CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Christopher Burton

SUBJECT: **See Below**

DATE: November 13, 2025

COUNCIL DISTRICT: Citywide

SUBJECT: PP25-005 – Amendment to the Title 13 (Historic Preservation) of the San José Municipal Code

RECOMMENDATION

(a) Adopt a resolution adopting the Addendum to the Downtown Strategy 2040 Final Environmental Impact Report and the Envision San José 2040 General Plan Final Environmental Impact Report.

(b) Approve an ordinance amending the Chapter 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.

SUMMARY AND OUTCOME

The proposed amendments to the San José Municipal Code Chapter 13.48 (Historic Preservation Ordinance (Attachment 1) focus on Sections 13.48.020 (Definitions) and 13.48.240 (Action by Director, Planning Commission, or City Council) to:

- Clarify the terms "historic district" and "landmark," including how they are formally designated.
- Define "detrimental" and related terms to better describe when changes negatively affect a landmark or property in a historic district.
- Allow the City Council to make findings to approve a project even if it is "detrimental," when specific benefits outweigh the negative effects.

Proposed Amendments to Section 13.48.020 (Definitions)

- "Historic District" and "Landmark": Amendments clarify that only formally designated properties are subject to Historic Preservation Ordinance (HP

Ordinance) provisions, including Historic Preservation Permit (HP Permit) review. Properties listed on the National Register of Historic Places and/or California Register of Historical Resources are not regulated under the HP Ordinance unless designated by the City Council.

- New Definitions: Adds definitions for "detrimental," "historic integrity," and "substantial alteration." These terms help determine when a project is incompatible with a landmark or property in a historic district. "Detrimental" was previously undefined, leading to uncertainty in permit evaluations. "Historic integrity" describes the ability of a property to convey its significance, while "substantial alteration" identifies changes that compromise a property's defining features.

Proposed Amendments to Section 13.48.240 (Action by Director, Planning Commission, or City Council)

Currently, projects deemed "detrimental" can only be approved under a hardship finding, which is difficult to demonstrate for public projects. The amendment adds an alternative approval path, similar to the California Environmental Quality Act (CEQA) statement of overriding considerations, allowing the City Council to:

- Approve projects with unavoidable impacts when the benefits - social, economic, legal, technical, or other - outweigh the detrimental effects.
- Document specific considerations justifying approval despite negative impacts on landmarks and historic districts.

This amendment responds to the 2024 Sixth Appellate District decision in *Sainte Claire Historic Preservation Foundation v. City of San José*. The court found that while the City correctly followed CEQA in approving a project in St. James Park, the HP Ordinance lacked a mechanism for the City to override detrimental impacts. The proposed amendment creates this authority, enabling the City Council to balance project benefits against a "detriment" to landmarks and historic districts.

BACKGROUND

The HP Ordinance establishes how historic resources are identified, designated, and regulated. It maintains a Historic Resources Inventory and authorizes the City Council to designate landmarks, historic districts, and conservation areas based on architectural, cultural, and historical significance. Only formally designated properties are subject to HP Ordinance requirements, including the need for an HP Permit for exterior work.

The HP Permit process ensures changes preserve the historic character of a landmark or district. Projects that meet the Secretary of the Interior's Standards for the Treatment of Historic Properties are considered compatible. Projects that do not may be deemed

"detrimental" and denied unless a hardship shows rehabilitation is technically, structurally, or economically infeasible.

The HP Permit process works alongside CEQA. Projects that significantly affect historical resources require an Environmental Impact Report (EIR) and, if impacts cannot be mitigated, a statement of overriding considerations. The proposed amendments align HP Permit authority with CEQA, allowing the City Council to approve projects with detrimental impacts when benefits outweigh the detriment.

These amendments respond to the 2024 Sixth Appellate District decision in *Sainte Claire Historic Preservation Foundation v. City of San José*. In that case, the City approved an HP Permit for a performing arts pavilion in St. James Park. The City found the project would cause significant and unavoidable impacts to the historical resource under CEQA, but mitigation measures could not reduce the impacts to less than significant. Under CEQA, the City adopted a statement of overriding considerations, finding that the project's social, economic, legal, and technical benefits outweighed its unavoidable impacts. However, the court noted that the HP Ordinance did not provide a clear mechanism for the City to override detrimental effects to a landmark or historic district. While the EIR complied with CEQA, the court found that the facts establishing CEQA impacts also demonstrated a detriment under the HP Ordinance.

The court 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.

ANALYSIS

The proposed amendments clarify definitions and expand City Council authority while maintaining the existing review role of the Historic Landmarks Commission (HLC). HLC recommendations will continue to guide the decision-making body, ensuring expert input on the compatibility of proposed projects with landmarks or districts.

The amendments provide a new path for approving projects that are "detrimental" when overriding benefits exist. Currently, the hardship provision is the only way to approve detrimental projects, which is often difficult to apply to public projects that do not face economic or structural feasibility constraints. The new HP Permit finding allows the City Council to consider factors such as social, economic, legal, or technical benefits when evaluating a project, permitting approval even if it adversely affects a landmark or district, but only when those benefits outweigh the loss or impact.

In accordance with the City of San José's Certified Local Government Agreement, the proposed HP Ordinance amendments were submitted to the California Office of Historic Preservation (OHP) for consultation. OHP noted that the changes help clarify certain elements of the existing ordinance. OHP's Technical Assistance Bulletin #14, "Drafting

Effective Historic Preservation Ordinances: A Manual for California Local Governments," notes that communities may tailor preservation programs based on resource types, desired protection levels, and local development pressures, supporting flexibility in how the City structures its ordinance.

A review of twelve California cities - including Berkeley, Long Beach, Los Angeles, Oakland, Pasadena, Riverside, Sacramento, San Diego, San Francisco, Santa Barbara, Santa Monica, and West Hollywood – shows that most do not allow overrides for projects that negatively affect designated landmarks and historic districts (Attachment 2). Some exceptions exist: Sacramento allows overrides for consistency with general or specific plans, Pasadena permits it for demolition with compelling public interest, and San Diego limits it to public capital improvement projects. San José's HP Ordinance relies on a hardship finding, which can be difficult to apply to public projects.

Currently, hardship is the only basis for approving a project deemed "detrimental" to a landmark or historic district, which can pose challenges for public projects without economic or structural feasibility issues. The proposed amendment introduces an additional HP Permit finding aligned with CEQA, allowing the City Council to consider factors beyond hardship - such as social, economic, legal, or technical benefits - when approving projects with unavoidable impacts, while requiring clear documentation of both the detrimental effects and overriding benefits.

The proposed amendments do not change existing HP Permit standards for compatibility, nor do they alter the HLC's advisory role. Projects will still be reviewed for consistency with the Secretary of the Interior's Standards for the Treatment of Historic Properties, and HP Permits for designated properties will continue to require careful evaluation of their impact on historic character.

EVALUATION AND FOLLOW-UP

Following the first City Council reading of the ordinance to amend Chapter 13.48 of the San José Municipal Code, there will be a second reading scheduled in two weeks. If the ordinance is approved by the City Council in the second reading, it will go into effect in 30 days.

COORDINATION

The preparation of the proposed ordinance, CEQA resolution and this memorandum was coordinated with the City Attorney's Office.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy, preparing notices for the public hearings posted on the City's website and published in the San Jose Post-Record. Staff created a dedicated website for the code revisions[1] to provide both a technical and simplified explanation of the proposed changes to the code and its effects. Staff also shared the proposed ordinance amendments with the development and preservation communities in San José and posted the public hearings on social media channels and City platforms.

COMMISSION RECOMMENDATIONS AND INPUT

Historic Landmarks Commission (HLC) conducted a public hearing on October 1, 2025. The HLC considered the staff report (Attachment 3) and received public comment, which is outlined in the approved minutes of the HLC (Attachment 4). The HLC voted 4-0-2 (Royer and Arnold absent) to defer the item to November 5, 2025 to allow for additional input and time for staff to bring back modifications to the proposed text amendments to:

1) Clarify the meaning of "impair" in the definition of "substantial alteration;"
2) Clarify that any project that complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties (SIS) would not be a substantial alteration; and
3) Limit the broad application of the override provision by providing clear boundaries, decoupling the finding from the California Environmental Quality Act (CEQA) and providing separate findings for demolition.

In response to the HLC's request, staff drafted modified language outlined in the November 5, 2025 staff report (Attachment 5). The HLC received public comment, which is outlined in the draft minutes (Attachment 6). There were 23 speakers, the majority of which spoke in support of the ordinance amendments to facilitate the development of the Levitt Pavilion project. Four speakers spoke in favor of Option 2 of the modified override findings drafted by staff, one speaker commented that the proposed ordinance amendments should be analyzed in a supplemental EIR and four speakers opposed the ordinance amendments and the Levitt Pavilion project.

The HLC discussed the modified language drafted by staff (indicated through underline) and made a motion to recommend approval to the City Council as following:

- Modify the proposed definition of "substantial alteration" to clarify that work in conformance with the SIS would not be considered a "substantial alteration." Substantial Alteration. The term "substantial alteration" shall mean demolition, destruction, relocation, new construction, or alteration activities that would impair

[1] https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/historic-resources/general-plan-policies-historic-preservation-ordinance/historic-preservation-ordinance-update-pp25-005

the historic integrity and significance of a landmark, or property within a historic district. Evaluation of the alteration shall be informed by the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings. Work that fully conforms with the Secretary of the Interior's Standards for the Treatment of Historic Properties is not considered "substantial alteration."

- Add a definition for "impair."

  Impair. The term "impair" shall mean to diminish, damage, degrade, or otherwise negatively affect one or more physical characteristics, features, materials, workmanship, setting, design, or other elements that contribute to the landmark or property in a historic district's historical significance or integrity such that its ability of the resource to convey that significance is materially reduced.

- Amend the proposed override language.

  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 the project has specific overriding economic, legal, social, technological, or other benefits that outweigh the detrimental effects on the landmark or property in a historic district and the project provides a clear, measurable benefit to the community and is necessary to achieve a specific public purpose that cannot be reasonably accomplished through preservation, relocation, or adaptive reuse. Approval under these findings shall not establish precedent for future departures from historic preservation standards, and the City Council shall state in the resolution the unique circumstances justifying approval.

  1. For City-sponsored projects on City land or facilities, the City Council must find that the project provides a substantial, demonstrable benefit to the City and the community in public services or amenities, or is necessary for public health, safety, or welfare; or
  2. For private projects, the City Council must make all the following findings:
     a. The project advances the Major Strategies of Chapter 1 of the General Plan, other General Plan goals and policies, a specific plan or community plan or adopted public policy objectives that cannot otherwise be achieved;
     b. The project deviates from the standards to the minimum extent necessary to achieve the project's legitimate purpose, and the scope of nonconformance has been reduced to the smallest extent practicable;
     c. The project incorporates changes which substantially lessen the detriment to the landmark or property in a historic district, such as preservation of

the most significant character-defining features, even if other less critical features must be altered or moved, retention and adaptive reuse of significant portions or façades, or reconstruction of defining features;

d. The project is compatible in massing, character, design, and materials with the historic context of the site and surrounding area to minimize visual or physical impacts; and

e. The project incorporates educational, cultural, interpretive, or commemorative features that recognize the site's former landmark or property in a historic district.

The HLC approved the motion 4-2 (Camuso and Cohen opposed) to recommend to the City Council the above alternate language for the new override finding.

The Planning Commission conducted a public hearing on November 19, 2025 and received public comment from 15 speakers (Attachment 7).

- Nine speakers supported the ordinance amendments as proposed by staff to facilitate the development of the Levitt Pavilion project (one speaker specified public projects).
- One speaker supported adding the word "public" to the staff proposed finding to limit the override to public projects.
- One speaker expressed concern about creating another override in addition to hardship that applies to both public and private projects and commented the staff proposed override is too broad and the HP Ordinance protecting city landmarks and districts is not CEQA.
- One speaker commented that a distinction should be made between public and private projects.
- One speaker supported more specificity in the override regarding the public projects and also expressed support for the Levitt Pavilion project.
- One speaker commented that the override needs to specify that it would be public serving and consideration needs to be given to the people that are already in the park and downtown, like the unhoused, not to displace but to create a space that works for everyone.
- One speaker commented that the proposed language is not perfect, the HLC had good recommendations and supported adding the word "public" to the staff proposed finding, but would also support the staff proposal if necessary.
- One speaker commented that the proposed ordinance amendments should be analyzed in a supplemental EIR.

Planning Commissioners deliberated. Commissioner Cantrell expressed concern about the broad language in the staff-proposed override and suggested guardrails should be put in place.

Commissioner Young inquired about the public vs. private application of the override. Daniel Zazueta, Senior Deputy City Attorney, responded that it is a policy decision. He commented that projects would be treated equally and it would be up to staff to guide the decision whether an override would be supported or a hardship finding would be more appropriate. Commissioner Young commented that he is not concerned that the staff override language would create an overly broad application because there is a robust review process with the HP Ordinance, Historic Landmarks Commission, staff, the Planning Commission, and ultimately the City Council that provides a lot of steps and transparency.

Commission Bickford expressed opposition to separating public from private projects in the override because the City needs to give equal treatment to both.

Chair Rosario commented that there is a robust system of checks and balances in the review process, the City is within its rights to amend the ordinance as affirmed by the appellate court and there are already CEQA abuses that prevent development in California. He commented that the override would remove avenues for additional, unwanted litigation that could cause additional delays.

The Planning Commission approved the staff recommendation 9-0-1 (Casey absent).

CEQA

The proposed HP Ordinance amendments do not require a subsequent or supplemental EIR under CEQA Guidelines Sections 15162 and 15164, as they do not create new significant impacts, increase the severity of existing impacts, or introduce new mitigation measures. No physical development is proposed, and the amendments primarily clarify permit findings to align with state law for projects with significant and unavoidable impacts. The CEQA analysis is addressed in an Addendum to the certified Envision San José 2040 General Plan Final EIR and Downtown Strategy 2040 Final EIR.

