

FW: Please approve the new historic preservation ordinance language

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 7:00 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Sally Schroeder [REDACTED]
Sent: Monday, December 1, 2025 4:56 PM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: Please approve the new historic preservation ordinance language

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Dear Councilmembers,

My name is Sally Schroeder, and I've been a resident of downtown San Jose for 22 years. I've raised my children here, we've played at the St. James Park after service at Trinity Cathedral, and I serve on the Board of Friends of Levitt Pavilion San Jose. For the past three years, I've volunteered my time to help bring the Levitt Pavilion to St. James Park.

During this time, Friends of Levitt has produced free, family-friendly concerts in the park so our community can experience what the future Levitt Pavilion will offer. Each performance has a welcoming, inclusive energy that reflects the diversity and spirit of San Jose. As part of our work, I personally randomly survey about 50 audience members per concert to understand who we're reaching.

The results are clear: at least 30% of attendees come from the surrounding 95112 neighborhood. Across every concert, 70 to 80% of the audience is from San Jose zip codes, with representation from all 10 Council Districts. The remaining attendees come from nearby cities like Campbell and Santa Clara, and occasionally from across the Bay Area, depending on the artist.

We have demonstrated that a Levitt Pavilion at St. James Park will serve all San Joseans. Anyone who attends our concerts can feel the beauty of the historic park—the mature shade trees, the expansive lawns, and the architectural historical landmarks—and can see how activation creates safety, vibrancy, and community connection.

Preserving St. James Park must include activating the park so residents can enjoy spending time in the park without fear. I urge you to approve the new historic preservation ordinance language, as recommended unanimously by the Planning Commission and supported by the majority of the Historic Landmarks Commission.

San Jose deserves a St. James Park that is open, safe, and welcoming for all.

Thank you.

Kind regards,

Sally Schroeder

--

Sally Billstrom Schroeder

Board Member

Friends of Levitt Pavilion San Jose

levittsanjose.org

"building community through music"

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FW: Levitt Pavilion: Item 10.2, Amendment- Title 13 of San Jose Code (Historic Preservation), 12/2

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 7:01 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Mark Schroeder <[REDACTED]>
Sent: Monday, December 1, 2025 7:54 PM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: Levitt Pavilion: Item 10.2, Amendment- Title 13 of San Jose Code (Historic Preservation), 12/2

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Dear San Jose City Council Members December 1, 2025

RE: Item 10.2, Amendment to Title 13 of San Jose Code (Historic Preservation), 12/2

I've been a downtown San Jose resident since 2003. I strongly support and want the City Council to approve the amendment to Title 13 that includes the proposed language of the revised Historic Preservation Ordinance clarifying the override power that **the city already holds** regarding projects in historically designated areas.

St James Park has a history of evolving to meet the needs of our city. Similar to most city parks across our nation, changing to meet the needs of citizens is a constant feature for any historic park, especially a park without significant structures. It's interesting to review several key features that have changed at St. James Park over the past few decades.

- 1.
- 2.
3. The Senior Center was located in the NE Corner of St James Park, built in 1973 and existed
4. until around 2005 when it was demolished.
- 5.
- 6.
- 7.
8. The children's playground is not historic. However my children played there after Trinity
9. Cathedral church services.
- 10.
- 11.
- 12.
13. The most historical feature (a tree) of St James Park (i.e., the 1922 lynching) has been
14. removed.
- 15.
- 16.

17.

18. VTA has a light rail going through the park, including the addition of 2nd Street and

19. restrooms.

20.

Clearly these changes were functionally necessary and valuable to our community and did not cause detriment to the historic nature of the St. James district.

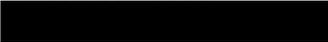
The Sainte Claire Historic Preservation Foundation has initiated a disingenuous PR campaign to generate publicity with their form letter that asks City Council to protect the park exclusively for the benefit of the rich male members of Sainte Claire Club. For the last 10 years, the Sainte Claire Club has been trying to kill the Levitt Pavilion project at St. James Park.

I urge the City Council to follow the recommendation by the San Jose City Attorney, to follow the recommendation by the Historic Landmarks Commission, and to follow the recommendation of the San Jose Planning Commission to approve the revised language to the Historic Ordinance such that the project of building Levitt Pavilion San Jose may proceed without delay.

As a contributor to PAC SJ, I believe in their mission and support their work; however, after trying to get Levitt Pavilion San Jose built for the past 13 years, adding more legal words and complicating the situation does not add value and only serves to delay the construction start.

Thank you,

Mark Schroeder


San Jose CA 95112

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FW: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 7:01 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Jacob Yoder-Schrock [REDACTED]
Sent: Monday, December 1, 2025 8:16 PM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

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SJ City Clerk,

Mayor Mahan and Council Members:

I urge the San José City Council to fix the proposed changes to the Historic Preservation Ordinance (PP25-005) so they support vital public projects without opening the door to unnecessary demolition of our historic landmarks.

The City's draft ordinance creates a sweeping new override that would let Council waive landmark protections for any public or private project based on vague "overriding considerations." This goes far beyond what the recent Sainte Claire court decision requires and puts more than 200 designated City Landmarks and Landmark Districts at risk.

San Jose should support the arts and public space activation. But I do not support weakening the very Ordinance that has protected San José's historic places for decades.

I support PAC*SJ's call to:

- 1) Keep the useful clarifying definitions in the draft ordinance; and
- 2) Limit the new override to projects that demonstrate a compelling public interest, not speculative private development proposals that threaten to erase our architectural and cultural heritage.

Support the Arts AND Protect Our Landmarks!

Jacob Yoder-Schrock
[REDACTED]

FW: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 7:01 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Amanda Rawson [REDACTED]
Sent: Monday, December 1, 2025 8:17 PM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

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SJ City Clerk,

Mayor Mahan and Council Members:

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The City's draft ordinance creates a sweeping new override that would let Council waive landmark protections for any public or private project based on vague "overriding considerations." This goes far beyond what the recent Sainte Claire court decision requires and puts more than 200 designated City Landmarks and Landmark Districts at risk.

San Jose should support the arts, public space, and activation. But I DO NOT support weakening the very Ordinance that has protected San José's historic places for decades.

I support PAC*SJ's call to:

- 1) Keep the useful clarifying definitions in the draft ordinance; and
- 2) Limit the new override to projects that demonstrate a compelling public interest, not speculative private development proposals that threaten to erase our architectural and cultural heritage.

This simple fix keeps our landmark protections strong.

Support the Arts AND Protect Our Landmarks!

Amanda Rawson
District 3 Resident
District 3 Small Business Owner

Amanda Rawson



San Jose, California 95112

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FW: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 7:01 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Karen Kienzle <[REDACTED]>
Sent: Monday, December 1, 2025 8:17 PM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

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SJ City Clerk,

Mayor Mahan and Council Members:

I urge the San José City Council to fix the proposed changes to the Historic Preservation Ordinance (PP25-005) so they support vital public projects without opening the door to unnecessary demolition of our historic landmarks.

The City's draft ordinance creates a sweeping new override that would let Council waive landmark protections for any public or private project based on vague "overriding considerations." This goes far beyond what the recent Sainte Claire court decision requires and puts more than 200 designated City Landmarks and Landmark Districts at risk.

San Jose should support the arts and public space activation. But I do not support weakening the very Ordinance that has protected San José's historic places for decades.

I support PAC**SJ's* call to:

- 1) Keep the useful clarifying definitions in the draft ordinance; and
- 2) Limit the new override to projects that demonstrate a compelling public interest, not speculative private development proposals that threaten to erase our architectural and cultural heritage.

This simple fix keeps our landmark protections strong.

Support the Arts AND Protect Our Landmarks!

Karen Kienzle



San Jose, California 95112

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FW: Item 10.2 - Amendment to the Title 13 (Historic Preservation) of the San José Municipal Code.

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 7:02 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Fred Buzo [REDACTED]
Sent: Monday, December 1, 2025 10:35 PM
To: City Clerk <city.clerk@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; The Office of Mayor Matt Mahan <mayor@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>
Subject: Item 10.2 - Amendment to the Title 13 (Historic Preservation) of the San José Municipal Code.

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Dear Mayor & Council, [REDACTED]

Thank you for the opportunity to comment. I must respectfully oppose the proposed amendments to the Historic Preservation Ordinance.

St. James Park is the defining open space within what is arguably San José's most significant historic district. The contributing historic buildings surrounding the park derive much of their integrity and context from this landscape, and any changes to the ordinance that weaken standards for evaluating harm will have district-wide consequences.

The proposed introduction of a CEQA-style override is especially concerning. Allowing projects that are explicitly found "detrimental" to a landmark or historic district to be approved based on broad assertions of social or economic benefit would fundamentally shift the ordinance away from preservation and toward discretionary balancing. This invites incremental erosion of the district's character and diminishes the ordinance's core protective purpose. Likewise, while defining "detrimental" is important, the proposed language does not adequately address the cumulative or contextual impacts that are central to evaluating changes within historic districts. Even small alterations to St. James Park can disrupt the spatial, visual, and civic relationships that give the district its historic coherence.

What makes these amendments particularly unsound is that they appear motivated, at least in part, by the desire to accommodate a speculative project—the proposed Levitt Pavilion—whose funding, feasibility, long-term operations, and true community benefit all remain uncertain. Weakening citywide preservation standards to clear a path for a project that has not demonstrated viability undermines the integrity of the ordinance and sets a troubling precedent that exceptions can be written into the rules whenever a project struggles to meet them.

Rather than loosening preservation protections, the City should be strengthening them—especially in a historic district as important as St. James Square. Any reinvestment in the park needs to uphold the district’s historic character, support active use of the surrounding historic buildings, and ensure decisions advance long-term stewardship rather than short-term outcomes.

The proposed event stage also raises a fundamental question about the purpose of St. James Park: is the City intending to transform it into a regional event venue drawing large crowds from outside downtown, or should it function primarily as an everyday public space for the growing residential community that relies on it? If the park’s financial model depends on large-scale events, those priorities will inevitably overshadow daily neighborhood needs and compromise the park’s role as a community asset.

Instead, the city should direct scarce public funds toward parks that more directly serve local communities, support surrounding uses and advance a broader equity strategy. Park system investments should reflect long-term goals and maintain strong public support for future funding across the city.

For these reasons, I urge the City to reject the proposed amendments.

Fred Buzo

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FW: Support HLC and PAC*SJ recommendations for HP Ordinance - Item 10.2

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 7:02 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Jordan Moldow [REDACTED]
Sent: Monday, December 1, 2025 11:05 PM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: Support HLC and PAC*SJ recommendations for HP Ordinance - Item 10.2

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Please support the recommendations that have been made by the City's Historic Landmarks Commission (HLC) and PAC*SJ.

The staff recommendation is likely an improvement over the status quo, but I don't think it represents the ideal compromise. If we believe that pieces of our history are worth preserving, then there should be standards and conditions that need to be met in order to get an HP Ordinance waiver. Otherwise, the HP Ordinance won't amount to much more than "a piece of history (which the City has already declared worthy of preserving) is only worth preserving if I can convince six Councilmembers to defend it."

I do agree with having an exception process, as otherwise we'd be a city that cannot improve itself by making changes to old things. And there are plenty of old things that aren't worth preserving, such as auto-centric land-use and suburban sprawl.

But giving unchecked exception authority to Council doesn't feel like the right answer. The HP Ordinance only applies to landmarks that have already been determined by the City to be worthy of protecting, and the exception process should have guardrails to weigh that determination against overriding considerations that are more specific than whims. The recommendations from HLC and PAC*SJ seemed reasonable to me. But if they are unreasonable, then please find a middle ground between their recommendations and the staff recommendations.

As part of making a compromise, we could also use this as an opportunity to determine whether the right set of landmarks are being added to the City's list of historic landmarks, or if we're adding landmarks too easily. If we are designating the right set of landmarks, then there should be little reason for concern about having a slightly more rigorous process for making overriding considerations on them.

Best,
Jordan Moldow
District 3, Japantown (95112)

FW: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 7:02 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Josephine Hogin [REDACTED]
Sent: Monday, December 1, 2025 11:13 PM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

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SJ City Clerk,

Mayor Mahan and Council Members:

I urge the San José City Council to fix the proposed changes to the Historic Preservation Ordinance (PP25-005) so they support vital public projects—like the Levitt Pavilion—without opening the door to unnecessary demolition of our historic landmarks.

The City’s draft ordinance creates a sweeping new override that would let Council waive landmark protections for any public or private project based on vague “overriding considerations.” This goes far beyond what the recent Sainte Claire court decision requires and puts more than 200 designated City Landmarks and Landmark Districts at risk.

San Jose should support the arts, public space activation, and the Levitt Pavilion. But I do not support weakening the very Ordinance that has protected San José’s historic places for decades.

I support PAC*SJ’s call to:

- 1) Keep the useful clarifying definitions in the draft ordinance; and
- 2) Limit the new override to projects that demonstrate a compelling public interest, not speculative private development proposals that threaten to erase our architectural and cultural heritage.

This simple fix allows the Levitt Pavilion to move forward and keeps our landmark protections strong.

Support the Arts AND Protect Our Landmarks!

Josephine Hogin



San Jose, California 95126

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FW: Approve the Proposed Language regarding the Historic Preservation Ordinance for the Levitt Pavillion

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 7:55 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Tania Martin [REDACTED]
Sent: Tuesday, December 2, 2025 7:10 AM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: Approve the Proposed Language regarding the Historic Preservation Ordinance for the Levitt Pavillion

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Attention City Council Meeting, December 2nd, 2025

To the Mayor, Vice Mayor, and Council Members,

My name is Tania Martin, and I'm a long-time District Three resident. I moved into the Hensley neighborhood back in the late 90s, and I clearly remember that I would only ever go to St James Park when it was being activated by outdoor cinema or Shakespeare in the Park. Otherwise, the park felt like a place of neglect and despair.

I've since moved over to Naglee Park. I hadn't thought much about St James Park until Levitt Pavilion Foundation started hosting concerts there. Over the last few summers, I've enjoyed cycling to the park to spend an afternoon listening to high-quality music, featuring well-respected musicians, where seniors, students, and parents with their kids can be seen relaxing on blankets or getting up and dancing. How cool is that?

Please pass this ordinance to ensure that the Levitt Pavilion project proceeds, so that the public, the tax-paying citizens of San José, can enjoy free music in the park for generations to come. Let's continue this tradition of joyful and peaceful concerts and events. And let's give St James Park a bright future for all.

Thank you for your attention.

Tania Martin
[REDACTED]

FW: letter to City Council re: PP25-005 (Amendment to Title 13 of the San Jose Municipal Code)

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 7:55 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Doug King <[REDACTED]>
Sent: Tuesday, December 2, 2025 7:41 AM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: letter to City Council re: PP25-005 (Amendment to Title 13 of the San Jose Municipal Code)

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Dear City Councilmembers,

My name is Doug King and I'm a long-time resident of District 3. I'm writing to support the proposed amendment that will hopefully clear the way for the Levitt Pavilion and revitalization of the Park.

