

BB 29
Ordinance No. 106348

AN ORDINANCE creating a Landmarks Preservation Board, establishing a procedure for the designation and preservation of objects, sites, improvements and elements having historical, cultural, architectural, engineering or geographic importance, providing for enforcement and imposing penalties for violations, and repealing Ordinance 102229.

3/19/77 - Pass

C.F. 284771 - Veto

COMPTROLLER
FILE NUMBER _____

Council Bill No. 98236

INTRODUCED: MAR 7 1977	BY: EXECUTIVE REQUEST
REFERRED: MAR 7 1977	TO: PLANNING & URBAN DEV.
REFERRED:	
REFERRED:	
REPORTED: MAR 14 1977	SECOND READING: MAR 14 1977
THIRD READING: MAR 14 1977	SIGNED: MAR 14 1977
PRESENTED TO MAYOR: MAR 15 1977	APPROVED:
RETD. TO CITY CLERK: MAR 25 1977	PUBLISHED:
VETOED BY MAYOR: MAR 25 1977	VETO PUBLISHED: MAR 28 1977
PASSED OVER VETO: APR 4 1977	VETO SUSTAINED:

ORDINANCE 106348 AMENDMENTS...RE...TO...

- ORD 106595 -RE LAND USE & ZONING; AMENDING SEC 28.2 OF ZONING ORD 86300 TO PROVIDE FOR AUTHORIZATION OF CERTAIN USES AS SPECIAL EXCEPTIONS IN BLDGS DESIGNATED AS LANDMARKS UNDER THE LANDMARKS PRESERVATION ORDINANCE.
- CF-285212 -RULES & REGULATIONS, CODE OF ETHICS & PROCEDURES OF THE LANDMARKS PRESERVATION BRD, ADOPTED PURSUANT TO ADMIN. PROCEDURES ORD 102228 & LANDMARKS PRESERVATION ORD 106348.
- ORD 106985 -PROVIDING FOR FEES FOR CERTIFICATES OF APPROVAL FOR CONSTRUCTION AND ALTERATION IN HISTORICAL OR SPECIAL REVIEW DISTRICTS OR LANDMARK SITES, AND ON LANDMARKS; AMENDING SEC 12.02, ORD 106348, ETAL.
- CF-286502 -RULES GOVERNING HEARING EXAMINER REVIEW & DECISION ON LANDMARKS PRESERVATION BOARD RECOMMENDATIONS ON CONTROLS & INCENTIVES, ADOPTED MAY 3, 1978 PURSUANT TO ADMINISTRATIVE PROCEDURES ORD 102228 & LANDMARKS PRESERVATION ORD 106348.
- Ord 107679 -Creating Columbia City Landmark District specifying boundaries, etc.
- Ord 107993 -Designating the Fremont Hotel as a Landmark imposing controls thereon.....
- Ord 107995 - Designating the Montlake Bridge and Montlake Cut as Landmarks.....~~designating~~ and imposing controls thereon.
- ORD 108157 -Changing fees for certain certificates and permits required by Ordinance, etc.
- Ord 108517 -NEW PACIFIC APARTMENTS, 2600-04 1st Ave. -Re Historic Pres., imposing controls upon the ..., designated by ...
- Ord. 108518 -HULL BLDG. -2401-05 1ST AVE. -Re to Historic Preservation, imposing controls upon the ..., designated by
- Ord. 108519 -SEATTLE HEBREW ACADEMY -Re to historic preservation, imposing controls upon the, formerly Forest Ridge Convent, designated by
- Ord. 108649 -Establishes filing fees for Hearing Examiner appeals.
- Ord. 108729 -Permit Fee Ordinance; prescribes fees for use, grading, sign, gas piping, bldg., elevator, mechanical system, boiler & pressure vessel, elec permits, & other certificates & permits required by ordinance, etc... Repeals Ord. 108157.
- Ord. 108731 -ANHALT APTMTS -Imposes controls & grants incentives for the ..., 1005 E. Roy, a Landmark designated by LPB under Ord. 106348.
- Ord. 109125 -Amends Sec 1.03 to reflect name & title changes in the Bldg & Engr Dept's re the Mayor's reorganization project.
- Ord. 109317 -PARSONS/GERRARD RESIDENCE -Imposes controls upon the ..., a Landmark designated by the Landmarks Preservation Board under Ord. 106348.
- Ord. 109318 -McFEE/KLOCKZIEN RESIDENCE -Imposes controls upon the ..., a Landmark designated by the Landmarks Preservation Board, etc...
- Ord. 109319 -PARSONS MEMORIAL GARDEN -Imposes controls upon the ..., a Landmark designated by the Landmarks Preservation Board, etc...
- Ord. 109320 -EAST REPUBLICAN ST. STAIRWAY -Imposes controls upon the ..., a Landmark designated by the Landmarks Preservation Board.
- Ord. 109388 -HAYARD-BELMONT LANDMARK DISTRICT -Creates the ...; specifies its boundaries and the criteria for designation of the District, etc...
- Ord. 109586 -BRACE/MORIARTY RESIDENCE -Imposes controls upon the ..., a Landmark designated by the Landmarks Preserv. Brd. under Ord. 106348.
- Ord. 109730 -IMMANUEL LUTHERAN CHURCH -Imposes controls upon the ..., a Landmark designated by the Landmarks Preserv. Brd. under Ord. 106348.
- Ord. 109731 -TEMPLE DE HIRSCH SINAI, OLD SANCTUARY -Imposes controls upon the ... a Landmark designated by the Landmarks Preservation Brd under Ord. 106348.
- Ord. 109732 -CHURCH OF THE BLESSED SACRAMENT, RECTORY & GROUNDS -Imposes controls upon the ... designated a Landmark by the Landmarks Preservation Brd., etc...
- Ord. 109733 -HILLCREST APARTMENT BLDG. -Imposes controls upon the ... a landmark designated by the Landmarks Preservation Brd, etc...
- ORD. 109734 -HAINSWORTH/GORDON HOUSE & GROUNDS -Imposes controls upon the ... a landmark designated by the Landmarks Preservation Brd., etc...
- ORD. 109738 -SALMON BAY BURLINGTON NORTHERN BRIDGE # 4 -Acknowledges as a landmark designated by Ordinance 106348.

ORDINANCE 106348

AN ORDINANCE creating a Landmarks Preservation Board, establishing a procedure for the designation and preservation of objects, sites, improvements and elements having historical, cultural, architectural, engineering or geographic importance, providing for enforcement and imposing penalties for violations, and repealing Ordinance 102229.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

PART I

Title; Purpose; Definitions

Section 1.01. Short Title. This ordinance may be cited as the "Landmarks Preservation Ordinance."

Section 1.02. Purpose and Declaration of Policy. The City's legislative authority finds that the protection, enhancement, perpetuation and use of sites, improvements and objects of historical, cultural, architectural, engineering or geographic significance, located within the City of Seattle, are required in the interest of the prosperity, civic pride and general welfare of the people; and further finds that the economic, cultural and aesthetic standing of this City cannot be maintained or enhanced by disregarding the heritage of the City and by allowing the unnecessary destruction or defacement of such cultural assets.

The purposes of this ordinance are (1) to designate, preserve, protect, enhance and perpetuate those sites, improvements and objects which reflect significant elements of the City's cultural, aesthetic, social, economic, political, architectural, engineering, historic or other heritage, consistent with the established long-term goals and policies of the City; (2) to foster civic pride in the beauty and accomplishments of the past; (3) to stabilize or improve the aesthetic and economic vitality and values of such sites,

1 improvements and objects; (4) to protect and enhance the
2 City's attraction to tourists and visitors; (5) to promote
3 the use of outstanding sites, improvements and objects for the
4 education, stimulation and welfare of the people of the
5 City; and (6) to promote and encourage continued private
6 ownership and use of such sites, improvements and objects now so
7 owned and used, to the extent that the objectives listed
8 above can be attained under such a policy.

