

***DRAFT***

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING  
TITLE 13 (STREETS, SIDEWALKS AND PUBLIC PLACES)  
OF THE SAN JOSE MUNICIPAL CODE TO AMEND PART  
3 OF CHAPTER 13.48, HISTORIC PRESERVATION  
PERMITS AND TITLE 20 (ZONING ORDINANCE OR  
ZONING CODE) OF THE SAN JOSE MUNICIPAL CODE TO  
AMEND SECTION 20.100.140 OF CHAPTER 20.100,  
CONCURRENT REVIEW; AND TO MAKE OTHER  
TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING  
CHANGES WITHIN THOSE SECTIONS OF TITLE 13 AND  
TITLE 20 OF THE SAN JOSE MUNICIPAL CODE**

**WHEREAS**, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-010 (City Organizational and Administrative Activities); and

**WHEREAS**, the City Council of the City of San José is the decision-making body for this Ordinance; and

**WHEREAS**, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

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

SECTION 1. Part 3 of Chapter 13.48 of Title 13 of the San José Municipal Code is amended to read as follows:

### **PART 3 - HISTORIC PRESERVATION (HP) PERMITS**

#### **13.48.210 - Compliance required.**

- A. No person shall perform any work or cause any work to be performed on a city landmark or in a city historic district except in compliance with the provisions of this chapter and pursuant to and in compliance with the terms and conditions of a permit issued thereunder, hereinafter called "historic preservation permit" or "HP permit," in addition to compliance with all other applicable laws and regulations. For purposes of this chapter, work shall include any and all of the following: construction, reconstruction, alteration, basic color change, repair, rehabilitation, restoration, remodeling, or any other change to the exterior of any structure or any other similar activity. Work shall also include installation of new or additional pavement or sidewalks or the erection of new or additional structures. Work shall also include demolition, removal, or relocation of any structure or portion thereof.
- B. Notwithstanding the provisions of subsection A. of this section, a solar photovoltaic system mounted on a city landmark or on an existing building located in a city historic district in a manner that conforms to the provisions of Title 20 of this Code (known as the "zoning ordinance") and the Secretary of the Interior's Standards for the Treatment of Historic Properties may be allowed without a HP permit.
- C. Notwithstanding the provisions of subsection A. of this section, minor work involving a site or structure within the Hensley Historic District may be allowed without an HP permit if such work does not alter the historic significance, use, intensity, general character, architectural style, circulation or other site function of the property. "Minor work" as used in this section, means repainting and repair or replacement of existing building materials with materials of the same size, shape, pattern and substance.

- D. Pursuant to and in accordance with the provisions of this chapter, the ~~director~~ director of planning Planning, Building and Code Enforcement ("director") and the city council on appeal from a decision of said director pursuant to Section 13.48.270 may issue HP permits for any work described in subsection A. of this section, except that if an HP permit is subject to concurrent review pursuant to Section 20.100.140 of Title 20 of this Code, the planning commission, and the city council, as an initial decision-making body, may issue HP permits for any work described in subsection A. of this section.
- E. The building official shall maintain a current roster of proposed and designated landmarks and historic districts. When the building official receives an application for a building permit which indicates contemplated work on such landmark or structure, or property within an historic district, the building official shall require the applicant to obtain an HP permit prior to issuance of a building permit for such work if such permit is required.

**13.48.220 - Ordinary maintenance allowed - Public safety.**

- A. Nothing in Section 13.48.210 shall be construed to require an HP permit for the ordinary maintenance or repair of any exterior features of a landmark or property within an historic district which does not involve a change in design, material, color or external appearance thereof.
- B. An HP permit shall be required for work done pursuant to any notice and order of the enforcement official issued pursuant to Section 17.40.270 of Chapter 17.40 of Title 17 of this Code (dangerous building ordinance), except that in cases of imminent danger, the enforcement official may order such work as is immediately necessary to abate the imminent danger, provided that any such work shall be

done in the manner which is least likely to materially change the exterior appearance of the building or structure. Nothing in this provision shall preclude orders made pursuant to Section 17.40.310 to vacate and/or restrict a building or structure from use or occupancy pending repair.