I'm not familiar enough with the legal issues surrounding the development, but I can speak to the relationship between St. James Park and the health and well-being of San Jose. My son attended after-school care at the First Unitarian Church, where he often played in St. James Park. We were recently there for the No Kings Day protests. We've walked and ridden our bikes in and around the park on the way to Trials Pub or Ludwig's, and we've enjoyed the park during many of the Viva Calle events. As you surely know, the Park has seen better days.

St. James Park is not just an amenity for those of us that live in District 3. People from all over the city and the region come downtown to enjoy events in the city - fun runs, concerts, protests. These are the things that bring residents together as a community, and allow San Jose to thrive. I believe that revitalizing St. James Park will have massive benefits for residents all across the area.

I did some digging into the background on St. James Park and its designation as an historic landmark. I'm sure it's no surprise to you, but it was designated an historic landmark because of various notable events and gatherings that took place here. It seems to me that's what makes a place an historic good. It's not a museum piece; it continues to have value to the community and its members. I'd like to see St. James continue that tradition by being a place for gatherings and history-making for the next 50 years, and I believe revitalizing the park is essential for that.

Most sincerely,

Douglas King

FW: urgent message for HLC Commissioners Royer, Ghalandari, Arnold, Baniwal, Camuso, Cohen

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 8:34 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: PlanningSupportStaff <PlanningSupportStaff@sanjoseca.gov>
Sent: Tuesday, December 2, 2025 8:34 AM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: FW: urgent message for HLC Commissioners Royer, Ghalandari, Arnold, Baniwal, Camuso, Cohen

PP25-005, item 10.2

From: mari p <[REDACTED]>
Sent: Friday, November 28, 2025 7:58 PM
To: PlanningSupportStaff <PlanningSupportStaff@sanjoseca.gov>
Cc: The Office of Mayor Matt Mahan <mayor@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; Peak, Dana <Dana.Peak@sanjoseca.gov>; jennifer.provedor@sanjoseca.gov <jennifer.provedor@sanjoseca.gov>
Subject: urgent message for HLC Commissioners Royer, Ghalandari, Arnold, Baniwal, Camuso, Cohen

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Dear HLC Commissioners,

In the Nov 5 Historic Landmark Council meeting at City Hall there were about 30 Friends of Levitt people who spoke up in favor of the amendment to the Historic Preservation Ordinance and said how the building of the Levitt Pavilion in Saint James Park would benefit them.

But not one of them explained how the pavilion would benefit us, we who live 60 feet from the park at 97 East Saint James Street, and the Sainte Claire Club.

The Friends of Levitt did not say how we would benefit from the loud noise, the high decibel music, the 2-way traffic, the trash, the use of the pavilion late at night by drug dealers and homeless people; nor did they mention how chopping down all the trees in the park would increase the heat during the summer months, summers which get into the 90s at times; nor how our property values could decrease due to all the noise and traffic.

They also didn't mention how a large, white, dragon-looking pavilion fits in with the historic architecture of the Saint James Historic District. The current plan would change the whole character of the park, converting it into "Anywhere, USA". Changing the character of the park buries its history.

None of them mentioned us, yet we and San Jose's history are the ones who would lose the most.

With best wishes for all,



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FW: urgent message for Commissioner Caruso - Dec 2 City Council Mtg

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 8:35 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Provedor, Jennifer <jennifer.provedor@sanjoseca.gov>
Sent: Tuesday, December 2, 2025 8:34 AM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: FW: urgent message for Commissioner Caruso - Dec 2 City Council Mtg

PP25-005, item 10.2

From: PlanningSupportStaff <PlanningSupportStaff@sanjoseca.gov>
Sent: Monday, December 1, 2025 12:28 PM
To: Powell, Alex <Alex.Powell@sanjoseca.gov>
Subject: Fw: urgent message for Commissioner Caruso - Dec 2 City Council Mtg

From: mari p [REDACTED]
Sent: Friday, November 28, 2025 6:20 PM
To: PlanningSupportStaff <PlanningSupportStaff@sanjoseca.gov>
Cc: The Office of Mayor Matt Mahan <mayor@sanjoseca.gov>; District3 <district3@sanjoseca.gov>
Subject: urgent message for Commissioner Caruso - Dec 2 City Council Mtg

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Dear Commissioner Caruso,

We, at 97 East Saint James Street and at the Sainte Claire's Club, appreciate very much your efforts in preserving San Jose's historic districts and landmarks. We especially thank you for opposing the amendment to the Historic Preservation Ordinance, Chapter 13.48, that makes it easier for the City Council to change Saint James Park into an entertainment center.

I'm writing to the other HLC members today in the hopes that they will not erase a part of San Jose's history, will not pass the ordinance amendment and will not approve the Pavilion construction.

Wishing you all the best,
Maria Petersen

FW: Dec 2 2025 City Council Agenda Item 10.2, File No. 25-1267

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 8:11 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Susan Brandt-Hawley [REDACTED]
Sent: Tuesday, December 2, 2025 8:01 AM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: Re: Dec 2 2025 City Council Agenda Item 10.2, File No. 25-1267

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Please confirm receipt, thank you. Susan

On Dec 2, 2025, at 06:52, Susan Brandt-Hawley <[REDACTED]> wrote:

Good morning.

Please add the attached to the public comment for Item 10.2 for today's City Council Meeting:

Pdf of Action Minutes from the City's Historic Landmark Commission meeting from October 1, 2025, which address the proposed amendment of the Historic Preservation Ordinance,

Pdf of Final St Claire Judgment on Remand: Court of Appeal Opinion/Historic Preservation Section and Order

<101 HLC Action Minutes_FINAL.pdf>

<St Claire Judgment on Remand- JUST HP ORDINANCE SECTION AND WRIT.pdf>

Susan Brandt-Hawley
[REDACTED]

Envelope: 15819692

1 Susan Brandt-Hawley /SBN 75907
2 BRANDT-HAWLEY LAW GROUP
3 P.O. Box 1659
4 Glen Ellen, CA 95442
5 707.938.3900
6 u_anbh@pre_rvationlawyer.com

7 Attorney for Petitioner
8 Sainte Claire Historic Preservation Foundation

FILED
July 17, 2024
Clerk of the Court
Superior Court of CA
County of Santa Clara

20CV374459
By: rwalker

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

Sainte Claire Historic
Preservation Foundation,
a California non-profit
corporation;

Petitioner;

v.

City of San Jose, City Council
of the City of San Jose, and
City of San Jose Department
of Parks, Recreation, and
Neighborhood Services;

Responder:its;

Mortimer & Mimi Levitt
Foundation, Levitt Pavilion,
San Jose; *et al.*;

Real Parties in Interest.

_____ /

Case No. 20CV374459

proposed
Judgment on Remand

Assigned for all Purposes
Hon. Theodore Zayner
Dept.19

1 The petition filed in this case in 2020 alleged that the City of San Jose violated its
2 Municipal Code and the California Environmental Quality Act (CEQA) in its approval
3 of the St. James Park Capital Vision and Performing Arts Pavilion Project (the Project).

4 The petition came on for hearing on the merits on February 23, 2022, before the
5 Honorable Patricia M. Lucas. Susan Brandt-Hawley of the Brandt-Hawley Law Group
6 appeared as counsel for petitioner Sainte Claire Historic Preservation Foundation (the
7 Foundation); Senior Deputy City Attorney Margo Laskowska appeared as counsel for
8 respondents City of San Jose, *et al.* (collectively, the City); and Todd A. Williams of
9 Fennemore Wendel appeared as counsel for real party in interest Friends of Levitt
10 Pavilion San Jose (Levitt), mistakenly named as Levitt Pavilion San Jose.
11

12 On April 8, 2022, this Court denied the mandamus petition and entered
13 judgment in favor of the City and Levitt.
14

15 The Foundation filed a timely appeal. Briefing on the merits proceeded in Civil
16 Case No. H050106 in the Sixth District Court of Appeal. The Court of Appeal held oral
17 argument on December 14, 2023. On March 12, 2024, the Court issued its ruling (the
18 Opinion) reversing the 2022 judgment in part, holding that the City failed to comply
19 with its Municipal Code in approving the Project's required Historic Preservation
20 permit. The Opinion otherwise affirmed the judgment, holding that the Project
21 approval complied with CEQA. A true copy of the Opinion is attached as Exhibit A
22 and is incorporated by reference.
23

24 The remittitur issued on May 14, 2024.
25

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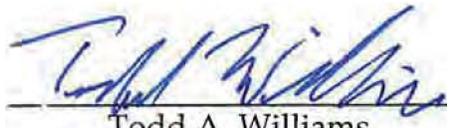
1 Upon review of the Opinion and

2 **GOOD CAUSE APPEARING, IT IS HEREBY ADJUDGED THAT:**

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- 4 1. The judgment entered by this Court on April 8, 2022, is vacated.
 - 5 2. Judgment is entered granting the Foundation's writ petition as to the San Jose
6 Municipal Code cause of action and denying the Foundation's writ petition as
7 to the CEQA cause of action, for the reasons stated and the extent set forth in
8 the Opinion, attached as Exhibit A and incorporated by reference.
 - 9 3. A peremptory writ shall issue in the form attached as Exhibit B.
 - 10 4. The Court reserves jurisdiction over a claim for private attorney general fees
11 pursuant to Code of Civil Procedure section 1021.5. The Foundation shall file
12 any motion for said fees within 30 days of Notice of Entry of this Judgment.
13
 - 14 5. The parties shall bear their own costs on appeal. The Court shall retain
15 jurisdiction to adjudicate the Foundation's claimed trial court costs.
 - 16 6. The Court shall retain jurisdiction to adjudicate the City's full compliance
17 with the peremptory writ.
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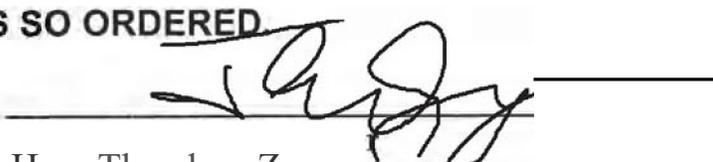
22 Margo Laskowska
23 Sr. Deputy City Attorney

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21 

22 Todd A. Williams
23 Attorney for Friends of Levitt

24 **IT IS SO ORDERED**

25 Date: July 17, 2024

26 
27 Hon. Theodore Zayne
28 Judge of the Superior Court

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EXHIBIT A

Opinion of the Court of Appeal

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

SAINTE CLAIRE HISTORIC
PRESERVATION FOUNDATION,

Plaintiff and Appellant,

v.

CITY OF SAN JOSE, et al.,

Defendants;

MORTIMER & MIMI LEVITT
FOUNDATION, et al.,

Real Parties in Interest and
Respondents.

H050106
(Santa Clara County
Super. Ct. No. 20CV374459)

This case presents a challenge by the Sainte Claire Historic Preservation Foundation (the Foundation) to the City of San Jose’s approval of a Historic Preservation permit for the “St. James Park Capital Vision and Performing Arts Pavilion (St. James Park Master Plan) Project” (the Project) under the City’s Historic Preservation Ordinance (the Ordinance, San Jose Municipal Code (S.J. Mun. Code) § 13.48.010 et seq.).

[DELETED OPINION UP TO PAGE 56: THE FOLLOWING SECTION ADDRESSES THE HISTORIC PRESERVATION ORDINANCE}

“The Issuance of the Historical Preservation Permit, on This Record, Was in Violation of the Ordinance

The Foundation’s primary challenge on appeal is to the City’s issuance of an Historical Preservation permit for the Project under the Ordinance, specifically S.J. Mun. Code section 13.48.240. This is not a CEQA issue, but the City’s environmental review process for the Project, including the City’s ultimate CEQA findings and the Project EIR, are relevant to its determination. Indeed, the EIR was expressly generated with various discretionary approvals in mind, including for a permit under the Ordinance. And the EIR and Project certification and approval were considered at every step of the administrative process leading to the issuance of the permit under the Ordinance, including the City Council’s final and ultimate approval of the Planning Director’s administrative decision to grant the Historical Preservation permit for the Project by denying the appeal of that decision.¹⁵

A. Standard and Framework of Our Review

This claim, challenging a decision that is quasi-judicial in nature, is subject to review in administrative mandate under Code of Civil Procedure

¹⁵ Respondents contended below that this claim was not administratively exhausted and the Foundation lacked standing, as the administrative appeal of the Planning Director’s issuance of the permit was brought by the St. Claire Club, different from the Foundation. The trial court rejected this contention and respondents do not raise it on appeal.

section 1094.5 after, under the Ordinance, a hearing was required to be given, evidence was required to be taken, and discretion in the determination of facts was vested in the agency. (*Bunnett v. Regents of University of California* (1995) 35 Cal.App.4th 843, 848.) Abuse of discretion is established if the agency has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by substantial evidence in the light of the whole record. (Code Civ. Proc., § 1094.5, subs. (b), (c).)

The Foundation challenges the City’s interpretation and application of the Ordinance in issuing the Historical Preservation permit for the Project. We place the challenge in the context of Code of Civil Procedure section 1094.5—a claimed failure to proceed in the manner required by law, a claim that the decision to approve the permit under the Ordinance is not supported by the findings, and a claim that contrary findings are not supported by substantial evidence.

The first aspect of the challenge involves construction and interpretation of the Ordinance. “In interpreting municipal ordinances, we exercise our independent judgment as we would when construing a statute. [Citation.]” (*Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880, 896 (*Berkeley Hills*).)

“ “ “ “As in any case involving statutory interpretation, our fundamental task here is to determine the [drafter’s] intent so as to effectuate the law’s purpose. [Citation.] We begin by examining the statute’s [or ordinance’s] words, giving them a plain and commonsense meaning.” ’ ’ ’ [Citation.] ‘ “[W]e look to ‘the entire substance of the statute in order to determine the scope and purpose of the provision.....[Citation.]’ [Citation.] That is, we construe the words in question ‘ “in context, keeping in mind the nature and obvious purpose of the statute.....” [Citation.]’ [Citation.] We must harmonize the various parts of a

statutory enactment . . . by considering the particular clause or section in the context of the statutory framework as a whole.” ’ ’ ’ [Citation.]” (*People v. Venice Suites, LLC* (2021) 71 Cal.App.5th 715, 727 (*Venice Suites*); see also *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715 [well-established rules of statutory construction require courts to ascertain intent of enacting legislative body]; *Riddick v. City of Malibu* (Feb. 1, 2024, No. B323731) ____ Cal.App.5th ____ [2024 Cal.App. LEXIS 118, *19–*21] (*Riddick*).

“If the statutory language is susceptible of more than one reasonable interpretation, the courts look to ‘extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part. [Citations.]’ [Citation.] We interpret the statute using ‘reason, practicality, and common sense to the language at hand.’ [Citation.]’ [Citation.] We must give words of the statute a workable and reasonable interpretation. [Citation.]” (*Venice Suites, supra*, 71 Cal.App.5th at p. 727; see also *Riddick, supra*, ____ Cal.App.5th at p. ____ [2024 Cal.App. LEXIS 118 at pp. *19–*21].)