9 Section 1.03. Definitions. The following words and
10 terms when used in this Ordinance, unless a different meaning
11 clearly appears from the context shall mean as follows:

12 (1) ALTERATION is any construction, modification,
13 demolition, restoration or remodeling for which a permit
14 from the Superintendent is required.

15 (2) APPROVAL OF DESIGNATION is final action by the
16 Landmarks Preservation Board identifying an object, improvement
17 or site as a landmark or landmark site.

18 (3) APPROVAL OF NOMINATION is an action by the Landmarks
19 Preservation Board approving a nomination, in whole or in
20 part, for further designation proceedings.

21 (4) BOARD is the Landmarks Preservation Board.

22 (5) CERTIFICATE OF APPROVAL is written authorization
23 which must be issued by the Board before any alteration or
24 significant change may be made to the controlled features of a
25 landmark or landmark site, or during the pendency of designation
26 proceedings, to a site, improvement or object after its
27 nomination has been approved by the Board for further proceedings.

28 (6) CONTROLS are such specific restrictions as may be
29 imposed by a designating ordinance upon the alteration or
30 the making of significant changes of specific features or
31 characteristics of a landmark site or landmark that are
32

1 designated for preservation by such designating ordinance.

2 (7) COUNCIL is the City Council of the City of Seattle.

3 (8) DESIGNATING ORDINANCE is an ordinance enacted
4 pursuant to this ordinance for the purpose of declaring an
5 object, improvement or site a landmark, or a landmark site,
6 and specifying the controls and any economic incentives
7 applicable thereto, and shall include any ordinance designating
8 a landmark in accordance with Ordinance 102229.

9 (9) ECONOMIC INCENTIVES are such compensation, rights
10 or privileges or combination thereof, which the Council, or
11 other public body or agency, by virtue of applicable present
12 or future legislation, may be authorized to grant to or
13 obtain for the owner as consideration for the imposition of
14 controls on a designated landmark site or landmark. Examples
15 of economic incentives include tax relief, conditional use
16 permits, rezoning, street vacation, planned unit development,
17 transfer of development rights, facade easements, named
18 gifts, preferential leasing policies, private or public
19 grants-in-aid, beneficial placement of public improvements,
20 or amenities, or the like.

21 (10) HEARING EXAMINER shall mean any person authorized
22 to act as a hearing examiner pursuant to the Administrative
23 Code of The City of Seattle (Ordinance 102228) or any
24 ordinance amendatory or successor thereto.

25 (11) IMPROVEMENT is any building, structure, or other
26 object constituting a physical improvement of real property.

27 (12) INTERESTED PERSON OF RECORD includes any individual,
28 corporation, partnership or association which notifies the
29 Board in writing of its interest in any matter before the
30 Board.
31 Board.

32

1 (13) LANDMARK is an improvement or object designated
2 as a landmark pursuant to this ordinance, or pursuant to
3 Ordinance 102229.

4 (14) LANDMARK SITE is a site designated as a landmark
5 site pursuant to this ordinance.

6 (15) NOMINATION is the act of proposing that any object,
7 site or improvement be designated a landmark or landmark
8 site.

9 (16) OBJECT is any tangible thing, including any ship,
10 which may or may not be attached to real property.

11 (17) OWNER is a person having a fee simple interest, a
12 substantial beneficial interest of record or a substantial
13 beneficial interest known to the Board in an object, site or
14 improvement.

15 (18) PARTY OF RECORD includes the Board, the owner,
16 the person in charge, and the nominator of any proposed
17 landmark or landmark site, and the Hearing Examiner, when
18 appropriate.

19 (19) PERSON is an individual, partnership, corporation,
20 group or association.

21 (20) PERSON IN CHARGE is the person or persons in
22 possession of an object or of an improved lot or parcel
23 including but not limited to a mortgagee or vendee in possession,
24 an assignee of rents, a receiver, executor, trustee, lessee,
25 tenant, agent, or any other person directly or indirectly in
26 control of an object or of an improved lot or parcel of real
27 property.

28 (21) SIGNIFICANT CHANGE is any change in appearance
29 not requiring a permit from the Superintendent, but for which
30 a Certificate of Approval is expressly required by a Board approval
31 of nomination, a Board report on designation, or a designating
32 ordinance.

1 (22) SITE is any area of land which is unimproved
2 except for trees, shrubs, and/or plants.

3 (23) SUPERINTENDENT is the Superintendent of Buildings
4 of The City of Seattle or such other official as may be
5 designated from time to time to issue permits for construction,
6 alteration, reconstruction, or demolition of improvements
7 upon real property in the City of Seattle.

8 PART II

9 Landmarks Preservation Board

10 Section 2.01. Creation.

11 a. There is hereby created the Landmarks Preservation
12 Board (hereinafter called the "Board") which shall consist
13 of eleven members. The membership of the Board shall consist
14 of at least two architects, (one of whom may be a landscape
15 architect), two historians, one representative from the City
16 Planning Commission, one structural engineer, one representative
17 from the field of real estate management, and one representative
18 from the field of finance. Three additional members shall
19 also be appointed without regard to occupation or affiliation.
20 All Board members shall have a demonstrated sympathy with
21 the purposes of this Ordinance.

22 b. Members of the Landmarks Preservation Board established
23 under Ordinance 102229 are hereby appointed members of the
24 Board established pursuant to this Ordinance to serve for
25 the remainder of the terms to which they were originally
26 appointed, and in addition, one new member shall be appointed
27 for a three year term and one new member shall be appointed
28 for a two year term. Thereafter all members of the Board
29 shall be appointed by the Mayor, subject to confirmation by
30 the Council, for a term of three years, which appointments
31 shall be made in such a manner that the composition specified
32 herein is maintained.

1 c. In the event of a vacancy, an appointment shall be
2 made to fill the vacancy in the same manner as if at the
3 beginning of the term. The person appointed to fill the
4 vacancy shall hold for the unexpired term, and if the vacancy
5 being filled was occupied by a person meeting one of the
6 enumerated qualifications, the newly appointed member shall
7 meet that same qualification. No member shall serve for
8 more than two terms consecutively; provided that for the
9 purpose of this limitation a member shall be deemed to have
10 served one term if such member resigns after being appointed
11 for any period of time, and provided further that "one term"
12 shall include an unexpired term of two years or more.
13 Members of the Board shall serve without compensation.

14 Section 2.02. Rules and Regulations; Quorum

15 a. The Board shall elect a Chairperson from among its
16 members, and shall within six months adopt in accordance with the
17 Administrative Code (Ordinance 10.223), and file with the
18 City Comptroller rules and regulations, including a code of
19 ethics for its members, for its organization and procedures
20 consistent with this Ordinance. The Board shall not conduct
21 any public hearing required under this ordinance until rules
22 and regulations have been filed.

23 b. A majority of the current appointed and confirmed
24 members of the Board shall constitute a quorum for the
25 transaction of business. All official actions of the Board,
26 with the exception of votes on approval of designation,
27 shall require a majority vote of the members present and
28 voting. Votes on approval of designation shall require a
29 majority vote of the then current appointed and confirmed
30 members of the Board. No member shall be eligible to vote
31 upon any matter required by this ordinance to be determined
32

1 after a hearing unless that member has attended the hearing
2 or familiarized him or herself with the record.