The amendments clarify terms such as “detrimental” to help evaluate whether a project would significantly affect historical resources, consistent with Public Resources Code Section 21084.1 and CEQA Guidelines Section 15064.5. Evaluations will continue to follow the Secretary of the Interior’s Standards for the Treatment of Historic Properties.

The amendments also provide an alternate path for City Council approval of projects with detrimental effects based on overriding considerations, similar to the CEQA override process under Section 15093, which allows a lead agency to approve a project with significant and unavoidable impacts upon adopting a Statement of Overriding Considerations. This allows the Council to weigh a project’s economic, social, legal, and technical benefits against unavoidable impacts while maintaining full CEQA review. The certified General Plan and Downtown Strategy EIRs both acknowledged that certain projects could result in significant and unavoidable impacts to historic resources and

explicitly contemplated use of overriding considerations in limited circumstances. The ordinance amendments do not expand the City Council's discretion beyond what CEQA already provides. For projects causing significant impacts to historical resources, a project-level CEQA review will still be required. The amendments codify a process that is consistent with CEQA's framework, ensuring that if an override is exercised, it is supported by ordinance findings, a resolution, and a public record.

In summary, the amendments refine key definitions and permit findings, ensure the HP Ordinance aligns with CEQA, and provide the City Council discretion to approve projects with unavoidable impacts while maintaining full CEQA review.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/
Christopher Burton, Director
Planning, Building and Code Enforcement
Planning Commission Secretary

The principal author of this memorandum is Dana Peak Edwards, Principal Planner and Historic Preservation Officer, Planning, Building and Code Enforcement Department, at dana.peak@sanjoseca.gov or (408) 534-2990.

ATTACHMENTS

1. Historic Preservation Ordinance Text Amendments
2. California Cities Comparison Table
3. Historic Landmarks Commission Staff Report (October 1, 2025)
4. Historic Landmarks Commission Action Minutes (October 1, 2025)
5. Historic Landmarks Commission Staff Report (November 5, 2025)
6. Historic Landmarks Commission Draft Action Minutes (November 5, 2025)
7. Planning Commission Staff Report (November 19, 2025)

ATTACHMENT 1
PROPOSED TEXT AMENDMENTS TO HISTORIC PRESERVATON ORDINANCE

Chapter 13.48 - HISTORIC PRESERVATION

Part 1 - GENERAL PROVISIONS

13.48.020 - Definitions.

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

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

B. Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of an Historical Nature. The term "historical, architectural, cultural, aesthetic, or engineering interest or value of an historical nature" shall mean a quality that derives from, is based upon, or related to any of the following factors:

1. Identification or association with persons, eras or events that have contributed to local, regional, state or national history, heritage or culture in a distinctive, significant or important way;

2. Identification as, or association with, a distinctive, significant or important work or vestige:

    a. Of an architectural style, design or method of construction;

    b. Of a master architect, builder, artist or craftsman;

    c. Of high artistic merit;

    d. The totality of which comprises a distinctive, significant or important work or vestige whose component parts may lack the same attributes;

    e. That has yielded or is substantially likely to yield information of value about history, architecture, engineering, culture or aesthetics, or that provides for existing and future generations an example of the physical surroundings in which past generations lived or worked; or

    f. That the construction materials or engineering methods used in the proposed landmark are unusual or significant or uniquely effective.

3. The factor of age alone does not necessarily confer a special historical, architectural, cultural, aesthetic or engineering significance, value or interest upon a structure or

site, but it may have such effect if a more distinctive, significant or important example thereof no longer exists.

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

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

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

1. An individual structure or portion thereof;

2. An integrated group of structures on a single lot;

3. A site, or portion thereof; or

4. Any combination thereof.

F. Preservation. The term "preservation" shall mean the protection, conservation, enhancement, perpetuation, rehabilitation, restoration, repair, reconstruction or other action taken to repair, conserve or prevent the deterioration or destruction or removal of a landmark or property in a historic district.

G. Site. The term "site" shall mean any place or area or any portion thereof, including any thing, element or fixed object thereon, whether man-made or natural.

H. Structure. The term "structure" shall mean anything directly or indirectly fixed or attached to the ground, which is built or constructed by man. A "structure" includes, but is not necessarily limited to, buildings, monuments, edifices, signs, fences, fountains, walks, kiosks, bridges, gates, walls, cemetery markers, and building appendages such as marquees, awnings and lighting fixtures.

I. Substantial Alteration. The term “substantial alteration” shall mean demolition, destruction, relocation, new construction or alteration activities that would impair the historic integrity and significance of a landmark, or property within a historic district. Evaluation of the alteration shall be informed by the Secretary of the Interior’s Standards

for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings.

](Prior code § 8952; Ords. 20884, 24212.)

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

A. In taking action on an application for an HP permit, the director or the planning commission, or the city council, as applicable, shall consider the comments and recommendations of the historic landmarks commission as well as hear and consider all evidence presented to them or it at the public hearings. The director or the planning commission or the city council, as applicable, shall also consider, among other things, the purposes of this chapter, the historic architectural value and significance of the landmark or of the district, the texture and material of the building or structure in question or its appurtenant fixtures, including signs, fences, parking, site plan, landscaping, and the relationship of such features to similar features of other buildings within an historic district, and the position of such buildings within an historic district, and the position of such building or structure in relation to the street or public way and other buildings or structures.

B. If the director or the planning commission or the city council, as applicable, finds that, subject to such conditions as they may impose, the work will not be detrimental to a landmark or property in a historic district and is consistent with the spirit and purposes of this chapter, the director or the planning commission or the city council, as applicable, shall issue such HP permit subject to such conditions as they deem reasonably necessary to secure the purposes of this chapter.

C. If the director or the planning commission or the city council, 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 director or the council on appeal shall deny such HP permit, except as provided in Section 13.48.260.

D. If the director or the planning commission or the city council, as applicable, finds that the work will be detrimental to a landmark or property in a historic district, or is inconsistent with the purposes of this chapter, despite any conditions that the director or the planning commission or the city council, as applicable, may impose, the city council, through a resolution, may find that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the detrimental effects on the landmark or property in a historic district.

(Ords. 20884, 30543.)

ATTACHMENT 2

TABLE OF HISTORIC PRESERVATION ORDINANCE PERMIT FINDINGS FOR DESIGNATED PROPERTIES IN OTHER CALIFORNIA CITIES

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
Berkeley	No, limited to Hardship	A. The commission shall be guided by the standards in this section in its review of permit applications for work on a landmark site, in an historic district or on a structure of merit site. In appraising the effects and relationships mentioned herein, the commission shall in all cases consider the architectural style, appearance, arrangement, height, design, texture, materials, color and appurtenances and such other facts as may be relevant. B. In all instances, the proposed work shall be as appropriate for and as consistent with the purposes of this chapter as is possible within the peculiar circumstances of the owner of the property and preservation or enhancement of the characteristics and particular features specified in the designation. C. Approval of permit applications pursuant to this section may be granted only upon determination that the proposal conforms to the criteria set forth in paragraphs 1. and 2. below: 1. For permit applications for construction, alteration or repair: (a) For applications relating to landmark sites, the proposed work shall not adversely affect the exterior architectural features of the landmark and, where specified in the designation for a publicly owned landmark, its major interior architectural features; nor shall the proposed work adversely affect the special character or special historical, architectural or aesthetic interest or value of the landmark and its site, as viewed both in themselves and in their setting. (b) For applications relating to property in historic districts, the proposed work shall not adversely affect the exterior architectural features of the subject property or the relationship and congruity between the subject structure or feature and its neighboring structures and surroundings, including facade, setback and height; nor shall the proposed work adversely affect the special character or special historical, architectural or aesthetic interest or value of the district. The proposed work shall also conform to such further standards as may be embodied in the designation of the historic district. (c) For applications relating to structure of merit sites, the proposed work shall not adversely affect the architectural features if architectural merit is the basis for designation; nor shall the proposed work adversely affect the special cultural, educational or historical interest or value if that is the basis for designation. 2. For permit applications for demolition: the commission shall find that the designated landmark, historic district or structure of merit or portion thereof is in such condition that it is not feasible to	3.24.260Permit application--Review standards and criteria. 3.24.270Permit application--Finding of hardship authorized when--Effect.

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		preserve or restore it, taking into consideration the economic feasibility of alternatives to the proposal, and balancing the interest of the public in preserving the designated landmark, historic district or structure of merit or portion thereof and the interest of the owner of the landmark site, historic district, or structure of merit site in its utilization. (Ord. 5686-NS § 1 (part), 1985: Ord. 4694-NS § 6.2, 1974) Regardless of whether or not the standards set forth in Section 3.24.260 are met, the commission may approve a permit application to carry out alterations or construction on a landmark site, in an historic district or on a structure of merit site, if the applicant presents clear and convincing evidence to the commission that such disapproval will work immediate and substantial hardship because of conditions peculiar to the particular structure or feature involved, and that failure to disapprove the application will be consistent with the purposes of this chapter. If hardship is found to exist under this section, the commission shall make a written finding to that effect, and shall also specify in writing the facts relied upon in making such finding. Nothing in this section shall prohibit the commission from acting to modify or to suspend action on any application pursuant to Sections 3.24.220 through 3.24.250 hereof. (Ord. 5686-NS § 1 (part), 1985: Ord. 4694-NS § 6.2, 1974)	
Long Beach	No	D. The Cultural Heritage Commission or, as appropriate, the Director of Development Services, shall only issue a certificate of appropriateness if it is determined that the proposed modification: 1. Will not adversely affect any significant historical, cultural, architectural or aesthetic feature of the Landmark or subject property within the Landmark District and that issuance of the certificate of appropriateness is consistent with the spirit and intent of this Chapter. 2. Will remedy any condition determined to be imminently dangerous or unsafe by the Fire Marshal and/or Building Official. 3. Will comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties and Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings. 4. Will comply with the Design Guidelines for Landmark Districts, for a property located within a Landmark District.	2.63.080 - Procedures for certificate of appropriateness.

ATTACHMENT 2
TABLE OF HISTORIC PRESERVATION ORDINANCE PERMIT FINDINGS FOR DESIGNATED PROPERTIES IN OTHER CALIFORNIA CITIES

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		E. If the Cultural Heritage Commission or, if authorized, the Director of Development Services determines that the proposed modification will adversely affect any significant historical, cultural, architectural or aesthetic feature of the Landmark or concerned property within a Landmark District, the certificate of appropriateness shall be denied. If the Commission or the Director of Development Services finds that the adverse effects can be overcome by minor modifications to the application, a certificate of appropriateness with conditions may be issued.	
Los Angeles	No, limited to hardship	4. Standards for Issuance of Certificate of Appropriateness for Construction, Addition, Alteration, or Reconstruction. The Director shall base a determination whether to approve, conditionally approve or disapprove a Certificate of Appropriateness for construction, Addition, Alteration or Reconstruction on each of the following: If no Preservation Plan exists, whether the Project complies with Standards for Rehabilitation approved by the United States Secretary of the Interior considering the following factors: architectural design; height, bulk, and massing of buildings and structures; lot coverage and orientation of buildings; color and texture of surface materials; grading and site development; landscaping; changes to Natural Features; antennas, satellite dishes and solar collectors; off-street parking; light fixtures and street furniture; steps, walls, fencing, doors, windows, screens and security grills; yards and setbacks; or signs; and (b) Whether the Project protects and preserves the Historic and architectural qualities and the physical characteristics which make the building, structure, landscape, or Natural Feature a Contributing Element of the Preservation Zone; or (c) If a Preservation Plan exists, whether the Project complies with the Preservation Plan approved by the City Planning Commission for the Preservation Zone. 5. No Certificate of Appropriateness shall be issued for Demolition, removal or relocation of any building, structure, Landscaping, Natural Feature or lot within a Preservation Zone that is designated as a Contributing Element, and the application shall be denied unless the Owner can demonstrate to the Area Planning Commission that the Owner would be deprived of all economically viable use of the property. In making its determination, the Area Planning Commission-shall consider any evidence presented concerning the following: An opinion regarding the structural soundness of the structure and its suitability for continued use, renovation,	Section 12.20.3 of the Los Angeles Municipal Code 4) Standards for Issuance of a Certificate of Appropriateness (Construction, Addition, Alteration, or Reconstruction) 5) Demolition

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		Restoration or Rehabilitation from a licensed engineer or architect who meets the Secretary of the Interior's Professional Qualification Standards as established by the Code of Federal Regulation, 36 CFR Part 61. This opinion shall be based on the Secretary of the Interior's Standards for Architectural and Engineering Documentation with Guidelines; (a) An estimate of the cost of the proposed Alteration, construction, Demolition, or removal and an estimate of any additional cost that would be incurred to comply with the recommendation of the Board for changes necessary for it to be approved; (b) An estimate of the market value of the property in its current condition; after completion of the proposed Alteration, construction, Demolition, or removal; after any expenditure necessary to comply with the recommendation of the Board for changes necessary for the Area Planning Commission to approve a Certificate of Appropriateness; and, in the case of a proposed Demolition, after renovation of the existing structure for continued use; (c) In the case of a proposed Demolition, an estimate from architects, developers, real estate consultants, appraisers, or other real estate professionals experienced in Rehabilitation as to the economic feasibility of Restoration, renovation or Rehabilitation of any existing structure or objects. This shall include tax incentives and any special funding sources, or government incentives which may be available. (d) In a case where Demolition, removal, or relocation of any Contributing Element, without a Certificate of Appropriateness for Demolition, Removal, or Relocation has occurred, Section 12.20.3 K.5 shall not apply. Procedures in Sections 12.20.3 K.1-4 and/or Section 12.20.3 Q shall apply.	
Oakland	No, limited to hardship	Finding 1: The applicant demonstrates that: a) the existing property has no reasonable use or cannot generate a reasonable economic return and that the development replacing it will provide such use or generate such return, OR b) the applicant demonstrates that the structure constitutes a public nuisance and is economically infeasible to rehabilitate on its present site. For this finding, a public nuisance constitutes a threat to health and safety that is not immediate. Finding 2: If a replacement project is required, the design quality of the replacement project is equal or superior to that of the existing facility. Finding 3: It is economically, functionally, architecturally, or structurally infeasible to incorporate the historic structure into the proposed development.	Demolition Findings for Category 1 Resources

