



## ATTACHMENT C – CITY ATTORNEY MEMORANDUM

**MEMORANDUM DATE:** June 2, 2021

**AGENDA DATE:** June 9, 2021

**TO:** Chair and Members of the Historic Resources Preservation Board

**RE:** **Resolution 31-2021**

**FROM:** Jordan Hodges, Senior Preservation Coordinator  
Abraham Fogel, Preservation Planner  
Department for Community Sustainability

**TITLE: Resolution 31-2021:** An amendment to page 198 of the City's Historic Preservation Design Guidelines to allow Low-E coatings with a minimum visible light transmittance (VLT) of 60% for glazing in the historic districts.

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# **TORCIVIA, DONLON, GODDEAU & RUBIN, P.A.**

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CITY COUNTY AND LOCAL GOVERNMENT ATTORNEY

## **Memorandum**

To: William Waters, Community Sustainability Director  
Erin Sita, Assistant Director, Community Sustainability  
Jordan Hodges, Senior Preservation Coordinator  
Abraham Fogel, Preservation Planner

From: Susan M. Garrett

Cc: Christy L. Goddeau  
Glen J. Torcivia

Date: May 6, 2021

Re: Preservation Guidelines and Replacement Glass

You have asked for legal guidance concerning (1) the required procedure for making revisions to the preservation guidelines; (2) whether the Historic Resources Preservation Board's recent interpretation of one of the guidelines concerning replacement window glass was an unauthorized amendment to the guidelines; and (3) whether changes made to administrative forms used in the processing of applications for Certificate of Appropriateness would be considered amendments to the Guidelines. As more fully discussed below, while revisions to the preservation guidelines require approval by resolution of the City Commission, the HRPB's determination that Low-E glass having minimum 70% visual light transmittance (VLT) may be approved administratively was not an amendment to the Guidelines. Further, the Code expressly authorizes the HRPB to develop and expand the list of items that can be approved administratively by staff.

### Procedure for Revising Historic Preservation Design Guidelines

Under the City of Lake Worth Beach Code of Ordinances (the "Code"), the Historic Preservation Design Guidelines (the "Guidelines") are recommended by the HRPB and adopted by Resolution of the City Commission. Revisions to the Guidelines follow the same procedure. In addition, as a condition of the City's participation in the Certified Local Government Program, amendments must be submitted to the State Historic Preservation Officer ("SHPO") for review and comment at least thirty (30) days prior to adoption.

Section 23.1-12 of the Code defines the term “guidelines” as follows:

Guidelines: Standards set forth in a Design Guidelines Handbook, which is adopted, amended or replaced by the HRPB, and which are subsequently ratified and adopted by the city commission, intended to preserve the historic, cultural and architectural character of an area or a building, site or structure.

Section 23.5.4-(e)15 of the Code sets out the procedure for the adoption of preservation design guidelines, as follows:

*Design guidelines.* The HRPB may recommend to the city commission supplemental design guidelines which will apply to proposed changes in the exterior appearance of individual landmarks or of buildings or structures in historic districts. The purpose of the design guidelines is to conserve and enhance the special aesthetic, historical and cultural character of the landmark or the historic district. Once adopted by the city commission via resolution, these guidelines will supplement the land development regulations applicable to the site or sites within a district. Guidelines may be amended from time to time as provided herein, and may be published in the form of a manual or as otherwise determined by the city commission used in processing applications for certificates of appropriateness.

Accordingly, design guidelines, and amendments thereto, are initially adopted, amended or replaced by the HRPB, but must also be ratified and adopted by resolution, after giving the required notice to the SHPO. Once so adopted, the guidelines may be promulgated by the HRPB in a Design Guidelines Handbook for use in processing applications for certificates of appropriateness. The current City of Lake Worth Beach Historic Preservation Design Guidelines were adopted by the City Commission on January 15, 2019 (Resolution No. 03-2019).

#### HRPB’s Interpretation of the Window Glass Guidelines

The guidelines concerning replacement windows include the following:

5. Windows historically utilized clear glass, and therefore clear glass is the most compatible type for historic structures. Windows with Low-E or Solarban coatings, applied tint, and mirrored finishes are not recommended. Guidelines, p. 198.

Thus, the standard established by the adopted guidelines is that window glass must be clear in appearance in order to meet historic preservation standards. Any modification of the guidelines to modify the clear glass standard would require recommendation by the HRPB, review by the SHPO, and adoption by the City Commission as discussed above.

While this guideline further notes that Low-E or Solarban coatings, applied tint, and mirror finishes are “not recommended,” it does not necessarily prohibit such glass outright, *provided that*

*it meets the standard of being clear in appearance.*

After receiving requests for Certificates of Appropriateness (“COA”) for the use of Low-E glass in replacement windows, the HRPB discussed in public session the interpretation of the applicable guideline as under the agenda item for Planning Issues. The focus of the discussion was whether such replacement glass could ever be approved administratively by staff, or whether it would require consideration by the HRPB.