3 Section 2.03. Landmarks Preservation Board Staff

4 The Director of the Department of Community Development
5 shall provide adequate staff support to the Landmarks Preservation
6 Board and shall assign a member of the Department's staff to
7 act as Historic Preservation Officer. Under the direction
8 of the Board, the Historic Preservation Officer shall be the
9 custodian of the Board's records, conduct official correspondence,
10 assist in organizing and supervising the Landmarks Preservation
11 Board, conduct official correspondence, organize and supervise
12 the Board staff and the clerical and technical work of the
13 Board to extent required to administer this Ordinance. In
14 addition, the Historic Preservation Officer shall:

- 15 (1) Carry out, assist and collaborate in studies and
16 programs designed to identify and evaluate objects,
17 improvements and sites worthy of preservation;
18 (2) Consult with and consider the ideas and recommendations
19 of civic groups, public agencies, and citizens
20 interested in historic preservation;
21 (3) Inspect and investigate objects, improvements and
22 sites which are believed worthy of preservation;
23 (4) Officially recognize design excellence in the
24 rehabilitation of objects, improvements and other
25 features deemed deserving of official recognition
26 although not designated as landmark sites or
27 landmarks and encourage appropriate measures for
28 such recognition;
29 (5) Disseminate information to the public concerning
30 those objects, improvements and sites deemed
31 worthy of preservation, and encourage and advise
32

- 1 owners in the protection, enhancement and perpetua-
2 tion of such objects, improvements and sites;
3 (6) Consider methods other than those provided for in
4 this Ordinance for encouraging and achieving
5 historical preservation, and make appropriate
6 recommendations to the Council and to other bodies
7 and agencies, both public and private;
8 (7) Recommend such policies, rules and regulations for
9 adoption by the Board as are deemed necessary to
10 carry out the purposes of this Ordinance;
11 (8) Subject to such limitations and within such standards
12 as the Board may establish from time to time,
13 grant Certificates of Approval all without prejudice
14 to the right of the owner at any time to apply
15 directly to the Board for its consideration and
16 action on such matters.

17 Section 2.04. Board Meetings. All meetings of the
18 Board shall be open to the public. The Board shall keep
19 minutes of its proceedings, showing the action of the Board
20 upon each question, and shall keep records of all official
21 actions taken by it, all of which shall be filed in the
22 office of the Historic Preservation Officer and shall be
23 public records.

24 Section 2.05. Electronic Record of Hearings. At all
25 hearings before the Board, all oral proceedings shall be
26 electronically recorded. Such proceedings may also be
27 recorded stenographically by a court reporter if any interested
28 person at his or her expense shall provide a court reporter
29 for that purpose. A copy of the record or any part thereof,
30 whether recorded stenographically or electronically, shall
31 be transcribed and furnished to any person upon request
32 therefor and payment of the reasonable costs thereof.

1
2 Par II

3 Designation Criteria

4 Section 3.01. Standards for Designation of Landmark
5 Sites and Landmarks. An object, site or improvement which
6 is more than twenty-five (25) years old may be designated
7 for preservation as a landmark site or landmark if it has
8 significant character, interest or value, as part of the
9 development, heritage or cultural characteristics of the
10 city, state, or nation and if it falls into one of the
11 following categories:

- 12 (1) It is the location of, or is associated in a
13 significant way with, an historic event with a
14 significant effect upon the community, city,
15 state, or nation; or
- 16 (2) It is associated in a significant way with the
17 life of a person important in the history of the
18 city, state, or nation; or
- 19 (3) It is associated in a significant way with a
20 significant aspect of the cultural, political, or
21 economic heritage of the community, city, state or
22 nation; or
- 23 (4) It embodies the distinctive visible characteristics
24 of an architectural style, or period, or of a
25 method of construction; or
- 26 (5) It is an outstanding work of a designer or builder;
27 or
- 28 (6) Because of its prominence of spatial location,
29 contrasts of siting, age, or scale, it is an
30 easily identifiable visual feature of its neighborhood
31 or the city and contributes to the distinctive
32 quality or identity of such neighborhood or the
city;

1 Section 3.02. Requirement of Separate Nomination and
2 Designation of Site and Object or Improvement. The nomination
3 or designation of a site as a landmark site shall not constitute
4 nomination or designation of any object or improvement
5 located on the site as a landmark unless the object or
6 improvement is nominated or designated as a landmark. The
7 nomination or designation of an object or improvement as a
8 landmark shall not constitute nomination or designation of
9 the site on which the object or improvement is located as a
10 landmark site unless the site is nominated or designated as
11 a landmark site.

12 Part IV

13 Procedure for Nomination

14 Section 4.01. Nomination. Any person including the
15 Historic Preservation Officer and any member of the Board
16 may nominate any site, improvement or object for designation
17 as a landmark or landmark site. Nominations may be made on
18 official nomination forms provided by the Historic Preservation
19 Officer, shall be filed with the Historic Preservation
20 Officer, and shall include all data required by the Board.
21 Nominations found to be in order by the Historic Preservation
22 Office shall be considered by the Board at a public meeting.
23 The Historic Preservation Officer or the Board may amend or
24 complete any nomination. A copy of any nomination and of
25 any amendments thereto shall be given the owner promptly.
26

27 Part V

28 Approval of Nomination Procedure

29 Section 5.01. Notice of Board Meeting on Approval of
30 Nomination. The Board may approve a nomination for further
31 designation proceedings only at a public meeting. The Board
32 shall make a reasonable effort to serve the owner of a

1 nominated site, improvement or object with notice of any
2 Board meeting at which such nomination shall be considered
3 for approval by the Board, however, failure to serve such
4 notice shall not invalidate any proceedings with respect to
5 such nomination. Neither the attendance, and participation
6 of the owner at the meeting to consider the nomination nor
7 the owner's failure to so attend or participate shall prejudice
8 the right of the owner to resist designation or the imposition
9 of controls if the nomination is approved.

10 Section 5.02. Board Approval Of Nomination. If the
11 Board, in whole or in part, approves a nomination for further
12 designation proceedings, it shall in such approval:

- 13 (a) specify the legal description of the site, the
14 particular features and/or characteristics proposed
15 to be preserved, and such other description of the
16 site, improvement or object as it deems appropriate;
17 (b) set a date, which is not less than thirty (30) nor
18 more than forty-five (45) days from the date of
19 approval of nomination, at which a public hearing
20 on approval of designation shall be held as provided
21 in Part VI.
22

23 If the Board approves a nomination, the provisions of Part
24 XII shall apply.

25 Section 5.03. Notification of Board of Approval of
26 Nomination. If the Board approves a nomination in whole or
27 in part for further designation proceedings, the Historic
28 Preservation Officer shall within three working days file a
29 written notice of such action with the Superintendent and
30 serve a copy of the same on the owner and interested persons
31 of record. Such written notice shall include:

- 32 (1) a copy of such approval of nomination;

- 1 (2) a statement that while proceedings pursuant to
2 this ordinance are pending, and thereafter if a
3 designating ordinance is enacted, a Certificate of
4 Approval must be obtained before anyone may (i)
5 make alterations or significant changes to specific
6 features or characteristics of the site, improvement
7 or object suggested for preservation in the approval
8 of nomination or thereafter specified in the
9 report on approval of designation, or set forth in
10 the decision of the Hearing Examiner; or (ii) make
11 alterations or significant changes to specific
12 controlled features or characteristics of such
13 landmark site or landmark specified in a designating
14 ordinance; and
15 (3) a statement of the date and time of the Board
16 hearing on approval of designation;
17 (4) a statement that all proceedings to review the
18 action of the Board at the hearing on approval of
19 designation will be based on the record made at
20 such hearing and that no further right to present
21 evidence on the issue of designation is afforded
22 pursuant to this Ordinance.

23 Section 5.04. Disapproval of Nomination. If the Board
24 disapproves the nomination, the proceedings shall terminate
25 as provided in Sec. 14.02(a), and the Board shall set forth
26 its reasons why approval of nomination is not warranted.
27

28 Part VI

29 Approval of Designation Procedure

30 Section 6.01. Board Hearing on Approval of Designation.
31 Except as otherwise provided in Section 7.02 the Board may
32 approve or deny designation of a site, improvement or object only

1 at a public hearing. At the hearing on approval of designation
2 the Board shall receive evidence and hear arguments on
3 whether the site, improvement or object meets the criteria
4 for designation of landmarks and landmark sites specified in
5 Section 3.01 and merits designation as a landmark or landmark
6 site.

7 Section 6.02. Board Action on Approval of Designation.
8 Whenever the Board approves designation of all or any portion
9 of the site, improvement or object under consideration as a
10 landmark or landmark site, it shall within fourteen (14)
11 days issue a written Report on Designation which shall set
12 forth:

- 13 (1) the legal description of the site, the specific
14 features and/or characteristics to be preserved,
15 and such other description of the site, improvement
16 or object as it deems appropriate;
17 (2) its reasons, analysis and conclusions supporting
18 (1) above with specific reference to the criteria
19 set forth in Section 3.01 of this ordinance.

