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--A community organization dedicated to preserving the character, charm and historical resources of the Mission Hills neighborhood.

October 10, 2025

Policy Subcommittee of the Historic Resources Board
C/O Kelley Stanco Deputy Director
Environmental Policy & Public Spaces Division
City of San Diego, City Planning Department
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**Re: HRB Policy Subcommittee Meeting – October 13, 2025
Preservation and Progress Package A, Part 3, and Continuing Discussion of
Designation Appeals Process**

Dear HRB Policy Subcommittee Chair Byers and Members,

Enclosed is our response to City staff's recommended amendments of the historic designation appeal process provisions of San Diego Municipal Code. Please note, these comments were prepared without the benefit of the "Benchmarking Study," which informs many of City staff's recommendations and which has not been released despite prior assurances.

(1) The appeals process amendments, SDMC § 123.0203(a) and (b), create asymmetrical appeal rights that are fundamentally unfair.

- **The proposed appeal process raises Equal Protection Concerns under the U.S. and California Constitutions.** The Equal Protection Clause of the U.S. and California Constitution protects against uneven application of the laws. Thus, when similarly situated groups are treated differently under a statutory scheme and a non-suspect class is not involved, the government must show the scheme has a rational basis.

Here, the amendment treats two similarly situated groups differently: Appellants who are record owners of property and appellants who are not (all other "interested persons" and applicants), with only the former group being permitted full appeal rights of both

designations and non-designations and the latter being permitted only appeals of designations.¹ Thus, disparate treatment of similarly situated groups exists.

This classification is not rationally related to the purpose of the historic resource regulations, which is to promote the preservation of historical resources. Instead, limiting appeals of non-designations to only record property owners works against this goal by precluding potentially legitimate claims of error on appeal and allowing potentially meritorious resources to go unprotected. Precluding meaningful judicial review and relief—especially in the instance where the appellant brought the nomination but is not the record owner and is an aggrieved party—cannot realistically be a legitimate state interest. Moreover, the proposed disparate treatment bears no relationship to any factual circumstances. As originally proposed, this amendment limiting appeals of non-designations to record property owners was to “reduce misuse and delays.”² Yet, the disparate classification does not meet this end, since the same “delays” will stem from appeals of affirmative designation decisions and there remains a potential for abusive appeal practices of both designations and non-designations.³ In other words, the disparate classification does not fix the alleged problem it was proposed to address and, thus, cannot be rationally related to the government interest of reducing delays and preventing malicious appeals. In sum, the disparate classification scheme is not rationally related to a legitimate government purpose and arguably violates the Equal Protection Clause.

- **The amendment is contrary to the intent and purpose of both the Land Development Code and the Preservation and Progress Initiative.** Giving appeal rights for non-designations only to record property owners favors developers and property owners, because it precludes other “interested parties” (individuals, applicants, community and/or preservation groups who participated in the nomination or hearings) from appealing a non-designation and precludes them from public participation. In the instance the would-be appellant was an applicant before the HRB, the proposed language will block this aggrieved party’s access to judicial review. This result is contrary to the purpose of the

¹ The SDMC §113.0103 defines “interested person,” to mean “person who spoke at a public hearing from which an appeal arose or a person who expressed an interest in the decision in writing to that decision maker before the close of the public hearing.”

² Members of the HRB’s Policy Subcommittee unanimously adopted the asymmetrical appeal process, disallowing appeals of non-designations from applicants or interested parties, at the August 7, 2025, subcommittee meeting after presentation by Jennifer Ayala of Nexus Planning & Research. In her written comments, Ms. Ayala requested that appeals of non-designations be limited to record property owners, as follows:

Appeals of Non-Designations – Please limit appeals of non-designations to property owners or voluntary nominations to reduce misuse and delays, which supports the goal of making historic determinations more efficient and protecting truly significant resources. [See Public Correspondence of Jennifer Ayala attached to August 11, 2025 Meeting, available at https://www.sandiego.gov/sites/default/files/2025-08/20250811_preservation_progress-package-a-part-1_comments-from-nexus.pdf.]

³ The only abusive appeal practice in MHH’s recent memory relates to the unmeritorious appeals of designation decisions by Clint Daniels, who regularly pulled items off the consent agenda and appealed affirmative designations to City Council. There are no facts to support abuse of appeals of non-designation decisions.

Land Development Code, which is expressly intended to “facilitate fair and effective decision-making and to encourage public participation,” SDMC §111.0102, as well as the purpose of the P&P Initiative to ensure equity in the historic resource regulations.

Conclusion & Recommendation: An even-handed appellate procedure, where both interested parties and property owners can appeal non-designations, would be consistent with equal-protection principles and honor the purpose of both the Code and the P&P Initiative. Language allowing interested parties the right to appeal non-designations should be added.

(2) The amendment to SDMC § 123.0203(e) should preclude submission of additional evidence after the 90-day period.

We support the proposed amendment allowing for submission of additional information in support of the appeal within 90 days of filing the appeal. The section should be further amended to preclude submission of additional information after the 90 calendar days. This will disallow an appellant from submitting additional information at, or immediately before, the hearing. Such “surprise” introduction of evidence is prohibited by most court rules and the rationale for prohibiting the introduction of such information applies equally to administrative adjudication. The additional proposed language is included below in blue:

Upon the filing of the appeal, the appellant shall submit additional information in support of the stated grounds for appeal within 90 calendar days or the right to appeal will be forfeited and the decision of the Board to designate or not to designate shall become final. ~~The City Clerk shall set the matter for public hearing as soon as is practicable no later than 90 calendar days after the date on which the additional information in support of the appeal is submitted by the appellant and shall give written notice to the property owner and the appellant of the time and date set for the hearing.~~ Failure to hold the hearing within the time frames specified above shall not limit the authority of the City Council to consider the appeal. At the public hearing on the appeal, the City Council may by resolution affirm, reverse, or modify the determination of the Board and shall make written *findings* in support of its decision. No additional information other than that information submitted within 90 calendar days of the filing of the appeal shall be considered at the hearing.

Conclusion & Recommendation: Language precluding the introduction of information after 90 days of the date the appeal was filed should be added.

(3) The appeals process amendment, SDMC § 123.0203(a)(3) and (b)(3), provides a new ground for appeal that potentially allows City Council to supplant the HRB’s designation determination with its own judgment or political preferences.

We do not support adding this new ground for appeal for the reason stated. Further, with respect to the appeal of a decision to not designate, the new ground that the decision “to not designate the property is a not supported by the information” constitutes a confusing double negative. The ground should be restated to indicate that “the designation is supported by the information provided to the Board, contrary to the Board’s decision to not designate.”⁴

⁴ At staff’s October 8, 2025, “Virtual Public Workshop on Preservation & Progress Package A,” staff indicated an intent to further amend this provision given feedback that the language was “vague.” To the

Conclusion & Recommendation: The new ground for appeal in SDMC § 123.0203(a)(3) and (b)(3) should be stricken. If retained, revise language of SDMC § 123.0203(b)(3) to remove the double negative language.

Respectfully Submitted,



Mission Hills Heritage,

By: Robert Jassoy, President

extent that staff introduces new proposed language at this subcommittee hearing related to these grounds to appeal, the subcommittee's consideration of such language is precluded under the Brown Act because any new amendments have not been properly noticed. Cal Gov. Code § 54954.2(a)(1) ("At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.").