ATTACHMENT 2

TABLE OF HISTORIC PRESERVATION ORDINANCE PERMIT FINDINGS FOR DESIGNATED PROPERTIES IN OTHER CALIFORNIA CITIES

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
Pasadena	No, limited to hardship Yes for demolition	Required findings for approval of a Certificate of Appropriateness. Approval of a Certificate of Appropriateness shall be based on the following findings: a. If a project is a demolition or relocation, including demolition in a historic or landmark district, the project will not cause a significant adverse effect as defined in the State CEQA guidelines; or b. If a project is an alteration or new construction, the project complies with the Secretary's Standards or adopted guidelines based on the Secretary's Standards. Additional findings for demolition of historic resources (excluding non-contributing structures). In addition to the findings required in Section 17.62.090.E.3, the Commission must make one of the following findings to approve demolition of a designated historic resource: a. The building has experienced severe structural damage and there is substantial evidence to support this conclusion from at least two sources (e.g., structural engineer, architect); or b. No economically reasonable, practical, or viable measures could be taken to adaptively use, rehabilitate, or restore the building or structure on its existing site—and there is substantial evidence to support this conclusion from at least two sources (e.g., structural engineer, architect); or *A compelling public interest justifies demolition*. Conditions of approval. As a condition of approval for demolition, the Commission may require historic materials to be salvaged from a property, and it may require archival-quality photo documentation of the building and/or architectural drawings similar to those required for the Historic American Buildings Survey (HABS).	17.62.090 - Alteration, Demolition, or Relocation of a Historic Resource
Riverside	No	20.25.050 - Principles and standards of site development and design review. The Board and Historic Preservation Officer or Qualified Designee shall make findings of the following standards when applicable to approving or denying a Certificate of Appropriateness. A. For proposed projects involving individually significant Cultural Resources (i.e. City Landmarks, Structures of Merit, etc.), the proposed project should demonstrate:	20.25.050 - Principles and standards of site development and design review

ATTACHMENT 2
TABLE OF HISTORIC PRESERVATION ORDINANCE PERMIT FINDINGS FOR DESIGNATED PROPERTIES IN OTHER CALIFORNIA CITIES

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		1. Consistency or compatibility with the architectural period and the character-defining elements of the historic building, such as colors, textures, materials, fenestration, decorative features, details, height, scale, massing, and method of construction; 2. The proposed project does not destroy or pose a substantial adverse change to an important architectural, historical, cultural or archaeological feature or features of the Cultural Resource; 3. Compatibility with context considering the following factors: grading; site development; orientation of buildings; off-street parking; landscaping; signs; street furniture; public areas; relationship of the project to its surroundings; 4. Consistency with the principles of the Secretary of the Interior's Standards for the Treatment of Historic Properties; and 5. As applicable, consistency with other federal, state, and/or local guidelines. B. For proposed projects involving contributors or contributing feature within Historic Districts and Neighborhood Conservations Areas, the proposed project should demonstrate: 1. Compatibility with the height, scale, or massing of the contributor (or contributing feature) the Cultural Resource; 2. Compatibility with colors, textures, materials, decorative features of the contributor (or contributing feature) to the Cultural Resources; 3. The proposed change does not destroy or pose a substantial adverse change to an important architectural, historical, cultural or archaeological feature or features within boundary of the Cultural Resource; 4. Compatibility with the context of the Cultural Resource regarding grading, site development, orientation of buildings, landscaping, signs, or public areas; 5. Consistency with the Citywide Residential Historic District Design Guidelines, approved guidelines for each Historic District, and/or any other applicable Design Guidelines; and 6. Consistency with the principles of the Secretary of the Interior's Standards for the Treatment of Historic Properties.	

ATTACHMENT 2
TABLE OF HISTORIC PRESERVATION ORDINANCE PERMIT FINDINGS FOR DESIGNATED PROPERTIES IN OTHER CALIFORNIA CITIES

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		C. For non-contributors in a Historic District, the proposed project should demonstrate: 1. Compatibility with the height, scale, or massing of contributors within the Historic District, and as allowed by Title 19-Zoning; 2. Compatibility with the colors, textures, roof forms, and materials of contributors or the architectural period within the Historic District; 3. That the proposed project does not pose an adverse change to the Historic District or its context; 4. Consistency with the Citywide Residential Historic District Design Guidelines and the Historic District guidelines; and 5. Consistency with the principles of the Secretary of the Interior's Standards for the Treatment of Historic Properties.	
Sacramento	Yes, in addition to hardship	17.808.180 Site plan and design review-Decision and findings. A. Development projects located in a historic district or involving a landmark. **1. Projects not involving the demolition or relocation of a landmark or contributing resource. For projects not involving the demolition or relocation of a landmark or contributing resource, the decision-maker may approve an application for site plan and design review based on the following findings:** a. The project is consistent with the Secretary of Interior standards and the goals and policies of this chapter; or b. The project is not fully consistent with the Secretary of Interior standards, due to economic hardship or economic infeasibility, but the project is generally consistent with, and supportive of, the goals and policies of this chapter. The applicant shall have the burden of proving economic hardship or economic infeasibility; or c. The project is not fully consistent with the Secretary of Interior standards, but is consistent with and supportive of identified goals and policies of the general plan or applicable community or specific plan(s); and the project is either generally consistent with, and supportive of, the goals and policies of this chapter, or if not, the benefits of the project and furthering the identified goals and	17.808.180 Site plan and design review-Decision and findings**.**

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		policies of the general plan or applicable community plan outweigh any impacts on achieving the goals and policies of this chapter. **2. Projects involving demolition or relocation of a landmark or contributing resource. For projects involving the demolition or relocation of a landmark or contributing resource, the decision-maker may approve an application for site plan and design review based on the following findings:** a. Based upon sufficient evidence, including evidence provided by the applicant, the property retains no reasonable economic use, taking into account the condition of the structure, its location, the current market value, the costs of rehabilitation to meet the requirements of the building code or other city, state, or federal law; or b. That the demolition or relocation of the landmark or contributing resource is necessary to proceed with a project consistent with and supportive of identified goals and policies of the general plan or applicable community or specific plan(s), and the demolition of the building or structure will not have a significant effect on the achievement of the purposes of this chapter or the potential effect is outweighed by the benefits of the new project; or c. In the case of an application for a permit to relocate, that the building may be moved without destroying its historic or architectural integrity and importance; or d. That the demolition or relocation of the landmark or contributing resource is necessary to protect or to promote the health, safety or welfare of the citizens of the city, including the need to eliminate or avoid blight or nuisance, and the benefits of demolition or relocation outweigh the potential effect on the achievement of the goals and policies of this chapter. B. Development projects not located in a historic district and not involving a landmark. For projects not located in a historic district and not involving a landmark, the decision-maker may approve an application for site plan and design review based on all of the following findings: 1. The design, layout, and physical characteristics of the proposed development are consistent with the general plan and any applicable specific plan or transit village plan; and 2. The design, layout, and physical characteristics of proposed development are consistent with all applicable design guidelines and with all applicable development standards or, if deviations from design guidelines or development standards are approved, the proposed development is	

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		consistent with the purpose and intent of the applicable design guidelines and development standards; and 3. All streets and other public access ways and facilities, parking facilities, and utility infrastructure are adequate to serve the proposed development and comply with all applicable design guidelines and development standards; and 4. The design, layout, and physical characteristics of the proposed development are visually and functionally compatible with the surrounding neighborhood; and 5. The design, layout, and physical characteristics of the proposed development ensure energy consumption is minimized and use of renewable energy sources is encouraged; and 6. The design, layout, and physical characteristics of the proposed development are not detrimental to the public health, safety, convenience, or welfare of persons residing, working, visiting, or recreating in the surrounding neighborhood and will not result in the creation of a nuisance. C. The decision-maker may impose conditions as the decision-maker determines to be necessary or appropriate in order to make the required findings for approval. (Ord. 2013-0020 § 1; Ord. 2013-0007 § 1)	
San Diego	Private Projects – No, limited to hardship Public Projects Yes	It is unlawful to substantially alter, demolish, destruct, remove, or relocate any *designated historical resource* or any *historical building*, *historical structure*, *historical object* or *historical landscape* located within a *historical district* except as provided in Section 143.0260. **§143.0260 Deviations from the Historical Resources Regulations** (a) If a proposed *development* cannot to the maximum extent feasible comply with this division, a deviation may be considered in accordance with decision Process Four, or Process CIP-Five for *capital improvement program projects* or *public projects*. (b) The minimum deviation to afford relief from the regulations of this division and accommodate *development* may be granted only if the decision maker makes the applicable *findings* in Section 126.0504. (c) If a deviation for demolition or removal of a *designated historical resource* or a contributing *structure* within *a historical district* is approved, a Building Permit application must be *deemed*	§143.0251 Development Regulations for Designated Historical Resources and Historical Districts §143.0260 Deviations from the Historical Resources Regulations

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		complete for the new *development* on the same *premises* prior to issuance of a Demolition/Removal Permit. Process Four §126.0505 Findings for Site Development Permit Approval Supplemental Findings--Historical Resources Deviation for Substantial Alteration of a Designated Historical Resource or Within a Historical District A Site Development Permit required in accordance with Section 143.0210 because of potential impacts to designated historical resources where a deviation is requested in accordance with Section 143.0260 for substantial alteration of a designated historical resource or within a historical district or new construction of a structure located within a historical district may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 126.0505(a): (1) There are no feasible measures, including a less environmentally damaging alternative, that can further minimize the potential adverse effects on the designated historical resource or historical district; (2) The deviation is the minimum necessary to afford relief and accommodate the development and all feasible measures to mitigate for the loss of any portion of the historical resource have been provided by the applicant; and (3) The denial of the proposed development would result in economic hardship to the owner. For purposes of this finding, "economic hardship" means there is no reasonable beneficial use of a property and it is not feasible to derive a reasonable economic return from the property. Process CIP/Public Project-Five An application for a Site Development Permit for a capital improvement program project or a public project that deviates from the Historical Resources Regulations shall be acted upon in accordance with Process CIP/Public Project-Five. An application for a Process CIP/Public Project-Five decision may be approved, conditionally approved, or denied by the City Council. A Process CIP/Public Project Five decision shall be made in the following manner.	§126.0504 Decision Processes for Site Development Permits §126.0505 Findings for Site Development Permit Approval

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		(a) Notice. The City Manager shall mail a Notice of Application to the persons described in Section 112.0302(b) no later than 10 business days after the date on which an application for a permit, map, or other matter is deemed complete. Ch. Art. Div. 11 2 6 5 San Diego Municipal Code Chapter 11: Land Development Procedures (2-2025) Ch. Art. Div. 11 (b) Decision Process. The City Council shall hold a public hearing to consider the application. The hearing shall be noticed in accordance with Sections 112.0301(c), 112.0302, and 112.0303. The City Council may approve, conditionally approve, or deny the application at the conclusion of the hearing.	
San Francisco	No	(a) The proposed work shall be appropriate for and consistent with the effectuation of the purposes of this Article 10. (b) The proposed work shall comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties for individual landmarks and contributors within historic districts, as well as any applicable guidelines, local interpretations, bulletins, or other policies. Development of local interpretations and guidelines based on the Secretary of the Interior's Standards shall be led by the Planning Department through a public participation process; such local interpretations and guidelines shall be found in conformance with the General Plan and Planning Code by the Planning Commission and shall be adopted by both the HPC and the Planning Commission. If either body fails to act on any such local interpretation or guideline within 180 days of either body's initial hearing where the matter was considered for approval, such failure to act shall constitute approval by that body. In the case of any apparent inconsistency among the requirements of this Section, compliance with the requirements of the designating ordinance shall prevail. (c) For applications pertaining to landmark sites, the proposed work shall preserve, enhance or restore, and shall not damage or destroy, the exterior architectural features of the landmark and, where specified in the designating ordinance pursuant to Section 1004(c), its major interior architectural features. The proposed work shall not adversely affect the special character or special historical, architectural or aesthetic interest or value of the landmark and its site, as viewed both in themselves and in their setting, nor of the historic district in applicable cases. (d) For applications pertaining to property in historic districts, other than on a designated landmark site, any new construction, addition or exterior change shall be compatible with the character of the historic district as described in the designating ordinance; and, in any exterior change, reasonable efforts shall be made to preserve, enhance or restore, and not to damage or	Section 1006.6 (Standards for Review of Applications – Certificate of Appropriateness

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		destroy, the exterior architectural features of the subject property which are compatible with the character of the historic district. Notwithstanding the foregoing, for any exterior change where the subject property is not already compatible with the character of the historic district, reasonable efforts shall be made to produce compatibility, and in no event shall there be a greater deviation from compatibility. Where the required compatibility exists, the application for a Certificate of Appropriateness shall be approved. (e) For applications pertaining to all property in historic districts, the proposed work shall also conform to such further standards as may be embodied in the ordinance designating the historic district.	
Santa Barbara	No	In addition to any other application requirements, an application to demolish a historic resource shall include evidence in support of the applicable findings required below. This may include presenting preservation alternatives such as adaptive reuse, rehabilitation, reconstruction or relocation. A. **Major Alterations.** A Major Alteration, as defined in Section 30.300.080 "H", Historic Resources Related Definitions, may only be approved if the Historic Landmarks Commission finds that: 1. The exterior alterations are being made to restore the historic resource to its original appearance or in order to substantially aid its preservation or enhancement as a historic resource; and 2. The exterior alterations are consistent with the Secretary of the Interior's Standards. B. **Minor Alterations for Landmarks, and Structures within El Pueblo Viejo Landmark District.** A Minor Alteration, as defined in Section 30.300.080 "H", Historic Resources Related Definitions, may only be approved for Landmarks, and structures within El Pueblo Viejo Landmark District, if the Historic Landmarks Commission finds that: 1. The exterior alterations are being made primarily for, and will substantially advance, restoration of the Historic Resource to its original appearance; and 2. The alterations are consistent with the Secretary of the Interior's Standards. C. **Minor Alterations for Structures of Merit, and Resources on the Historic Resource Inventory or Within a Historic District Overlay Zone.** A Minor Alteration, as defined in Section 30.300.080 "H", Historic Resources Related Definitions, may only be approved for Structures of Merit, and resources	30.157.110 Required Findings for Alterations, Maintenance, relocation and Demolition of Historic Resources