20 Section 6.03. Notice of Report on Designation. A copy
21 of the Board's Report on Designation shall be served on the
22 owner and mailed to interested persons of record within
23 three (3) working days after it is issued. If the Board
24 acts to approve designation, the owner, at the time of
25 service of said report shall also be served with a notice
26 that:

- 27 a. states a date, which is not later than seventy-five
28 (75) days after mailing of the Report on Designation, when
29 the Board will consider controls and incentives, if any, to
30 be applied for preservation of specific features or characteristics
31 of the site, improvement or object in question;
32

1 L. requests the owner to consult and confer with the
2 Board staff to develop and agree upon controls and incentives;
3 and

4 c. informs the owner of the procedures of Part VIII of
5 this Ordinance.

6 Section 6.04. Disapproval of Designation. If the Board
7 disapproves designation, the proceedings shall terminate as
8 provided in Section 14.02(a) and the Board shall set forth
9 its reasons why approval of designation is not warranted.

10 Part VII

11 Consent Procedure Following Approval of Nomination

12 Section 7.01. Consultation with Owner. Following
13 Board approval of nomination an owner may affirmatively
14 indicate a desire to confer and consult with the Board and
15 Board staff with a view toward reaching agreement on specific
16 features and characteristics of the site, improvement or object
17 to be preserved and methods of achieving such preservation,
18 including controls and incentives.

19 Section 7.02. Procedure. Upon receipt of written
20 notice that the owner desires to confer and consult with the
21 Board and Board staff under the provisions of Section 7.01,
22 the Board staff and owner shall develop a schedule for such
23 consultation which shall not be subject to any time limitations
24 set forth in other sections of this Ordinance. The Board
25 shall establish procedures for consent proceedings under
26 this Part which shall insure that the Board's consideration
27 of approval of designation and the Board's recommendation on
28 controls and incentives are separate actions. If, for any
29 reason, the Board and owner fail to reach agreement under
30 this procedure and when either party informs the other in
31 writing that an impasse has been reached, Section 8.03 shall
32 apply.

1 after receipt of such notice. If the owner and the Board
2 Staff reach written agreement within the period allotted for
3 negotiation, the Board Staff shall promptly submit the
4 agreement to the Board for approval at a Board meeting to be
5 held not later than twenty (20) days after the written
6 agreement is reached, or within such further time as the
7 Board and owner may stipulate in writing. Notice of such
8 Board meeting shall be served on the owner and mailed to
9 interested persons of record at least fifteen (15) days
10 prior to such meeting. Within three (3) working days after
11 such meeting the Board shall serve upon the owner, and mail
12 to interested persons of record, notice of its approval or
13 disapproval of the agreement and specify the reasons therefor.

14 Section 8.02. Effect of Board Approval of Agreement on
15 Controls and Incentives between Board Staff and Owner. If
16 the agreement on controls and incentives between the Board
17 staff and owner is approved by the Board, the Board shall
18 transmit the agreement to the Council with a request for
19 Council action pursuant to Section 11.01.

20 Section 8.03. Effect of Failure to Agree or Disapproval
21 of Agreement by the Board. In the event the Board Staff and
22 the owner are unable to reach an agreement by negotiation,
23 or in the event the agreement reached is disapproved by the
24 Board, the Board shall file its recommendation on controls
25 and economic incentives, if any, with the Hearing Examiner
26 and serve same on the owner and the owner shall have an
27 opportunity to file objections thereto. The controls proposed
28 in such recommendation shall relate to the specific feature
29 or features of the site, improvement or object which are to
30 be preserved. The recommendation shall set forth the reasons
31 and the need for each proposed specific control and for any
32

1 proposed economic incentive and shall, in addition, state
2 the circumstances under which a Certificate Of Approval
3 shall be required with respect to any alteration or significant
4 change to the site, improvement or object if the proposed
5 controls are imposed. The Board may hold a public hearing
6 prior to the making of its recommendation.
7

8 Part IX

9 Hearing Examiner Review and Decision on Board
10 Recommendations on Controls and Incentives

11 Section 9.01. Filing of Recommendation and Objections
12 with Hearing Examiner. As provided in Section 8.03, in the
13 event of a failure to agree on proposed controls and incentives
14 or in the event of disapproval of an agreement, the Board
15 shall file with the Hearing Examiner and serve upon the
16 owner recommendations for proposed controls and incentives
17 and the owner may file objections thereto. The recommendation
18 of the Board shall be filed not later than one hundred
19 eighty-five (185) days after the approval of nomination and
20 not later than fifteen (15) days after the expiration of the
21 maximum period permitted for negotiations if no written
22 agreement was signed by the Board staff and the owner, or if
23 an agreement, was signed within fifteen (15) days after the
24 time has expired for the Board to approve or disapprove such
25 a written agreement pursuant to Section 8.01(b). The owner's
26 objections shall be filed not later than fifteen (15) days
27 after receipt of the Board's recommendation on proposed
28 controls and incentives. For good and sufficient cause
29 shown by either the Board or owner, the Hearing Examiner may
30 grant an extension of time not to exceed thirty (30) days.
31 Any interested person of record may file with the Hearing
32 Examiner written objections to the Board's recommendations
on controls and economic incentives.

1 Section 9.02. Scheduling of Hearing. After the Board's
2 recommendations and the owner's objections, if any, are filed
3 with the Hearing Examiner, the Hearing Examiner shall set
4 the matter for a hearing which shall be held within seventy
5 (70) days of the receipt of the owners objections or the
6 receipt of the Board's recommendations, whichever is later,
7 and promptly notify the Board, owner and all interested
8 persons of record of the date and time for the hearing.

9 Section 9.03. Expert Advice. After reasonable notice
10 to the Board and owner, the Hearing Examiner may appoint an
11 expert or experts to provide advice concerning the economic
12 effects of the proposed controls and economic incentives.

13 Section 9.04. Hearing Examiner Procedure. Proceedings
14 before the Hearing Examiner shall be in accordance with the
15 procedures for hearings in contested cases pursuant to the
16 Administrative Code of The City of Seattle (Ordinance 102228),
17 except as such procedures are modified by this Ordinance.
18 Any person may testify at the hearing.

19 Section 9.05. Basis for Hearing Examiners Recommendation.

20 (a) On the basis of all the evidence presented at a
21 hearing, the Hearing Examiner shall determine whether to
22 recommend all or any of the proposed controls and economic
23 incentives, and/or whether to recommend a modified version
24 of any of the proposed controls or incentives. The Hearing
25 Examiner, except upon written agreement with the owner,
26 shall not recommend any control which directly regulates
27 population density; provided that the Hearing Examiner may
28 recommend a control which indirectly affects density by
29 controlling a specific feature of a site, improvement or object.
30 The Hearing Examiner shall not recommend any control which
31 is not set forth with adequate specificity, or which is
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1 inconsistent with any provision of this ordinance, or for
2 which the reason and need is not established with respect to
3 the specific features and characteristics of the site,
4 improvement or object to be preserved, or which requires
5 that the site, improvement or object be devoted to any
6 particular use, or which imposes any use restrictions, or
7 any control or incentive if the effect of such control,
8 incentive or combination thereof would be to prevent the
9 owner from realizing a reasonable return on the site, improvement,
10 or object.

11 (b) Owners Shall Not Be Deprived of Reasonable Economic
12 Use. In no event shall the recommendation of the Hearing
13 Examiner or any proceedings under or application of this
14 Ordinance deprive any owner of a site, improvement or object
15 of a reasonable economic use of such site, improvement or object.