One such extrinsic aid when construing a municipal law that is susceptible of more than one reasonable interpretation is the city’s interpretation of its own ordinance. (*Symons Emergency Specialties v. City of Riverside* (2024) 99 Cal.App.5th 583, 593, & fn. 5 (*Symons*)). Though not to the exclusion of other tools of statutory construction, “a city’s interpretation of its own ordinance ‘is entitled to great weight unless it is clearly erroneous or unauthorized.’ ’ [Citation.] In determining what weight to give an agency’s interpretation of its own regulations, we apply the ‘complex of factors’ set forth by our Supreme Court in *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 12 (*Yamaha*) [weight to be given an agency’s

interpretation is ‘fundamentally situational’].) Greater deference is accorded an agency’s interpretation where ‘ “the agency has expertise and technical knowledge, especially where the legal text to be interpreted is . . . entwined with issues of fact, policy, and discretion[,] . . . since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.” ’ (*Ibid.*) Deference is also appropriate when there are indications the agency’s interpretation is likely to be correct. (*Id.* at pp. 12–13.)” (*Berkeley Hills, supra*, 31 Cal.App.5th at p. 896; see also *Riddick, supra*, --- Cal.App.5th at p. __ [2024 Cal.App. LEXIS 118 at pp. *20–*24] [discussing and applying *Yamaha* factors on question of deference to City’s interpretation of its own ordinance after administrative process culminating in city council action]; see also *Symons, supra*, 99 Cal.App.5th at pp. 593–595 & fn. 5 [city’s interpretation of own ordinance is entitled to deference and given great weight in a court’s independent review of its meaning and application, unless the interpretation is arbitrary, capricious, or lacking any rational basis or is clearly erroneous or unauthorized].) But in the end, a “ ‘court has the duty “ ‘ “to state the true meaning of the statute finally and conclusively” ’ notwithstanding the [municipal] agency construction.” ’ ” (*Berkeley Hills, supra*, 31 Cal.App.5th at p. 896, fn. 10.)

Beyond that, the Foundation’s challenge to the City’s approval of the Historical Preservation permit invokes our review for substantial evidence in light of the whole record.

B. The Ordinance

As noted, San Jose’s Historic Preservation Ordinance is set out at chapter 13.48 of the S.J. Mun. Code. It begins at Part 1 with a statement of its purpose and declaration of policy at S.J. Mun. Code section 13.48.010.

The policy (at subdivision A.) states that “to promote the economic and general welfare” and “to ensure the harmonious, orderly and efficient growth and development of the municipality, it is deemed essential . . . that the qualities relating to the history of” San Jose and “a harmonious outward appearance of structures which preserve property values and attract tourists and residents alike be preserved; some of these qualities are the continued existence and preservation of historic districts and landmarks; continued construction of structures in the historic styles and a general harmony as to style, form, color, proportion, texture and material between buildings of historic design and those of more modern design; that such purpose is advanced through the preservation and protection of the old historic or architecturally worthy structures and neighborhoods which impart a distinct aspect to the City of San José and which serve as visible reminders of the historical and cultural heritage of the City of San José, the state, and the nation.”

S.J. Mun. Code section 13.48.010.B. explains that the Ordinance’s purpose is “to promote the public peace, health, safety and welfare through the preservation of landmarks and districts and thereby stabilize neighborhoods and areas of the city; enhance, preserve and increase property values; carry out the goals and policies of the city’s general plan[;] increase cultural, economic and aesthetic benefits to the city and its residents; preserve, continue and encourage the development of the city to reflect its historical, architectural, cultural, and aesthetic value or tradition; protect and enhance the city’s cultural and aesthetic heritage; and promote and encourage continued private ownership and utilization of such structures.”

S.J. Mun. Code section 13.48.020 contains definitions of terms as used in the Ordinance. As stated in subdivision A.: “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.” (Italics added.)

The term “[h]istoric district” under S.J. Mun. Code section 13.48.020.B. is *not* confined to a locally designated district but is more broadly defined as “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.” “Landmark,” as defined at S.J. Mun. Code section 13.48.020.C., includes a “site or portion thereof.”

Under S.J. Mun. Code section 13.48.020.D., 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.”

Part 3 of the Ordinance concerns Historic Preservation permits. S.J. Mun. Code section 13.48.210.A. provides that 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 . . . this chapter and pursuant to and in compliance with the terms and conditions of a permit issued thereunder.....” (Italics added.) Thus, as pertains to “historic districts,” the City in enacting the Ordinance knew how to qualify these designations as local—versus a national or state designated historic district—when it wanted to. The requirement of an Historical Preservation permit is thus expressly limited to work performed on a city landmark or in a city-designated historical district.

S.J. Mun. Code section 13.48.240.A. provides that in “taking action on an application for an [Historical Preservation] permit, the director or the planning commission, or the city council, 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. [They] 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.”

S.J. Mun. Code section 13.48.240.B. provides the standard for the issuance of an Historical Preservation permit. It says, “If the director or the planning commission or the city council, 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*, [they] shall issue such [Historical Preservation] permit subject to such conditions as they deem reasonably necessary to secure the purposes of this chapter.” (Italics & boldface added.) Thus, the imposition of conditions to the issuance of a permit may operate to mitigate harm to the point that it is not found or perceived to be “detrimental.”

Conversely, S.J. Mun. Code section 13.48.240.C. provides, as relevant here, that if the Planning Director or the City Council “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 purpose of this chapter, **despite any conditions** that [they] may impose, [they] shall deny such [Historic Preservation] permit

(Italics and boldface added.) Thus, if the work of a project is still “detrimental,” within the meaning of this section, after taking into account mitigating conditions to the issuance of a permit, the permit must be denied.

There is no language equivalent in the Ordinance to CEQA’s statement of overriding considerations (set out at sections 21081 and 21081.5), which provides for an agency’s acknowledgment and acceptance of significant impacts that cannot be fully and feasibly mitigated, and allows the agency’s discretionary policy choice, in the end, to approve the project anyway because its specific benefits are expressly determined to outweigh its significant environmental effects. CEQA’s statement of overriding considerations is structurally, analytically, and substantively distinct. But as we discuss below, this does not necessarily mean that under the Ordinance, discretion or policy judgments or values do not infuse or color how “detriment,” or its extent, may be assessed or determined or whether a “structure or feature” of “architectural,

cultural, historical, or engineering interest or value” is “significant.” (S.J. Mun. Code § 13.48.240.)

“[H]istoric district” as used in S.J. Mun. Code section 13.48.240—as the object of detriment that may be found—is notably not limited to a *local* or *city designated* district. This contrasts with section 13.48.210.A., which limits the scope of the permit requirement to work performed “on a city landmark or in a *city historic district.*” (Italics added.) In ascertaining whether to grant or deny a permit, assessing a project’s “detrimental” impact to a “historic district” would thus appear to encompass those districts designated for purposes of the national or state listings, and not just city-designated historic districts.

The Ordinance does not define the term “detrimental.” And the S.J. Mun. Code contains no overarching or general provisions or canons to aid in the interpretation or construction of this specific term as used in S.J. Mun. Code section 13.48.240.

C. The Parties’ Positions

The Foundation offers a dictionary and plain meaning definition of “detrimental” as “tending to cause harm” or “causing damage or injury.” It argues on this basis that S.J. Mun. Code section 13.48.240 mandated denial of an Historical Preservation permit here because the Project was shown to cause harm to an historic district or a structure or feature of significant architectural, cultural, historical, or aesthetic interest or value. The Foundation applies this definition to the Ordinance without regard to the extent of harm, whether great or de minimis, and without factoring or weighing relative benefits into the equation to arrive, as a matter of policy or discretionary judgment, at a net finding of a lack of detriment as the standard for the grant of an Historical Preservation permit under S.J. Mun. Code section 13.48.240.

The Foundation further emphasizes what we've just noted—that a textual reading of S.J. Mun. Code section 13.48.240, unlike section 21081, subdivision (b)'s statement of overriding considerations under CEQA, reflects no express provision or term permitting specific project benefits in the end to outweigh or override acknowledged detriment that is not mitigated by the imposition of conditions as a discretionary policy choice. In this respect, the Foundation contends, the Ordinance offers more protection to historic resources than CEQA, something a city is authorized to do under its municipal authority. (Cal. Const. Art. XI, § 7 [city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws].) The Foundation goes further, contending that the Ordinance precludes the degree of detriment requiring denial of a permit to be ultimately assessed as a net effect, after factoring in perceived project benefits or goals. Instead, it urges, absolutely, that any detriment or harm at all to a historic resource, without regard to countervailing benefits or mitigating conditions, mandates denial of a permit—a position the trial court found “not . . . reasonable.”

Beyond the text of the Ordinance and how it should be interpreted, the Foundation contends the record here indisputably establishes that the Project is “detrimental,” as plainly defined, to historical resources—St. James Park and the historic district in which it sits. It underscores that there is uncontradicted and substantial evidence supporting certified findings under CEQA that the approved Project, even as fully mitigated and accounting for all the conditions imposed by the issued Historic Preservation permit, will have significant and unavoidable adverse impacts on—and will thus be detrimental to—historic resources protected under the Ordinance. The identified impacts are generally rooted in the degree to which the Project was found to be inconsistent with both the Secretary's Standards and the local St. James Square Historic District

Design Guidelines applicable to the city-designated historic district, and specifically, for the Foundation, as pertains to the Pavilion. Such inconsistencies, as found and supported in the record, would negatively affect the integrity and significance of these historical resources, and would consequently endanger or even eliminate the national and state listings of the St. James Square Historic District on the National Register of Historic Places and the California Register of Historical Resources, respectively. Thus, the Foundation contends, despite the conceded benefits of the Project, the record nonetheless establishes that, as designed, it will indisputably and unequivocally be “detrimental” to a “historic district” or to St. James Park as a “feature of significant architectural, cultural, historical, [or] aesthetic . . . interest or value,” which detriment will remain despite imposed permit conditions. Therefore, according to the Foundation, S.J. Mun. Code section 13.48.240.C. required denial of the Historical Preservation permit.

Respondents’ view in briefing is that the language of the Ordinance is clear and unambiguous and functions in parallel to CEQA, offering no greater protections to historical resources and providing a discretionary override, in the imposition of conditions to the issuance of an Historical Preservation permit, equivalent to CEQA’s statement of overriding considerations. They do not refute the Foundation’s dictionary definitions of the word “detrimental.” But they provide no interpretation or analysis of the meaning of S.J. Mun. Code section 13.48.240’s standard of finding a project “detrimental to an historic district or to a . . . feature of significant architectural, cultural, historical, [or] aesthetic . . . interest or value” or how that standard operates in practical application. And they appear to assume, without analysis or support in the record, that “historic district” in this context, as the object of detriment potentially caused by a project, means only a city-designated district and not a nationally or state

designated one. They further disregard that S.J. Mun. Code section 13.48.240's standard for granting or denying a permit additionally includes assessment of whether a project will or will not be "detrimental" to "a feature of significant architectural, cultural, historical, [or] aesthetic . . . interest or value," offering no discussion or argument of this element in their briefing.¹⁶

Respondents further contend that substantial evidence is present in the record to uphold the City's issuance of the Historic Preservation permit for the Project and its express finding that the Project "will not be detrimental to the St. James Square Historic District and is consistent with the spirit and purposes of the Historic Preservation Ordinance." They cite what they urge is substantial evidence of the City's no-detriment finding as to the *local* historic district, in that the Project will not defeat this municipal designation under S.J. Mun. Code section 13.48.120¹⁷ despite its undisputed impacts to the Park's integrity as a historical resource and its negative effects on the Park as a contributor to the national and state listings, and the consequences to those listings on account of these effects. In fact, the no-detriment finding in the City Council's Resolution No. 79848 actually concerns the "St. James Square

¹⁶ As noted, City Council Resolution No. 79848 made no actual findings about this prong of the standard when approving the Historical Preservation permit. But see footnote 11, *ante*, noting that the Historical Preservation permit issued by the Planning Director and ultimately approved by the City Council in Resolution No. 79848 does contain this additional finding.

¹⁷ S.J. Mun. Code section 13.48.129 (at H.) of the Ordinance authorizes the designation of a local historic district if the proposed district "is a geographically definable area of urban or rural character, possessing a significant concentration or continuity of site, buildings, structures or objects unified by past events or aesthetically by plan or physical development." Per S.J. Mun. Code section 13.48.130.A., the historic district designation may "be rescinded . . . by the city council" "when it deems it to be in the public interest to do so."

Historic District,” which, throughout the document and the record as a whole, is commonly the reference for the nationally designated historic district, as distinguished from the local “St. James Square City Landmark Historic District.” This alone undercuts respondents’ claim that the only detriment that matters for purposes of the Ordinance is on the historic district as designated by the City.

Equally important as respondents’ articulated positions about the proper interpretation of the Ordinance are what their arguments omit. Respondents tender no construction or interpretation of S.J. Mun. Code section 13.48.240 tethered to the language of the Ordinance. They contended at oral argument that S.J. Mun. Code section 13.48.240 allows for “some” but not “significant detriment,” but did not identify what part of the Ordinance would lend itself to this meaning. And they disavowed that interpreting or applying S.J. Mun. Code section 13.48.240 contemplates the balancing or weighing of project benefits in the assessment of degree of detriment, or that any construction of “detrimental” means a net detriment, even if this term is used as a relative one in the Ordinance.

As to their argument that the City’s issuance of the Historical Preservation permit under the Ordinance is supported by substantial evidence, respondents cite the City’s findings of no detriment to an historic district in ultimately approving the permit. These findings are, as paraphrased, that the Project (1) preserves the Park’s location in downtown San Jose and in the historic district; (2) preserves and continues the property’s historic use as a community park and the new or altered elements generally support the continued and improved use of the property as a public open space; (3) preserves significant features of the Park and maintains it as the focus of the historic district; (4) relates to the historic design intent as a reinterpretation

of St. James Park, with a botanically organized understory, including many new trees that would restore the Park’s mostly lost tree canopy and diagonal walkways, with the design being compatible with the bulk and scale of the historic-district proportions; (5) differentiates its design from the original St. James Park and does not allow the new elements to be mistaken for original features; and (6) is mostly reversible while its design preserves the essential form and integrity of the Park’s history.

D. Construction and Application of S.J. Mun. Code Section

13.48.240 Here

The Foundation’s dictionary meaning of the word “detrimental” as used in S.J. Mun. Code section 13.48.240 defines this term in isolation and absolutely. And it overlooks how the standard of the work of a project being “detrimental to a historic district or to a . . . feature of significant architectural, cultural, historical, [or] aesthetic . . . interest or value” (S.J. Mun. Code, § 13.48.240), as determinative of whether to grant or deny an Historical Preservation permit, is to be understood. We can in the abstract envision circumstances in which this standard necessarily involves consideration of how a project, despite some impacts, may in other respects enhance the historic character of a designated district or may further historic-preservation land-use policies more generally, such that the project is assessed in the end as not “detrimental.”