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		on the Historic Resource Inventory or within a Historic District Overlay Zone, if the Historic Landmarks Commission finds that: 1. The exterior alterations are being made primarily for, and will substantially advance, restoration of the Historic Resource to its original appearance; and 2. The alterations are consistent with the Secretary of the Interior's Standards. D. **Ordinary Maintenance.** Ordinary maintenance as defined in Section 30.300.080 "H", Historic Resources Related Definitions under ordinary maintenance to a historic resource shall be approved by the City's Architectural Historian only if he or she finds that: 1. The ordinary maintenance is being made primarily for, and will substantially advance, restoration of the historic resource to its original appearance; and 2. The ordinary maintenance is consistent with the Secretary of the Interior's Standards. E. **Relocation.** A proposal to relocate a historic resource, including a landscape feature, may only be approved if the Historic Landmarks Commission finds that: 1. The relocation does not constitute a "substantial redevelopment" or "demolition" as defined this chapter; 2. The relocation does not constitute alterations that would be incompatible with the goal of long-term preservation or enhancement of the historic resource; 3. The relocation will substantially aid in its long-term preservation or enhancement as a historic resource; and 4. The relocation is consistent with the Secretary of the Interior's Standards. F. **Substantial Redevelopment or Demolition of a Landmark** A proposal to substantially redevelop or demolish a Landmark may only be approved if the Historic Landmarks Commission finds that the Landmark has been damaged by an earthquake, fire, or other similar natural casualty such that its repair or restoration is not reasonably practical or feasible as supported by substantial evidence provided by at least one qualified structural engineer or architect qualified in historic preservation. The Historic Landmarks Commission may require, as conditions of approval of a demolition, that the property owner(s) salvage historic materials from the property and/or provide archival quality	

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		photo documentation of the remaining historic materials of the structure, site or feature to the City.	
Santa Monica	No	For purposes of this Chapter, the Landmarks Commission, or the City Council on appeal, shall issue a certificate of appropriateness for any proposed alteration, restoration, construction, removal, relocation or demolition, in whole or in part, of or to a Landmark or Landmark Parcel, or of or to a Structure of Merit if the Structure of Merit is subject to a deed restriction pursuant to Section 9.43.100(G) or 9.64.030(C), or of or to a building or structure within a Historic District if it makes a determination in accordance with any one or more of the following criteria. A. In the case of any proposed alteration, restoration, removal or relocation, in whole or in part, of or to a Landmark or to a Landmark Parcel or upon a parcel that contains a City-designated Historic Resource subject to a deed restriction pursuant to Section 9.43.100(G) or 9.64.030(C), the proposed work would not detrimentally change, destroy or adversely affect any exterior feature of the Landmark or Landmark Parcel upon which such work is to be done. B. In the case of any proposed alteration, restoration, construction, removal or relocation, in whole or in part, of or to a building or structure within a Historic District, the proposed work would not be incompatible with the exterior features of other improvements within the Historic District, not adversely affect the character of the Historic District for which such Historic District was designated, or not be inconsistent with such further standards as may be embodied in the ordinance designating such Historic District. For any proposed work to any building or structure whose exterior features are not already compatible with the exterior features of other improvements within the Historic District, reasonable effort shall be made to produce compatibility, and in no event shall there be a greater deviation from compatibility. C. In the case of any proposed construction of a new improvement upon a Landmark Parcel or upon a parcel that contains a City-designated Historic Resource subject to a deed restriction pursuant to Section 9.43.100(G) or 9.64.030(C), the exterior features of such new improvement would not adversely affect and not be disharmonious with the exterior features of other existing improvements situated upon such Landmark Parcel. D. The applicant has obtained a certificate of economic hardship in accordance with Section 9.56.160. E. The Commission makes both of the following findings:	9.56.140 Alterations and Demolitions: Criteria for Issuance of Certificate of Appropriateness

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		1. That the structure does not embody distinguishing architectural characteristics valuable to a study of a period, style, method of construction or the use of indigenous materials or craftsmanship and does not display such aesthetic or artistic quality that it would not reasonably meet the criteria for designation as one of the following: National Historic Landmark, National Register of Historic Places, California Registered Historical Landmark, or California Point of Historical Interest. 2. That the conversion of the structure into a new use permitted by right under current zoning or with a conditional use permit, rehabilitation, or some other alternative for preserving the structure, including relocation within the City, is not feasible. F. In the case of any proposed alteration, restoration, removal or relocation, in whole or in part, to interior public space incorporated in a Landmark designation pursuant to Section 9.56.110, the proposed work would not detrimentally change, destroy or adversely affect any interior feature of the Landmark structure. G. The Secretary of Interior's Standards shall be used by the Landmarks Commission in evaluating any proposed alteration, restoration, or construction, in whole or in part, of or to a Landmark, Landmark Parcel, or to a Contributing Building or Structure within a Historic District. H. Notwithstanding subsections (A) though (F) of this Section, a City-designated Historic Resource protected by a deed restriction pursuant to Section 9.43.100(G) or 9.64.030(C) shall not be relocated, removed, or demolished in contravention of the deed restriction.	
West Hollywood	No	*Findings for Certificate of Appropriateness.* 1. Alterations, Generally. A certificate of appropriateness shall be issued for a proposed alteration only if the review authority first finds that: a. The proposed work will neither adversely affect the significant architectural features of the cultural resource nor adversely affect the character or historic, architectural, aesthetic interest, or value of the cultural resource and its site; and b. The proposed work conforms to the prescriptive standards and design guidelines, if any, prepared by the Historic Preservation Commission for the particular resource, and to the Secretary of the Interior's Standards for Rehabilitation, and does not adversely affect the character of the cultural resource; and	19.58.100 Review and Approval of Certificates of Appropriateness 19.58.110 Certificate of Appropriateness for Proposed Demolition

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		c. In the case of construction of a new improvement upon a cultural resource property, the use and design of the improvement shall not adversely affect, and shall be compatible with, the use and design of existing cultural resources within the same historic district; and d. Wherever feasible, the alteration takes full advantage of the State Historic Building Code and Uniform Code for Building Conservation. 2. Alterations Found Not to be Adverse. The effect of alteration on a cultural resource that would otherwise be found to be adverse may be considered not adverse for the purpose of this section when the alteration is: • Limited to the rehabilitation or restoration of improvements; and • Conducted in a manner that preserves the archaeological, cultural, and historic value of the cultu standards adopted by the HPC for that cultural resource, cultural resource property, or historic dis Standards for Rehabilitation. E. *Conditions for Certificate of Appropriateness.* The review authority may approve a certificate of appropriateness subject to any condition deemed necessary or desirable to effect the purposes of this chapter. The conditions shall be covenants running with the land. In approving or denying the certificate in whole or in part, the HPC may impose additional or different conditions to ensure that the purposes of this chapter shall be achieved. If the conditions imposed by the Commission (in cases where Commission review is required) conflict with the conditions imposed by the Historic Preservation Commission, the matter shall be referred back to the Historic Preservation Commission in order to resolve the conflict. In this case, the Historic Preservation Commission shall hear the matter as soon as is practical, and the Commission shall again consider the matter following the Historic Preservation Commission meeting. The following requirements shall apply in cases involving proposed demolition, in addition to all other applicable provisions of this chapter. A. *Demolition, Generally.* Notwithstanding the adverse effect thereon, the HPC when recommending approval or conditional approval of a certificate of appropriateness to the approval authority for a demolition of a cultural resource, shall only do so when all of the following findings are made in a positive manner:	

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		1. The cultural resource cannot be remodeled, rehabilitated or re-used in a manner which would allow a reasonable use; 2. Denial of the application will diminish the value of the subject property so as to leave substantially no value; 3. The cultural resource cannot be remodeled, rehabilitated, or re-used in a manner that would allow a reasonable rate of return; and 4. The applicant demonstrated that all means involving city-sponsored incentives (e.g., financial assistance, grants, loans, reimbursements, tax abatements, and changes in the Zoning Map or Zoning Ordinance), as well as the possibility of a change of use or adaptive reuse in compliance with Section 19.58.150(E)(5)(b) (Change of Use or Adaptive Reuse), above have been explored to relieve possible economic hardship, and further, that all other means for alleviating economic hardship, including state or federal tax credits, grants to subsidize the preservation of the property, have been exhausted and have failed to alleviate the hardship. Commercial or residential developments which propose to demolish cultural resources shall not be e Sections 19.10.050, 19.22.050, and 19.36.265.) B. *Demolition - Justifiable Hardships.* Personal, family or financial difficulties, loss of prospective profits and Building Code violations are not justifiable hardships. C. *Demolition - Reasonable Rate of Return.* In determining reasonable rate of return, the HPC shall not consider debt service arising from the acquisition of properties, or any increase in debt service resulting from the refinancing of properties listed on the city's Historic Resources Inventory occurring after January 4, 1988. For any properties included on the city's Historic Resources Inventory, the city's consideration of means of historic preservation had begun and was well known, and property owners had reason to know that the city would enact a historic preservation ordinance. Further, on January 4, 1988 the Council adopted a six-month moratorium on demolition of properties listed in the Inventory. For any properties not included in the Inventory, the HPC shall not consider debt service resulting from the acquisition, or any increase in debt service resulting from the refinancing, of properties once the properties are nominated as cultural resources.	

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		D. *Demolition - Alternative Plan to Relieve Economic Hardship.* The HPC shall recommend the development and adoption of a plan in order to relieve economic hardship and to allow the applicant a reasonable use of and economic return from the property or otherwise preserve the subject property. If the HPC has found that without approval of the demolition, the property cannot be put to a reasonable economic return, and all of the findings and requirements of this section have been met, then the HPC shall recommend the issuance of a certificate of appropriateness approving the proposed demolition. If the demolition is to occur in a historic district, approval of alternative plans and specifications for constructing the new improvements shall require approval by the HPC. If the HPC finds otherwise, or that any of the aforementioned incentives can be used to avoid economic hardship, it shall recommend issuance of a certificate of appropriateness only based upon the findings identified in Section 19.58.100(D) (Findings for Certificates of Appropriateness), utilizing the applicable incentives to ensure that the cultural resource is rehabilitated. E. *Effect of Demolition.* If approval of a certificate of appropriateness will result in the demolition of a cultural resource, the applicant shall be required to memorialize the resource proposed for demolition in compliance with the standards of the Historic American Building Survey. The documentation may include an archaeological survey, floor plans, measured drawings, photographs, or other documentation specified by the HPC. When appropriate, the HPC may require that a memorialization of the resource be incorporated into the proposed redevelopment of the site including the following: 1. Book or pamphlet; 2. Photographic display; 3. Small museum or exhibit; 4. Use of original fixtures; and/or 5. Other methods deemed appropriate by the HPC. F. *HPC Recommendation.* In all cases where the proposed demolition or removal would otherwise require Commission approval, the HPC may recommend approval or denial, in whole or in part, of the application in writing. The HPC's recommendation shall include findings of fact relating to the criteria for obtaining the certificate and that constitute the basis for its recommendation. The HPC	

CITY	COMPARABLE OVERRIDE PROVISION	PERMIT FINDINGS	ORDINANCE SECTION
		shall adopt its recommendation by resolution and send it to the Commission at the Commission meeting held to consider the proposal. The final approval authority shall approve or deny, in whole or in part, the recommendation of the Historic Preservation Commission regarding demolitions. The certificate to demolish may only be approved in conjunction with a project for which other approvals are required. A certificate of appropriateness to demolish a cultural resource may not be issued for any building for which there is no project proposed and thereafter approved; demolition of a cultural resource requires concurrent processing and approval in compliance with Section 19.50.040 (Concurrent Processing of Permits).	

HLC AGENDA: 10-01-2025
ITEM: 3.a.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HISTORIC LANDMARKS COMMISSION

FROM: Christopher Burton, Director of Planning, Building and Code Enforcement

SUBJECT: TEXT AMENDMENTS TO MUNICIPAL CODE CHAPTER 13.48 HISTORIC PRESERVATION (PP25-005)

DATE: October 1, 2025

COUNCIL DISTRICT: CITYWIDE

RECOMMENDATION

Staff recommends the Historic Landmarks Commission recommend that the City Council:

1. Adopt a Resolution approving the Addendum to the Downtown Strategy 2040 Final Environmental Impact Report and the Envision San José 2040 General Plan Final Environmental Impact Report.

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.

BACKGROUND

The City's Historic Preservation Ordinance ("HP Ordinance") is found in Chapter 13.48 of the San José Municipal Code. The HP Ordinance establishes the framework for historic preservation within the City, including the Historic Resources Inventory; landmark, historic district and conservation area designation; the regulation of designated buildings and areas through historic preservation permits; and incentives like historical property contracts. The HP Ordinance also establishes guidelines for work performed on, next to, or within landmarks, historic districts, and conservation areas.

A Historic Preservation Permit ("HP Permit") is required under Municipal Code Section 13.48.210 when exterior changes are proposed to a designated landmark or property in a designated historic district. The HP Permit process helps property owners and developers to adapt old buildings for new uses, make compatible additions, and integrate new construction. The intended result is a project that is compatible with the historic materials and features of a landmark or historic district and maintains their historic significance. Compatible projects meet professional, established standards for historic properties (also called the Secretary of Interior Standards for the Treatment of Historic Properties) and carry out the purpose of the HP Ordinance.