16 (c) Factors to be Considered. Only the following
17 factors may be considered in determining the reasonable
18 return on a site, improvement or object:

- 19 (1) the market value of the site, improvement or object
20 in its existing condition taking into consideration
21 the ability to maintain, operate or rehabilitate
22 the site, improvement or object
23 (i) before the imposition of controls and/or
24 incentives and
25 (ii) after the imposition of proposed specific
26 controls and/or incentives;
27 (2) the owner's yearly net return on the site, improvement
28 or object, to the extent available, during the
29 five years prior to the imposition of specific
30 controls and/or incentives;
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- 1 (3) estimates of the owner's future net yearly return
- 2 on the site, improvement or object with and without
- 3 the imposition of proposed specific controls
- 4 and/or incentives;
- 5 (4) the net return and the rate of return necessary to
- 6 attract capital for investment
- 7 (i) in such site, improvement or object and in
- 8 the land on which the site, improvement or
- 9 object is situated after the imposition of
- 10 the proposed specific controls and/or incentives,
- 11 if such information is available, or, if such
- 12 information is not available,
- 13 (ii) in a comparable site, improvement or object
- 14 and in the land on which such comparable
- 15 site, improvement or object is situated; and
- 16 (5) the net return and rate of return realized on
- 17 comparable sites, improvements or objects not
- 18 subject to controls imposed pursuant to this
- 19 Ordinance.
- 20 (d) Information. It shall be the responsibility of the
- 21 owner or person in charge to provide the Hearing Examiner
- 22 with such information as is necessary and sufficient to
- 23 determine yearly net return under Section 9.05(c) (2) and
- 24 (3).

25 Section 9.06. Hearing Examiner Recommendations; Referral
 26 to Council. Within thirty (30) days after the hearing, the
 27 Hearing Examiner shall serve on the Board and the owner and
 28 file with the Council for such action as the Council may
 29 deem appropriate, a decision setting forth a recommendation
 30 of the proposed controls and any economic incentives, findings
 31 with respect to the specific controls so recommended, the
 32

1 reasons and need for the controls and any incentives recommended,
2 and the effect of such controls and incentives.
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4 Part X

5 Appeal to Council of Hearing Examiner's
6 Recommendations on Controls and Economic Incentives

7 Section 10.01. Right of Appeal to Council. Any party
8 of record may appeal the findings and recommendations of the
9 Hearing Examiner regarding controls and/or economic incentives
10 by filing with the Council and serving on other parties of
11 record a written notice of appeal within thirty (30) days
12 after the Hearing Examiner's decision is served on the party
13 appealing.

14 Section 10.02. Procedure on Appeal to Council.

15 (a) Any appeal from the findings and recommendation of
16 the Hearing Examiner shall be considered by the Council on
17 the record only. The Hearing Examiner shall promptly prepare,
18 certify and file with the Council such record which shall
19 consist of all documents and exhibits submitted to the
20 Hearing Examiner (except to the extent that the same are
21 already before the Council) and a transcript of all oral
22 proceedings before the Hearing Examiner. The appellant
23 shall be responsible for the reasonable costs of preparation
24 of the record unless the appeal is successful, in which
25 event the Council may apportion such reasonable costs as it
26 deems appropriate.

27 (b) The Council or committee to which such appeal is
28 referred shall notify the Board and any appellant of the
29 procedures established for such hearing and of the date and
30 time when it will hear oral argument, if any, from the
31 parties or their representatives upon the issues which are
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1 the subject of such appeal. Such notice shall be served
2 upon the Board and the owner not less than twenty (20) days
3 before the date of such oral argument.

4 Section 10.03. Council Action on Appeal. The Council
5 may conclude such an appeal by enacting a designating ordinance
6 as provided in Sec. 11.01, adopting a committee report
7 denying designation, or by such other action it deems appropriate.
8

9 Part XI

10 Council Action

11 Section 11.01. Designating Ordinance

12 (a) Pursuant to the procedures set forth in this
13 Ordinance, the Council may by ordinance specify controls and
14 economic incentives with respect to sites, improvements
15 or objects designated by the Board and pursuant to such
16 procedures the Council may by ordinance amend or repeal any
17 such designating ordinance; provided

18 (i) That if an ordinance designating a landmark or
19 a landmark site imposes specific controls upon such land-
20 mark or landmark site, no proceedings may be commenced under
21 this ordinance to impose other or further controls on such
22 landmark or landmark site within four (4) years from the
23 effective date of such designating ordinance without the
24 agreement of the owner in writing; and

25 (ii) That if any landmark or landmark site is substantially
26 destroyed by fire, earthquake or other casualty not en-
27 visioned at the time of designation, the owner may petition
28 the Board to revoke the designation.

29 (b) Each designating ordinance, and each ordinance
30 amendatory thereof, shall include:
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- (1) the legal description of the site, improvement or object;
- (2) the specific features or characteristics which are designated to be preserved;
- (3) the reasons and basis for such designation; and
- (4) the specific controls imposed and any economic incentives granted or to be granted or obtained with respect to such site, improvement or object.

A certified copy of each such ordinance shall be recorded with the King County Director of Records and Elections and served on the owner and on the person in charge of such land, site or landmark.

Part XII

Certificates Of Approval For Alterations Or Significant Changes

Section 12.01. Requirement of Certificate of Approval

After the filing of an approval of nomination with the Superintendent and thereafter as long as proceedings for a designation are pending or a designating ordinance so requires, a Certificate of Approval must be obtained, or the time for denying a Certificate of Approval must have expired, before the owner may:

- (1) make alterations or significant changes to specific features or characteristics of the site, improvement or object suggested for preservation in the approval of nomination, or thereafter specified in the report on approval of designation or the decision of the Hearing Examiner, whichever was issued most recently, while proceedings under this Ordinance are pending, or

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1 (2) make alterations or significant changes which
2 would be in violation of specific controls imposed
3 by a designating ordinance.
4 Section 12.02. Application for Certificate Of Approval
5 (a) Application for a Certificate Of Approval may be
6 made by filing an application for such certificate with the
7 Board, or by filing with the Superintendent an application
8 for a permit to make alterations or significant changes for
9 which a Certificate Of Approval is required because of the
10 pendency of designation proceedings, or the terms of a
11 designating ordinance. The Board may consider or issue a
12 Certificate of Approval without the submission of final
13 drawings, plans or specifications.
14 (b) If before a Certificate of Approval is obtained,
15 an application is made to the Superintendent for a permit
16 for which a Certificate of Approval is required, the Superintendent
17 shall promptly refer such application to the Board and such
18 application shall be deemed an application for a Certificate
19 of Approval. The Superintendent shall continue to process
20 such application, but shall not issue any such permit until
21 the time has expired for filing with said Superintendent the
22 notice of denial of a Certificate of Approval or a Certificate
23 of Approval has been issued pursuant to this ordinance;
24 provided that if by its terms or the provisions of Section
25 13.03 the operation of such Certificate of Approval is
26 suspended the Superintendent shall not issue such permit
27 until the suspension terminates.
28 (c) After the Board has commenced proceedings for the
29 consideration of any application for a Certificate of Approval
30 for a particular alteration or significant change, by giving notice
31 of a hearing pursuant to Section 12.03 or otherwise, no other
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1 application for the same or a similar alteration or significant
2 change may be made until such proceedings and all appeals there-
3 from pursuant to this ordinance have been concluded.

4 Section 12.03. Board Hearing on Certificate of Approval
5 and Stipulated Certificate of Approval. Within thirty (30)
6 days after the filing of an application for a Certificate of
7 Approval with the Board or the referral of an application to
8 the Board pursuant to Section 12.02, the Board shall hold a
9 hearing thereon and shall serve notice of the hearing on the
10 owner and the applicant not less than ten (10) days before
11 the date of the hearing; provided that no hearing shall be
12 required if the Board, the owner and the applicant agree in
13 writing to a stipulated Certificate of Approval approving
14 the requested alterations or changes with such modifications
15 as may be agreed upon. If an agreement on a stipulated
16 Certificate of Approval is reached or if, after a hearing,
17 the Board orders a Certificate of Approval, such certificate
18 shall be issued forthwith and the Board shall file a certified
19 copy of such certificate with the Superintendent.