Under Section 23.5-4(h) of the Code, certain COA applications may be approved administratively by staff without need for the applicant to appear before the HRPB. This code section also authorizes the HRPB to prepare, maintain, and modify the list of administrative approvals without further review by the City Commission. Section 23.5-4(h) provides in pertinent part as follows:

*h) Certificate of appropriateness, administrative approvals.*

**1. Administrative approvals, in general. The HRPB shall prepare and maintain a list of routine alterations that may receive a certificate of appropriateness from the department for community sustainability without a decision by the HRPB,** or a determination that a certificate of appropriateness is not needed, when an applicant complies with the design guidelines of the HRPB. **This list shall be in the form of a certificate of appropriateness approval matrix, reviewed and approved by the HRPB as necessary.** The development review officer may impose reasonable conditions on the approval in order to implement the goals and intent of this section. These routine alterations shall include, but are not limited to, the following:

*[Subsections A. through H. omitted]*

I. Replacement of windows with windows compatible with the original style in size, type and materials or compatible with the existing architectural style and fenestration pattern;

*[Subsection J. omitted]*

K. Installation of hurricane protection to include:

- i. Any installation not visible from any public street; and
- ii. Any replacement of windows or doors to improve hurricane protection where they conform to the original door and window openings, and as closely as possible replicate the original fenestration pattern so that the character of the property is preserved and conforms to the city's adopted illustrated guidelines;

*[Subsections L. through. M omitted]*

**2. Revisions to list of administrative approvals. The HRPB may expand or otherwise revise the list of exterior improvements which may be approved administratively.**

Code, Section 23.5-4(h) (Emphasis supplied.)

With respect to Low-E windows, the HRPB discussed whether any type of Low-E window glass could be approved administratively in light of the guideline provision that window glass should be clear. After reviewing industry research and examining examples of various types of glass, the HRPB concluded that Low-E glass having minimum 70% visible light transmittance (VLT) was essentially clear in appearance and therefore could be approved administratively. Any applications for replacement glass having a lower VLT would require consideration by the HRPB.

#### The HRPB's Authority to Revise the COA Approval Matrix

Based upon its review and discussion, the HRPB directed staff to modify the COA Approval Matrix. As shown in the attached COA Approval Matrix, as revised, footnote (4) was added to indicate that staff could administratively approve only clear, untinted glass *or* Low-E glass with minimum 70% VLT. As shown above, this action was fully authorized under Code Section 23.5-4(h)(1), which directs the HRPB to develop and maintain the list of administrative approvals in the form of the COA Approval Matrix, and Code Section 23.5-4(h)(2), which expressly authorizes the HRPB to expand or revise the list.