In other words, “detrimental” in this context may be a flexible concept not susceptible to easy resolution by dictionary definition of the single word. Instead, it may have meaning only in material relationship to its object—what a proposed project is detrimental to—or to a baseline condition, standard, or norm of a multifaceted district, or structure or feature of significant interest or value, as these terms are used in the Ordinance. Ambiguity in the application of the standard may lie somewhere within that relationship, depending on the

circumstances presented. There may be instances in which ascertaining whether a project is “detrimental” to a historic district or to a structure or feature of significant interest or value involves the exercise of discretionary judgment about the type and degree of harm in the totality of circumstances, because of all the factors and considerations that, under the Ordinance, necessarily may go into a net assessment of detriment.

We note other parts of the law where the terms “detriment” or “detrimental” can present ambiguity or likewise have contextual meaning only in relation to an object of harm or after consideration of multi-layered circumstances and competing interests. For example, under Civil Code section 3282, in the general area of damages, “[d]etriment is a loss or harm *suffered in person or property.*” (Italics added; see also Civ. Code, § 3333 [measure of tort damages for “all the detriment proximately caused thereby”].) In *Fulle v. Kanani* (2017) 7 Cal.App.5th 1305, 1314–1316, the court found the term “actual detriment” as used in Civil Code section 3346 to be ambiguous, susceptible to conflicting interpretations as to its scope, whether limited to purely economic damages or also extending to intangible, noneconomic damages suffered by a plaintiff for annoyance and discomfort.

In the area of juvenile dependency, Welfare and Institutions Code sections 366.21, subdivision (e)(1) and 366.22, subdivision (a) require the return of a child to a parent at different points unless the court finds that such return would create a “substantial risk of detriment to the safety, protection, physical or emotional well-being of the child”—often a multifaceted determination infused with the discretionary consideration of many interests and values. In *Guardianship of Kassandra H.* (1998) 64 Cal.App.4th 1228, 1239, fn. 6, the court observed that “detriment” as used in juvenile dependency law differs from the “ ‘best interest’ ” standard in guardianship. But the court noted that the

word “ ‘detrimental’ ” presents multiple senses. It questioned and observed: “Being worse off than you were before is not ‘detriment’? Yet if detriment were defined to mean, say, ‘less than another viable alternative,’ then ‘lack of detriment’ would only be another way of saying ‘best interest.’ The trial judge obviously did not mean to define detriment that way. In context, the trial judge used the word ‘detriment’ as the term of art it has become in the juvenile law.” (*Id.* at p. 1239, fn. 6.)

Under Family Code section 3041, subdivision (a), before granting custody of a child to a nonparent over the objection of a parent, a court must find that custody to a parent would be “detrimental to the child and that granting custody to the nonparent is required to serve the best interest of the child.” There, “ ‘detriment to the child’ includes the harm of removal from a stable placement of a child with a person who has assumed, on a day-to-day basis, the role of the child’s parent, fulfilling both the child’s physical needs and the child’s psychological needs for care and affection, and who has assumed that role for a substantial period of time.” (Fam. Code, § 3041, subd. (c).) This is obviously a multifaceted determination involving many potentially nuanced considerations in the exercise of the court’s discretion, and “illustrates the necessity of maintaining flexibility in the concept and application of the standard of detriment set forth in Family Code section 3041.” (*Guardianship of Olivia J.* (2000) 84 Cal.App.4th 1146, 1155–1156.) “ [D]etriment has no clear-cut meaning and the courts must have flexibility to make fact-specific decisions’ ” depending on the facts of the case. (*Id.* at p. 1157.)

Finally, in *Kalispel Tribe of Indians v. U.S. Department of the Interior* (2021) 999 F.3d 683, 685 (*Kalispel Tribe*), the Ninth Circuit Court of Appeals addressed the standard of “detrimental to the surrounding community” as stated in 25 U.S.C. section 2719(b)(1)(A) in the administrative approval of a

proposed gaming establishment on off-reservation land. The parties in that case offered competing interpretations of this standard, the dispute centering on whether the new gaming operation would “cause *any* detriment to a nearby Indian tribe, regardless of the net impact on the surrounding community” or whether “the gaming establishment would be detrimental to the surrounding community as a whole, rather than detrimental to any individual community member, including a nearby Indian tribe.” (*Kalispel Tribe*, at p. 689.) The court acknowledged the plain and clear dictionary definition of the word “detriment” but concluded that this word alone did not resolve the dispute, which required additional interpretation and consideration of what it meant for the proposed gaming institution to be detrimental “ ‘to the surrounding community,’ ” the stated object of the detriment to be assessed. (*Id.* at p. 690.) The court rejected that the statute meant “any detriment” to a single person in the community, but rather meant to the “surrounding community as a whole,” ultimately holding that this standard required the weighing and considering of “the various interests of those within the surrounding community.” (*Ibid.*)

These examples illustrate our point that to ascertain whether something is “detrimental” to something else often requires more than a dictionary definition of the single word. The determination is context specific and often infused with multilayers of discretionary considerations involving competing interests and value judgments, depending on the circumstances.

We also observe that the term “significant” as modifying an architectural, cultural, historical, aesthetic, or engineering interest or value as used in S.J. Mun. Code section 13.48.240 may, in some circumstances, inherently incorporate discretion or a policy or value judgment that balances detriment against the significance of the value or interest being impaired, when assessing whether the work of a project is, in the end, “detrimental.”

Having said that, we perceive that these sorts of potential ambiguities or uncertainties in the interpretation of S.J. Mun. Code section 13.48.240 and its standard for the grant or denial of an Historical Preservation permit do not present here because of the circumstances of the case and the record with which we are presented. We thus need not reach these abstract issues in this case but recognize that they may present in other cases involving the Ordinance, hence our avoidance of offering pronouncements on its correct interpretation that are unnecessary to resolve this case.

As to respondents' apparent position that "historic district," as used in S.J. Mun. Code section 13.48.240, is limited to a *city*-designated district as the object of detriment to be assessed, we reject this unsupported interpretation. As we've noted, the Ordinance definition of "[h]istoric district" is 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." (S.J. Mun. Code, § 13.48.020.B.) There is nothing about this definition that is limited to *city*-designated historical districts and it would seem to encompass a district that is listed on the National Register of Historic Places and included on the California Register of Historic Resources.

Further, while the scope of the Ordinance requires an Historical Preservation for "work . . . performed" in a "*city* historic district" (S.J. Mun. Code, § 13.48.210.A., italics added), this same local qualification of "historic district" does not appear as this term is used in the standard articulated for the grant or denial of a permit—whether the work will be "detrimental to an historic district." (S.J. Mun. Code, § 13.48.240.) Neither does this local and limiting qualification appear in the articulated declaration of policy and purpose of the Ordinance as concerns "historic districts" or "districts." (S.J.

Mun. Code, § 13.48.010.) The policy, as relevant here, announces the importance of preserving of “qualities relating to the history of San Jose,” which include “the continued existence and preservation of *historic districts*.” (*Id.* at subd. A., italics added.) The express purpose of the Ordinance, as relevant here, is to “promote the public peace, health, safety and welfare through the preservation of landmarks and *districts* and thereby stabilize neighborhoods and areas of the city.” (*Id.* at subd. B., italics added.)

Respondents offer no analysis or authority supporting what we understand their position to be—that the standard of whether the work of a project is “detrimental” to a “historic district” such that an Historical Preservation permit must be granted or denied is limited to *city*-designated historic districts. Nor did the City offer evidence that this is its longstanding interpretation of its Ordinance or urge any other factors as set out in *Yamaha* that might lead to deference to the City’s interpretation, assuming for argument sake the Ordinance in this respect is susceptible to more than one reasonable interpretation such that resort to extrinsic aids is appropriate. (*Berkeley Hills, supra*, 31 Cal.App.5th at p. 896; *Riddick, supra*, ___ Cal.App.5th at p. ___ [2024 Cal.App. LEXIS 118 at pp. *21–*24; *Symons, supra*, 99 Cal.App.5th at pp. 594–595 & fn. 5.) Indeed, as we’ve noted, it appears that the City Council Resolution No. 79848 approving the permit found the Project not detrimental to “St. James Square Historic District,” which is the nationally designated listing as distinct from the city-designated “St. James Square City Landmark Historic District.” Moreover, we do not view the City’s apparent interpretation here to be correct based on our reading of S.J. Mun. Code section 13.48.240 and viewing this section in the context of the Ordinance as a whole. Such a reading would add a qualifier that isn’t there to limit the scope of protection afforded to historical resources under the Ordinance. And the City’s current reading appears at odds

with the importance the City once placed on having the St. James Square Historic District nationally recognized as part of its city-wide survey of historical resources, and as a means to preservation of the Park's historic character as it remained in 1978.

Having concluded that that the term "historic district" as used in S.J. Mun. Code section 13.48.240 is not limited to *city*-designated historic districts and would include the nationally listed St. James Square Historic District, we turn to the other possible object of "detrimental" impact in this section—"a structure or feature of significant architectural, cultural, historical [or] aesthetic . . . interest or value."

However elastic this description might be under other circumstances, no one argues here that St. James Park, itself and as a contributor to a designated historic district, would not qualify under the Ordinance as a feature of significant cultural or historical value, or that some of the Park's own features would not. And the record is replete with such references. For example, City Council Resolution No. 79848 approving the Historical Preservation permit observed and found that "[t]he human use . . . of [St. James Park] over its years of existence, as a center of public life and leisure, as a forum for political discourse, for events of community importance, and as a site of commemoration, makes it one of San José's most importan[t] places, even though it lacks substantial integrity to its original form." Similarly, City Council Resolution No. 79770 approving the Project under CEQA acknowledged the "historic significance of the [P]ark and the St. James Historic District." The Planning Director's recommendation memo to the City Council concerning the permit appeal, which is incorporated into the Council's Resolution No. 79848 approving the Historical Preservation permit, observed that "St. James Park itself is the

central and key component of the [nationally designated] historic district, without which the district would lose its essence.”

Even if the word “feature” as used in the Ordinance is intended to have a more granular meaning than an entire park or landmark structure, an argument respondents do not make, a “feature” would still appear to include acknowledged character-defining attributes of the Park to the extent remaining, such as the perimeter meandering walkways and the undulating perimeter path connecting them, which are negatively affected by the Project as proposed. The significance of these features is long-established and is supported by the record.

Thus, we have little difficulty under the circumstances and on this record concluding that both St. James Park, itself and as a contributor to the historic district in which it sits, whether designated nationally or locally, qualify as historical resources protected by the Ordinance. In this case, to apply S.J. Mun. Code section 13.48.240, we need not delve into more nuanced value judgments about the significance of these resources, or lack thereof, and how that calculus might interplay with an assessment of detriment or its degree.

We pointed above, in the abstract, to potential ambiguity under the Ordinance in assessing, in some circumstances, whether the work of a project is “detrimental” to an historical resource, where detriment may ultimately be a flexible concept incorporating discretion and policy judgments that also account for project benefits. Separately from that, we can rule out any interpretation of the Ordinance that equates it functionally with CEQA’s statement of overriding considerations—where discretionary policy choices are expressly permitted to overcome acknowledged and unmitigated harm. Respondents urge such a parallel reading in their briefing, and the trial court so reasoned by questioning whether an Historic Preservation permit could be denied under the Ordinance

“where there are, as here, overriding considerations that justify CEQA approval despite significant and unavoidable adverse impact.” The trial court also relied in this determination on the City Council’s CEQA findings in its statement of overriding considerations for the Project—findings that reflected the existence and acknowledgment of significant and unavoidable impacts to historical resources but characterized those impacts as “ ‘acceptable’ ” in light of, and as outweighed by, specific project benefits. Although CEQA expressly permits this discretionary policy choice, in the end, notwithstanding significant and unavoidable impacts, the Ordinance contains no equivalent or similar provision. What’s more, the City did not put forth or engage in such an analysis or decision here when considering and approving the Historical Preservation permit, instead confining its findings and conclusions to a lack of detriment to a protected historical resource under the Ordinance. It did not proceed by first finding detriment but overriding it by an overarching discretionary policy choice. That would be a different case.

As we have discussed, under CEQA, after addressing mitigation measures and project alternatives that are determined to be infeasible, an agency may still approve a project with significant environmental effects, including to an historic resource, if “specific economic, legal, social, technological, or other benefits outweigh the significant environmental effects.” (§§ 21081, 21081.5; see Guidelines, §§ 15091, 15092, 15093.) This express option for a statement of overriding considerations confers wide discretion on policymakers to weigh and balance project benefits versus detriments and to approve a project when mitigation measures do not fully reduce identified adverse impacts to less than significant effect, so long as CEQA statutory and regulatory requirements are met. This is in keeping with CEQA’s dual and sometimes conflicting purposes of environmental protection and informed public decisionmaking.

In contrast, the Ordinance, specifically S.J. Mun. Code section 13.48.240.C., after consideration of all input and evidence as required under subdivision A., which here includes the Project EIR and related CEQA findings along with the specified purposes of the Ordinance, mandates denial of an Historical Preservation permit if the work of a project will be “detrimental to an historic district *or* to . . . a feature of significant . . . cultural, historical [or] aesthetic . . . interest or value *and* is consistent with the purposes of [the Ordinance], *despite* any conditions that” may be imposed. (Italics added.)

In plain terms, this requires the assessment of detriment or harm, however that is performed, as a net effect or otherwise, *despite* the imposition of conditions, and denial of the permit if the detriment to the historical resource so found remains unmitigated by those conditions. There is no discretionary provision in the Ordinance to find assessed detriment, however that occurs, to be acceptable and outweighed or overridden by project benefits. Neither S.J. Mun. Code section 13.48.240 nor the Ordinance taken as a whole contain an express allowance for the discretionary weighing of project benefits against unmitigated and assessed detriment that remains despite the imposition of conditions. And the policy and purposes of the Ordinance, as expressed in S.J. Mun. Code section 13.48.010, provide no out. This section includes the policy of “harmonious, orderly and efficient growth and development of the municipality,” as cited by respondents, and expresses the purpose of the Ordinance to include carrying out the City’s General Plan and encouraging the development of the City “to reflect its historical . . . , cultural, and aesthetic value or tradition.” But nothing about the Ordinance’s expressed policy or purpose confers or allows for discretion to be exercised to override or overcome a project’s assessed “detriment” to a protected historical resource in favor of project benefits. And the requirement at S.J. Mun. Code section 13.48.240.C. of

consistency with the Ordinance’s purpose is additional and not alternative to a finding of no detriment as a basis for the issuance of a permit.