20
21 Section 12.04. The Board shall issue a written decision
22 either granting or denying a Certificate of Approval not
23 later than forty-five (45) days after the filing of the
24 application for permit with the Superintendent or after the
25 filing of an application for a Certificate of Approval with
26 the Board and shall serve a copy thereof upon the owner, the
27 applicant and the Superintendent within three (3) working
28 days after such grant or denial. A decision denying a
29 Certificate of Approval or attaching conditions to the grant
30 of a Certificate of Approval shall contain an explanation of
31 the reasons for the Board's decision and specific findings
32 with respect to the factors enumerated in Section 12.06.

1 Except by written agreement with the owner and the applicant,
2 neither the Board nor the Hearing Examiner may attach any
3 conditions to the grant or denial of the Certificate of
4 Approval, if the effect of such conditions would be to
5 impose controls which are prohibited by this ordinance, or
6 if such conditions would otherwise be inconsistent with the
7 provisions of this ordinance or any applicable designating
8 ordinance.

9 Section 12.05. Appeal to Hearing Examiner. Any interested
10 person of record may appeal to the Hearing Examiner the
11 decision of the Board to grant, deny or attach conditions to
12 a Certificate of Approval by serving written notice of
13 appeal upon the Board and filing such notice and a copy of
14 the Board's decision with the Hearing Examiner within fifteen
15 (15) days after such grant, denial or conditional grant.
16 Except as otherwise specified in this Part, the Hearing
17 Examiner shall hold a hearing in the same manner as provided
18 in Part IX of this Ordinance for hearings on the application
19 of controls and economic incentives.

20 Section 12.06. Factors to be Considered by Board or
21 Hearing Examiner. In considering any application for a
22 Certificate of Approval the Board, and the Hearing Examiner
23 upon any appeal, shall take into account the following
24 factors:

- 25 (i) the extent to which the proposed alteration or
26 significant change would adversely affect the
27 specific features or characteristics specified in
28 the latest of: the Board approval of nomination,
29 the Board Report on Approval of Designation, the
30 stipulated agreement on controls, the Hearing
31 Examiner's decision on controls, or the designating
32 ordinance.

1 (ii) the reasonableness or lack thereof of the proposed
2 alteration or significant change in light of other
3 alternatives available to achieve the objectives
4 of the owner and the applicant; and

5 (iii) the extent to which the proposed alteration or
6 significant change may be necessary to meet the
7 requirements of any other law, statute, ordinance,
8 regulation, code or ordinance; and

9 (iv) where the Hearing Examiner has made a decision on
10 controls and economic incentives, the extent to
11 which the proposed alteration or significant
12 change is necessary or appropriate to achieving
13 for the owner or applicant a reasonable return on
14 the site, improvement or object, taking into
15 consideration the factors specified in Section
16 9.05 of this Ordinance and the economic consequences
17 of denial; provided, that in considering the
18 factors specified in Section 9.05(c) for purpose
19 of this paragraph, references to times before or
20 after the imposition of controls shall be deemed
21 to apply to times before or after the grant or
22 denial of a Certificate of Approval.

23 Section 12.07. Hearing Examiner Procedure. The Hearing
24 Examiner shall serve notice of the date of the hearing on
25 the parties not less than twenty (20) days before the hearing
26 and shall hold a Hearing not later than eighty (80) days
27 after the filing of the application for a Certificate of
28 Approval. The Hearing Examiner shall issue a decision
29 within fourteen (14) days after the conclusion of the hearing
30 and shall serve the decision on the Board, the owner and the
31 applicant and file the same with the Superintendent within
32 three (3) working days thereafter.

1 The Hearing Examiner may appoint an expert or experts
2 to provide advice or report concerning the economic effect
3 of the denial of a Certificate of Approval or the imposition
4 of proposed conditions. The Hearing Examiner shall receive
5 evidence at the hearing upon the factors specified in Section
6 12.06 and in reaching a decision shall make findings on such
7 factors. If the Hearing Examiner determines that there is
8 no showing of a significant change in circumstances since a
9 previous application for a similar certificate, the appeal
10 shall be denied.

11 Section 12.08. Failure of Timely Decision. If the
12 Board or Hearing Examiner fails to issue and serve a written
13 decision upon the Superintendent, the owner, and the applicant
14 within the times specified in Part XII, or as the same may
15 be extended in accordance with Section 14.02(d), an unconditional
16 Certificate of Approval shall be deemed to have been granted
17 and the Superintendent shall issue all necessary permits for
18 the proposed alteration when all other requirements for
19 issuance have been satisfied.

20 Section 12.09. Appeal to Council. The decision of the
21 Hearing Examiner shall be final unless the action proposed
22 by the owner or applicant involves demolition of an improvement,
23 or destruction of an object, or an estimated cost of \$100,000.00
24 or more. In any such case, the owner or the applicant may
25 appeal on the record to the Council any decision of the
26 Hearing Examiner which denies, or attaches conditions to the
27 grant of a Certificate of Approval, by filing written notice
28 of appeal with the Hearing Examiner, the Board and the
29 Council within fifteen (15) days after such decision. The
30 proceedings and procedure on such appeal shall be in accordance
31 with Section 10.02 except that the Council shall adopt a
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1 resolution embodying its decision not later than 230 days
2 after the filing of the application for a Certificate of
3 Approval and shall serve a copy of such resolution upon the
4 Superintendent, the owner, and the applicant not later than
5 three (3) working days thereafter.
6

7 Part XIII

8 Suspension of Certificate of Approval
9 for Demolition

10 Section 13.01. Suspension by the Board. An order of
11 the Board granting a Certificate of Approval for a proposed
12 alteration which involves demolition of any protected features
13 of a site, improvement or object may provide that the operation
14 of the Certificate shall be suspended for a period of time
15 not to exceed sixty (60) days unless extended pursuant to
16 Section 13.03.

17 Section 13.02. Suspension by Hearing Examiner. If an
18 appeal has been taken from a Board decision granting, denying,
19 or conditionally granting a Certificate of Approval for a
20 proposed alteration which involves demolition of all or any
21 part of the protected features of a site, improvement or object
22 then:

- 23 (i) during the appeal proceedings the Board shall
24 investigate the feasibility of developing a plan
25 meeting the requirements of 13.03(1) below; and
26 (ii) the Board shall present evidence thereon to the
27 Hearing Examiner.

28 If on such appeal the Hearing Examiner determines that
29 a Certificate of Approval should be granted or that one or
30 more of the conditions previously adopted by the Board
31 should be revoked or modified and if there is a showing of a
32 reasonable cause to believe that the subject plan is feasible.

1 the order of the Hearing Examiner ordering the granting of a
2 Certificate of Approval for such alteration may provide that
3 the operation of the Certificate shall be suspended for a
4 period not to exceed thirty (30) days unless extended pursuant
5 to Section 13.03.

6 Section 13.03. Effect of Suspension of Certificate of
7 Approval. When the operation of a Certificate of Approval
8 is suspended, the following provisions shall apply:

9 (i) The Board, in consultation with the owner and the
10 applicant, shall attempt to prepare a plan under
11 which the site, improvement or object or protected
12 features thereof may be preserved or perpetuated
13 in such manner or form as to both effectuate the
14 purpose of this ordinance and to render the site,
15 improvement or object capable of realizing a
16 reasonable return.

17 (ii) If written agreement on such a plan is not reached
18 within thirty (30) days of the issuance of such
19 certificate the Board may, within ten (10) days
20 after the expiration of said time, file with the
21 Mayor and Superintendent and serve on the owner
22 and the applicant a written recommendation that
23 the City acquire a specified appropriate protective
24 interest in the property and the filing of such
25 recommendation shall extend the period of suspension
26 until termination in accordance with Section
27 13.04.

28 Section 13.04. Termination of Suspension. The suspension
29 of a Certificate of Approval shall terminate.

30 (a) If the recommendation provided for in 13.03(ii) is
31 not served and filed in a timely fashion; or
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1 (b) If within ninety (90) days after the service and
2 filing of such recommendation, the City neither commences a
3 court action to condemn such interest or any other appropriate
4 protective interest agreed upon by the Mayor and the Board,
5 nor enters into a contract with the owner to acquire such
6 interest; or

7 (c) Upon the expiration of the period of suspension
8 when no recommendation has been filed.