Sometimes projects are proposed that are not compatible with a landmark or historic district and would have an adverse impact on its significance. This impact is characterized as a "detriment" and

would result in the denial of a HP Permit. In other words, a project is "detrimental" when it adversely impacts the significance of a landmark or historic district and is, therefore, inconsistent with the purpose of the HP Ordinance - to preserve designated buildings that provide a sense of place and community identity for San José.

When a proposed project is "detrimental" to a landmark or historic district, however, it may be reviewed under the "hardship" provision of the HP Ordinance (Section 13.48.260). This requires applicants to document that compatible rehabilitation of a building is infeasible from a technical, mechanical, or structural standpoint or the economics of compatible rehabilitation would require an unreasonable expenditure to feasibly reuse the building. Examples of documentation the applicant may submit include a report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of the building and its suitability for rehabilitation; ownership tenure; building expenses and income; taxes; property appraisals; vacancy rates; financing; efforts to rent or sell the property; and owner's consideration of different profitable or adaptive uses for the property. Applicants must meet a burden of proof and demonstrate that the property cannot yield a reasonable economic return, not just that it is failing to achieve its maximum possible value or there is simply a loss of potential profits. The City Council considers the hardship documentation submitted by the applicant and determines whether a hardship has been demonstrated. If so, the City Council may approve the HP Permit, even though the project is "detrimental" to a landmark or historic district. Currently, hardship is the only finding that can be made to approve such a project, which ultimately poses a problem for public projects that do not face the same feasibility challenges as private projects, making it difficult, if not impossible, to substantiate a hardship.

In a parallel Planning process, a project also undergoes analysis under the California Environmental Quality Act ("CEQA"). Landmarks and properties in a historic district are historical resources that must be analyzed under CEQA. When an impact to historical resources is considered significant, an environmental impact report ("EIR") is prepared, project impacts are disclosed, project alternatives are analyzed, and mitigation measures are developed to reduce those impacts to the extent feasible. Projects that are "detrimental" to a landmark or property in a historic district are characterized as having a significant and unavoidable environmental impact under CEQA. To approve a project with a significant and unavoidable impact that cannot be mitigated to a less than significant level, a legislative body must adopt a statement of overriding considerations pursuant to Public Resources Code Section 21081 and CEQA Guidelines Section 15093. The statement of overriding considerations must include findings that explain the specific social, economic, legal, technical, or other benefits of a project that outweigh any significant and unavoidable impact(s).

On March 12, 2024, the Court of Appeal for the Sixth Appellate District issued a decision in *Sainte Claire Historic Preservation Foundation v. City of San José*, regarding a dispute over the City's approval of an HP Permit for a performing arts pavilion in St. James Park (the "project") and the certification of an EIR for the project. During its review of the project, the City, as lead agency under CEQA, found the project created a significant and unavoidable impact to the St. James Square Historic District. The City further found that mitigation measures could not reduce the impact to a less than significant level and, thus, the EIR required a statement of overriding considerations for certification. Accordingly, the City Council made findings pursuant to Public Resources Code Section 21081 that specific social, economic, legal, technical, or other benefits of the project outweighed the impacts to the historic district, and the City Council adopted a statement of overriding considerations.

Despite finding the project presented a significant and unavoidable impact under CEQA, the City did *not* find the project was detrimental for purposes of issuing an HP Permit. The Sainte Claire Historic Preservation Foundation (the "Foundation") challenged the City's approval of the HP Permit, claiming the statement of overriding considerations necessary to override the significant and unavoidable impact under CEQA as proof the project was detrimental to the historic district and in violation of the HP Ordinance. The City prevailed at the trial court. Ultimately, the Court of Appeal found the EIR was approved in accordance with CEQA, but it agreed with the Foundation that the facts establishing the project's impacts under CEQA likewise established a detriment to the historic district under the HP Ordinance.

In its opinion, the Court of Appeal stated the City has the authority to provide for the overriding discretion necessary to balance the detriment against the project's benefits in the same way CEQA provides for such overriding discretion. The problem, according to the Court of Appeal, was the HP Ordinance did not provide this overriding discretion. Therefore, the overarching goal of this amendment to the HP Ordinance is to follow the Court of Appeal's direction and create that discretion.

ANALYSIS

The amendments to Sections 13.48.020 (Definitions) and 13.48.240 (Action by Director, Planning Commission or City Council) of the HP Ordinance are included in this memorandum as Attachment 1 and Attachment 2 and are proposed to:

- provide greater clarity on the term historic district and landmark to reference the designation process.
- provide greater clarity on what constitutes a detriment to a landmark or property in an historic district.
- allow the City Council to make specific findings to override the "detrimental" effects on a landmark or property in a historic district.

Proposed Amendments to Section 13.48.020 (Definitions)

This section proposes amendments to the definitions of "Historic District" and "Landmark"; adds new definitions for "detrimental," "historic integrity," and "substantial alteration". The terms "historic district" and "landmark" are updated to make clear that they only apply to properties officially designated by the City Council through a set process outlined in the HP Ordinance. These properties require an HP Permit, unlike historic districts that are only listed on the National Register of Historic Places.

An HP Permit can be approved when exterior changes are compatible with the historic characteristics when the work is not "detrimental" to the historic resource's significance to the City. The existing findings for the issuance of an HP Permit are designed to prevent a "detriment" wherever possible, emphasizing compatibility and the protection of historic character. However, there is currently no definition for the term "detrimental" in the HP Ordinance. The proposed amendments define the term "detrimental" to provide greater clarity on what constitutes a "detriment" to a landmark or property in an historic district and add definitions for the terms "historic integrity" and "substantial alteration" to clarify how project compatibility is evaluated.

Proposed Amendments to 13.48.240 (Action by Director, Planning Commission or City Council)

Under the current standards, when a project is "detrimental" to a landmark or historic district, the City may approve a project only if it can find a specific hardship. In the last five years, the San José City Council has approved three HP Permits under the hardship provision demonstrating economic/structural infeasibility. The proposed amendment would provide an additional path to HP Permit approval that would align with the override findings under CEQA when a significant and unavoidable impact is identified. The additional HP Permit finding would require the City Council to make specific findings that identify the specific considerations of a project that override the "detrimental" effects on a landmark or property in a historic district. This proposed finding aligns with the CEQA override process under Public Resources Code Section 21081 and CEQA Guidelines Section 15093 to approve a project despite the project having significant, unavoidable, and unmitigable adverse environmental impacts. The City Council could make findings that justify the project's approval by detailing how the project's social, economic, legal, technical, or other benefits outweigh the identified environmental impact to the landmark or historic district which cannot be reduced to acceptable levels through mitigation measures or project alternatives through CEQA. This approach allows the City Council to acknowledge that while a project is "detrimental" to a landmark or property in a historic district, those effects may be outweighed by economic, legal, social, technological, or other benefits.

The changes would not affect the Historic Landmark Commission's role in reviewing and making recommendations on HP Permits and HP Permit Amendments. Commission recommendations would still be received and reviewed by the decision-making body.

In accordance with the City of San José's Certified Local Government Agreement, the proposed ordinance amendments were forwarded to the California Office of Historic Preservation ("OHP") for consultation. The OHP believes the proposed changes serve to clarify subject elements of the existing ordinance. The OHP's Technical Assistance Bulletin #14 "Drafting Effective Historic Preservation Ordinances: A Manual of California's Local Government was prepared to assist California's local governments in creating or revising a historic preservation ordinance. The manual states that communities have different goals for their preservation programs, based on widely varying factors such as the types of historic resources they want to protect, the degree of protection they want to offer through an ordinance, and local development pressures. The comments of the OHP align with these principles discussed in the manual.

As highlighted above, local governments take different approaches to HP Permit findings (sometimes called certificate of appropriateness findings). The table included in this memorandum as Attachment 3 summarizes the permit findings for twelve (12) different California cities, including Berkeley, Long Beach, Los Angeles, Oakland, Pasadena, Riverside, Sacramento, San Diego, San Francisco, Santa Barbara, Santa Monica and West Hollywood. As outlined in the table, most cities do not have a similar override provision for the issuance of a permit for alterations to a landmark or historic district and provide more protection for their designated historic properties. Some cities (including San José) have a hardship provision in their ordinance that allows for incompatible alteration when the owner can demonstrate that they would be deprived of all economically viable use of the property. Sacramento has some form of an override provision related to consistency with identified goals and policies of a general plan or community or specific plan(s); Pasadena considers a compelling public interest only for demolition and San Diego has an override provision only for capital improvement program projects or public projects.

Given the challenge of substantiating infeasibility and hardship for public projects, the proposed additional HP Permit finding provides an alternative to the hardship process that would allow the City Council to consider other factors beyond economic or structural feasibility of building rehabilitation that might outweigh the "detrimental" effects on a landmark or property in a historic district. There's no one-size fits all ordinance because every community has different types of historic resources, populations, development pressures, etc. Each local government has a historic preservation ordinance that best suits the needs and views of its community. The City Council will weigh these needs and views and balance the expressed desire to see San José grow as a prominent City while fostering a sense of place and community identity through the preservation of designated landmarks and historic districts.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy, preparing notices for the public hearings posted on the City's website and published in the San Jose Post-Record. Staff created a dedicated website for the code revisions to provide both a technical and simplified explanation of the proposed changes to the code and its effects. Staff also shared the proposed ordinance amendments with the development and preservation communities in San José and posted the public hearings on social media channels and City platforms.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) ANALYSIS

Pursuant to CEQA Guidelines Section 15162 and 15164, the HP Ordinance amendments do not require preparation of a subsequent or supplemental EIR because they would not result in new significant impacts, a substantial increase in the severity of previously identified impacts, or new mitigation measures not previously considered as no physical improvements would occur. The amendment ensures that local permit findings are consistent with state law regarding approval of projects with significant and unavoidable impacts. Accordingly, the amendments are appropriately analyzed in an Addendum to the certified Envision San José 2040 General Plan Final EIR (SCH #2009072096) and the Downtown Strategy 2040 Final EIR (SCH #2003042127) included as Attachment 4 and 5 to this memorandum.

The proposed amendments to Chapter 13.48 of the San José Municipal Code intersect directly with CEQA requirements governing historical resources. Pursuant to Public Resources Code Section 21084.1, and CEQA Guidelines Section15064.5, a substantial adverse change in the significance of a historical resource is considered a significant effect on the environment. The proposed HP Ordinance amendments would clarify terms which would help in evaluating if a project would result in a significant impact to historical resources.

The HP Ordinance as amended would provide a clear definition of "detrimental" that is consistent with CEQA Guidelines Section 15064.5 for a substantial adverse change. In addition, evaluation of the detrimental effects would be informed by the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings, which is also consistent with CEQA.

The amended HP Ordinance authorizes the City Council to approve projects with detrimental impacts based on overriding considerations. While this appears to be a substantial policy change because it introduces an alternate path to approving projects that knowingly damage historic resources, this action aligns with CEQA Guidelines Section 15093 ensuring local decision-making is legally aligned with CEQA override provisions. The HP Ordinance amendments would allow the City Council to

weigh economic, social, legal, and technical benefits against unavoidable impacts and adopt a statement of overriding considerations, when deemed appropriate.

The proposed amendments clarify definitions and permit findings, which by themselves do not directly result in physical development. In addition, authorizing City Council to override detrimental impacts through findings consistent with CEQA does not eliminate CEQA review but aligns the City's HP Ordinance with CEQA's existing statutory framework. Projects subject to the HP Ordinance, as amended, will continue to undergo full CEQA review (unless statutorily or categorically exempt). Where a project would cause a significant impact to historical resources pursuant to CEQA Guidelines Sectrion15064.5, a project level CEQA review shall be prepared. If the impact cannot be mitigated, the City Council could adopt a statement of overriding considerations pursuant to Public Resources Code Section 21081 and CEQA Guidelines Section15093.

For questions, please contact Dana Peak Edwards, Historic Preservation Officer, at Dana.Peak@sanjoseca.gov.

/s/

MANIRA SANDHIR,
DEPUTY DIRECTOR OF PLANNING
FOR CHRISTOPHER BURTON,
DIRECTOR, PLANNING, BUILDING
AND CODE ENFORCEMENT

ATTACHMENTS:

1. Proposed Text Amendments to San José Municipal Code Chapter 13.48.
2. Draft Ordinance amending Section 13.48.020
3. Table of Historic Preservation Permit Findings from Other California Cities
4. Addendum to the Downtown Strategy 2040 Final Environmental Impact Report and the Envision San José 2040 General Plan Final Environmental Impact Report
5. Draft Resolution approving the Addendum to the Downtown Strategy 2040 Final Environmental Impact Report and the Envision San José 2040 General Plan Final Environmental Impact Report

PP25-005

Links to Correspondence Received After 9/24/25

Click on the title to view document.

Correspondence Received After 9/24/25

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

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 Bainiwal
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 its 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 Fairglen 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.

HLC AGENDA: 11-05-2025
ITEM: 3.a.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HISTORIC LANDMARKS COMMISSION

FROM: Christopher Burton, Director of Planning, Building and Code Enforcement

SUBJECT: TEXT AMENDMENTS TO MUNICIPAL CODE CHAPTER 13.48 HISTORIC PRESERVATION (PP25-005)

DATE: November 5, 2025

COUNCIL DISTRICT: CITYWIDE

RECOMMENDATION

Staff recommends the Historic Landmarks Commission recommend that the City Council:

1. Adopt a Resolution approving the Addendum to the Downtown Strategy 2040 Final Environmental Impact Report and the Envision San José 2040 General Plan Final Environmental Impact Report.

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.

