

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 13.48.020 AND SECTION 13.48.240 OF CHAPTER 13.48 OF TITLE 13 OF THE SAN JOSE MUNICIPAL CODE TO ADD DEFINITIONS FOR “DETRIMENTAL,” “HISTORIC INTEGRITY,” AND “SUBSTANTIAL ALTERATION,” CLARIFY DEFINITIONS FOR “HISTORIC DISTRICT” AND “LANDMARK,” CLARIFY THE APPLICATION OF HISTORIC PRESERVATION PERMIT FINDINGS, AND REQUIRE OVERRIDING FINDINGS WHEN WORK IS DETRIMENTAL TO A LANDMARK OR PROPERTY IN A HISTORIC DISTRICT

WHEREAS, following a decision from the Court of Appeal for the Sixth Appellate District on March 12, 2024, involving a violation of the San José Municipal Code Chapter 13.48 (“Historic Preservation Ordinance”), the City of San José (“City”) proposed amending the Historic Preservation Ordinance to provide the City Council with overriding discretion in the event a project posed a detrimental impact to a historic resource in accordance with the decision from the Court of Appeal for the Sixth Appellate District; and

WHEREAS, the background and analysis contained in the staff report from Christopher Burton, Director of Planning, Building and Code Enforcement, to the City’s Historic Landmarks Commission that accompanies this Ordinance is hereby incorporated by reference; and

WHEREAS, the City evaluated whether the proposed amendments to Historic Preservation Ordinance, including updated definitions, clarification of permit findings, and the introduction of an override provision, would result in new significant environmental impacts or substantially increase the severity of previously identified impacts; and

WHEREAS, the City determined that no new effects would occur from and no new mitigation measures would be required for the adoption of this Ordinance, and adoption

of this Ordinance is within the scope of and in furtherance of the previously approved programs contained in the Envision San José 2040 General Plan Environmental Impact Report (“General Plan EIR”) and the Downtown Strategy 2040 Environmental Impact Report (“Downtown Strategy EIR”); and

WHEREAS, the City, acting as lead agency under the California Environmental Quality Act (“CEQA”), prepared an Addendum to the General Plan EIR and Downtown Strategy EIR, which is incorporated into this Ordinance by reference; and

WHEREAS, the City Council, as the decision-making body for this Ordinance, reviewed and adopted the General Plan EIR, the Downtown Strategy EIR, and the Addendum thereto in compliance with CEQA;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 13.48.020 of Chapter 13.48 of Title 13 of the San José Municipal Code is amended to read as follows:

13.48.020 Definitions

As used in this **e**Chapter, the following terms shall have the following meanings unless otherwise indicated from the context:

A. **Detrimental.** The term “detrimental” shall mean any work that substantially alters the historic integrity of a landmark or property in a historic district.

B. Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of an Historical Nature. The term "historical, architectural, cultural, aesthetic, or

engineering interest or value of an historical nature" shall mean a quality that derives from, is based upon, or related to any of the following factors:

1. Identification or association with persons, eras or events that have contributed to local, regional, state or national history, heritage or culture in a distinctive, significant or important way;
2. Identification as, or association with, a distinctive, significant or important work or vestige:
 - a. Of an architectural style, design or method of construction;
 - b. Of a master architect, builder, artist or craftsman;
 - c. Of high artistic merit;
 - d. The totality of which comprises a distinctive, significant or important work or vestige whose component parts may lack the same attributes;
 - e. That has yielded or is substantially likely to yield information of value about history, architecture, engineering, culture or aesthetics, or that provides for existing and future generations an example of the physical surroundings in which past generations lived or worked; or
 - f. That the construction materials or engineering methods used in the proposed landmark are unusual or significant or uniquely effective.

3. The factor of age alone does not necessarily confer a special historical, architectural, cultural, aesthetic or engineering significance, value or interest upon a structure or site, but it may have such effect if a more distinctive, significant or important example thereof no longer exists.

CB. Historic District. "Historic district" shall mean a geographically definable area of urban or rural character, possessing a significant concentration or continuity of site, building, structures or objects unified by past events or aesthetically by plan or physical development that is designated as a historic district by the City Council pursuant to Section 13.48.120.