City of Lake Worth Historic Resources Preservation Board Certificate of Appropriateness (COA) Approval Matrix <sup>(1)</sup>						
Action <sup>(2)</sup>	Designated Landmarks or Contributing Structures			Non-Contributing Structures		
	No	Staff	Board	No	Staff	Board
<b>Compatible Design:</b> Staff approval is limited to compatible exterior alterations that are consistent with the City's Ordinances, Historic Preservation Design Guidelines, and Secretary of Interior Standards For Rehabilitation, and all other application regulations.  <b>Incompatible Design:</b> All incompatible exterior alterations that are not consistent with the City's Ordinances, Historic Preservation Design Guidelines, and Secretary of Interior Standards For Rehabilitation, and all other application regulations are subject to Board Approval.	Approval <sup>(3)</sup>	Approval	Approval	Approval <sup>(3)</sup>	Approval	Approval
Additions to Structures - Visible from Street		<input type="checkbox"/>			<input type="checkbox"/>	
Additions to Structures - Not Visible from Street		<input type="checkbox"/>		<input type="checkbox"/>		
Alterations, Interior (Not Affecting Exterior Appearance)	<input type="checkbox"/>			<input type="checkbox"/>		
Alterations, Exterior - Visible from Street		<input type="checkbox"/>			<input type="checkbox"/>	
Alterations, Exterior - Not Visible from Street		<input type="checkbox"/>		<input type="checkbox"/>		
Awnings - Visible from Street		<input type="checkbox"/>			<input type="checkbox"/>	
Awnings - Not Visible from Street		<input type="checkbox"/>		<input type="checkbox"/>		
Deck - Visible from Street		<input type="checkbox"/>			<input type="checkbox"/>	
Deck - Not Visible from Street	<input type="checkbox"/>			<input type="checkbox"/>		
Demolition (Due to Condemnation by City) - National Register Listing			<input type="checkbox"/>			<input type="checkbox"/>
Demolition (Due to Condemnation by City) - Local Register Listing		<input type="checkbox"/>	Board Notice		<input type="checkbox"/>	Board Notice
Demolition, Private			<input type="checkbox"/>			<input type="checkbox"/>
Dock	<input type="checkbox"/>			<input type="checkbox"/>		
Doors, Exterior - Visible from Street (4)		<input type="checkbox"/>			<input type="checkbox"/>	
Doors, Exterior - Not Visible from the Street (4)		<input type="checkbox"/>		<input type="checkbox"/>		
Flat Hardscape (Driveways, Pavers, Patio, Sidewalks, etc) Initial Installation or Repaving with New Material - Visible from Street		<input type="checkbox"/>			<input type="checkbox"/>	
Flat Hardscape (Driveways, Pavers, Patio, Sidewalks, etc) Initial Installation or Repaving with New Material - Not Visible from Street	<input type="checkbox"/>			<input type="checkbox"/>		
Fences, Walls and Gates, Installation or Modification of Materials	<input type="checkbox"/>			<input type="checkbox"/>		
Landscape and Lawn Maintenance	<input type="checkbox"/>			<input type="checkbox"/>		
New Construction - New Structure on Vacant Lot			<input type="checkbox"/>			<input type="checkbox"/>
New Construction - Accessory Structure - Visible from Street			<input type="checkbox"/>			<input type="checkbox"/>
New Construction - Accessory Structure - Not Visible from Street		<input type="checkbox"/>			<input type="checkbox"/>	
Occasional Maintenance and Repair (5)		<input type="checkbox"/>			<input type="checkbox"/>	
Paint Over Unpainted Masonry, Stone or Terra Cotta		<input type="checkbox"/>			<input type="checkbox"/>	
Paint General (Not Over Unpainted Masonry, Stone or Terra Cotta)	<input type="checkbox"/>			<input type="checkbox"/>		
Pool, Above Ground - Visible from Street			<input type="checkbox"/>			<input type="checkbox"/>
Pool, Ground Level - Visible from Street		<input type="checkbox"/>			<input type="checkbox"/>	
Pool - Not Visible from Street	<input type="checkbox"/>			<input type="checkbox"/>		
Porches, Porch Columns & Steps, Initial Installation or Alterations - Visible from Street		<input type="checkbox"/>			<input type="checkbox"/>	
Porches, Porch Columns & Steps, Initial Installation or Alterations - Not Visible from Street		<input type="checkbox"/>		<input type="checkbox"/>		
Roof Replacement		<input type="checkbox"/>			<input type="checkbox"/>	
Shed		<input type="checkbox"/>			<input type="checkbox"/>	
Shutters, Decorative or Protective, Permanent or Removable - Visible from Street		<input type="checkbox"/>			<input type="checkbox"/>	
Shutters, Decorative or Protective, Permanent or Removable - Not Visible from Street		<input type="checkbox"/>		<input type="checkbox"/>		
Siding and other exterior wall finishes - Visible from Street		<input type="checkbox"/>			<input type="checkbox"/>	
Siding and other exterior wall finishes - Not Visible from Street		<input type="checkbox"/>		<input type="checkbox"/>		
Murals			<input type="checkbox"/>			<input type="checkbox"/>
Signs - Permanent		<input type="checkbox"/>			<input type="checkbox"/>	
Skylights - Visible from Street		<input type="checkbox"/>			<input type="checkbox"/>	
Skylights - Not Visible from Street		<input type="checkbox"/>		<input type="checkbox"/>		
Solar Panels/Solar Energy Systems - Visible from Street			<input type="checkbox"/>		<input type="checkbox"/>	
Solar Panels/Solar Energy Systems - Not Visible from Street		<input type="checkbox"/>		<input type="checkbox"/>		
Windows - Visible from Street (4)		<input type="checkbox"/>			<input type="checkbox"/>	
Windows - Not Visible from Street (4)		<input type="checkbox"/>		<input type="checkbox"/>		
<div>Adopted by the City of Lake Worth Historic Preservation Board, 08/20/1997. Amended 12/10/99. Amended 01/11/2012. Amended 4/11/2012. Amended 10/9/2013. Amended 01/13/2016. Amended 01/10/2018. Amended 09/09/2020.</div> <div>Footnotes:</div> <div>(1) Refer to Sections 23.5-4(f) and to (h) of the historic preservation ordinance for details of the authority of the HRPB to adopt this Approval Matrix.</div> <div>(2) May include changes not specifically listed within the Approval Matrix.</div> <div>(3) Refer to historic preservation approval. The actions listed on this matrix are not exempt from complying with the Florida Building Code and zoning ordinance of the City of Lake Worth Beach.</div> <div>(4) All glazing shall be clear, non-reflective and without tint. Low-E (low emissivity) is allowed but the glass shall have a minimum 70% visible light transmittance (VLT) measured from the center of glazing. Glass tints or any other glass treatments shall not be combined with the Low-E coating to further diminish the VLT of the glass.</div> <div>(5) Refer to Section 23.5-4(m) of the historic preservation ordinance for a list of items which qualify this category. exceptions that do not require a certificate of appropriateness.</div>						