owner shows the work cannot reasonably be performed within one year. If the owner refuses to execute and record such covenant, then the city may cause such reconstruction or restoration to be done, and the owner shall reimburse the city for all costs incurred in doing the work. The cost of the work performed by the city shall constitute a lien against the property on which the work is performed. Restoration or reconstruction may only be required when plans or other evidence is available to effect the reconstruction or restoration to the satisfaction of the director of planning.

2. **Designated Landmark.** With respect to a violation of this article on a landmark or an improvement within a historic district, no building or construction-related permits shall be issued for a **period of five years** from the date of demolition for property on which demolition has been done in violation of this article and no permits or use of the property as a parking area shall be allowed during the five years if plans or other evidence for reconstruction or restoration of a demolished structure do not exist, or if the reconstruction or restoration is not completed for any reason. Permits which are necessary for public safety or restoration is not completed for any reason. Permits which are necessary for public safety or welfare in the opinion of the director of planning may be issued. For purposes of this section, the demolition shall be presumed to have occurred on the date the city has actual knowledge of the demolition, and the owner shall have the burden of providing an earlier date, if entitlement to an earlier date is claimed. The owner shall have the affirmative obligations to plant grass, to provide a temporary irrigation system to maintain such landscaping and to prevent the accumulation and waste on the property during this period.

3. **Eligible for Historic District.** With respect to a violation of this article on a building or structure eligible for historic district, no building permits or other construction-related permits shall be issued for a **period of three years** from the date of demolition of such building or structure if demolition is done without first obtaining a certificate of appropriateness for the demolition. Permits which are necessary for public safety or welfare in the opinion of the director of planning may be issued. No permits or use of the affected property as a parking area shall be allowed. The demolition shall be presumed to have occurred on the date the city has actual knowledge of the demolition, and the owner shall have the burden of proving an earlier date, if entitlement to an earlier date is claimed. The owner shall have affirmative obligations to plant grass, to provide a temporary irrigation system to maintain such landscaping and to prevent the accumulation of debris and waste on the property during this period.

4. **Other Structures.** With respect to a violation of this article on a building or structure that is not a landmark or eligible for historic district, **no building permits or other construction-related permits shall be issued for a period of one year**

from the date of demolition of such building or structure if demolition is done without first obtaining a certificate of appropriateness for the demolition. Permits which are necessary for public safety or welfare in the opinion of the director of planning may be issued. No permits or use of the affected property as a parking area shall be allowed. The demolition shall be presumed to have occurred on the date the city has actual knowledge of the demolition, and the owner shall have the burden of proving an earlier date, if entitlement to an earlier date is claimed. The owner shall have affirmative obligations to plant grass, to provide a temporary irrigation system to maintain such landscaping and to prevent the accumulation of debris and waste on the property during this period.

5. **Noticing. Noticing.** The director of planning shall cause notice of the applicability of this section to be made by certified mail on the person shown as the owner on the rolls of the tax assessor, and on any other person known to have an interest in the property, as soon as practicable after having knowledge that the provisions of this section are applicable to the property. The date the city first had knowledge of the demolition shall be stated in the notice.

#### **City of Monrovia**

##### **Enforcement and penalties for demolition without permit.**

1. Any person who constructs, alters, or removes, an Historic Landmark, a contributor to an Historic District, or other property subject to special review in violation of this chapter shall be **required to restore the building**, object, site, or structure **to its original setting prior to the violation** at the discretion of the Commission, whenever possible. Any action to enforce this provision may be brought by the city or any other interested party. This civil remedy shall be in addition to, any criminal prosecution and penalty and any other remedy provided by law

2. **Historic Landmark or Contributor to an Historic District.** If any person demolishes an Historic Landmark or a contributor to an Historic District in violation of this chapter, no building or construction related permits or permits to use the property as a parking area shall be issued for a **period of up to five years**, at the City Council's discretion, based on the significance of the resource from the date of demolition, except to replicate the lost resource or to move on a bona fide historic resource. Permits which are necessary for public safety or welfare in the opinion of the Director of Community Development may be issued. The demolition shall be presumed to have occurred on the date the city has actual knowledge of the demolition, and the owner shall have the burden of providing an earlier date, if entitlement to an earlier date is claimed. The owner shall have the affirmative obligations to plant grass, to provide a temporary irrigation system to maintain such landscaping and to prevent the accumulation of debris and waste on the property during the interim period.

3. **All other structures.** If any person demolishes a structure not considered a Historic Landmark or a contributor to an Historic District without permits they shall

be guilty of a misdemeanor and upon conviction shall be punishable by a **fine not exceeding \$1,000, or by imprisonment in the county jail for a period of not more than six months**, or by both such fine and imprisonment.

**City of San Marino**

Enforcement, violations, and penalty for demolition without permit.

1. Any building or structure hereafter set up, erected, built, moved, demolished or maintained and any use of property hereafter commenced or continued contrary to the provisions of this chapter are hereby declared to be unlawful and a public nuisance, and the city prosecutor shall, upon order of the planning and building director, commence action or proceeding for the abatement, removal and enjoinder thereof, in the manner provided by law, and shall take such other steps and shall apply to such court as may have jurisdiction to grant such relief as will abate and remove such building, structure or use and restrain and enjoin any person from setting up, erecting, building, moving or maintaining any such building or structure or using any property contrary to the provisions of this chapter.
2. Any person, whether acting as principal, agent, employee or otherwise, violating any provision of this chapter or of any variance or conditional permit granted hereunder shall be deemed guilty of a misdemeanor or infraction, as determined by the city prosecutor, and, upon conviction thereof, shall be punished by a **fine not to exceed \$1,000 or by imprisonment in the county jail for a period of not more than six months**.