9 Section 13.05. Effect of Termination of Suspension.
10 Whenever a suspension terminates, the Superintendent shall
11 forthwith issue the permit if all other requirements for the
12 issuance of a permit shall have been met.

13 Part XIV

14 General Provisions

15 Section 14.01. Notice.

16 (a) Notices, decisions, and any other instruments or
17 documents required to be served upon the owner pursuant to
18 this Ordinance shall be served by mailing the same: (1) to
19 the person shown to be the owner on the records of the
20 Department of Finance of King County, Washington, to the
21 address therein given and to such other addresses as may be
22 ascertained from telephone or Polk directory listings for
23 the City of Seattle, and (2) to the owner's attorney where
24 the files or records of the Board, the Hearing Examiner, or
25 the Council, reveal representation in such proceedings by an
26 attorney; and (3) to the person in charge of a site, improvement
27 or object. Notices, applications, other instruments or
28 documents required to be served upon the Board shall be
29 served by delivering the same to the Historic Preservation
30 Officer or by mailing the same either to the Historic Preservation
31 Officer or to the Landmarks Preservation Board at the then
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1 current address for such officer or Board. Transmittals by
2 mail shall be sent by first-class mail, certified with
3 return receipt requested and with postage prepaid. Service
4 shall be deemed to have been given when all of the steps
5 specified above have been completed. Failure to send notice
6 by mail to any owner whose address is not listed in the
7 above sources, and failure to give actual notice to any
8 owner whose name and address is unknown, shall not invalidate
9 any proceedings in connection with the proposed designation.

10 (b) Notice to parties of record shall include at least
11 those documents sent to the owner. Such notice shall be
12 served by first-class mail.

13 (c) Notice to interested persons of record shall
14 include at least the following: a description of the most
15 recent action taken by the Board, the Hearing Examiner or
16 Council; the time and place of the next public meeting or
17 hearing, if any; the procedure to be followed at such meeting
18 or hearing; the rights of appeal available, if applicable;
19 and the time and place where documents in the record may be
20 inspected. Such notice shall be served by first-class mail.

21 (d) The Historic Preservation Officer may give such
22 other notice as he may deem desirable and practical.

23 Section 14.02. Termination of Proceedings.

24 (a) In any case where a site, improvement or object is
25 nominated for designation as a landmark site or landmark and
26 thereafter the Board fails to approve such nomination or to
27 adopt a report approving designation of such site, improvement
28 or object, such proceeding shall terminate and no new proceeding
29 under this ordinance may be commenced with respect to such
30 site, improvement or object within five (5) years from the
31 date of such termination without the written agreement of
32 the owner.

1 (b) In any case where a site, improvement or object has
2 been designated by the Board, in the absence of a written
3 agreement with the owner deferring consideration of the
4 imposition of controls or Board approval of a negotiated
5 agreement pursuant to Section 8.01(b), such proceeding shall
6 terminate and no new proceeding under this Ordinance with
7 respect to such site, improvement or object may be commenced
8 within four (4) years from the date of such termination
9 without the written agreement of the owner if:

10 (1) The Board fails to file with the Hearing Examiner
11 its statement of proposed controls within the time prescribed
12 in Section 9.01, or

13 (2) The Hearing Examiner does not issue a decision
14 which recommends controls, together with a proposed form of
15 designating ordinance, within 100 days after the filing of
16 the Board's recommendations on controls and incentives, or
17 within such further time as the Board and the owner may
18 agree to by written stipulation; provided, that if the
19 Hearing Examiner issues a decision which does not recommend
20 controls such proceedings shall terminate if no appeal is
21 filed with the City Council within the time limited for
22 filing such appeal.

23 (c) In any case where a designating ordinance imposing
24 specific controls is enacted, no further proceedings under
25 this Ordinance to impose other or further controls on such
26 landmark or landmark site may be commenced within four (4)
27 years from the effective date of such designating ordinance
28 without the written agreement of the owner.

29 (d) When delays in the proceedings pursuant to this
30 Ordinance result from any of the following:

31 (1) the owner's request for a continuance or extension;
32 or

1 (2) the owner's stipulation to a continuance or extension;
2 or
3 (3) the requirements of any other ordinances or any
4 statutes; or
5 (4) the institution of court proceedings challenging
6 any proceedings under any section of this Ordinance;
7 then, the time limits specified in this Ordinance shall be
8 extended accordingly, and in the case of the institution of
9 court proceedings such time periods will be stayed until the
10 termination of such court action.

11 Section 14.03. Revision or Revocation of Designation,
12 Controls, Incentives. At the end of four (4) years after
13 the effective date of a designating ordinance, the owner may
14 file with the Board an application to revoke designation of
15 a site, improvement or object as a landmark site or landmark
16 or an application to modify or revoke the controls or economic
17 incentives previously established with respect thereto.
18 Proceedings with respect to any such application shall
19 proceed in the manner specified in Parts V, VI, VII, VIII,
20 IX and X; provided that the burden shall be on the owner to
21 demonstrate that a substantial change in circumstances has
22 occurred to justify revision or revocation. Revocation of
23 designation shall have the further effect of the termination
24 of all controls and all present and future benefits from
25 granted economic incentives. Termination of revocation or
26 revision proceedings shall have the effects specified in
27 Section 14.02.

28 Section 14.04. Staff Reports and Studies. When a site,
29 improvement or object is the subject of any proceeding
30 pursuant to this Ordinance, the owner, upon request therefor,
31 shall be promptly furnished with a copy of all Board staff
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1 reports, inspections, and studies prepared for the use of
2 the Board with respect to the issues under consideration.
3 Unless otherwise expressly specified by the owner, a request
4 for a copy of such report, inspection and studies shall be
5 treated as a continuing request for copies of all such
6 documents prepared until the proceeding has terminated.
7

8 Section 14.05. Economic Incentives, City Authorities.

9 All city authorities, including the Council, to the extent
10 that they have the power to do so, may take such action as
11 may be necessary to grant economic incentives, and may make
12 any such action or grant conditional upon the subsequent
13 enactment of a designating ordinance. When any application
14 is made for the granting of recommended, requested or required
15 economic incentives, all responsible city authorities shall
16 give such application priority on their respective schedules
17 and shall reach their respective decisions with all possible
18 speed.

19 Section 14.06. Conformance with General Development.

20 In all proceedings under this Ordinance, the Board and the
21 Hearing Examiner shall consider and in their respective
22 reports or decisions make findings on the conformance or
23 lack of conformance of the proposed action with the desirable
24 long-term overall development of the City of Seattle, including,
25 without limitation, any then existing Comprehensive Plan.

26 Section 14.07. Advice and Guidance to Property Owners.

27 The Board may, upon request of the owner of the site, improvement
28 or object, render advice and guidance with respect to any
29 proposed work on a landmark or landmark site.

30 Section 14.08. Enforcement and Penalties. The Superintendent

31 shall enforce this Ordinance and any designating ordinances
32 enacted pursuant thereto or pursuant to Ordinance 102229 and

1 may, in addition to any other remedy or penalty provided
2 herein, seek injunctive relief for such enforcement. Anyone
3 violating or failing to comply with the provisions of this
4 Ordinance or any designating ordinance shall, upon conviction
5 thereof, be fined a sum not exceeding Five Hundred Dollars
6 (\$500), and each day's violation or failure to comply shall
7 constitute a separate offense; provided, however, that no
8 penalty shall be imposed for any violation or failure to
9 comply which occurs during the pendency of legal proceedings
10 filed in any court challenging the validity of the provision
11 or provisions of this Ordinance, as to which such violation
12 or failure to comply is charged.

13 Section 14.09. Severability. The invalidity of any
14 section, subsection, provision, clause or portion of this
15 Ordinance, or the invalidity of the application thereof to
16 any person or circumstance, shall not affect the validity of
17 the remainder of this Ordinance or the validity of its
18 application to other persons or circumstances.

