

TO: Tustin Residents
FROM: Tustin Preservation Conservancy
DATE: August 28, 2011
RE: Applicability of California Historical Building Code.

I. Purpose

The purpose of this memorandum is to provide the Tustin Preservation Conservancy's position as to when a building located within the Tustin Cultural Resource District¹ (TCRD) is subject to the California Historical Building Code² (CHBC) and to explain why the application of the CHBC is important for owners of Qualified Historical Structures in Tustin.

II. Applicable Law, Codes and Documents.

The California Historical Building Code is codified under the California Health and Safety Code, Division 13, Part 2.7, Sections 1895-18961. The regulations which were promulgated to support the CHBC are set forth in the California Code of Regulations, Title 24, Part 8. The TCRD is codified under the Tustin Code of Ordinances, Article 9, Chapter 2, Part 5, Section 9252. The Tustin Historical Survey (Survey) is a "Planning and Zoning Document" and can be located at Tustin's webpage <http://www.tustinca.org/departments/commdev/index.html>

III. When CHBC is Applicable.

To determine if a building or structure located in the TCRD is subject to the CHBC, the first and most important point of analysis is to determine if the building in question is a "qualified historical building or structure" as defined under Section 18955 of the CHBC. Section 18955 states:

For the purposes of this part, a qualified historical building or structure is any structure or property, collection of structures, and their related sites deemed of importance to the history, architecture, or culture of an area by an appropriate local or state governmental jurisdiction. This shall include historical buildings or structures on existing or future national, state or local historical registers or official inventories, such as the National Register of Historic Places, States Historical Landmarks, State Points of Historical Interest and city or county registers or inventories of historical or architecturally significant sites, places, historic districts or landmarks.

¹ The Tustin Cultural Resource District is commonly referred to generally as "Old Town Tustin" or the "Cultural Overlay District"

² This memo is not legal advice. Any person who has any legal problems or has concerns regarding code rules or code violations should consult an attorney immediately to review their case in detail and to make specific determinations as to their specific issues. This memo is solely for information and education purposes only and is meant to set forth the Tustin Preservation Conservancy's position in regards to the applicability of the California Historical Building Code in Tustin.

This shall also include places, locations, or sites identified on these historical registers or official inventories and deemed of importance to the history, architecture, or culture of an area by an appropriate local or state governmental jurisdiction.

The TCRD was established by the City of Tustin, the perimeter of which can be found on the City Zoning map also available at the website listed above. The TCRD is an overlay district and applies to the properties located within the perimeter of this district which are deemed cultural resources structures and sites as may be designated by resolution of the City Council and listed by address and filed with the Department of Community Development. (See Generally TCRD section 9252(b)(1)). Many structures included within the TCRD were identified in the Survey as structures qualifying as historical buildings or structures as defined under Section 18955 of the CHBC. Therefore, an owner of a structure located within the TCRD should review the Survey to determine if the building in question has already been qualified as a historical building or structure. If so, the CHBC *shall* apply to the Qualified Building or Structure.

In the event that a building or structure within the TCRD is not listed in the Survey, this alone does not mean the building or structure does not qualify as a historical building or structure. Section 9252(d)(1-7) of the CHBC sets for the criteria that a building or structure should have in order to be considered by the City Council for a designation. Section 9252(e)(1-11) sets for the procedures that a property owner should follow if their property is not designated under the Survey and they wish to have their building or structure designated as a cultural resource.

Based on the above, once a building or structure has been established as a qualified historical building or structure the CHBC shall apply in all instances. However, it is important to note that it appears that an owner of a structure must “elect” to have the CHBC apply to his/her property.

IV. Why is the Application of the CHBC Important to Tustin Residents?

The majority of the structures located with the TCRD are Qualified Historical Buildings or Structures. Many of these buildings were built or modified many years in the past and as such do not comply with modern structural code provisions. Furthermore, many of these Buildings and Structures cannot be brought up to modern code provisions or cannot be brought up to code without extensive and prohibitively expensive renovations. The CHBC was specifically drafted to address these issues and requires enforcement agencies to apply the CHBC in order to preserve these buildings and structures.