Nor do the features of S.J. Mun. Code section 13.48.240 that allow for the imposition of conditions to the issuance of an Historical Preservation permit provide for a discretionary override of assessed detriment. S.J. Mun. Code section 13.48.240.B. mandates the grant of a permit if, “*subject to such conditions*” (italics added) as may be imposed, the work will not be detrimental to an historic district or feature of significant cultural, historic, or aesthetic interest or value. This language means that for the grant of a permit, the imposition of conditions fully mitigates or eliminates detriment, however that is assessed. Likewise, S.J. Mun. Code section 13.48.240.C. requires denial of the permit where “*despite any conditions*” (italics added) to be imposed, detriment, however assessed, nonetheless remains. While there is discretion afforded in the imposition of conditions, this does not extend to overriding or accepting remaining detriment, however assessed, in favor of project benefits perceived to outweigh that assessed detriment.

Respondents contend this is an unreasonable misreading of the Ordinance and would lead to absurd results and thwart its purpose. But they point to no provision in the Ordinance, that, like CEQA, authorizes a discretionary override; cite no expressed purpose of the Ordinance with which this reading conflicts; cite no other conflicting term or provision within the Ordinance that requires harmonization; offer no legislative intent for a different reading or a longstanding history of the City applying the Ordinance consistently with its proffered interpretation; or identify an actual absurdity that would result from our reading of the Ordinance as distinct from CEQA’s statement of overriding considerations. Nor, as a threshold, do they identify any ambiguity in the Ordinance that would require or allow resort to any such

extrinsic aids to construction, instead jumping to arguments rooted in purposivism and the interpretive canon on avoiding absurd results. But the purpose of any legislation is determined in the first instance with reference to its plain language; invocation of broad purpose at the expense of the statute's express terms ignores the legislative process and prevents the effectuation of legislative intent. (*Board of Governors of Federal Reserve System v. Dimension Financial Corp.* (1986) 474 U.S. 361, 373–374.)

It's true that our reading means that the Ordinance offers more protection to historical resources than CEQA affords. But there is nothing absurd or unreasonable about that. Municipalities can exercise that authority and may choose to grant themselves the power to afford more protection to historical resources when not inconsistent with state or federal law. Indeed, this Ordinance would provide little more than redundancy and superfluity if it operated in complete parallel to CEQA and afforded nothing over and above CEQA's protections. While we recognize that deference to an agency's interpretation of its own regulation is sometimes warranted under conditions described in *Yamaha, supra*, 19 Cal.4th at page 12, and that the Ordinance here is “ ‘entwined with issues of fact, policy, and discretion’ ” (*ibid.*) such that the City is “ ‘likely to be intimately familiar with [the Ordinance] it authored and sensitive to the practical implications of one interpretation over another’ ” (*ibid.*), we do not view the City's proffered interpretation of the Ordinance, infused with overriding discretion that appears nowhere in it, as correct. What's more, the City has the authority to amend the Ordinance if it so chooses to expressly provide for the overriding discretion currently lacking.

We have thus so far concluded that St. James Park, itself and as a contributor to the nationally designated historic district in which it sits, are

protected historical resources under the Ordinance.¹⁸ We have also concluded that the Ordinance, in its omission of a provision parallel to CEQA’s statement of overriding considerations, does not include a discretionary override once detriment under the Ordinance, however assessed, is found. Conditions to the issuance of a permit may involve the exercise of discretion, but under the language of S.J. Mun. Code section 13.48.240, imposed conditions must fully mitigate detriment, however assessed, for the permit to be granted. In this respect, the Ordinance offers more protection to historical resources than does CEQA. To the extent the City’s ultimate decision to approve the Historical Preservation permit here involved interpretations or an application of the Ordinance inconsistent with our conclusions here, we hold that the City abused its discretion, largely by failing to proceed in the manner required by law.

We now turn to the question whether, on this record, the decision that the Project was not “detrimental” to historical resources protected by the Ordinance, which mandated the grant of the permit under S.J. Mun. Code section 13.48.240.B., constituted an abuse of discretion—meaning the decision is not supported by the findings or the findings are not supported by the record. We conclude that the decision is not supported by the findings.

As chronicled at length by the Foundation, and as discussed in this opinion, the Project as approved will indisputably have significant adverse cultural and aesthetic impacts to the Park as an historical resource and to the historical district in which it sits. These impacts were identified in the EIR (and the historical reports made a part thereof) and are included in the City’s

¹⁸ As to St. James Park itself, this conclusion requires support from the record, which we have identified above (at pp. 77–78, *ante*). But, as noted, no one here disputes that within the historic district, the Park qualifies under the Ordinance as a “feature of significant . . . cultural, historical, [or] aesthetic . . . interest or value.” (S.J. Mun. Code, §13.48.240.)

findings appearing in Resolution No. 79770 approving the Project under CEQA (as outlined above). These impacts, as generally described, include the loss of historic integrity, the loss of identified and remaining character-defining features of the Park, the threatened status of the current listings in the National Register of Historic Places and the California Register of Historic Resources because of acknowledged inconsistencies with the Secretary's Standards and the applicable 1989 St. James Square Historic District Design Guidelines, and alterations to the character of the existing Park that would impact or affect its historic significance and that of the district. These impacts are fully supported and uncontradicted in the record.

Specifically, the City's findings of significant and unavoidable impacts and cited facts in support in its Resolution No. 79770 approving the Project under CEQA included the following, as paraphrased, all uncontradicted and supported in the record:

- Under aesthetic impacts: the Project with its new buildings and Pavilion would change the visual character of the site and, as designed, would be constructed in a manner that would impact the historical significance of the Park and the St. James Square Historic District; inconsistency with the Secretary's Standards, even in the mitigation measures, results in a significant unavoidable impact;
- Under cultural resources impacts: The Project is inconsistent with the Secretary's Standards and the 1989 St. James Square Historic District Design Guidelines and its implementation would thus impact the historic integrity of St. James Park and the St. James Square Historic District; "removing or altering character defining features such as the north/south and

east/west axis paths, circulate features at four corners, undulating path around the perimeter connecting the circulate features, random placement of statuary and monument, flat ground plan with a lack of topographic variation, and informal planting scheme,” make the Project so inconsistent. If additional character-defining features of the Park are lost by implementation of the Project, it would no longer qualify as a contributing property to the National Register of Historic Places; therefore, the “Project would affect the historic significance of the site, change eligibility, remove character-defining features, and/or compromise integrity” (*italics omitted*) of the site and the historic integrity of the Park and the historic district in which it sits.

These findings, and the record that supports them, are based on *facts* that were before the City as administrative decisionmaker with respect to the Historic Preservation permit. That they were generated for purposes of environmental review under CEQA does not make them irrelevant to the standard for the grant or denial of a permit under S.J. Mun. Code section 13.48.240. Although this standard is unique to the Ordinance and different from CEQA standards, the facts are the facts, especially when the EIR was prepared with other discretionary approvals in mind and was required to be considered, under the Ordinance, S.J. Mun. Code section 13.48.240.A., in connection with the administrative process leading to the approval of the Historical Preservation permit.

The Historic Preservation permit also included findings and stated facts. The permit emphasized that St. James Park has already “lost much of its historic integrity and quality.” But it does not address how the past losses

might vitiate the Project's further destruction of additional character-defining features and the impact of that destruction on the historic integrity and quality of the district.

The permit did acknowledge that the Project, because of its inconsistencies with the Secretary's Standards and the 1989 St. James Square Historic District Design Guidelines, will impact the national historic listing but concluded that the Park "will continue to qualify as a contributing property to the locally designated St. James Square City Landmark District and is also . . . eligible for designation as a Candidate City Landmark." The permit nonetheless concluded that the work of the Project would not be "detrimental to the significant architectural, cultural, historical and aesthetic interest or value of St. James Park and is consistent with the purposes of the Ordinance" because it, as paraphrased: (1) preserves the Park's location in downtown San Jose and in the historic district; (2) preserves and continues the property's historic use as a community park and the new or altered elements generally support the continued and improved use of the property as a public open space; (3) preserves significant features of the Park and maintains it as the focus of the historic district; (4) relates to the historic design intent as a reinterpretation of St. James Park, with a botanically organized understory, including many new trees that would restore the Park's mostly lost tree canopy and diagonal walkways, with the design being compatible with the bulk and scale of the historic-district proportions; (5) differentiates its design from the original St. James Park and does not allow the new elements to be mistaken for original features; and (6) is mostly reversible in design while preserving the essential form and integrity of the Park's history. None of the 25 permit conditions eliminated the negative impacts described above.

The City Council's Resolution No. 79848 denying the appeal of the Historic Preservation permit and approving it also included findings and stated facts. They reiterated much of what was stated in the permit and again emphasized the many changes to the Park that have already taken place. They included that the Project "preserves most of the significant character-defining features that remain a part of St. James Park. Further, the [P]roject maintains St. James Park as the focus of the historic district through the diagonal pathways and rich plantings and preserves the landscaped character and spatial understanding of the [P]ark." (Italics omitted.) Because of this, and because of the same paraphrased features of the Project in our immediately preceding paragraph above discussing the permit, the City Council found that the Project "will not be detrimental to the St. James Square Historic District and is consistent with the spirit and purposes" of the Ordinance. (Italics omitted.) Again, none of the 26 permit conditions (one added) eliminated the negative impacts described above.

Missing from these findings made in connection with the Historical Preservation permit is any explanation of how, on this record and even if supported, they show or establish that the Project will not be "detrimental to an historic district or to a . . . feature of significant architectural, cultural, historical, [or] aesthetic . . . interest or value." (S.J. Mun. Code, § 13.48.240.) None of the findings or facts stated either in the permit itself or in the City Council Resolution approving it provided any discussion of why or how the other significant CEQA findings of adverse impacts to historical resources, and substantial evidence in the record supporting them, did not amount to "detriment" under the Ordinance or how the permit findings and stated facts counteracted or vitiated that detriment. On this record, we fail to see how the CEQA findings and supporting evidence in the record, especially those relating

to the loss of the Park as a contributor to the St. James Square Historic District as nationally and state-listed, would not amount to “detriment” to historic resources under the Ordinance, however that standard might be assessed.

Therefore, the permit findings, which may themselves, such as they are, be supported in the record, still do not support the final administrative decision to approve the Historical Preservation permit under the Ordinance.

Respondents urge that the CEQA findings do not amount to or constitute “detriment” under the Ordinance because CEQA applies different standards, criteria, and analysis. While it’s true that CEQA and the Ordinance apply different standards, criteria, and analyses, this does not negate the factual findings and undisputed supporting evidence appearing in the administrative record. After all, as we’ve emphasized, the EIR was prepared with other discretionary approvals in mind and it, along with Project approvals, EIR certification, and Resolution No. 79770, were considered as evidence, and were required to be so under S.J. Mun. Code section 13.48.240.A., in the City’s approval of the Historical Preservation permit. Respondents’ argument on this point offers no rational, legal, or evidentiary basis for their conclusion.

Respondents further contend no detriment because, as the City found, the Project preserves the Park’s location, continues its historic use as a community Park, preserves some of its significant features, does not allow its new elements to be mistaken for original features, maintains the Park as the focus of the historic district; and its design is reversible. Granted, but under the Ordinance, these facts cannot override what amounts to acknowledged and uncontradicted detriment, however assessed, established by other facts, in the manner of CEQA’s statement of overriding considerations. Nor does the fact that the Park may remain a contributor to the St. James Square City Landmark District, or even may constitute a local landmark itself, avoid the other uncontradicted

evidence and factual findings of significant adverse impacts to historical resources, i.e., detriment. The Ordinance does not limit its consideration of detriment to local concerns and it expressly contemplates broader implications and interests.

In sum, on this record, the fact of the Project's detriment to the Park as an historical resource and to the historic district in which it sits is established by acknowledged and uncontradicted evidence and findings. Other findings made by the City in issuing the permit do not change, on this record, this ineluctable conclusion. Nor do the other findings vitiate or account for the harm to historical resources that is acknowledged. Detriment to historical resources protected by the Ordinance remains despite the conditions imposed in the issued Historical Preservation permit. As we read and interpret the Ordinance, this detriment required denial of the application for the permit under S.J. Mun. Code section 13.48.240.C.

DISPOSITION

The judgment is reversed as to the second cause of action. On remand, the trial court is directed to grant relief in mandate as to this cause of action, including set-aside of the issued Historical Preservation permit for the Project and remand to the City, in its discretion, to reconsider the Historical Preservation permit application in compliance with the Ordinance, as consistent with this opinion, or a revised application based on revisions to the Project, within the City's proper exercise of discretion. The judgment is otherwise affirmed. Each party to bear its own costs on appeal under California Rules of Court, rule 8.278(a)(3).

WILLIAMS, J.*

I CONCUR:

LIE, ACTING P.J.

Sainte Claire Historic Preservation Foundation v. City of San Jose, et al.
H050106

* Judge of the Santa Clara County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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10 FOR THE COUNTY OF SANTA CLARA

11 Sainte Claire Historic Preservation
12 Foundation, *et al.*;

Case No. 20CV374459

13 Petitioners;

Peremptory Writ of Mandamus

14 v.

15 City of San Jose, *et al.*;

16 Respondents;

17 _____/

18 Mortimer & Mimi Levitt
19 Foundation, Levitt Pavilion
20 San José, *et al.*;

21 Real Parties in Interest.

22 _____/

1 **TO THE CITY OF SAN JOSE:**

2 Judgment having been entered in this action ordering that a Peremptory Writ
3 of Mandamus (the Writ) issue from this Court consistent with the Opinion in Sixth
4 District Court of Appeal Case No. H050106, attached to the Judgment as Exhibit A:

5
6 **1. THE CITY OF SAN JOSE IS COMMANDED** upon service of this Writ
7 to forthwith set aside its 2020 approval of Resolution 79848 including the Historic
8 Preservation permit required for the St. James Park Capital Vision and Performing
9 Arts Pavilion Project (Project).

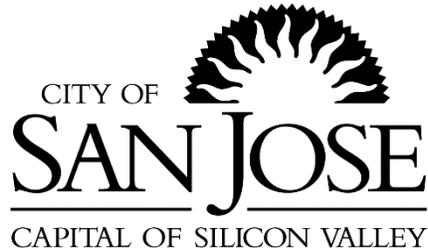
10
11 **2. THE CITY OF SAN JOSE IS FURTHER COMMANDED**, before the City
12 reapproves the Project or a revised St. James Park Capital Vision and Performing Arts
13 Pavilion Project, to fully comply with its Municipal Code's Historic Preservation
14 Ordinance in the proper exercise of its discretion as directed by the Opinion.

15 The Court retains jurisdiction to discharge the Writ after adjudicating the City's
16 compliance with this Writ.

17
18 Nothing in this Writ shall limit the discretion legally vested in the City.

19
20 Date: _____, Clerk

21
22
23 by: _____, Deputy Clerk



HISTORIC LANDMARKS COMMISSION AGENDA
Action Minutes

Wednesday, October 1, 2025

Regular Meeting
Commencing at 6:30 p.m.
City Hall Wing
Wing Rooms 118, 119 & 120
First Floor, City Hall Wing
200 East Santa Clara Street
San José, California

Commission Members

Rachel Royer, Chair
Sara Ghalandari, Vice Chair
Harriett Arnold
Himat Baniwal
Lawrence Camuso
Steve Cohen

Christopher Burton, Director
Department of Planning, Building & Code Enforcement

AGENDA

ORDER OF BUSINESS

WELCOME

ROLL CALL

The meeting was called to order at 6:32 p.m.