BACKGROUND

On October 1, 2025 the Historic Landmarks Commission ("HLC" or "Commission") considered in a public hearing proposed text amendments to Sections 13.48.020 (Definitions) and 13.48.240 (Action by Director, Planning Commission or City Council) of Chapter 13.48 of the San José Municipal Code (Historic Preservation Ordinance), which establishes the framework for historic preservation within the City, including the Historic Resources Inventory; landmark, historic district and conservation area designation; the regulation of designated buildings and areas through design review; and incentives like historical property contracts. The staff report, proposed text amendments, and supporting documents are included in Attachment 1 of this memorandum.

Proposed modifications to Section 13.48.020 (Definitions) would amend the definitions of "historic district" and "landmark" and add new definitions for "detrimental," "historic integrity," and "substantial alteration". The following provides an overview of each text amendment.

The terms "historic district" and "landmark" are updated to clarify that a Historic Preservation Permit (HP Permit) is only required for exterior alterations to properties officially designated by the City

Council through the designation processes outlined in Part 2 (Designation) of the Historic Preservation Ordinance (HP Ordinance). These text amendments align with existing Section 13.48.240 of the HP Ordinance which only requires a HP Permit for work performed on a city landmark or in a city historic district, not other individual properties or historic districts listed on the National Register of Historic Places and/or California Register of Historical Resources that are not designated city landmarks or historic districts by the San José City Council.

Definitions for "detrimental," "historic integrity," and "substantial alteration" are proposed because there is currently no definition for what constitutes a "detriment" to a landmark or property in a historic district. Companion definitions to "historic integrity" and "substantial alteration" are proposed to clarify how project compatibility is evaluated in the HP Permit process.

The proposed amendments to Section 13.48.240 (Action by Director, Planning Commission or City Council) would allow the City Council to acknowledge that while a project is "detrimental" to a landmark or property in a historic district, those effects may be outweighed by economic, legal, social, technological, or other benefits. This approach aligns with the CEQA override process under Public Resources Code Section 21081 and CEQA Guidelines Section 15093 to approve a project despite the project having significant, unavoidable, and unmitigable adverse environmental impacts.

ANALYSIS

At the October 1, 2025 HLC meeting, the Commission received public comment and discussed the proposed HP Ordinance text amendments included in Attachment 1 of this memorandum. The Commission voted 4-0-2 (Chair Royer and Commissioner Arnold absent) to defer the item to the November 5, 2025 HLC meeting to allow for additional input and time for staff to bring back modifications to the proposed text amendments to:

1) clarify the meaning of "impair" in the definition of "substantial alteration;"
2) clarify that any project that complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties (SIS) would not be a substantial alteration; and
3) limit the broad application of the override provision by providing clear boundaries, decoupling the finding from the California Environmental Quality Act (CEQA), and providing separate findings for demolition.

In response to the HLC's request, staff drafted modified language for the definition of "substantial alteration" and provided a potential definition for "impair" for consideration as outlined below.

Modified language for the definition of "substantial alteration" adds clarification in bold that work in conformance with the SIS would not be considered a "substantial alteration." No other changes are proposed because the definition otherwise aligns with CEQA Guidelines, specifically Title 14, Section 15064.5 of the California Code of Regulations.

Substantial Alteration. The term "substantial alteration" shall mean demolition, destruction, relocation, new construction or alteration activities that would impair the historic integrity and significance of a landmark, or property within a historic district. Evaluation of the alteration shall be informed by the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings. **Work that fully conforms with the** Secretary of the Interior's Standards for the Treatment of Historic Properties **is not considered "substantial alteration**."

Below is a potential definition for "impair" that could be added to Section 13.48.020 (Definitions) of the HP Ordinance.

Impair. The term "impair" shall mean to diminish, damage, degrade, or otherwise negatively affect one or more physical characteristics, features, materials, workmanship, setting, design, or other elements that contribute to the landmark or property in a historic district's historical significance or integrity such that its ability of the resource to convey that significance is materially reduced.

Below is an alternate definition for "substantial alteration" that does not use the term "impair", thus eliminating any need to define the term.

Substantial Alteration. The term "substantial alteration" shall mean any change to a landmark or property in a historic district that changes the form, scale, massing, materials or architectural style in a way that undermines the property's historic integrity;

In response to the HLC's request, staff also prepared two options for consideration by the Commission to allow the City Council to weigh other factors when proposed projects would cause a "detriment" to a landmark or property in a historic district. Option 1 provides separate, more detailed findings for public and private projects, and Option 2 provides a more streamlined approach.

Option 1

Public Projects

If the director or the planning commission or the city council, as applicable, finds that the work **proposed in a public project** 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 benefits of the project outweigh the detrimental effects on the landmark or property in a historic district **with one or more of the following findings**:

1. **The project is necessary for public safety or welfare, including:**
   - **Construction or expansion of fire stations, police facilities, or hospitals;**
   - **Improvements to critical infrastructure such as water supply, wastewater treatment, or stormwater management infrastructure; or**
   - **Upgrades to schools, libraries, or other educational facilities.**
2. **The project reduces or prevents risks to life or property from:**
   - **Earthquakes, flooding, landslides, or other natural disasters;**
   - **Fire hazards or hazardous material exposure; or**
   - **Urgent repairs to critical infrastructure required to maintain safe operations.**
3. **The project is required by law or regulation and alternatives that avoid substantial alteration are infeasible:**
   - **Americans with Disabilities Act (ADA) upgrades to public buildings;**
   - **California Building Code seismic retrofits; or**
   - **State or federal mandates for environmental protection or energy efficiency.**
4. **The project significantly improves transportation safety, efficiency, or accessibility:**
   - **New transit corridors, bike lanes, or pedestrian improvements; or**
   - **Roadway realignment or widening necessary to meet safety standards.**

5. **The project involving the creation, improvement or expansion of public parks, open spaces, cultural, community or recreational facilities provides substantial, demonstrable benefits to the community in public services or amenities.**
6. **The project produces measurable environmental or climate resilience including renewable energy or climate adaptation projects (solar, flood control, stormwater management).**

Private Projects

If the director or the planning commission or the city council, as applicable, finds that the work **proposed in a private project** 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 **the project provides a clear, measurable benefit to the community and is necessary to achieve a specific public purpose that cannot be reasonably accomplished through preservation, relocation, or adaptive reuse that outweighs** the detrimental effects on the landmark or property in a historic district **with all of the following findings:**

1. **The project advances the Major Strategies of Chapter 1 of the General Plan, other General Plan goals and policies, a specific plan or community plan or adopted public policy objectives that cannot otherwise be achieved.**
2. **The project incorporates changes which substantially lessen the detriment to the landmark or property in a historic district, such as preservation of character-defining features.**
3. **The project is compatible in massing, character, design and materials with the historic context of the site and surrounding area to minimize visual or physical impacts.**
4. **The project incorporates educational, cultural, interpretive or commemorative features that recognize the site's former landmark or property in a historic district.**

Option 2

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 the project has specific overriding economic, legal, social, technological, or other benefits of the project outweigh the detrimental effects on the landmark or property in a historic district with the public project finding or all of the provide project findings. **Approval under these findings shall not establish precedent for future departures from historic preservation standards, and the City Council shall state in the resolution the unique circumstances justifying approval.**

1. **The project is City-sponsored on City land or facilities that provides a substantial, demonstrable benefit to the City and the community in public services or amenities, or is necessary for public health, safety, or welfare; or**
2. **The project is a private development that:**
3. **advances the Major Strategies of Chapter 1 of the General Plan, other General Plan goals and policies, a specific plan or community plan or adopted public policy objectives that cannot otherwise be achieved; and**

4. **Deviates from the standards to the minimum extent necessary to achieve the project's legitimate purpose, and the scope of nonconformance has been reduced to the smallest extent practicable; and**
5. **Incorporates changes which substantially lessen the detriment to the landmark or property in a historic district, such as preservation of the most significant character-defining features even if other less critical features must be altered or moved, retention and adaptive reuse of significant portions or façades or reconstruction of defining features; and**
6. **Is compatible in massing, character, design and materials with the historic context of the site and surrounding area to minimize visual or physical impacts; and**
7. **Incorporates educational, cultural, interpretive or commemorative features that recognize the site's former landmark or property in a historic district.**

The proposed text amendments and HLC input will be considered by the Planning Commission at a public hearing on November 19, 2025. The recommendations of the HLC and the Planning Commission will each be transmitted to the City Council for final consideration in December 2025.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy, preparing notices for the public hearings posted on the City's website and published in the San Jose Post-Record. Staff created a dedicated website for the code revisions to provide both a technical and simplified explanation of the proposed changes to the code and its effects. Staff also shared the proposed ordinance amendments with the development and preservation communities in San José and posted the public hearings on social media channels and City platforms.

Written comment letters were received electronically from Susan Brandt-Hawley and Preservation Action Council San José on October 1, 2025. No questions or comments have been received via the project website, telephone or email.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) ANALYSIS

The proposed HP Ordinance amendments do not require a subsequent or supplemental EIR under CEQA Guidelines Sections 15162 and 15164, as they do not create new significant impacts, increase the severity of existing impacts, or introduce new mitigation measures. No physical development is proposed, and the amendments primarily clarify permit findings to align with state law for projects with significant and unavoidable impacts. They are addressed in an Addendum to the certified *Envision San José 2040 General Plan Final EIR* and *Downtown Strategy 2040 Final EIR*.

The amendments clarify terms such as "detrimental" to help evaluate whether a project would significantly affect historical resources, consistent with Public Resources Code Section 21084.1 and CEQA Guidelines Section 15064.5. Evaluations will continue to follow the Secretary of the Interior's Standards for the Treatment of Historic Properties.

The amendments also provide a new path for City Council approval of projects with detrimental effects based on overriding considerations, similar to the CEQA override process under Section 15093. This allows the Council to weigh a project's economic, social, legal, and technical benefits against unavoidable impacts while maintaining full CEQA review. For projects causing significant impacts to

historical resources, a project-level CEQA review will still be required, and the Council may adopt a statement of overriding considerations if impacts cannot be mitigated.

In summary, the amendments refine key definitions and permit findings, ensure the HP Ordinance aligns with CEQA, and provide the City Council discretion to approve projects with unavoidable impacts while maintaining full CEQA review.

For questions, please contact Dana Peak Edwards, Historic Preservation Officer, at Dana.Peak@sanjoseca.gov.

/s/

MANIRA SANDHIR,
DEPUTY DIRECTOR FOR CHRISTOPHER BURTON, DIRECTOR, PLANNING, BUILDING AND CODE ENFORCEMENT

ATTACHMENTS:

1. Historic Landmarks Commission Staff Report (October 1, 2025)

PP25-005

Links to Correspondence Received After 10/29/25

Click on the title to view document.

Correspondence Received After 10/29/25

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

HISTORIC LANDMARKS COMMISSION AGENDA

Action Minutes

Wednesday, November 5, 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 Bainiwal
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 6:33 p.m.*

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

ABSENT: *None*

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). *Continued from 10/01/2025.*
***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.

Chair Royer introduced the item.

Dana Peak Edwards, City of San José Historic Preservation Officer, provided a recap of the project to amend the Historic Preservation Ordinance first considered by the Historic Landmarks Commission (HLC) on October 1, 2025. She outlined the request by the HLC for staff to bring back modifications to the proposed amendments to: 1) clarify the meaning of "impair" in the definition of "substantial alteration;" 2) clarify that any project that complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties (SIS) would not be a substantial alteration; and 3) limit the broad application of the override provision by providing clear boundaries, decoupling the finding from the California Environmental Quality Act (CEQA), and providing separate findings for demolition. Ms. Peak Edwards reviewed the modified language drafted by staff in response to the HLC's request.

Chair Royer opened public comment.

Public speakers included: Fil Maresca, Dan Orloff, Grace Pugh, Edward Saum, Dan Vardo, Sally Schroeder, Susan Brandt-Hawly, Tara Branham, Shawn Atkisson, Laura Woford, Michelle Dreyband, Susanne St. John Crane, Ben Leech, Erin Fidler, Adrianna, Doug King, Julie Wiltshire, Karen Luebben, Veronica Bernal, Walter King, Maria Peters, Sally Zarnowitz, and Mike Sodergren. The following is a brief summary of the public comments, which are recorded in full here.

Fil Maresca, expressed support of the recommended changes to the language of the Historic Preservation Ordinance as proposed by City staff. He stated that he lives and works within two blocks of St. James Park, his company has worked on scores of events and activations in the park over the years, and he is the current board chair of the Friends of Levitt Pavilion.

Dan Orloff, San Jose resident, expressed support of the adoption of the ordinance changes proposed. He stated he has been producing live music downtown for more than 40 years as a member of the Fountain Blues Foundation and San Jose Jazz, and he is currently a member of San Jose Rocks.

Grace Pugh recommended the adoption of the new ordinance language so a project like Levitt Pavilion can move forward, She commented she has been attending the free concerts in St. James Park for a couple of years and was impressed by the caliber of bands that have performed at the temporary Levitt venue.

Edward Saum, an architect specializing in historic preservation for 25 years, planning and land use consultant for the Shasta Hanchett Park Neighborhood Association and former Historic Landmarks Commissioner and Chair, commented that the override finding has no tangible parameters and recommended the modified findings language in Option 2 which provides some additional parameters.

Dan Vardo, Art Boutiki (all-ages venue), urged that the amendments be passed. He commented that his venue is closing and the Levitt Pavilion can be that all-ages venue.

Sally Schroeder, over 20-year downtown resident and Friends of Levitt Pavilion board member, commented that the proposed ordinance updates provide the right balance between preserving San José's history and enabling adaptive projects.

Susan Brandt-Hawly, litigating lawyer for the Saint Claire Historic Preservation Foundation, commented that it is not appropriate to consider an addendum for the proposed ordinance amendments because the proposal reduces protections for historic resources and the project needs a supplemental environmental impact report.

Tara Branham, Director of Patron Experience for Opera San Jose, expressed support for the proposed amendments which would give the City more flexibility to approve projects that would enhance the sharing of the arts through the community.

Shawn Atkisson, Saint Claire Historic Preservation Foundation, commented that the impetus for the proposed amendments is the St. James Park-Levitt Pavilion project and if the ordinance is amended as proposed there will be a challenge.

