

Historic Preservation Ordinance Amendments

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*Planning, Building and
Code Enforcement*

Court Case & HP Ordinance Amendments

- Amendments respond to 2024 Sixth Appellate District decision in *Sainte Claire Historic Preservation Foundation v. City of San José*.
- City correctly followed CEQA in approving the project in St. James Park, but court found HP Ordinance lacked a mechanism for City to override “detrimental” impacts.
- Amendments create this authority, enabling the City Council to balance project benefits against a “detriment” to landmarks and historic districts.

HP Ordinance Overview

- Chapter 13.48 of the San José Municipal Code
- Defines City's historic preservation framework: Historic Resources Inventory, designation, design review/HP Permit, incentives (Mills Act)
- Applies to landmarks, historic districts and conservation areas only
- Separate from Title 20 (Zoning Ordinance) which regulates land use

Design Review/HP Permit

- Important component of the HP Ordinance that ensures exterior changes preserve the historic character and significance of a landmark or district.
- Projects that meet the Secretary of the Interior's Standards for the Treatment of Historic Properties are considered compatible.
- Incompatible projects may be deemed “detrimental” and denied unless a hardship shows rehabilitation is infeasible.

Hardship Provision (Section 13.48.260)

- Existing override allows City Council to approve HP Permit if compatible rehabilitation is technically, structurally, or economically infeasible
- Applicant submits documentation - engineer/architect reports, property expenses, attempts to rent/sell, etc.
- 4 Downtown projects approved under this provision
- Currently only path to approve “detrimental” projects
- Can be difficult to apply to public projects that do not face economic or structural feasibility constraints.

Relationship to CEQA

- Landmarks and historic districts are historical resources under CEQA
- CEQA requires separate but parallel analysis to HP Permit
- Projects with significant, unavoidable impacts require environmental impact report (EIR), mitigation and alternatives analysis outside of HP Ordinance
- If unavoidable, City Council may adopt Statement of Overriding Considerations
- Proposed HP Ordinance amendments mirror CEQA override

Proposal - Definitions (13.48.020)

- Define “detrimental” as raised in court case
- Provide clarity for HP Permit evaluation by adding also definitions for “Historic Integrity” and “Substantial Alteration”
- Clarify definition of “Historic District” & “Landmark” to specify that only city council designated landmarks and districts are subject to the HP Ordinance (including HP Permit

Proposal - Findings (13.48.240)

- Add finding to allow City Council to override “detrimental” effects if social, economic, legal, technical, or other benefits outweigh the impact (option to hardship).
- Projects with significant and unavoidable impacts under CEQA already require a Statement of Overriding Considerations.
- Mirrors 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.

Comparison with Other CA Cities

- Most California cities do not have a broad override provision beyond hardship
- 3 identified cities have provisions requiring more specific findings:
 - *Sacramento*, override for general plan/community goals
 - *Pasadena*, compelling public interest only for demolition
 - *San Diego*, override only for capital improvement projects

Historic Landmarks Commission Hearings

Public hearings on October 1 and November 5, 2025

HLC recommended:

1. Modify the proposed definition of “substantial alteration” to clarify that work in conformance with the SIS would not be considered a “substantial alteration”;
2. Add a definition for “impair” within the context of “substantial alteration”; and
3. Modify override finding to provide parameters for use and apply different findings for public vs. private projects.

Planning Commission Hearing

Public hearing on November 19, 2025

- Public vs. private application of new HP Permit finding
- Policy decision

PC recommended approval of staff recommendation.

CEQA Addendum

- Addendum to the certified Envision San José 2040 General Plan Final EIR and Downtown Strategy 2040 Final EIR.
- EIRs acknowledged certain projects could result in significant and unavoidable impacts to historic resources and explicitly contemplated use of overriding considerations in limited circumstances.
- Project-level CEQA review still required for projects causing significant impacts to historical resources.

Staff Recommendation

1. Recommend City Council adopt a resolution approving the Addendum to the Downtown Strategy 2040 and Envision San José 2040 EIRs.
2. Recommend City Council approve an ordinance amending:
 - Section 13.48.020: Definitions for “detrimental,” “historic integrity,” “substantial alteration”; clarify “historic district” and “landmark.”
 - Section 13.48.240: HP Permit findings, including City Council’s authority to override detrimental impacts.

End