PRESENT: *Vice Chair Ghalandari and Commissioners Bainiwal, Camuso and Cohen*

ABSENT: *Chair Royer and Commissioner Arnold*

In Chair Royer's absence, the meeting was chaired by Vice Chair Ghalandari

1. DEFERRALS

Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. If you want to change any of the deferral dates recommended or speak to the question of deferring these or any other items, you should say so at this time.

No Items

2. CONSENT CALENDAR

Notice to the public: There will be no separate discussion of individual Consent Calendar items as they are considered to be routine and will be adopted by one motion. If a member of the Commission requests debate, separate vote or recusal on a particular item, that item may be removed from the Consent Calendar by the Chair and considered separately. The public may comment on the entire Consent Calendar and any items removed from the Consent Calendar by the Chair. Staff will provide an update on the consent calendar. If anyone in the audience wishes to speak on one of these items, please make your request at this time.

No Items

3. PUBLIC HEARINGS

Generally, the Public Hearing items are considered by the Historic Landmarks Commission in the order in which they appear on the agenda. However, please be advised that the Commission may take items out of order to facilitate the agenda, such as to accommodate significant public testimony, or may defer discussion of items to later agendas for public hearing time management purposes. If anyone in the audience wishes to speak on one of these items, please make your request at this time.

- a. **PP25-005:** San Jose Municipal Code Chapter 13.48 (Historic Preservation Ordinance) text amendments. Council District: Citywide. **CEQA:** Addendum to the certified Envision San José 2040 General Plan Final EIR (SCH #2009072096) and the Downtown Strategy 2040 Final EIR (SCH #2003042127).

PROJECT MANAGER, DANA PEAK EDWARDS

STAFF RECOMMENDS THAT THE HISTORIC LANDMARKS COMMISSION RECOMMEND THAT THE CITY COUNCIL TAKE ALL THE FOLLOWING ACTIONS:

1. **ADOPT A RESOLUTION APPROVING THE ADDENDUM TO THE ADOPTED THE FINAL ENVIRONMENTAL IMPACT REPORTS (“FINAL EIR”) FOR THE**

DOWNTOWN STRATEGY 2040 AND ENVISION SAN JOSÉ 2040 GENERAL PLAN.

- 2. APPROVE AN ORDINANCE TO AMEND SECTION 13.48.020 BY ADDING DEFINITIONS FOR ‘DETRIMENTAL,’ ‘HISTORIC INTEGRITY,’ AND ‘SUBSTANTIAL ALTERATION’ AND CLARIFYING DEFINITIONS FOR HISTORIC DISTRICT AND LANDMARK; AND TO AMEND SECTION 13.48.240 BY REVISING (B) AND (C) TO CLARIFY THE APPLICATION OF HISTORIC PRESERVATION PERMIT FINDINGS AND BY ADDING (D) TO ALLOW THE CITY COUNCIL TO MAKE CERTAIN OVERRIDING FINDINGS WHEN WORK IS DETRIMENTAL TO A LANDMARK OR PROPERTY IN AN HISTORIC DISTRICT.**

Vice Chair Ghalandari introduced the item.

Dana Peak Edwards, San José Historic Preservation Officer, provided an overview of the project outlined in a PowerPoint presentation.

Vice Chair Ghalandari opened public comment.

Shawn Atkisson, Saint Claire Historic Preservation Foundation, commented that he is concerned the proposed text amendments would allow the City more deference to make decisions. He asked the Historic Preservation Commission (HLC) to take another look at the proposed changes because they lessen the value of historic preservation, the HLC, and the ability to control historical assets entrusted to the HLC on behalf of the public. Other comments were related to the Levitt Pavilion project which was not the subject of the hearing.

Susan Brandt-Hawley, attorney for the Saint Claire Historic Preservation Foundation, commented that she submitted a request to the HLC to defer the item and suggested that should be considered first. Staff stated such an action could be taken by the HLC following public comment and discussion. Ms. Brandt-Hawley commented there was inadequate public notice for a complicated and important change to the Historic Preservation Ordinance. She commented the proposal is a change and is not just a clarification; the text amendments change the import and definitions of the Historic Preservation Ordinance. Ms. Brandt-Hawley commented the proposal would reduce protections for historic resources and some historic resources may be lost. She inquired if it is necessary to reduce protections and apply the new findings provision citywide, or if could there be other ways to amend the Historic Preservation Ordinance, like for certain types of projects. Ms. Brandt-Hawley commented that the proposed amendments should be written in a way that would reduce environmental impacts to the extent feasible. She commented that the Addendum to the adopted final environmental impact reports for the Downtown Strategy 2040 and Envision San Jose 2040 General Plan does not require a public hearing or public notice which does not allow for public participation. Other comments were related to the Court of Appeal for the Sixth Appellate District decision in Sainte Claire Historic Preservation Foundation v. City of San José.

*Ben Leech, Executive Director of Preservation Action Council San Jose (PAC*SJ), referred to a comment letter that was emailed prior to the meeting. He commented that PAC*SJ is still reviewing the proposed changes, but they are less concerned about the changes to the definitions section than changes to Section 13.48.240. Mr. Leech commented the new action finding is an all-purpose, ill-defined exemption that would substantially undermine the intent of the Historic Preservation Ordinance and the protections it currently provides. He commented there is already an established hardship exemption with established criteria and process by which projects can be weighed. Mr.*

*Leech commented that an all-purpose exemption would undermine that provision and there would be no reason to pursue a hardship case. He commented that the override provision raises a number of questions: what constitutes an overriding economic benefit? Is it a public benefit or just maximum profit for a private development (which has not been historically protected by hardship exemptions)? What constitutes a legal benefit, social benefit or “other” benefit which is so broad that it calls into questions what are we talking about, if we don’t know, how can we expect the City Council to know? At what point in the application process would an applicant invoke this overriding benefit argument? Would it go through the HLC or Planning Commission without knowing that might be a possible outcome? Or is there a clear process where at each step each body would weigh the claim? Mr. Leech commented that the CEQA landscape is changing significantly, and we can’t always assume that environmental review process is going to remain parallel. He commented there could be cases where what is currently a CEQA reviewed project might not be and the Historic Preservation Ordinance would be the only mechanism for evaluation of feasibility, alternatives, and potential mitigation. Mr. Leech commented that as the text amendments are written, none of those things are required in the City Council’s determination. He commented that there has been a lack of true community outreach and a public engagement process, and PAC*SJ is concerned about the unintended consequences of the proposed changes.*

*Mike Sodergren, PAC*SJ, commented the Planning Commission has been inserted into the process in the new finding in Section 13.48.240 and it seems like the HLC’s role in communicating what is historic and what is a detriment has been transferred to the Planning Commission which is not equipped to answer these questions. He commented that he has never seen the City Council deny a statement of overriding considerations under CEQA so it is unlikely that it there would be a case where City Council would deny overriding benefits under the Historic Preservation Ordinance. Mr. Sodergren commented that it is presumptive not to do an updated EIR and the cumulative impact would likely be massive.*

Jeffrey Cherl, President of the Saint Claire Club, commented that he is a sixth generation Californian whose family came to San José when it was the capitol of California, and he is also a fourth-generation lawyer with his office around St. James Park. He commented that he has been going to the old courthouse for forty years. Mr. Cherl commented that the HLC is the check and balance with the charge to preserve the history of San José. He commented that changing the Historic Preservation Ordinance would give carte blanche to the City Council to do whatever they want with no restrictions. Mr. Cherl commented that would destroy the city even more than it already has been. He commented that the ordinance changes would allow St. James Park to be destroyed.

Karen Luebben, resident at 97 East St. James Street, provided comments related to the Levitt Pavilion project which was not the subject of the hearing.

Maria P, resident at 97 East St. James Street, provided comments related to the Levitt Pavilion project which was not the subject of the hearing.

Vice Chair Ghalandari closed public comment.

Commissioner Bainiwal commented that the provision for overriding findings in Section 13.48.240 seems like it would take the purpose of the HLC and make it redundant and irrelevant. He commented the finding doesn’t seem very concrete and there are no clear circumstances where it should be allowed or not. Commissioner Bainiwal commented that the provision seems to give the City Council a blank check to do whatever it wants with a historic building.

Vice Chair Ghalandari inquired about public notice for the proposed ordinance amendments. Ms. Peak Edwards responded that notice was provided in the newspaper and on the project website. Manira Sandhir, Deputy Director of Planning, stated that notice can be provided to those who commented at the hearing if contact information is provided on the speaker card and the upcoming Planning Commission and City Council hearing dates were shared in the meeting. Vice Chair Ghalandari inquired about the CEQA Addendum. She commented it is her understanding that addendums are a valid CEQA process that is part of the CEQA Guidelines and tiers off existing EIRs by providing analysis and a written document that is published as part of the packet for the approval process. Ms. Sandhir confirmed that an addendum is a valid CEQA document for actions of this type where it has been found that the ordinance amendments do not result in new significant impacts that were evaluated in prior EIRs from which the document tiers off. She noted that in the future there could be projects that need a Historic Preservation Permit and project-specific environmental analysis would be done at that time.

Commissioner Camuso commented the proposed override would be detrimental to preserving historic resources. He commented that he disagrees with the override provision and believes it is detrimental to and undermines historic preservation and the purpose of the HLC.

Vice Chair Ghalandari commented that she is concerned about how broadly the override provision was drafted. She noted that CEQA is a separate process from the Historic Preservation Ordinance and there's a reason why that is the case. Vice Chair Ghalandari commented that the city wants to provide certainty to those try to redevelop or adaptively a property and agrees with some of the proposed amendments that provide clarification. Vice Chair commented that some of the proposed language creates more questions, like "substantial alteration." She commented that the word "impair" in that definition is not defined and that property within a historic district should be clarified to be a contributing property or the historic district itself. Vice Chair Ghalandari suggested that it be clarified that any project that conforms with the Secretary of the Interior's Standards should be deemed not to be a "substantial alteration." She commented that the override finding was broadly drafted and is there a way to limit its application with specific findings. Vice Chair Ghalandari commented that it would be hard if the City is adopting a statement of overriding considerations on the CEQA front not to approve one for the Historic Preservation Permit and practically they should not be linked. She commented that the intent should be to provide City Council discretion in certain circumstances, but not in every circumstance, and the findings should be different for the demolition of a landmark, vs. a property in a historic district vs. alteration.

Commissioner Cohen agreed that the proposed amendments to the Historic Preservation Ordinance open up more questions. He commented that the proposal to amend the ordinance should have been brought to the HLC before the amendments were drafted. Commissioner Cohen inquired if the timeline would change if modifications could be considered and he recommended the proposal be tabled until it is thoroughly vetted by the community and the HLC. He commented that the words "hardship" and "detriment" undermine the purpose of the Historic Preservation Ordinance. Commissioner Cohen commented that the proposed amendments dilute any ability the HLC has to make a difference. He commented that the word "detriment" lowers the threshold of what the Planning Commission and City Council can do to bypass the Historic Preservation Ordinance. Commissioner Cohen commented that text amendments need to come back to the HLC before the project continues through the process.

Commissioner Cohen made a motion to defer the item to November 5, 2025, and requested staff bring back a new draft of the text amendments for HLC consideration, including term

definitions. Vice Chair Ghalandari made a friendly amendment to the motion which was accepted by Commissioner Cohen. Vice Chair Ghalandari requested that staff define what it means to impair in the definition of “substantial alteration” and to clarify that modifications made in conformance with the Secretary of the Interior’s Standards are not a substantial alteration. She also requested refinement of the language in Section 13.48.240 to include additional findings that are different than the CEQA findings for a statement of overriding considerations that apply to demolition of a landmark, which should have its own separate standards. Vice Chair Ghalandari recommended findings, in addition to hardship, that are more defined and have clear boundaries what is required for City Council to make this determination. Commissioner Bainiwal made a friendly amendment to allow the public to send in their input on the text revisions so that at the November 5th meeting staff can revise the text amendments in response to comments from the public and the HLC and request that the text amendments be posted on the project website. The motion was seconded by Commissioner Bainiwal. The motion was approved (4-0-2; Royer and Arnold absent).

- b. **PP24-012:** Eichler Neighborhood Objective Design Standards for exterior changes to Eichler houses listed on the San José Historic Resources Inventory that require a Single Family House Permit or other Planning permit that involves historic review. Council District: Citywide.
CEQA: Exempt pursuant to Public Resources Code Section 21065, 14 Cal Code Regs. Sections 15060(c)(2) or 15378, 15061(b)(3) and 15331.
PROJECT MANAGER, DANA PEAK EDWARDS

STAFF RECOMMENDS THAT THE HISTORIC LANDMARKS COMMISSION RECOMMEND THAT THE CITY COUNCIL TAKE ALL THE FOLLOWING ACTION:

- 1. CONSIDER AN EXEMPTION IN ACCORDANCE WITH CEQA GUIDELINES SECTIONS 15060(C)(2) OR 15378, 15061(B)(3) AND 15331.**
- 2. APPROVE AN ORDINANCE ADOPTING THE SAN JOSÉ EICHLER NEIGHBORHOOD OBJECTIVE DESIGN STANDARDS.**

Chair Ghalandari introduced the item.

Dana Peak Edwards, San José Historic Preservation Officer, provided an overview of the project outlined in a PowerPoint presentation.

Vice Chair Ghalandari opened public comment.

Ben Leech, PAC SJ Executive Director, expressed appreciation for all the work that followed the listing of Fairglens Additions on the National Register of Historic Places, including the preparation of the standards. He commented that the historic preservation community is trying to wrap its head around what objective design standards are in this new climate and this project has been an extremely worthwhile exercise to go through, benefiting a very unique collection of buildings. Mr. Leech suggested there could have been more slides in the presentation to detail why the standards are worthwhile. He expressed appreciation for the support of staff, the neighborhood and project consultants in a project that resulted in a net positive for the City.*

Vice Chair Ghalandari closed public comment.

Vice Chair Ghalandari made a motion to approve the staff recommendation. The motion was seconded by Commissioner Cohen and approved (4-0-2; Royer and Arnold absent).

4. PLANNING REFERRALS

No Items

5. GENERAL BUSINESS

No Items

6. REFERRALS FROM CITY COUNCIL, BOARDS, COMMISSIONS, OR OTHER AGENCIES

No Items

7. OPEN FORUM

Members of the public are invited to speak on any item that does not appear on today's Agenda and that is within the subject matter jurisdiction of the Commission. The Commission cannot engage in any substantive discussion or take any formal action in response to the public comment. The Commission can only ask questions or respond to statements to the extent necessary to determine whether to: (1) refer the matter to staff for follow-up; (2) request staff to report back on a matter at a subsequent meeting; or (3) direct staff to place the item on a future agenda. Each member of the public may fill out a speaker's card and has up to two minutes to address the Commission.