**13.48.230 - Application to perform work - Contents - Fees.**

- A. The owner or the authorized agent of the owner of a landmark or property in an historic district proposing to do any work on such landmark or on property in an historic district shall file an application for an HP permit with the director ~~of~~ **planning**.
- B. All applications shall be on forms prescribed therefor by said director and shall contain or be accompanied by all information and documentation required thereby. Such information and documentation shall include but not be necessarily limited to the following:
1. Name, address, telephone number of the owner and applicant, if other than owner;
  2. Address of the landmark or property within the district;
  3. Plans, photographs, renderings, working drawings and specifications showing, in such detail as the director ~~of~~ **planning** may determine, the existing and proposed exterior appearance of the landmark, including but not limited to, the following, as applicable: Architectural design, nature and texture of materials, color, lighting, method of construction and landscaping, and any other items that may be affected by the work; and

4. A site plan showing all existing buildings and structures and the proposed work.

The applicant may also, at the discretion of the director ~~of planning~~ or the city council on appeal, be required to file supplemental plans, specifications, drawings, photographs or other necessary and pertinent items.

The application shall be accompanied by a filing fee set forth in the schedule of fees established by resolution of council. Such fee shall be in addition to any other fees required by law. The application will not be accepted as complete by the director until all fees have been paid, and the environmental documentation required by CEQA and Title 21 of this Code has been completed.

- C. If due to the unique or unusual nature of the rehabilitation proposed, the director determines that it is necessary to utilize the advice and counsel of an expert consultant, such as an architectural historian, in order to fully evaluate the application, the applicant shall be given an opportunity to retain an expert who is satisfactory to the director. Failure to provide the services of a satisfactory expert may be grounds for denial of the application.
- D. The original application which has been accepted as complete by said director shall be retained by said director who shall set a hearing thereon. The director may, at the same time, forward a copy of said application to the planning commission for its information. He shall, at the same time, forward a copy of said application to the historic landmarks commission for its review and comments. The historic landmarks commission shall, within forty-five days of acceptance by the director of said application as complete, notify the director of its comments and recommendations. The comments and recommendations of said commission shall be advisory only and shall not be binding on the director. No action shall be taken

or permit issued by the director ~~of planning~~ during said forty-five-day review period unless he has received the comments and recommendations of the historic landmarks commission.

**13.48.240 - Action by director, planning commission or city council.**

- A. In taking action on an application for an HP permit, the director or the planning commission, or the city council, ~~on appeal as applicable~~, shall consider the comments and recommendations of the historic landmarks commission as well as hear and consider all evidence presented to them or it at the public hearings. The director or the planning commission or the city council, ~~on appeal as applicable~~, shall also consider, among other things, the purposes of this 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 director or the planning commission or the city council, ~~on appeal as applicable~~, finds that, subject to such conditions as they may impose, the work will not be detrimental to 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 chapter, the director or the planning commission or the city council, ~~on appeal as applicable~~, shall issue such HP permit subject to such conditions as they deem reasonably necessary to secure the purposes of this chapter.

- C. If the director or the planning commission or the city council, ~~on appeal as applicable~~, finds that the work will be detrimental to 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 chapter, despite any conditions that the director or the planning commission or the city council, ~~on appeal as applicable~~, may impose, the director or the council on appeal shall deny such HP permit, except as provided in Section 13.48.260.

**13.48.250 - Design criteria.**

- A. This part shall apply only to the exterior portions of landmarks or structures in historic districts and shall not apply to the interior portions thereof unless the director or the planning commission or the city council, ~~on appeal as applicable~~, finds that the structure cannot be preserved without preserving the interior, in which event, the director or the planning commission or the city council, ~~on appeal as applicable~~, shall exercise as little control over the interior as necessary to the preservation.
- B. The director shall develop design standards and guidelines in consultation with the historic landmarks commission. Said standards and guidelines shall be subject to the approval of the city council. Said standards and guidelines shall be kept on file at the office of the director ~~of planning~~ for use and examination by the public.
- C. In making the determination required by Sections 13.48.240, 13.48.330 and 13.48.340, the application shall be reviewed in accordance with the approved standards and guidelines.