Laura Woford, a 35-year downtown resident and Friends of Levitt Pavilion board member, recommended adoption of the proposed ordinance change so the benefit project in a public park can move forward.

Michelle Dreyband, resident near St. James Park and Friends of Levitt Pavilion board member, recommended adoption of the proposed ordinance language.

Susanne St. John Crane expressed support of the Historic Preservation Ordinance change as proposed by City staff to get the public benefit project that is Levitt Pavilion moving forward.

Ben Leech, Executive Director of Preservation Action Council San Jose, noted he forwarded a comment letter in advance of the meeting. He commented that the ordinance change is not just about one project, but it will affect the regulation and protection of all city landmarks and city landmark districts. Mr. Leech expressed hope that language could be tailored to accomplish what the City wants to accomplish as well as protecting and giving clear guidance to the HLC and City Council about how historic preservation fits into the competing priorities of the city.

Erin Fidler, 13-year downtown San José resident, recommended the proposed ordinance language be adopted to realize the full potential of St. James Park.

Adriana, 8-year resident and board member of East St. James Community Center, commented that she is opposed to the Levitt Pavilion project because it is a public nuisance with noise (inadequate windows) and other issues, and it has been difficult to rent and sell the units.

Doug King, San José resident, spoke in support of the proposal or any policies that would make the Levitt Pavilion a reality. He noted the park was designated for notable events and gatherings and is more about the community and experience than bricks and mortar.

Julie Wiltshire, Naglee Park resident and attorney, recommended the proposed ordinance language be adopted. She commented she likes to walk to St. James Park and listen to live music and the development in San José helps to bring up the value of the city.

Karen Luebben, resident of 97 East St. James, commented that she has been impressed by the comments and consideration the HLC has given to the proposed ordinance changes that would denigrate the HLC's ability to express its opinions.

Veronica Bernal, born and raised in San José and a resident who lives across the street from St. James Park, commented that she is opposed to the ordinance changes even though she believes St. James Park does need programming and the city needs space for community. She commented that the existing programming is disruptive and noisy even though she has upgraded windows.

Walter King, downtown San José resident, commented that he often attends free music events downtown and the Levitt Pavilion will make it a better place to visit because it is currently not the best place to play. He commented that revamping St. James Park would make it safer.

Maria Peters, resident in front of St. James Park, commented that she opposes the Levitt Pavilion because of the decibel level of the concerts which in the past have been too loud and the garbage, trash, traffic and crime that would result from the events.

Sally Zarnowitz, Preservation Action Council San Jose, reiterated and supported the organization's position and expressed support for Option 2 of the modified ordinance language presented by staff. She commented that the initially proposed findings were broad and the HLC did a great job in requesting more specific findings. Ms. Zarnowitz noted no other cities have findings as broad as those first proposed. She commented that the Historic Preservation Ordinance can go beyond CEQA in terms of protecting landmarks and historic districts and not just disclosing impacts but coming up with solutions for projects that meet the Secretary of the Interior's Standards.

Mike Sodergren, Preservation Action Council San Jose, commented that the legal language proposed will not resolve the different positions of the City, Saint Claire Preservation Foundation and the Friends of Levitt Pavilion and the parties should get together to address the issues. He commented the proposal is a significant change that is inconsistent across the state. Mr. Sodergren commented the ordinance is being changed for one project and consideration should be given how to accommodate that project but also to protect the other 200 landmarks that could become vulnerable.

Chair Royer closed public comment and called for Commissioner questions and comments.

Commissioner Bainiwal inquired if there are standards or a checklist that would be applied to make the override findings because this is a new addition to the ordinance. He also inquired about other cities where such a provision has been applied. Senior Deputy City Attorney, Daniel Zazueta, responded that is what is being discussed tonight since the HLC expressed concern at the October meeting that the override is based on CEQA and is too broad. He stated that the proposed language was written to be broad on purpose and the City Council would need to make the findings that specific overriding economic, legal, social, technological, or other benefits of a project outweigh the detrimental effects on the landmark or property in a historic district. Mr. Zazueta commented that if more parameters are put on the finding, it would allow more subjectivity and challenges to be a part of the process. He commented that it is up to the HLC what it would like to advise the City Council on the Historic Preservation Ordinance amendments.

Commissioner Cohen commented that the hardship section of the Historic Preservation Ordinance doesn't have any parameters, nor would the override findings which are subjective and without guardrails. He suggested that to make the override finding more specific and to protect the historic resources, the HLC should develop a set of parameters for City Council consideration. Manira Sandhir, Planning Deputy Director, stated that staff has proposed two options that provides those parameters that are more well defined for HLC consideration. She noted that if the HLC would like to see changes or additions to the language those changes could be added to the HLC's motion.

Vice Chair Ghalandari thanked staff for their response to the HLC's numerous comments at the October meeting. She stated that her concern at the last hearing was that the override proposal is too broad, essentially mirroring CEQA and that could cause confusion. She stated she wanted to see specific findings that would differentiate the ordinance findings from CEQA and limit the application, and that was done in staff's response to the HLC's comments with Option 2. She noted that Option 1 included the following language for private projects and why was that language not included in Option 2: .....the project provides a clear, measurable benefit to the community and is necessary to achieve a specific public purpose that cannot be reasonably accomplished through preservation, relocation, or adaptive reuse that outweighs…." Staff responded that language could also be included in Option 2 as part of the

HLC's recommendation to City Council. Vice Chair Ghalandari commented that the endless cycle of CEQA litigation that results in project delay harms the community and threatens and stops projects that have a public benefit with activation and safety. She commented this is a problem at the local and state levels and if the City does not have the mechanism to approve these types of projects through our own local ordinances, then it's going to be stripped away at the state level. Vice Chair Ghalandari expressed appreciation for the thought that staff put into the revisions and commented that they address her previous concerns to tighten up the language and add parameters.

Mr. Zazueta commented that the CEQA language was used to be broad on purpose because the additional findings create more opportunity for litigation. He noted that the Public Resources Code language has 50 years of precedent from case law and CEQA litigation that's held up the test of time. Mr. Zazueta commented that it is up to the decision makers to weigh the actual public benefits rather than pigeonholing the City Council into specific findings that may invite more subjectivity and need to define other terms.

Chair Royer commented that the potential noise associated with Levitt Pavilion is a CEQA concern and not part of the findings of the Historic Preservation Ordinance.

Commissioner Bainiwal expressed concern about overlapping CEQA with the Historic Preservation Ordinance and wondered if additional problems could arise from that and whether additional terms need to be defined to provide clarity.

Commissioner Cohen clarified that the hearing is not about Levitt Pavilion, but the Historic Preservation Ordinance and all future projects. He expressed concern that the override would provide the City Council more leverage and discretion to be subjective without parameters since the City does not have a strong history in its support of historic preservation.

Commissioner Camuso echoed the comments of Commissioner Cohen and commented that the override is so broadly written, even with the options, it would completely circumvent and undermine the purpose of the Historic Preservation Ordinance. He commented that the Levitt Pavilion is the reason for the ordinance amendments and he is opposed to any options to change the permit findings.

Commissioner Arnold commented that she understands there is concern that the City Council would not adhere to the modified override language in Option 2 that the City Council would be required to state in the resolution the unique circumstances justifying approval and shall not establish precedent for future departures from historic preservation standards. She inquired if there is an opportunity to do more work on Option 2 that would be favorable to the Commission because she did not hear an expression of faith that the process would go well in the future. Ms. Sandhir commented that staff has put together two options for the HLC's consideration and are seeking an HLC recommendation to City Council and noted that the HLC may tweak the language in the options to fold into the motion.

Commissioner Cohen made a motion to send the Historic Preservation Ordinance amendments back to staff to get the language where it should be. The motion was not seconded.

Vice Chair Ghalandari commented that she closely reviewed the modified language prepared by staff and staff has done a good job addressing the concerns of the commission. She inquired if there is something deficient in the language that needs to be discussed. Vice Chair Ghalandari commented that she previously suggested adding language from Option 1 into Option 2 because it ties the private project override findings to a specific public purpose.

Vice Chair Ghalandari made a motion to move forward with Option 2 incorporating the following language from Option 1: "…the project provides a clear, measurable benefit to the community and is necessary to achieve a specific public purpose that cannot be reasonably accomplished through preservation, relocation, or adaptive reuse that outweighs…" She

clarified that the motion includes adding Secretary of the Interior's Standards conformance to the definition of "Substantial Alteration" and also adding the proposed definition for "Impair." The motion was seconded by Chair Royer and approved by the HLC (4-2, Commissioners Camuso and Cohen opposed).

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.

Larry Ames, longtime creek, trail and park advocate, discussed the Coyote Creek Trestle located at Story Road and Center Road, the last railroad trestle remaining in the city. He commented that it is part of the Western Pacific track that looped around San José in 1922 and broke a monopoly that Southern Pacific had for decades. Mr. Ames commented the City has done an engineering report on the trestle and studied alternatives to demolition. He commented he is bringing the project to the HLC so the Commission can ask for input on the trail project. Mr. Ames understood that the project is scheduled to be brought to the HLC before the end of the year. He recommended that the City leave the bridge in place and construct a new bridge adjacent to the trestle. Chair Royer requested the item be agendized on the December 3rd HLC agenda.

Mike Sodergren, Preservation Action Council San Jose, commented on the demolition by neglect work done by former HLC member Anthony Raynsford. He recommended moving forward with that proposed amendment to the Historic Preservation Ordinance. Chair Royer requested the item be agendized on the December 3rd HLC agenda, along with a status report on recent City Council direction on blighted properties.

Edward Saum seconded the comment on demolition by neglect and informed the HLC that Larry Ames recently published a book about lessons learned trying to save the Willow Glen trestle.

Commissioner Cohen requested that the Hardship subcommittee of the HLC be activated and thanked staff for holding the 2025 HLC Annual Retreat. He also mentioned Mills Act compliance and recommended that property owners not be held to specific items on their contract 10-year plan but the focus be on the broad purpose of the Mills Act and ensuring that in general money is spent on the preservation of the building. Commissioner Cohen also discussed 401 South 3rd Street where unpermitted work was conducted (removal of windows). He inquired what could be done when unauthorized work is underway. Commissioner Cohen requested the HLC hear from Code Enforcement why there is such a time lapse between the complaint and inspection/investigation. He recommended prioritization of historic properties. Ms. Sandhir commented that there could be tools the City might use so contractors do not do these types of things to historic resources. Mr. Cohen

commented he would like to hear from someone in Code Enforcement to talk about priorities. Ms. Sandhir stated that she would connect with the Code Enforcement team so staff can report back on the process.

8. GOOD AND WELFARE

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

i. Correspondence Received October 10, 2025.

Written correspondence was received by the HLC.

b. **Report from Committees**

i. Design Review Subcommittee:

1) No meeting held on October 16, 2025. The next meeting is scheduled for Thursday, November 20, 2025 at 11:00 a.m.

2) Appoint Chair of the Design Review Subcommittee

A motion was made by Commissioner Cohen to appoint Commissioner Royer as Chair of the Design Review Subcommittee. The motion was seconded by Commissioner Camuso and unanimously approved 6-0.

c. **Approval of Action Minutes**

i. **Recommendation:** Approve Action Minutes for the Historic Landmarks Commission Meeting of October 1, 2025.

A motion was made by Commissioner Cohen to approve the Action Minutes for the October 1, 2025 HLC meeting. The motion was seconded by Commissioner Bainiwal and unanimously approved 6-0.

d. **Status of Circulating Environmental Documents**
No Items

ADJOURNMENT

The meeting was adjourned at 8:46 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.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: PLANNING COMMISSION

FROM: Christopher Burton, Director, Planning, Building, and Code Enforcement Department

SUBJECT: TEXT AMENDMENTS TO MUNICIPAL CODE CHAPTER 13.48 (HISTORIC PRESERVATION) PP25-005

DATE: November 19, 2025

COUNCIL DISTRICT: Citywide

Type of Permit	**N/A**
Demolition	N/A
Proposed Land Uses	N/A
New Residential Units	N/A
New Square Footage	N/A
Additional Policy Review Items	
Tree Removals	N/A
Project Planner	Dana Peak Edwards, Historic Preservation Officer
CEQA Clearance	Addendum to Envision San José 2040 General Plan Final EIR (SCH #2009072096) and the Downtown Strategy 2040 Final EIR (SCH #2003042127)

RECOMMENDATION

Staff recommends the Planning Commission recommend that the City Council:

1. Adopt a Resolution approving the Addendum to the Downtown Strategy 2040 Final Environmental Impact Report and the Envision San José 2040 General Plan Final Environmental Impact Report.
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.

PROJECT BACKGROUND

The City's Historic Preservation Ordinance ("HP Ordinance"), found in Chapter 13.48 of the San José Municipal Code, sets the rules for protecting historic resources. It covers the Historic Resources Inventory, how landmarks, historic districts, and conservation areas are designated, how exterior changes to designated properties are reviewed through permits, and it offers incentives such as historic property contracts.

An important part of preserving the historic character of designated properties is reviewing proposed exterior changes. This review takes place through the Historic Preservation Permit ("HP Permit") process described in Municipal Code Section 13.48.210. The process guides property owners and developers in adapting historic buildings for new uses, designing compatible additions, and integrating new construction. The goal is to ensure that projects respect historic materials and features, maintain historic significance, and comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties (SIS) and the purpose of the HP Ordinance.

Sometimes, proposed projects do not meet established preservation standards and would harm the historic integrity of a designated building. Such projects are considered "detrimental" and inconsistent with the purpose of the HP Ordinance, and therefore the HP Permit would be denied - unless the project is reviewed under the "hardship" provision in Section 13.48.260. Under this hardship provision, applicants must show that compatible rehabilitation is not feasible due to technical, mechanical, or structural limitations, or that the cost of such rehabilitation would be unreasonably high. Applicants must provide clear evidence that the property cannot produce a reasonable economic return - not merely that it is less profitable or not achieving its highest potential value. The City Council reviews the submitted hardship documentation and determines whether a hardship has been proven. If so, the Council may approve the project.