19 Section 14.10. Repeal. That Ordinance 102229, approved
20 June 8, 1973, and entitled:

21 "AN ORDINANCE creating the Landmarks Preservation
22 Board, establishing a procedure for the designation
23 and preservation of structures and areas having
24 historical, cultural, architectural, engineering
25 or geographic importance, providing for enforcement
26 and imposing penalties for violations."

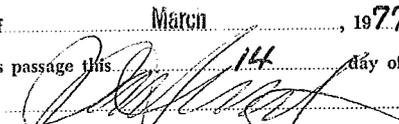
27 is hereby repealed.

28 All matters pending under Ordinance 102229 are hereby
29 vacated without prejudice to the Board's right to initiate
30 proceedings pursuant to this Ordinance; provided, that with
31 respect to any site, improvement or object which was the
32 subject of a pending proceeding under Ordinance 102229 on
the effective date of this Ordinance, the Board in accordance
with a written agreement between the Board and the owner may

1 issue an agreed Report Approving Designation and thereafter
2 continue with proceedings pursuant to this Ordinance, without
3 complying with the provisions of Part VI; and provided
4 further that the Board may, within One Hundred Twenty (120)
5 days after the effective date of this Ordinance, select any
6 sites, improvements or objects recommended for designation
7 under Section 7 of Ordinance 102229 and such sites, improvements
8 or objects shall be deemed to be approved for designation
9 under the terms of Part VI of this Ordinance, and the Board
10 shall serve upon the owner of such sites, improvements and objects
11 notice of such selection requesting that the owner negotiate
12 regarding controls and incentives, if any, pursuant to the
13 provisions of Part VIII of this Ordinance; and provided further that
14 nothing herein shall affect the validity of any ordinance which
15 was adopted prior to the effective date of this ordinance and
16 which designates any landmark or landmark site pursuant to and
17 in accordance with Ordinance 102229.
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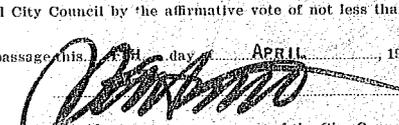
(To be used for all Ordinances except Emergency.)

Section ¹⁴ 11: This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 14 day of March, 1977
and signed by me in open session in authentication of its passage this 14 day of March, 1977.

President of the City Council.

I hereby certify that the foregoing Council Bill No. 98235, after passage by the City Council, was duly presented to the Mayor and by him disapproved and returned to the City Council with his objections in writing; that the objections of the Mayor were duly entered at large on the journal of the Council and published in the City Official Newspaper; that said Bill was duly reconsidered and voted upon by the City Council not less than five (5) days after such publication and within thirty (30) days after said bill had been so returned, to-wit, on APRIL 4, 1977; and that upon such reconsideration said Council Bill was, on said last mentioned date, again duly passed by said City Council by the affirmative vote of not less than two-thirds of all the members elected.

Signed by me in open session as aforesaid in authentication of its passage this 4 day of APRIL, 1977.

Filed by me this 4TH day of APRIL, 1977.

President of the City Council.

[SEAL] Attest: Ed King
City Official and Ex-Officio City Clerk.

Published: _____
By: Rayne T. Angewine
Deputy Clerk.

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THE CITY OF SEATTLE

LAW DEPARTMENT

MUNICIPAL BUILDINGS - SEATTLE, WASHINGTON 98104
AREA CODE 206 TELEPHONE 625-2402

JOHN P. HARRIS, CORPORATION COUNSEL

February 24, 1977

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ANDRE WOOTEN

CLAIMS MANAGER

V. L. PORTER

Re: CB 97647

Honorable Paul Kraabel
City Council
The City of Seattle

Dear Sir:

Pursuant to your request by memorandum dated January 10, 1977 we have prepared and forward herewith a revised version of the proposed Landmarks Preservation Ordinance (CB 97647), incorporating in such revision amendments set forth in such memorandum.

In connection with the above proposed legislation you have forwarded a copy of a letter from the "Coalition of Citizens for Landmarks" which recommends in part that -

"In section 14.08 the words appearing at line 7 on page 36: 'For any violation . . . which occurs' should be deleted so that a party may challenge any provision of the ordinance without thereby being exposed to the multiple penalty provisions. As this section is presently worded the pendency of legal proceedings would enable one to violate the provisions of this ordinance with impunity.",

and you ask whether Section 14.08 "would in fact allow one to violate the provisions of the ordinance with impunity", and if so, that we ". . . suggest an amendment to this section which would avoid this result but would also protect an owner who contested the proceedings under the ordinance from being subjected to a fine of monumental proportions for his or her failure to meet the requirements of the ordinance during such time as a legal challenge to its provisions was pending."

We advise that proposed Section 14.08 so far as pertinent here, reads as follows:

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February 24, 1977

" . . . Anyone violating or failing to comply with the provisions of this Ordinance or any designating ordinance shall, upon conviction thereof, be fined a sum not exceeding Five Hundred Dollars (\$500), and each day's violation or failure to comply shall constitute a separate offense; provided, however, that no penalty shall be imposed for any violation or failure to comply which occurs during the pendency of legal proceedings filed in any court challenging the validity of the provision or provisions of this ordinance as to which such violation or failure to comply is charged."

The recommendation of the Coalition of Citizens for Landmarks would amend the above underlined proviso to read as follows:

" . . . provided, however, that no penalty shall be imposed during the pendency of legal proceedings filed in any court challenging the validity of the provision or provisions of this ordinance as to which such violation or failure to comply is charged."

The existing language of proposed Section 14.08 would exempt from any penalty a violation occurring during the time a legal challenge to the provision or provisions violated is pending and is intended to "protect an owner who contested the proceedings under the ordinance from being subjected to a fine of monumental proportions for his or her failure to meet the requirements of the ordinance during such time."

Such exemption would, of course, allow a person to violate the ordinance without punishment if such person or some other person has brought an action challenging the validity of the provision violated and the action has not yet been decided. Such exemption quite often results from the pendency of legal proceedings challenging the validity of an ordinance or a provision or provisions thereof, for the reason that the person making such challenge will usually seek to obtain an order from the court temporarily enjoining enforcement of the ordinance while the action is pending. If, on the other hand, the challenge is made in the context of a criminal action charging a violation of the ordinance, the defendant is exempted from punishment only if the court finds the provision or provisions to be invalid; otherwise punishment is only delayed.

The effect of the language proposed by the Coalition of Citizens for Landmarks is not entirely clear. Taken literally,

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such language only delays punishment; i.e., "no penalty shall be imposed during" However, the courts might well interpret such language as being intended to achieve the same result as that expressed in the present language of Section 14.08. In the first instance, the owner would not be protected from punishment; in the second, violations occurring during the pendency of the action would not be punished.

In short, an ordinance cannot, in our opinion, protect an owner from punishment for a violation unless the ordinance allows the owner to violate the ordinance without punishment, and we accordingly have not made any change in proposed Section 14.08 pending your further request.

Very truly yours,

JOHN P. HARRIS
Corporation Counsel

BY


JAMES M. TAYLOR
Assistant

JMT:klm
Encl:

The City of Seattle--Legislative Department

MR. PRESIDENT:

Your Committee on PLANNING & URBAN DEVELOPMENT

Date Reported
and Adopted
MAR 14 1977

to which was referred

C.B. 98236

Creating a Landmarks Preservation Board, establishing a procedure for the designation and preservation of objects, sites, improvements and elements having historical, cultural, architectural, engineering or geographic importance, providing for enforcement and imposing penalties for violations, and repealing Ordinance 102229.

RECOMMEND THAT THE SAME DO PASS



P&UD
Chairman

Chairman

Committee

Committee

Affidavit of Publication

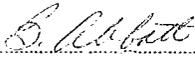
STATE OF WASHINGTON
KING COUNTY—SS.

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is new and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

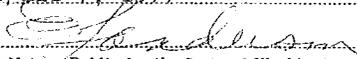
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

ORDINANCE NO 106348

was published on April 7, 1977


.....
Subscribed and sworn to before me on

April 7, 1977


.....
Notary Public for the State of Washington,
residing in Seattle.

AFFIDAVIT OF PUBLICATION

ORDINANCE 106348

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106348
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