The purpose of CHBD is to “provide *alternative regulations and standards* for the rehabilitation, preservation, restoration (including related reconstruction), or relocation of qualified historical buildings or structures, as defined in Section 18955. These alternative standards and regulations are intended to facilitate the rehabilitation, restoration, or change of occupancy so as to preserve their original or restored architectural elements and features, to encourage energy conservation and a cost-effective approach to preservation, and to provide for the safety of the building occupants.”(CHBC section 18951, emphasis added). As

such, for Tustin community members the very purpose of the CHBC is to assist the owner of such properties in preserving these State Historical assets.

The regulations set forth in Chapter 24, Section 8, start by setting forth the Purpose and intent of the CHBC and then set forth how the regulations are to be applied by state or local enforcing agencies. Due to the importance of these preliminary sections for owners of Qualified Historical Buildings or Structures, these sections are set forth in full, with emphasis added, immediately below.

SECTION 8-101 TITLE, PURPOSE AND INTENT

8-101.1 Title.

These regulations shall be known as the *California Historical Building Code* and will be referred to herein as “the CHBC.”

8-101.2 Purpose.

The purpose of the CHBC is to provide regulations for the preservation, restoration, rehabilitation, relocation or reconstruction of buildings or properties designated as qualified historical buildings or properties (Chapter 8-2). The CHBC is intended ***to provide solutions*** for the preservation of qualified historical buildings or properties, to promote sustainability, to provide access for persons with disabilities, to provide a ***cost-effective approach to preservation***, and to provide for the ***reasonable*** safety of the occupants or users. The CHBC ***requires*** enforcing agencies ***to accept solutions that are reasonably equivalent*** to the regular code (as defined in Chapter 8-2) when dealing with qualified historical buildings or properties.

8-101.3 Intent.

The intent of the CHBC is to ***facilitate the preservation and continuing use*** of qualified historical buildings or properties while providing ***reasonable*** safety for the building occupants and access for persons with disabilities.

SECTION 8-102 APPLICATION

8-102.1 Application.

The CHBC is ***applicable to all issues regarding code compliance*** for qualified historical buildings or properties. The CHBC may be used in conjunction with the regular code to provide solutions to facilitate the preservation of qualified historical buildings or properties. ***The CHBC shall be used by any agency with jurisdiction and whenever compliance with the code is required*** for qualified historical buildings or properties.

1. ***The state or local enforcing agency shall apply the provisions of the CHBC in permitting repairs, alterations and additions necessary for the preservation, restoration, reconstruction, rehabilitation, relocation or continued use of a qualified historical building or property when so elected by the private property owner.***

2. State agencies. All state agencies shall apply the provisions of the CHBC in permitting repairs, alterations and additions necessary for the preservation, restoration, rehabilitation, safety, relocation, reconstruction or continued use of qualified historical buildings or properties.

V. Conclusion

The CHBC is important for owners of Qualified Historical Buildings to understand in order to protect their structures from destruction and/or to protect the owners from possible criminal liability based on the misapplication of the law by enforcing agencies. The CHBC is California state law that trumps local Tustin ordinances and which SHALL be applied when so elected by the owners of a Qualified Historical Building or Structure. The CHBC provides the necessary alternatives to current structural codes to protect and preserve Tustin and as such, each owner of such buildings should be aware of when the CHBC should be applied and be prepared to elect to have these codes applied when dealing with local enforcing agencies.

The Conservancy advises that any person who finds himself or herself with issues stemming from the application of these or other building code provisions to consult an attorney immediately to review their case in detail and to make specific determinations as to their specific issues. This memo is solely for information and education purposes only and is meant to set forth the Tustin Preservation Conservancy's position in regards to the applicability of the California Historical Building Code in Tustin.

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