Alongside the HP Permit review, each project is also evaluated under the California Environmental Quality Act ("CEQA"). Historical resources, such as landmarks and properties within historic districts, must be analyzed for potential environmental impacts. If a project is found to have a significant effect on a historical resource, an Environmental Impact Report ("EIR") is prepared to disclose those impacts, explore project alternatives, and identify feasible mitigation measures. Sometimes projects present a significant and unavoidable impact on the historic resource that cannot be mitigated to a less than significant level. In those instances, the legislative body must adopt a Statement of Overriding Considerations in accordance with Public Resources Code Section 21081 and CEQA Guidelines Section 15093. This statement must provide findings regarding specific social, economic, legal, technical, or other benefits that outweigh the project's significant and unavoidable impacts. A question arose through litigation whether a project that had a significant and unavoidable impact under CEQA, and which required a Statement of Overriding Considerations, would also be considered "detrimental" to the historic resource under the City's HP Ordinance.

Indeed, the proposed amendments to the HP Ordinance are in response to the 2024 Sixth District Court of Appeal decision in *Sainte Claire Historic Preservation Foundation v. City of San José*. This case involved the City's approval of an HP Permit and certification of an EIR for a performing arts pavilion in St. James Park. As the lead agency under CEQA, the City determined the project would cause a significant and unavoidable impact to the St. James

Square Historic District - a designated city historic district requiring an HP Permit. The City also concluded that mitigation measures could not reduce the impact to a less-than-significant level, requiring adoption of a Statement of Overriding Considerations. The City Council found that specific social, economic, legal, technical, or other benefits of the project outweighed its adverse effects and adopted the statement accordingly. However, while the City acknowledged the CEQA impact, it determined the project was not "detrimental" under the HP Ordinance - the review process, requirements, and findings under CEQA and the HP Ordinance being fundamentally different. The Sainte Claire Historic Preservation Foundation ("Foundation") challenged this determination, arguing the City's own CEQA findings proved the project was "detrimental" and inconsistent with the HP Ordinance. Although the trial court ruled in favor of the City, the Court of Appeal ultimately agreed with the Foundation that the findings supporting the CEQA impact also demonstrated detriment under the HP Ordinance.

In its opinion, the Court of Appeal noted the City has the authority to allow overriding discretion to weigh a project's benefits against any "detriment" to designated buildings, similar to the discretion provided under CEQA. The Court found the HP Ordinance lacked such a provision, despite the City Council's discretion under the City's own HP Ordinance to determine whether a project was or was not a detriment to a historic resource. The primary purpose of this amendment is to provide specific overriding discretion in line with the Court's guidance.

PROJECT DESCRIPTION

The proposed amendments to the HP Ordinance, included as Exhibit A of this memorandum, focus on Sections 13.48.020 (Definitions) and 13.48.240 (Action by Director, Planning Commission, or City Council) and are intended to:

- Clarify the meaning of "historic district" and "landmark" and reference the formal designation process.
- Provide a clearer definition of what constitutes a "detriment" to a landmark or property in a historic district.
- Allow the City Council to make specific findings to override a project's "detrimental" effects on a landmark or historic district property.

Proposed Amendments to Section 13.48.020 (Definitions)

This section updates the definitions of "historic district" and "landmark" and adds new definitions for "detrimental," "historic integrity," and "substantial alteration."

The revised definitions clarify that "historic district" and "landmark" only apply to properties officially designated by the City Council through the HP Ordinance, which require an HP Permit for exterior changes - unlike districts and individual properties listed solely on the National Register of Historic Places.

An HP Permit may be approved when exterior changes are compatible with a property's historic characteristics and are not "detrimental" to its significance. Current HP Permit findings aim to prevent detriment wherever possible, emphasizing compatibility and the protection of historic character. However, the HP Ordinance currently does not define "detrimental." The proposed amendments establish a definition to clarify what constitutes a detriment and they also define "historic integrity" and "substantial alteration" to provide guidance for evaluating project compatibility.

Proposed Amendments to 13.48.240 (Action by Director, Planning Commission or City Council)

Under current standards, a project deemed "detrimental" to a landmark or historic district can only be approved if a specific hardship is demonstrated. Over the past five years, the San José City Council has approved three (3) HP Permits under this hardship provision, showing economic and/or structural infeasibility. The proposed amendments would create an additional path for HP Permit approval, aligning with CEQA's override findings when a project has significant and unavoidable impacts. Under this new finding, the City Council would make specific determinations showing how a project's social, economic, legal, technical, or other benefits outweigh its "detrimental" effects on a landmark or historic district. This approach mirrors the CEQA override process under Public Resources Code Section 21081 and CEQA Guidelines Section 15093, allowing approval despite significant, unavoidable impacts that cannot be fully mitigated. It provides the City Council discretion to recognize that while a project may be "detrimental", its overall benefits can justify approval.

PROJECT ANALYSIS SUMMARY

The proposed HP Ordinance amendments would not change the Historic Landmark Commission's ("HLC" or "Commission") role in reviewing and recommending on HP Permits; their recommendations, along with those of the Planning Commission when required, would continue to be considered by the decision-making body.

Consistent with the City's Certified Local Government Agreement (partnership between the City, National Park Service and State Historic Preservation Office), the amendments were sent to the California Office of Historic Preservation (OHP), which noted they clarify certain elements of the existing ordinance. OHP written guidance on historic preservation ordinances emphasizes that local preservation programs vary based on the types of resources, desired level of protection, and local development pressures.

Different California cities handle HP Permit findings in varying ways. Exhibit B summarizes 12 cities' approaches, showing that most do not have an override provision for approving alterations, providing stronger protection for historic properties. Some cities, including San José, allow a hardship finding when a property cannot achieve any economically viable use. Limited override provisions exist in Sacramento, Pasadena, and San Diego under specific circumstances.

Currently, hardship is the only basis for approving a project deemed "detrimental" to a landmark or historic district, which can pose challenges for public projects without economic or structural feasibility issues. The proposed amendment introduces an additional HP Permit finding, allowing the City Council to consider factors beyond hardship - such as social, economic, legal, or technical benefits - that may outweigh a project's detrimental effects on a landmark or historic district.

Planning Commission and HLC recommendations will be forwarded to the City Council for final consideration in December 2025.

HISTORIC LANDMARKS COMMISSION HEARING

At the October 1, 2025 HLC hearing the Commission received public comment and discussed the proposed HP Ordinance amendments. Please refer to the HLC staff report and HLC minutes included in this memorandum as Exhibits C and D.

The HLC voted 4-0-2 (Chair Royer and Commission Arnold absent) to continue the item to the November 5, 2025 Commission meeting to allow for additional input and time for staff to bring

back modifications to the proposed amendments to:

1. clarify the meaning of "impair" in the definition of "substantial alteration;"
2. clarify that any project that complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties (SIS) would not be a substantial alteration; and
3. limit the broad application of the override provision by providing clear boundaries, decoupling the finding from the California Environmental Quality Act (CEQA) and providing separate findings for demolition.

The HLC held another public hearing on November 5, 2025. Please refer to the HLC staff report included in this memorandum as Exhibit E. In response to the HLC's request, staff drafted modified ordinance language for consideration by the Commission to clarify the definition of "substantial alteration" and provide two different options for override findings.

The HLC again received public comment on November 5, 2025. The draft action minutes from the meeting are included in this memorandum as Exhibit F. There were 23 speakers, the majority of which spoke in support of the ordinance amendments to facilitate the development of the Levitt Pavilion project. Four speakers spoke in favor of Option 2 of the modified override findings drafted by staff, one speaker commented that the proposed ordinance amendments should be analyzed in a supplemental EIR and four speakers opposed the ordinance amendments and the Levitt Pavilion project.

The HLC discussed the modified language drafted by staff and made a motion to recommend approval to the City Council the following:

- Modify the proposed definition of "substantial alteration" to clarify that work in conformance with the SIS would not be considered a "substantial alteration."

  Substantial Alteration. The term "substantial alteration" shall mean demolition, destruction, relocation, new construction or alteration activities that would impair the historic integrity and significance of a landmark, or property within a historic district. Evaluation of the alteration shall be informed by the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings. **Work that fully conforms with the Secretary of the Interior's Standards for the Treatment of Historic Properties is not considered "substantial alteration.**"

- Add a definition for "impair."

  Impair. The term "impair" shall mean to diminish, damage, degrade, or otherwise negatively affect one or more physical characteristics, features, materials, workmanship, setting, design, or other elements that contribute to the landmark or property in a historic district's historical significance or integrity such that its ability of the resource to convey that significance is materially reduced.

- Amend the proposed override language to the following:

  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 the project has specific overriding economic, legal, social, technological, or other benefits that outweigh the detrimental effects on the landmark or property in a historic district **and the project provides a clear, measurable benefit to the community and is necessary to achieve a specific public purpose that cannot be reasonably accomplished through preservation, relocation, or adaptive reuse**. Approval under these findings shall not establish precedent for future departures from historic preservation standards, and the City Council shall state in the resolution the unique circumstances justifying approval

1. For City-sponsored projects on City land or facilities the City Council must find that the project provides a substantial, demonstrable benefit to the City and the community in public services or amenities, or is necessary for public health, safety, or welfare; or
2. For private projects the City Council must make all the following findings:

a. The project advances the Major Strategies of Chapter 1 of the General Plan, other General Plan goals and policies, a specific plan or community plan or adopted public policy objectives that cannot otherwise be achieved;

b. The project deviates from the standards to the minimum extent necessary to achieve the project's legitimate purpose, and the scope of nonconformance has been reduced to the smallest extent practicable;

c. The project incorporates changes which substantially lessen the detriment to the landmark or property in a historic district, such as preservation of the most significant character-defining features even if other less critical features must be altered or moved, retention and adaptive reuse of significant portions or façades or reconstruction of defining features;

d. The project is compatible in massing, character, design and materials with the historic context of the site and surrounding area to minimize visual or physical impacts; and

e. The project incorporates educational, cultural, interpretive or commemorative features that recognize the site's former landmark or property in a historic district.

The HLC approved the motion with four commissioners in favor (Commissioners Arnold, Bainiwal, Ghalandari, and Royer) and two opposed (Commissioners Camuso and Cohen) to any of the proposed amendments.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed HP Ordinance amendments do not require a subsequent or supplemental EIR under CEQA Guidelines Sections 15162 and 15164, as they do not create new significant impacts, increase the severity of existing impacts, or introduce new mitigation measures. No physical development is proposed, and the amendments primarily clarify permit findings to align with state law for projects with significant and unavoidable impacts. The CEQA analysis is addressed in an Addendum to the certified *Envision San José 2040 General Plan Final EIR* and *Downtown Strategy 2040 Final EIR* included as Exhibit G of this memorandum.

The amendments clarify terms such as "detrimental" to help evaluate whether a project would significantly affect historical resources, consistent with Public Resources Code Section 21084.1 and CEQA Guidelines Section 15064.5. Evaluations will continue to follow the SIS.

The amendments also provide a new path for City Council approval of projects with detrimental

effects based on overriding considerations, similar to the CEQA override process under Section 15093 which allows a lead agency to approve a project with significant and unavoidable impacts upon adopting a Statement of Overriding Considerations. This allows the Council to weigh a project's economic, social, legal, and technical benefits against unavoidable impacts while maintaining full CEQA review.

The certified General Plan and Downtown Strategy EIRs both acknowledged that certain projects could result in significant and unavoidable impacts to historic resources and explicitly contemplated use of overriding considerations in limited circumstances. The ordinance amendments do not expand the City Council's discretion beyond what CEQA already provides. For projects causing significant impacts to historical resources, a project-level CEQA review will still be required. The amendments codify a process that is consistent with CEQA's framework, ensuring that if an override is exercised, it is supported by ordinance findings, a resolution, and a public record.

In summary, the amendments refine key definitions and permit findings, ensure the HP Ordinance aligns with CEQA, and provide the City Council discretion to approve projects with unavoidable impacts while maintaining full CEQA review.

PUBLIC OUTREACH

Staff followed Council Policy 6-30: Public Outreach Policy, preparing notices for the public hearings posted on the City's website and published in the San Jose Post-Record. Staff created a dedicated website for the code revisions to provide both a technical and simplified explanation of the proposed changes to the code and its effects. Staff also shared the proposed ordinance amendments with the development and preservation communities in San José and posted the public hearings on social media channels and City platforms.

Written comment letters were electronically submitted to the HLC at both the October 1, 2025 and November 5, 2025 HLC hearings. All comment letters submitted to the HLC are included in this memorandum as Exhibit H. Public comment was also received at both HLC hearings. No questions or comments have been received via the project website, telephone or email as of the publishing of this memorandum.

Project Manager: Dana Peak Edward, Principal Planner and Historic Preservation Officer

Approved by: Manira Sandhir, Deputy Director of Planning

Please click on the title of each exhibit to view the document:

ATTACHMENTS:
Exhibit A: Historic Preservation Ordinance Text Amendments
Exhibit B: California Cities Comparison Table
Exhibit C: Historic Landmarks Commission Staff Report (October 1, 2025)
Exhibit D: Historic Landmarks Commission Approved Action Minutes (October 1, 2025)
Exhibit E: Historic Landmarks Commission Staff Report (November 5, 2025)
Exhibit F: Historic Landmarks Commission Draft Action Minutes (November 5, 2025)
Exhibit G: Addendum to the certified Envision San José 2040 General Plan Final EIR and Downtown Strategy 2040 Final EIR
Exhibit H: Comment Letters Submitted to the HLC
Exhibit I: Draft Ordinance to Amend Chapter 13.48
Exhibit J: Draft Resolution for CEQA Addendum

PP25-005

Links to Correspondence Received After 11/12/25

Click on the title to view document.

Correspondence Received After 11/12/25