*Mike Sodergren, PAC*SJ, commented that he received an email from the City of Los Altos requesting PAC*SJ speak on proposed amendments to the city's historic preservation ordinance. He urged the city not to give away its local control in a time of state streamlining without at least understanding the impacts. Mr. Sodergren commented that local control could be taken away in the future and the City of San José needs to be careful to maintain its land use decisions. He commented that midcentury homes like those in Fairglen Additions seem to be treasured, but midcentury commercial buildings are frequently demolished.*

8. GOOD AND WELFARE

a. Report from Secretary, Planning Commission, and City Council

- i. Historical Landmarks Commission Annual Retreat October 10, 2025 from 1:00-5:00 p.m.

b. Report from Committees

- i. Design Review Subcommittee:

- 1) No meeting held on September 18, 2025. The next meeting is scheduled for Thursday, October 16, 2025 at 11:00 a.m.
- 2) Appoint one commissioner to the Design Review Subcommittee (Royer and Camuso currently serving).

Commissioner Cohen was appointed to the Design Review Subcommittee with a motion by Vice Chair Ghalandari Commissioner and second by Commissioner Bainiwal. The motion was approved (4-0-2; Royer and Arnold absent).

- 3) Appoint Chair of the Design Review Subcommittee

This item was deferred to the November 5, 2025 meeting because Chair Royer was absent.

c. Approval of Action Minutes

- i. [Recommendation: Approve Action Minutes for the Historic Landmarks Commission Meeting of September 3, 2025.](#)

The Action Minutes for the September 3, 2025 meeting of the Historic Landmarks Commission were approved (4-0-2; Royer and Arnold absent) with a motion by Commissioner Cohen and a second by Chair Ghalandari.

d. Status of Circulating Environmental Documents

No Items

ADJOURNMENT

The meeting was adjourned at 8:21 p.m.

CITY OF SAN JOSÉ CODE OF CONDUCT FOR PUBLIC MEETINGS IN THE COUNCIL CHAMBERS AND COMMITTEE ROOMS

The Code of Conduct is intended to promote open meetings that welcome debate of public policy issues being discussed by the City Council, Redevelopment Agency Board, their Committees, and City Boards and Commissions in an atmosphere of fairness, courtesy, and respect for differing points of view.

1. Public Meeting Decorum:

- a) Persons in the audience will refrain from behavior which will disrupt the public meeting. This will include making loud noises, clapping, shouting, booing, hissing or engaging in any other activity in a manner that disturbs, disrupts or impedes the orderly conduct of the meeting.
- b) Persons in the audience will refrain from creating, provoking or participating in any type of disturbance involving unwelcome physical contact.
- c) Persons in the audience will refrain from using cellular phones and/or pagers while the meeting is in session.
- d) Appropriate attire, including shoes and shirts are required in the Council Chambers and Committee Rooms at all times.
- e) Persons in the audience will not place their feet on the seats in front of them.
- f) No food, drink (other than bottled water with a cap), or chewing gum will be allowed in the Council Chambers and Committee Rooms, except as otherwise pre-approved by City staff.
- g) All persons entering the Council Chambers and Committee Rooms, including their bags, purses, briefcases and similar belongings, may be subject to search for weapons and other dangerous materials.

2. Signs, Objects or Symbolic Material:

- a) Objects and symbolic materials, such as signs or banners, will be allowed in the Council Chambers and Committee Rooms, with the following restrictions:
 - No objects will be larger than 2 feet by 3 feet.
 - No sticks, posts, poles or other such items will be attached to the signs or other symbolic materials.
 - The items cannot create a building maintenance problem or a fire or safety hazard.
- b) Persons with objects and symbolic materials such as signs must remain seated when displaying them and must not raise the items above shoulder level, obstruct the view or passage of other attendees, or otherwise disturb the business of the meeting.
- c) Objects that are deemed a threat to persons at the meeting or the facility infrastructure are not allowed. City staff is authorized to remove items and/or individuals from the Council Chambers and Committee Rooms if a threat exists or is perceived to exist. Prohibited items include, but are not limited to: firearms (including replicas and antiques), toy guns, explosive material, and ammunition; knives and other edged weapons; illegal drugs and drug paraphernalia; laser pointers, scissors, razors, scalpels, box cutting knives, and other cutting tools; letter openers, corkscrews, can openers with points, knitting needles, and hooks; hairspray, pepper spray, and aerosol containers; tools; glass containers; and large backpacks and suitcases that contain items unrelated to the meeting.

3. Addressing the Council, Redevelopment Agency Board, Committee, Board or Commission:

- a) Persons wishing to speak on an agenda item or during open forum are requested to complete a speaker card and submit the card to the City Clerk or other administrative staff at the meeting.
- b) Meeting attendees are usually given two (2) minutes to speak on any agenda item and/or during open forum; the time limit is in the discretion of the Chair of the meeting and may be limited when appropriate. Applicants and appellants in land use matters are usually given more time to speak.
- c) Speakers should discuss topics related to City business on the agenda, unless they are speaking during open forum.
- d) Speakers' comments should be addressed to the full body. Requests to engage the Mayor, Council Members, Board Members, Commissioners or Staff in conversation will not be honored. Abusive language is inappropriate.
- e) Speakers will not bring to the podium any items other than a prepared written statement, writing materials, or objects that have been inspected by security staff.
- f) If an individual wishes to submit written information, he or she may give it to the City Clerk or other administrative staff at the meeting.
- g) Speakers and any other members of the public will not approach the dais at any time without prior consent from the Chair of the meeting.

Failure to comply with this Code of Conduct which will disturb, disrupt or impede the orderly conduct of the meeting may result in removal from the meeting and/or possible arrest.

FW: Dec 2 2025 City Council Agenda Item 10.2, File No. 25-1267

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 8:11 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

 1 attachment (279 KB)

SBH Letter to San Jose City Council re Historic Preservation Ordinance Dec 2, 2025 .pdf;

From: Susan Brandt-Hawley [REDACTED]
Sent: Tuesday, December 2, 2025 7:59 AM
To: City Clerk <city.clerk@sanjoseca.gov>
Cc: The Office of Mayor Matt Mahan <mayor@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>
Subject: Dec 2 2025 City Council Agenda Item 10.2, File No. 25-1267

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Good morning. Please add the attached to the public comment for Item 10.2 for today's City Council meeting:

Letter from Susan Brandt-Hawley to the Mayor and Council

Reporters Transcript from the HLC meeting of Oct 1, 2025

Thank you.

Please confirm receipt of these items as well as those I sent earlier this morning.

Susan

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

https://www.dropbox.com/scl/fi/8qnhpjs6550vyx2nuxcq/2025_10_01-Transcript-Historic-Landmarks-Comm-Agenda-Item-3a.pdf?rlkey=gfyoqsj0w5xeum8pj1uekzlw7&st=8ecxdvch&dl=0

Susan Brandt-Hawley



Brandt-Hawley Law Group

PO Box 1659
Glen Ellen, California 95442
707.938.3900
susanbh@me.com
www.preservationlawyers.com

December 1, 2025

Honorable Matt Mahan, Mayor
and Members of the City Council
City of San José

via email city.clerk@sanjose.ca.gov

Subject: Public Hearing, December 2, 2025
File # 25-1267; Item 10.2; PP25-005; Amendment to Title 13
(Historic Preservation) of the Municipal Code

Dear Mayor Mahan and Members of the City Council:

On behalf of the Sainte Claire Historic Preservation Foundation, I urge you to *deny* the proposed amendments to your Historic Preservation (HP) Ordinance. They would substantially reduce protections *city-wide*, causing significant impacts via needless loss of the City's most important historic resources held in trust for its citizens.

When this City Council certified the St James Park/Levitt project EIR, it made findings that the Project would result in significant impacts to the historic integrity and significance of St. James Park and the St. James Park Historic District. Your staff now admits that the impetus for the proposed HP Ordinance amendments before you today is the ruling from the Court of Appeal setting aside approval of the Project *because it does not comply with the HP ordinance in multiple respects*. I have submitted into the record the portions of the ruling that address the violations of the HP ordinance, in case they have not been provided to you by your staff or counsel.

The City has now prepared a CEQA "addendum" for the amended HP Ordinance. As the Foundation explained to the Historic Resources Commission (HRC), a supplemental EIR is instead required because the record contains a fair argument of significant impacts not studied in previous EIRs. I have submitted the Action Minutes and reporter's transcript from the HRC meeting of October 1 into today's record. I also request that the entire administrative record from the still-pending case be part of this record on remand. While addenda are discussed in the CEQA Guidelines and case law, they are not authorized by the Public Resources Code, are inconsistent with mandates and procedures required by CEQA for public notice and comment, and thus should not be relied upon by this Council.

The staff memorandum before you *does not accurately explain* the full orders of the Court of Appeal vis-à-vis this project. The Court of Appeal spent 30 pages of its ruling rejecting each of the City's many arguments that claimed it complied with its HP Ordinance. Again, I have submitted into today's record a copy of the section of the

Court of Appeal decision addressing the HP Ordinance violation, for the Council's ease of review. *There is currently an outstanding judgment against the City and a peremptory writ. The case remains pending and your actions today await judicial approval.* In the meantime the Project cannot go forward.

Your staff memorandum at page 3 *inaccurately* says that the Court of Appeal

... concluded that the City has authority to balance detrimental effects against project benefits, similar to CEQA's override process, but the HP Ordinance must explicitly allow such discretion. The proposed amendments implement this authority, enabling the City Council to approve projects that are detrimental when justified by overriding considerations.

The Opinion says no such thing. The City cannot adopt an ordinance that evades the requirements of state law, including CEQA's procedural and substantive mandate that requires *study and adoption of feasible mitigations and alternatives before considering overriding considerations.* What the appellate decision specifically orders, after thirty pages in which the Court refutes each City argument relating to the HP Ordinance, is:

- The City must set aside the issued HP permit for the Project
- The City must reconsider the HP permit application *in compliance with the HP ordinance*, consistent with the appellate ruling (again, expressed in 30 pages) **or**
- The City may reconsider "a revised application based on *revisions to the Project*"¹

The action before you thus does not comply with the still-pending orders of the Court of Appeal as now remanded to the Superior Court. Please do not approve the Ordinance revision as unlawfully proposed. The Project can be amended to move forward without further legal violations and resultant court review and expense.

The Foundation has tried to work with the City attorneys and City staff to reasonably amend the project to be compatible with the historic park and historic

¹ In sum, on this record, the fact of the Project's detriment to the Park as an historical resource and to the historic district in which it sits is established by acknowledged and uncontradicted evidence and findings. Other findings made by the City in issuing the permit do not change, on this record, this ineluctable conclusion. Nor do the other findings vitiate or account for the harm to historical resources that is acknowledged. Detriment to historical resources protected by the Ordinance remains despite the conditions imposed in the issued Historical Preservation permit. As we read and interpret the Ordinance, this detriment required denial of the application for the permit under S.J. Mun. Code section 13.48.240.C.

DISPOSITION

The judgment is reversed as to the second cause of action. On remand, the trial court is directed to grant relief in mandate as to this cause of action, including set-aside of the issued Historical Preservation permit for the Project and remand to the City, in its discretion, to reconsider the Historical Preservation permit application in compliance with the Ordinance, as consistent with this opinion, or a revised application based on revisions to the Project, within the City's proper exercise of discretion.

district, *to no avail*. The City has simply refused. After making no progress after the appellate ruling I was eventually told by City attorneys that the Foundation should meet with Parks, Recreation, and Neighborhood Services (PRNS) to present settlement ideas. Petitioner representatives Shawn Atkisson and Jon Ball met— most recently in April 2025—with PRNS Director Jon Cicerelli, who I am informed told them that the City was too far along with the project to consider any amendments. He also expressed that St. James Park cannot accommodate more than 3000 concert attendees while the Levitt Pavilion is approved for 5000 attendees.

Further, current information about the Project is that Levitt Pavilion intends to proceed with construction without any Park improvements that it relied upon to justify its significant impacts to nationally-important historic resources. This change in Project phasing, along with the proposed HP ordinance changes before you today, triggers a supplemental Project EIR.

Thank you for your consideration.

Sincerely,

A black rectangular redaction box covering the signature of Susan Brandt-Hawley.

Susan Brandt-Hawley

cc: Members of the City Council

Rosemary Kamei

district1@sanjoseca.gov

Pamela Campos

district2@sanjoseca.gov

Anthony Tordillos

District3@sanjoseca.gov

David Cohen

District4@sanjoseca.gov

Peter Ortiz

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Domingo Candelas

District8@sanjoseca.gov

Pam Foley

District9@sanjoseca.gov

George Casey

District10@sanjoseca.gov

FW: Support Historic Preservation Ordinance – Clear the Way for Levitt Pavilion

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 8:59 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Michael Van Every [REDACTED]
Sent: Tuesday, December 2, 2025 8:53 AM
To: City Clerk <city.clerk@sanjoseca.gov>
Cc: The Office of Mayor Matt Mahan <mayor@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>
Subject: Support Historic Preservation Ordinance – Clear the Way for Levitt Pavilion

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Dear Mayor and Councilmembers,

As a community leader and longtime advocate for a more vibrant, inclusive, and safe San José, I am writing to express my strong support for the staff-recommended updates to the Historic Preservation Ordinance. These updates are essential to ensuring that transformational projects like the Levitt Pavilion at St. James Park can move forward after more than a decade of thoughtful planning, collaboration, and community input.

The Levitt Pavilion will bring meaningful change to our downtown core. Beyond being a state-of-the-art music venue, it will activate St. James Park in ways proven to make our city safer and more connected. A recent survey by the San José Downtown Association found that 92% of park visitors feel safe when the park is activated with events—compared to just 30% when it is not. This speaks volumes about the power of public gathering spaces in shaping public safety and perception. In addition, like the great urban parks of America, St. James Park can and will be a destination for all San Jose residents. Think Bryant Park in New York, or Millennium Park in Chicago. These were also eyesores that required vision and political leadership by its Mayor's and councilmembers and now look how amazing these parks are and what they mean to their respective communities.

The Pavilion will generate an estimated \$14 million in economic activity, support 40–50 local artists each year and offer a plug-and-play venue for schools, arts organizations, and community

groups—at a time when live music venues across the city are struggling or closing. The updated ordinance does not weaken our historic preservation values; it simply clarifies the City’s ability to weigh broader community benefits when evaluating projects on historically designated sites. This balanced and sensible approach—crafted by Planning staff in coordination with the City Attorney’s Office—gives the City the legal clarity it needs to act decisively in the public interest.

