

Historic Landmarks and Preservation Districts Commission

-Economic Hardship and Designation-

NEW PROVISION - LMCO 32.260 (O) (2) (f) “Additionally, in considering the designation of any individual landmark, the Commission may determine whether the structure or site owner(s) would qualify for an economic hardship exemption, pursuant to § [32.257\(L\)](#), from any exterior alteration specified in § [32.256\(C\)](#).”

What are Economic Hardship and Economic Hardship Exemption?

- As to the Landmarks Commission, an *Economic Hardship* occurs when an applicant is unable to sufficiently comply with the Design Guidelines to obtain a Certificate of Appropriateness (COA) resulting in a hardship that is either:
 - with regard to a non-income producing structure or site, the structure or site cannot be put to a reasonable beneficial use, or;
 - with regard to an income producing structure or site, the applicant cannot obtain any reasonable return.
- An *Economic Hardship Exemption* allows an applicant relief (exemption from compliance) from those Design Guidelines which prevent the approval of a COA, so a COA can be obtained.

What is the Standard of Review for Economic Hardship analysis? LMCO 32.257 (L) defines the review process and references “guidelines adopted by the Commission.” These guidelines and standards are currently specified in the Landmarks Commission pamphlet “Economic Hardship and Guidelines for Demolition.” In essence, specific “tests” must be met as shown in specific documents.

What changed and why?

- Previously an Economic Hardship Exemption may only have been considered and approved by the Commission during a COA review process for a property or structure already designated.
- Now the Commission can also consider during the Designation process whether the property owner could qualify for an Economic Hardship Exemption in the future, should their property be designated.
- This change was initiated by Metro Council to allow for analysis by the Commission and Council of potential, future Economic Hardship – often a primary concern for a property owner – during the designation process. The inability to consider this during designation resulted in significant confusion, perception of risk, and uncertainty which has negatively impacted the goals and success of the local designation process.

What is the role of Economic Hardship analysis in a Designation review? The Designation of a structure or site is still based solely on level of integrity and the designation criteria. The Commission may now additionally make a finding with regard to Economic Hardship. This finding would be part of the record of decision for the structure or site and would inform future COA reviews if designated.

What exterior alterations may be considered for Economic Hardship analysis during Designation?

- YES - As referenced in the new provision specific alterations may be considered. These are specified in LMCO 32.256 (C): new construction including carriage houses and accessory residential units; demolition; any exterior alteration with a value that exceeds 25% of the value of the structure; or any other application which is determined by staff to be inappropriate for staff review. These are the minimum thresholds for projects requiring committee level review.
- NO - All other projects are excluded from Economic Hardship consideration including:
 - projects Exempt from Review such as regular maintenance and repair, painting of non-masonry materials, interior renovations, landscaping, emergency repairs, small security items or;
 - projects requiring staff level review which are items that are not exempt from review but fall under the thresholds set by 32.256 (C).

What do we do now to better implement this provision?

- Education and training of process stakeholders including the Commission, staff, petitioners, property owners, Metro Council, and the community at large of these and other process changes, this could include:
 - Ongoing training of Commissioners
 - Inclusion of Economic Hardship at each point in the designation process including meetings, submittals, reviews
- Commission could consider adopting modified/simplified Economic Hardship document requirements for a property owner who did not initiate a designation. The current list is extensive and could put a significant burden on a property owner. The scope of the review is also more scenario driven so detailed analysis could be difficult
- Commission could take advantage of the 90 day time period between the public hearing and deadline for final action to do this analysis as opposed to trying to evaluate all the material in 1 setting in addition to the designation criteria, etc
- Commission could adopt bylaws for procedure of the Economic Hardship review including:
 - Timeframes
 - Modified document list
 - Assignment to a committee including the Commission appraiser member
 - Develop method for seeking input on the analysis or bylaw development from persons determined by the Commission to have expertise in real estate and development who are knowledgeable in real estate economics in general and, more specifically in the economics of renovation, redevelopment, and rehabilitation (this language borrowed from LMCO 32.257 (L))