### 13.48.260 - Hardship.

- A. If the director or the planning commission or the city council, ~~on appeal as applicable~~, is unable to make the findings required under Section 13.48.240 for issuance of an HP permit, either with or without conditions, the director or the planning commission or the city council, ~~on appeal as applicable~~, may nevertheless issue an HP permit, either with or without conditions, if the director or the planning commission or the city council, ~~on appeal as applicable~~, finds that denial of the HP permit would cause immediate and substantial hardship on the applicant because rehabilitation in accordance with the chapter is infeasible from a technical, mechanical, or structural standpoint, or if the economics of rehabilitation in accordance with this chapter would require an unreasonable expenditure in light of the feasible uses of such property.
- B. Before a permit for removal, relocation, or demolition is granted under this section, the application may be suspended by the director or the planning commission or the city council, ~~on appeal as applicable~~, for a period of up to one hundred eighty days in order that such steps may be taken as are reasonably likely to result in the preservation of the building or structure involved. These efforts may include consultation with civic groups, public agencies, and interested citizens, and the exploration of possible acquisition.

### 13.48.270 - Time for director's action - Appeal.

- A. ~~The director of planning shall act on such a~~An application shall be acted upon within sixty days after the acceptance of said application is complete or within fifteen days after ~~his~~the receipt of the comments and recommendations of the historic landmarks commission, ~~whichever is sooner subject to the provisions of Section 20.100.140 of Title 20 of this Code~~-. The applicant may, at any time prior to the ~~director's~~ hearing on such application, request in writing an extension of time



in order to enable ~~him~~ the applicant to submit additional or amended documentation. Such extension will grant the applicant a period of thirty days, during which period the time for the ~~director's~~ action under this section shall be tolled. ~~Only one such extension shall be granted.~~ If the director fails to take action within the time above provided, the director shall not thereafter take action, and the application shall be deemed denied and such denial shall be deemed to be appealed to the city council by the applicant.

- B. Before ~~the director may take~~ action may be taken on the application, ~~he must conduct~~ at least one public hearing thereon must be conducted. ~~He may, before taking action, conduct~~ More than one public hearing may be conducted prior to taking action on the application.
- C. Any action taken ~~by the director on the application~~ shall be in writing and shall be filed by ~~him in his~~ in the director's office. At the time ~~he files the same~~ the action on the application is filed, ~~he the director~~ shall mail notice thereof to the applicant and to all other persons who, in writing on a form provided by the director, have requested such notice. A separate request for notice must be filed for each structure within an historic district and for each landmark.
- D. Any action taken by the director or the planning commission may be appealed to the city council by the applicant or any person who is a taxpayer of the City of San José, within the meaning of Section 526a of the Code of Civil Procedure of the state of California, by filing with the director a written notice of appeal within ten days after the action of the director is filed.
- E. The action of the director or the planning commission shall not be final during said ten-day period and unless a notice of appeal therefrom is filed within said ten-day period, the action of the director or the planning commission is final and the

proceedings shall terminate at the conclusion of said ten-day period. No HP permit issued by the director or the planning commission shall have any force or effect prior to the time that his action issuing the same shall have become final. If, within said ten-day period, a notice of appeal from the action of the director of the planning commission is filed, then, in such event, the action of the director shall not become final and his action shall, on the filing of such notice within said ten-day period, become null and void, the proceedings shall not terminate at the conclusion of said ten-day period, and the matter shall come before the city council for action.

- F. Within five days after the filing of a timely notice of appeal from the director's or the planning commission's action, or within five days after the expiration of the time above provided within which the director or the planning commission may take action, the director shall file with the city clerk a copy of the application together with copies of the notice of appeal and of the vacated action ~~of the director or his~~ a written statement that the matter is on appeal by reason of ~~his-the~~ failure to take action within the time required.

#### **13.48.280 - Council action - Finality.**

- A. The council on appeal shall conduct at least one public hearing on the matter. However, before taking action, the council may conduct more than one public hearing. Council consideration of the appeal shall be de novo.
- B. After it has conducted at least one public hearing thereon, the council may take action on the matter. Any action taken by the council shall be by written resolution. The action of the council shall be final. The city clerk shall mail notice thereof to the appellant and the applicant, if different than the appellant, and to all other

persons who, in writing on a form provided by said clerk, have requested such notice.