D. Historic Integrity. The term "historic integrity" shall mean a property's ability to convey its historical, architectural, cultural, aesthetic, or engineering interest or historical significance through its physical characteristics.

EG. Landmark. The term "landmark" shall mean any of the following which have a special historical, architectural, cultural, aesthetic or engineering interest or value of an historical nature that is designated by the City Council pursuant to Section 13.48.110:

1. An individual structure or portion thereof;
2. An integrated group of structures on a single lot;
3. A site, or portion thereof; or
4. Any combination thereof.

- FD.** Preservation. The term "preservation" shall mean the protection, conservation, enhancement, perpetuation, rehabilitation, restoration, repair, reconstruction or other action taken to repair, conserve or prevent the deterioration or destruction or removal of a landmark or property in a historic district.
- GE.** Site. The term "site" shall mean any place or area or any portion thereof, including any thing, element or fixed object thereon, whether man-made or natural.
- HF.** Structure. The term "structure" shall mean anything directly or indirectly fixed or attached to the ground, which is built or constructed by man. A "structure" includes, but is not necessarily limited to, buildings, monuments, edifices, signs, fences, fountains, walks, kiosks, bridges, gates, walls, cemetery markers, and building appendages such as marquees, awnings and lighting fixtures.
- I.** Substantial Alteration. The term "substantial alteration" means demolition, destruction, relocation, new construction or alteration activities that would impair the historic integrity and significance of a landmark, or property within a historic district. Evaluation of the alteration shall be informed by the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings.

SECTION 2. Section 13.48.240 of Chapter 13.48 of Title 13 of the San José Municipal Code is amended to read as follows:

13.48.240 Action by Director, Planning Commission or City Council

- A. In taking action on an application for an HP permit, the **dD**irector or the **pP**lanning **eC**ommission, or the **eC**ity **eC**ouncil, as applicable, shall consider the comments and recommendations of the **hH**istoric **lL**andmarks **eC**ommission as well as hear

and consider all evidence presented to them or it at the public hearings. The ~~d~~Director or the ~~p~~Planning ~~e~~Commission or the ~~e~~City ~~e~~Council, as applicable, shall also consider, among other things, the purposes of this ~~e~~Chapter, the historic architectural value and significance of the landmark or of the district, the texture and material of the building or structure in question or its appurtenant fixtures, including signs, fences, parking, site plan, landscaping, and the relationship of such features to similar features of other buildings within an historic district, and the position of such buildings within an historic district, and the position of such building or structure in relation to the street or public way and other buildings or structures.

- B. If the ~~d~~Director or the ~~p~~Planning ~~e~~Commission or the ~~e~~City ~~e~~Council, as applicable, finds that, subject to such conditions as they may impose, the work will not be detrimental to a landmark or property in an historic district ~~or to a structure or feature of significant architectural, cultural, historical, aesthetic, or engineering interest or value~~ and is consistent with the spirit and purposes of this ~~e~~Chapter, the ~~d~~Director or the ~~p~~Planning ~~e~~Commission or the ~~e~~City ~~e~~Council, as applicable, shall issue such HP permit subject to such conditions as they deem reasonably necessary to secure the purposes of this ~~e~~Chapter.
- C. If the ~~d~~Director or the ~~p~~Planning ~~e~~Commission or the ~~e~~City ~~e~~Council, as applicable, finds that the work will be detrimental to a landmark or property in an historic district ~~or to a structure or feature of significant architectural, cultural, historical, aesthetic or engineering interest or value~~ or is inconsistent with the purposes of this ~~e~~Chapter, despite any conditions that the ~~d~~Director or the ~~p~~Planning ~~e~~Commission or the ~~e~~City ~~e~~Council, as applicable, may impose, the ~~d~~Director or the City ~~e~~Council on appeal shall deny such HP permit, except as provided in Section 13.48.260.

D. If the Director or the Planning Commission or the City Council, as applicable, finds that the work will be detrimental to a landmark or property in a historic district, or is inconsistent with the purposes of this Chapter, despite any conditions that the Director or the Planning Commission or the City Council, as applicable, may impose, the City Council, through a resolution, may find that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the detrimental effects on the landmark or property in a historic district.

PASSED FOR PUBLICATION of title this ____ day of _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
City Clerk