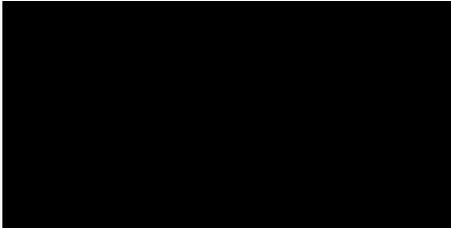
The Friends of Levitt Pavilion San José, in partnership with the Levitt Foundation and the City, are ready to move forward with the capital campaign and project execution. What they need now is your support to remove a procedural roadblock that has no place standing in the way of a project with this level of community benefit.

Please adopt the proposed ordinance language and help unlock the full potential of St. James Park. Let’s make this long-promised community vision a reality. After all, do we not want to make St. James Park a better place; or do we want status quo where the unhoused and others keep the park an eyesore and prevent economic growth?

Thank you,

MVE

Michael R. Van Every
President and Managing Partner



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FW: levity pavilion

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 10:49 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

-----Original Message-----

From: elizabeth kinnear [REDACTED]
Sent: Tuesday, December 2, 2025 10:38 AM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: levity pavilion

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i am in full support of the constitution of fundraising with intention to build a permanent stage and music acts for free for the residents of San Jose. i feel there is enough space in our vast city to have many areas for open air concerts and performances. this should not be limited to one foundation! if this happens i feel San Jose residents will lose out on the Arts!

thank you

elizabeth schroeder

resident of downtown San Jose for more than 24 years!

Sent from my iPhone

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FW: Support Historic Preservation Ordinance – Clear the Way for Levitt Pavilion

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 10:25 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

-----Original Message-----

From: Stacy Ayraud [REDACTED]
Sent: Tuesday, December 2, 2025 10:07 AM
To: City Clerk <city.clerk@sanjoseca.gov>
Cc: The Office of Mayor Matt Mahan <mayor@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>
Subject: Support Historic Preservation Ordinance – Clear the Way for Levitt Pavilion

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[You don't often get email from [REDACTED]. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Dear Mayor Mahan and Honorable Members of the San José City Council,

My husband and I, along with our neighbors have enjoyed many Levitt concerts and excited for the new upcoming stage! We were saddened to hear that the project is at risk now.

I urge you to adopt the proposed update to San José's historic preservation ordinance, unanimously recommended by the Planning Commission on November 19, 2025. This change, required by the Court of Appeal following the 2020 lawsuit by the Sainte Claire Historic Preservation Foundation, ensures that a private, men-only club cannot control decisions about a public park.

St. James Park belongs to the people of San José. Adopting this ordinance will finally clear the way for Levitt Pavilion San José, a project 13 years in the making, bringing 50 free, family-friendly concerts and programs that make our park safer, more vibrant, and welcoming to all. This is a long-overdue opportunity to transform St. James Park into the thriving historic treasure our community deserves.

Please act now to adopt the ordinance as recommended and bring this long-awaited vision to life. San José has waited over a decade—let's make it happen.

Sincerely,

Stacy Ayraud, downtowner

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FW: Support Historic Preservation Ordinance – Clear the Way for Levitt Pavilion

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 10:25 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

-----Original Message-----

From: Lane Daniels [REDACTED]
Sent: Tuesday, December 2, 2025 10:12 AM
To: City Clerk <city.clerk@sanjoseca.gov>
Cc: The Office of Mayor Matt Mahan <mayor@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>
Subject: Support Historic Preservation Ordinance – Clear the Way for Levitt Pavilion

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Dear Mayor Mahan and Honorable Members of the San José City Council,

My wife and I look forward to every concert, and enjoy the community it's created. We love live music, and I'm always telling friends and family Downtown SJ has so much to offer. We have invited them to the summer Levitt concerts and they've had so much fun. I've never spent so much time in St. James Park. These concerts have totally transformed it.

I urge you to adopt the proposed update to San José's historic preservation ordinance, unanimously recommended by the Planning Commission on November 19, 2025. This change, required by the Court of Appeal following the 2020 lawsuit by the Sainte Claire Historic Preservation Foundation, ensures that a private, men-only club cannot control decisions about a public park.

St. James Park belongs to the people of San José. Adopting this ordinance will finally clear the way for Levitt Pavilion San José, a project 13 years in the making, bringing 50 free, family-friendly concerts and programs that make our park safer, more vibrant, and welcoming to all. This is a long-overdue opportunity to transform St. James Park into the thriving historic treasure our community deserves.

Please act now to adopt the ordinance as recommended and bring this long-awaited vision to life. San José has waited over a decade—let's make it happen.

Sincerely,
Lane Daniels, district 3 downtowner

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FW: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 10:26 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Alexandra Kaputerko <[REDACTED]>
Sent: Tuesday, December 2, 2025 10:18 AM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

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SJ City Clerk,

Mayor Mahan and Council Members:

I has been a San Jose resident for more than 20 years and it became my home. In my opinion, historic buildings are tangible links to the past—a living, breathing history lesson for new generation that cannot be replicated in a textbook or a digital simulation. They provide context for our community's evolution, showing the challenges and triumphs of those who came before us.

I urge the San José City Council to fix the proposed changes to the Historic Preservation Ordinance (PP25-005) so they support vital public projects—like the Levitt Pavilion—without opening the door to unnecessary demolition of our historic landmarks.

The City's draft ordinance creates a sweeping new override that would let Council waive landmark protections for any public or private project based on vague "overriding considerations." This goes far beyond what the recent Sainte Claire court decision requires and puts more than 200 designated City Landmarks and Landmark Districts at risk.

San Jose should support the arts, public space activation, and the Levitt Pavilion. But I do not support weakening the very Ordinance that has protected San José's historic places for decades.

I support PAC*SJ's call to:

- 1) Keep the useful clarifying definitions in the draft ordinance; and
- 2) Limit the new override to projects that demonstrate a compelling public interest, not

speculative private development proposals that threaten to erase our architectural and cultural heritage.

This simple fix allows the Levitt Pavilion to move forward and keeps our landmark protections strong.

Support the Arts AND Protect Our Landmarks!

Best regards,
Alexandra

Alexandra Kaputerko



San Jose, California 95129

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FW: City Council Meeting-12/02/25: Item #10.2

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 10:48 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Tod <[REDACTED]>
Sent: Tuesday, December 2, 2025 10:32 AM
To: The Office of Mayor Matt Mahan <mayor@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; district10@sanjose.ca.gov; City Clerk <city.clerk@sanjoseca.gov>
Subject: City Council Meeting-12/02/25: Item #10.2

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December 2, 2025

Dear Mayor and City Councilmembers,

We are excited about improvements to St. James Park and the promise of Levitt Pavilion. In your on-going discussions, please be sure to review any potential negative impacts to surrounding areas and parks.

While our neighborhood (Vendome) is pleased with the progress at Columbus Park, we are seeing residual effects including an increase in vagrancy in our neighborhood including a returning encampment on Coleman Ave under the 87 freeway and several new encampments along the 87 freeway frontage land from Fox Ave to Hawthorne Ave.

Please diligently consider all ramifications from changes to St. James Park on other downtown neighborhoods. *As one example, we want to make sure the ongoing (unsanctioned) food distribution services are addressed and not just relocated to another nearby area or park.*

Thank you,

Tod Willams
Downtown Vendome Neighborhood

FW: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 11:25 AM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Burton, Chris <Christopher.Burton@sanjoseca.gov>
Sent: Tuesday, December 2, 2025 11:25 AM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: FW: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

Additional public comment regarding Agenda Item 10.2.

From: Alexandra Kaputerko · [REDACTED]
Date: Tuesday, December 2, 2025 at 10:18 AM
To: Burton, Chris <Christopher.Burton@sanjoseca.gov>
Subject: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

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Director Chris Burton,

Mayor Mahan and Council Members:

I has been a San Jose resident for more than 20 years and it became my home. In my opinion, historic buildings are tangible links to the past—a living, breathing history lesson for new generation that cannot be replicated in a textbook or a digital simulation. They provide context for our community's evolution, showing the challenges and triumphs of those who came before us.

I urge the San José City Council to fix the proposed changes to the Historic Preservation Ordinance (PP25-005) so they support vital public projects—like the Levitt Pavilion—without opening the door to unnecessary demolition of our historic landmarks.

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This simple fix allows the Levitt Pavilion to move forward and keeps our landmark protections strong.

Support the Arts AND Protect Our Landmarks!

Best regards,
Alexandra

Alexandra Kaputerko



San Jose, California 95129

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FW: Support Historic Preservation Ordinance – Clear the Way for Levitt Pavilion

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 12:50 PM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Richard Hernandez <[REDACTED]>
Sent: Tuesday, December 2, 2025 12:49 PM
To: City Clerk <city.clerk@sanjoseca.gov>
Cc: The Office of Mayor Matt Mahan <mayor@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>
Subject: Support Historic Preservation Ordinance – Clear the Way for Levitt Pavilion

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Dear Mayor Mahan and Honorable Members of the San José City Council,

My name is Richard Hernandez and I live on [REDACTED] St James and Julian; just [REDACTED] from the (hopefully) future home of the Levitt Pavilion at St James Park. Over the last few years, the events held there have brought joy along with the hope of a more welcoming for the local downtown community. The recent events have shown to unite a range of San Jose residents together, all from a diverse group of backgrounds, ages, and identities.

I urge you to adopt the proposed update to San José's historic preservation ordinance, unanimously recommended by the Planning Commission on November 19, 2025. This change, required by the Court of Appeal following the 2020 lawsuit by the Sainte Claire Historic Preservation Foundation, ensures that a private, men-only club cannot control decisions about a public park.

St. James Park belongs to the people of San José. Adopting this ordinance will finally clear the way for Levitt Pavilion San José, a project 13 years in the making, bringing 50 free, family-friendly concerts and programs that make our park safer, more vibrant, and welcoming to all. This is a long-overdue opportunity to transform St. James Park into the thriving historic treasure our community deserves.

Please act now to adopt the ordinance as recommended and bring this long-awaited vision to life. San José has waited over a decade—let's make it happen.

Sincerely,

Richard Hernandez
[REDACTED]

FW: Agenda Item 10.2 - Amendment to the Title 13 (Historic Preservation) of City Municipal Code

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 1:04 PM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Mike Sodergren [REDACTED]
Sent: Tuesday, December 2, 2025 1:01 PM
To: The Office of Mayor Matt Mahan <mayor@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; district10@sanjoseca.com; City Clerk <city.clerk@sanjoseca.gov>
Subject: Agenda Item 10.2 - Amendment to the Title 13 (Historic Preservation) of City Municipal Code

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Honorable Mayor and Council Members

Thank you for your service to the people of San Jose. The following comments are in addition to those already provided to the Historic Landmarks and Planning Commission.

PAC*sj recommends approval of Staff's Historic Preservation Ordinance with a requested addition that clarifies and emphasizes the importance of noting the public interest. This is important in recognizing the distinction between "public" or "public-private" versus private "projects" in this going forward.

Per staff, you're hearing this item today because of an ongoing legal dispute involving a public project that cannot be approved without the City having the power to issue a statement of Overriding Consideration for public projects, so please do not fail to ask the City Attorney as we have if inserting the words "public" or "compelling public interest" into section 13.48.240 (D) of the amended ordinance would in any way limit Council's authority to issue a statement of overriding consideration for public projects. And please confirm that the appellate court in this case instructed that the City could make a distinction between public and private projects in amending its ordinance.

Unfortunately, without emphasizing the public interest, the revised text by default eliminates ordinance based accountability by private owners of San Jose's historic landmarks that the ordinance was created to protect.

I attended every public hearing on this matter and never heard a discussion of private projects, something I believe the public should have had a right to hear and comment on if that was an additional reason for amending the ordinance.

The fate of a number of over 200 iconic landmarks listed on www.preservation.org website across all 10-districts could hinge on the omission of wording that specifies “the public interest.” One does not need to look far from the site of the Levitt Pavilion to see via the First Church of Christ Scientist, evidence of what poor private stewardship of a historic resource looks like.

Please note that the City Council has issued a statement of overriding consideration for no less than 5 out of 5 private projects which used the hardship exemption within the historic preservation ordinance to win HP permits for their projects, so the City already has the tool it needs to enable projects which involve privately owned City Landmarks.

Thank you for your consideration.

Mike Sodergren,
PAC*SJ President



Here is the language PAC*SJ proposes for section 13.48.240 (D) w/ additions highlighted in red.

13.48.240 (D) For projects demonstrating a compelling public interest: 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 public benefits of the project outweigh the detrimental effects on the landmark or property in a historic district.

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FW: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 2:06 PM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Elius Graff <[REDACTED]>
Sent: Tuesday, December 2, 2025 1:49 PM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

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SJ City Clerk,

Mayor Mahan and Council Members:

I urge the San José City Council to fix the proposed changes to the Historic Preservation Ordinance (PP25-005) so they support vital public projects—like the Levitt Pavilion—without opening the door to unnecessary demolition of our historic landmarks.

The City's draft ordinance creates a sweeping new override that would let Council waive landmark protections for any public or private project based on vague "overriding considerations." This goes far beyond what the recent Sainte Claire court decision requires and puts more than 200 designated City Landmarks and Landmark Districts at risk.

San Jose should support the arts, public space activation, and the Levitt Pavilion. But I do not support weakening the very Ordinance that has protected San José's historic places for decades.

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This simple fix allows the Levitt Pavilion to move forward and keeps our landmark protections strong.

Support the Arts AND Protect Our Landmarks!

Elius Graff



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FW: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 2:06 PM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Elizabeth Graff <[REDACTED]>
Sent: Tuesday, December 2, 2025 1:48 PM
To: City Clerk <city.clerk@sanjoseca.gov>
Subject: Agenda Item 10.2: Support the Arts AND Protect Our Landmarks!

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Support the Arts AND Protect Our Landmarks!

Elizabeth Graff



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FW: Support Historic Preservation Ordinance – Clear the Way for Levitt Pavilion

From City Clerk <city.clerk@sanjoseca.gov>
Date Tue 12/2/2025 3:48 PM
To Agendadesk <Agendadesk@sanjoseca.gov>

From: Jenneke de Vries <[REDACTED]>
Sent: Tuesday, December 2, 2025 2:55 PM
To: City Clerk <city.clerk@sanjoseca.gov>
Cc: The Office of Mayor Matt Mahan <mayor@sanjoseca.gov>; District1 <district1@sanjoseca.gov>; District2 <District2@sanjoseca.gov>; District3 <district3@sanjoseca.gov>; District4 <District4@sanjoseca.gov>; District5 <District5@sanjoseca.gov>; District 6 <district6@sanjoseca.gov>; District7 <District7@sanjoseca.gov>; District8 <district8@sanjoseca.gov>; District9 <district9@sanjoseca.gov>; District 10 <District10@sanjoseca.gov>; PlanningSupportStaff <PlanningSupportStaff@sanjoseca.gov>
Subject: Support Historic Preservation Ordinance – Clear the Way for Levitt Pavilion

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Dear Mayor Mahan and Honorable Members of the San José City Council,

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Please act now to adopt the ordinance as recommended and bring this long-awaited vision to life. San José has waited over a decade—let’s make it happen.

Sincerely,
Jenneke de Vries
Small business owner, and downtown San José resident