### 13.48.290 - Hearings.

- A. Subject to the provisions of Section 20.100.140 of Title 20 of this Code,  
~~W~~Whenever any hearings are conducted in any proceedings under this part for an HP permit, notice of the time, place and purpose thereof shall be given by publication in a newspaper of general circulation in the city at least ten days before the date of said hearing and by mailing the same to the applicant, postage prepaid, at the address shown for such purpose on his application at least ten days before the date of said hearing.

Said notice shall also be mailed at least ten days before the date of said hearing, postage prepaid, to all persons who have requested such notice in accordance with subsection C of Section 13.48.270.

- B. The director ~~of planning~~ shall set the date for all hearings conducted by ~~him~~ the director or the planning commission in all proceedings under this chapter. The date of any such hearing shall be not less than fifteen days after the date of the filing of the documents required to be filed under Section 13.48.230 and shall be within the time allowed for ~~director's~~ action under subsection A of Section 13.48.270.
- C. The city clerk shall set the date of the first hearing conducted by the council in all proceedings for issuance of HP permits under this chapter. The date of said first hearing shall be not less than fifteen nor more than forty days from and after the date the director files with the council the documents required to be filed ~~with him~~ under subsection F of Section 13.48.270. If the council conducts more than one

hearing in any proceeding, the date of all subsequent hearings after the first shall be set by the council.

- D. If the council takes action on the matter within thirty days after it completes its first hearing thereon, then on the taking of such action, the proceedings shall terminate forthwith. If the council fails to take action within such thirty-day period, it shall not thereafter do so and the proceedings shall terminate at the conclusion of said thirty-day period and upon such termination of proceedings the appeal shall be deemed denied, except that at any time prior to the expiration of the thirty-day period and before the council has taken action, the applicant may request that council extend the time period in order to enable ~~him~~the applicant to submit additional or amended documentation. Such extension, if authorized by council, will grant the applicant a period of thirty days during which period time for council action shall be tolled. Only one such extension may be granted.

#### **13.48.300 - Fees for appeals.**

Any appeal filed pursuant to this chapter shall be accompanied by the fee set forth in the schedule of fees adopted by resolution of the city council. The director ~~of planning~~ may refuse to accept any notice of appeal for filing unless it is accompanied by the prescribed fee. However, such fee shall not be applicable to an appeal filed by either the historic landmarks commission or the planning commission.

#### **13.48.310 - Resubmittal of application.**

Whenever an application for an HP permit is denied, no subsequent application which is the same, or substantially the same, may be submitted, filed or reconsidered for a period of one year from the effective date of the final action; provided, that an application may be withdrawn by the applicant at any time prior to the first public hearing ~~conducted by~~

~~the director of planning~~, and such withdrawal shall not be considered a denial of such application.

### **13.48.320 - Applicability.**

Whenever proceedings for designation of a landmark or an historic district have been commenced under this chapter, no subsequent application for a building permit to do any work for which an HP permit would be required under this chapter on a proposed landmark or an historic district filed under any other provision of this Code, which is filed after the date that the application for designation has been filed or proceedings for initiation of designation have been commenced pursuant to this chapter, shall be approved while proceedings are pending on such designation. However, while designation is pending, the applicant may apply for and be granted an HP permit in the same manner and subject to the same requirements as if such designation had already been granted except that the provisions of Chapter 17.70 of Title 17 of this Code (the historical building ordinance) shall not be applicable unless the building or structure is otherwise a qualified historical building within the meaning of Section 17.70.030. If at any time after the application for the HP permit has been filed or the HP permit has been issued, said designation is finally denied, the HP permit will no longer be required; however, the fees paid for an HP permit for a proposed landmark or a structure within a proposed historic district shall not be refundable upon denial of designation.

### **13.48.330 - Historic preservation permit amendment.**

- A. Any historic preservation (HP) permit holder may, at any time, file an application form for an HP permit amendment with the director. An HP permit amendment shall mean any addition, deletion, or modification to any HP permit, provided that such amendment does not alter the general character, use, or intensity of nor degrade the protections of the historic elements of a structure or site provided through the HP permit to be amended.

- B. The procedures set forth in this part for the processing of an application for a HP permit shall apply equally to and in the same manner as an application for an amendment except as otherwise hereinafter expressly set forth. The review of the application for an amendment shall be limited to consideration of those conditions or specifications proposed to be amended in the application.

**13.48.340 - Historic preservation permit adjustment.**

- A. For properties subject to an HP permit, as the same may be amended from time to time, the holder of an HP permit may, at any time, file an application for an adjustment to that HP permit. An adjustment can be processed for work that involves a minor modification to an HP permit or, where the property has no prior HP permit, a permit adjustment may be approved without the necessity of the issuance of a full HP permit.

"Minor modifications" to an HP permit involve incidental construction, reconstruction, replacement, repair, remodeling, rehabilitation and/or restoration that does not affect the historic significance, use, intensity, general character, architectural style, circulation or other site function of the property.

- B. An application for an HP permit adjustment must be filed on a form provided by the director and accompanied by the fees set forth in the schedule of fees adopted by resolution of the city council.
- C. The decision to grant, deny or condition an HP permit adjustment is an administrative determination and requires no hearing or notice. The action of the director on an HP permit adjustment application shall be final. If the director denies

an HP permit adjustment, nothing herein shall preclude the applicant from thereafter filing an application for an HP permit or HP permit amendment.

D. Notwithstanding the provisions of Section 13.48.210.A., the director may, at the director's sole discretion, approve an HP permit adjustment only for the following:

1. An extension of the term of an approved HP permit for a period of up to but not exceeding one year; provided, however, that no more than two such term extensions may be approved.
2. Changes to an approved HP permit, but only for minor modifications of architectural elements, basic color change, landscape details (including but not limited to equipment screening, minor landscape furniture and structures, benches, small trellises and planters), or installation of new or additional pavement that do not affect the historic significance, use, intensity, general character, architectural style, circulation or other site function of the property.
3. Signs that conform to Title 23, minor changes to existing and approved sign programs, that do not affect the general character or architectural style of the site.
4. Accessory structures that do not exceed five hundred square feet in area and that are consistent with applicable design guidelines and standards.

SECTION 2. Section 20.100.140 of Title 20 of the San José Municipal Code is amended to read as follows:

**20.100.140 - Concurrent review.**

- A. Whenever applications for the same site have been filed for one or more development permits or approvals required by this title, such development permit or approvals may be reviewed and acted on in a unified process.
- B. The following actions, where required to implement a project that requires approval of a development permit, may be reviewed and acted on in a unified process:
1. Determinations of public convenience or necessity governed by Chapter 6.84 of Title 6 of the San José Municipal Code.
  2. Tree removal permits governed by Chapter 13.32 of Title 13 of the San José Municipal Code.
  3. Major Encroachment Permits governed by Chapter 13.37 of the San José Municipal Code.
  4. Historic Preservation permits governed by Chapter 13.48 of Title 13 of the San José Municipal Code.
  45. Development Agreements governed by Chapter 18.02 of Title 18 of the San José Municipal Code.
  56. Subdivision approvals governed by Title 19 of the San José Municipal Code.



**67.** Street and Easement Vacations governed by the Government Code or the Streets and Highways Code.

**BC.** The unified process shall use the public hearing procedures required for the highest level permit or approval. Permits and approvals are ranked as follows with the highest level permit or approval listed first: Development Agreement; rezoning, Major Encroachment Permit; Street or Easement Vacation; conditional use permit; subdivisions; determination of public convenience or necessity; planned development permit; special use permit; site development permit; historic preservation permit, single-family house permit-director's decision; development exception; development variance; tree removal permit-director's decision; single-family house permit-administrative decision; and tree removal permit-administrative decision.

**CD.** The hearing body shall make the findings, if any, applicable to each permit or approval.

PASSED FOR PUBLICATION of title this \_\_\_\_ day of \_\_\_\_\_, 2021 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk