

Chapter 13.48 HISTORIC PRESERVATION

Part 1 GENERAL PROVISIONS

13.48.010 Purpose and declaration of policy.

- A. The council of the City of San José hereby finds that in order to promote the economic and general welfare of the people of the City of San José, and to ensure the harmonious, orderly and efficient growth and development of the municipality, it is deemed essential by the council of the City of San José that the qualities relating to the history of the City of San José and a harmonious outward appearance of structures which preserve property values and attract tourists and residents alike be preserved; some of these qualities are the continued existence and preservation of historic districts and landmarks; continued construction of structures in the historic styles and a general harmony as to style, form, color, proportion, texture and material between buildings of historic design and those of more modern design; that such purpose is advanced through the preservation and protection of the old historic or architecturally worthy structures and neighborhoods which impart a distinct aspect to the City of San José and which serve as visible reminders of the historical and cultural heritage of the City of San José, the state, and the nation.
- B. The purpose of this chapter is to promote the public peace, health, safety and welfare through the preservation of landmarks and districts and thereby stabilize neighborhoods and areas of the city; enhance, preserve and increase property values; carry out the goals and policies of the city's general plan, increase cultural, economic and aesthetic benefits to the city and its residents; preserve, continue and encourage the development of the city to reflect its historical, architectural, cultural, and aesthetic value or tradition; protect and enhance the city's cultural and aesthetic heritage; and promote and encourage continued private ownership and utilization of such structures.

(Prior code § 8950; Ord. 20884.)

13.48.020 Definitions.

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

- A. 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;

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- 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.
- B. 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.
- C. 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:
- 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.
- D. 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.
- E. 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.
- F. 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.

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

13.48.030 Historic landmarks commission.

"Historic landmarks commission," also referred to as "commission," shall mean the commission established pursuant to the provisions of Part 26 of Chapter 2.08.

(Ord. 25209.)

13.48.040 Notices - Affidavits.

- A. The provisions of this section shall apply to all proceedings under this chapter whether for designation of a landmark or historic district or for issuance of an HP permit.
- B. The city clerk shall cause publication of the notices of all hearings conducted under this chapter.

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- C. The notices of public hearings or actions of any person or body under this chapter which are required to be mailed shall be mailed by the director of planning for hearings conducted and actions taken by the said director, planning commission, and the historic landmark commission, and by the city clerk for hearings conducted and actions taken by the city council. Upon completion thereof, the director of planning or the city clerk, as the case may be, shall cause to be filed in the proceedings an affidavit or affidavits of the giving of such notice.
 - D. Notwithstanding the preceding provisions of this chapter, the failure of any person to mail any notice required under this chapter, or the failure of any person to receive the same, shall not affect in any way whatsoever the validity of any proceedings under this chapter, or the validity of any action of any officer or body taken in such proceedings, nor prevent any officer or body in any such proceedings from proceeding with any hearing.

(Prior code § 8968; 13.48.220; Ords. 20884, 21704.)

13.48.050 Historic resources inventory.

- A. In order to help carry out the goals and policies of the city's general plan, and in particular, to further the purposes of this chapter, an inventory of potentially historical and/or architecturally significant structures shall be maintained. This inventory shall be designated as the historic resources inventory.
- B. The historic resources inventory shall serve as a resource document which can be used as a foundation for future designation of historic landmarks and/or districts, reviewing and evaluating proposed alterations or removal of structures and proposed development on sites identified therein.

(Ord. 23408.)

13.48.060 Historic preservation officer.

- A. Appointment. There shall be a city historic preservation officer within the department of city planning who is appointed by the director of planning.
- B. Duties. The historic preservation officer shall, among other responsibilities:
 - 1. Encourage and promote the preservation of historic landmarks, sites, and documents, and protect the interests of historic preservation through the environmental review process and through the development permit process;
 - 2. Provide staff support to the historic landmarks commission, including acting as liaison between the commission and the public, city staff, and other historic preservation agencies;
 - 3. Maintain an up-to-date historic resources inventory for the City of San José.

(Ord. 23408.)

Part 2 DESIGNATION

13.48.110 Procedure for designation of a landmark.

- A. Any potentially historic property can be nominated for designation as a city landmark by the City Council, the Historic Landmarks Commission or by application of the owner or the authorized agent of the owner of the property for which designation is requested. When a landmark has been nominated by application of the

owner or authorized agent of the owner, the application may be withdrawn at any time by the applicant by the filing of a notice of such withdrawal with the City Clerk, provided that said applicant may reapply for landmark designation at any time thereafter, and provided that the Council may nominate the property for such designation at any time after withdrawal. Any nomination for designation by the Historic Landmarks Commission and City Council shall occur after a duly noticed public hearing on the proposed nomination.

- B. Any such nomination applications shall be filed with the Director of Planning upon the prescribed form and shall include the following data:
1. Assessor's parcel number of the site;
 2. Description of the characteristics and category of the landmarks which meets the requirements this chapter detailing the landmark's special historical, architectural, cultural, aesthetic, or engineering interest or value of an historical nature;
 3. Sketches, drawings, photographs or other descriptive material;
 4. Statement of condition of the proposed landmark;
 5. Statement of the special historical, architectural, cultural, aesthetic or engineering interest or value of an historical nature of the proposed landmark; and
 6. Other information requested by said Director.
- C. When the nomination documentation is complete, the Director of Planning, Building and Code Enforcement, shall initiate the procedure for the designation of a landmark so nominated by setting the public hearing on the proposed designation required by this Section 13.48.110 before the Historic Landmarks Commission for its recommendation on nominations made by the City Council or a property owner or before the City Council for nominations made by the Historic Landmarks Commission.
- D. Whenever proceedings for designation of a landmark have been initiated or withdrawn, the City Clerk shall transmit a copy of the record of initiation or withdrawal to the Director of Planning and Director of Public Works, for their information, and to the Building Official to be maintained in the roster of proposed and designated landmarks and historic districts.
- E. Every proposed designation of a landmark nominated by the City Council or property owner shall be considered by the Historic Landmarks Commission at a public hearing. The hearing of the Commission shall be held within ninety (90) days from the date that the Director of Planning, Building and Code Enforcement initiates a proposed landmark nomination for designation by setting a public hearing before the Historic Landmarks Commission. The Historic Landmarks Commission shall report to City Council within thirty (30) days after the close of the public hearing on the landmark nomination, in any event, no later than one hundred twenty days (120) from initiation.
- F. Notice of the time and place of such Commission hearings and the purpose thereof shall be given by publication of a notice to appear once in a newspaper of general circulation in the City of San José of at least ten (10) days prior to the date of said hearing; and by mailing the same, postage prepaid, (1) the owner of said property, as shown on the last equalized assessment roll adopted by the County of Santa Clara, or to the address shown for such purposes on the application if the proceedings were initiated by application of the owner, and (2) the occupant of the property if other than the owner. In addition, the Director of Planning, Building and Code Enforcement shall cause notices of the time, place, and purpose of such hearings to be posted along the frontage of the site of the proposed landmark. Said notices shall contain:
1. A statement of the general location of the landmark;
 2. A notice of the time and place and purpose of the hearing;
 3. A reference to the application or other documents on file with the Director of Planning for particulars;

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4. A statement that any interested person may appear in person or by agent and be heard; and
 5. An identification and description of the landmark.
- G. After such public hearing, the Historic Landmarks Commission shall recommend to the City Council approval, disapproval or modified approval of every such proposed landmark designation. Such recommendation shall be advisory only and shall not be binding on the Council. Failure of the Historic Landmarks Commission to report to the Council within one hundred twenty (120) days of the date of initiation of the proposed landmark designation by the Director of Planning shall be deemed a recommendation of denial of the proposed designation.
- H. Prior to nominating a potentially historic property for designation as a city landmark and/or recommending approval or modified approval of a proposed designation as a city landmark, the Historic Landmarks Commission shall find that said proposed landmark has special historical, architectural, cultural, aesthetic, or engineering interest or value of an historical nature, and that its designation as a landmark conforms with the goals and policies of the general plan. In making such findings, the Commission may consider the following factors, among other relevant factors, with respect to the proposed landmark:
1. Its character, interest or value as part of the local, regional, state or national history, heritage or culture;
 2. Its location as a site of a significant historic event;
 3. Its identification with a person or persons who significantly contributed to the local, regional, state or national culture and history;
 4. Its exemplification of the cultural, economic, social or historic heritage of the City of San José;
 5. Its portrayal of the environment of a group of people in an era of history characterized by a distinctive architectural style;
 6. Its embodiment of distinguishing characteristics of an architectural type or specimen;
 7. Its identification as the work of an architect or master builder whose individual work has influenced the development of the City of San José; and
 8. Its embodiment of elements of architectural or engineering design, detail, materials or craftsmanship which represents a significant architectural innovation or which is unique.
- I. After receiving a nomination and/or recommendation from the Historic Landmarks Commission, the City Council shall hold a public hearing at the earliest next regular meeting, consistent with the agenda preparation procedure. The City Clerk shall give notice of the time and place of the hearing in the manner prescribed by Subsection F. of this Section for noticing such hearings before the Historic Landmarks Commission.
- J. The City Council by written resolution may approve, disapprove, or give modified approval to a proposed designation.
- K. Prior to the approval or modified approval of designation, the City Council shall make those findings specified in Subsection H. of this Section.
- L. When a landmark has been designated by the Council, as provided above, the City Clerk shall promptly notify the owners of the property included therein by mailing to them a certified copy of the resolution of the Council in the manner prescribed for mailing notices in this Section, or such other address as the owner may request at the time of the hearing. Such resolution shall be recorded by the City Clerk in the Office of the Recorder of the County of Santa Clara. The Clerk shall also send a certified copy of said resolution to the Director of Planning, Building and Code Enforcement, Director of Public Works, the Building Official, and the occupant of the property.

M. Landmarks so designated shall be subject to the provisions of Part 3 of this chapter.

(Ords. 20884, 21704, 23408, 28652.)

13.48.120 Procedure for designation of historic districts.

- A. Any geographically defined area can be nominated as a city historic district by the city council, the historic landmarks commission, the planning commission or by application of persons who own sixty percent of the land proposed to be included in the district or the authorized agents of such owners.
- B. Any such applications by the owners, or their authorized agents, shall be filed with the director of planning upon the prescribed forms and shall include the following data:
1. Statement of the district's special historical, architectural, cultural, aesthetic or engineering interest or value of an historical nature;
 2. Drawings, photographs, or other descriptive material;
 3. Assessor's parcel map showing the properties to be included in the proposed district; and
 4. Other information requested by the director of planning.

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

- C. After the environmental documentation required by CEQA and Title 21 of this Code has been completed, the city council, by resolution, shall initiate the procedure for the designation of an historic district so nominated.
- D. Whenever proceedings for the designation of an historic district have been initiated or withdrawn, the city clerk shall transmit a copy of the record of initiation or withdrawal to the director of planning, director of neighborhood preservation, and director of public works for their information, and to the building official to be maintained in the roster of proposed and designated historical landmarks and historic districts.
- E. The director of planning shall refer the resolution of the initiation of the proposed historic district to the historic landmarks commission for report and recommendation to the planning commission, and to the planning commission for report and recommendation to the city council. The historic landmarks commission and the planning commission shall each hold a public hearing, notice of which shall be given by publication of a notice to appear once in a newspaper of general circulation in the City of San José of at least ten days prior to the date of said hearing, and by mailing the same, postage prepaid, to:(1) the owner of said property, as shown on the last equalized assessment roll adopted by the county of Santa Clara, or to the address shown for such purposes on the application if the proceedings were initiated by application of the owners; (2) the occupants of the property if other than the owners; and (3) the owners, as shown on the last equalized assessment roll adopted by the county of Santa Clara, of lots or parcels of land which (either in part or in their entirety) are situated within three hundred feet of such proposed historic district. Said notices shall contain:
1. A statement of the boundaries of the proposed district;
 2. A notice of the time and place and purpose of the hearing;
 3. A reference to the application or other documents on file with the director of planning for particulars;
 4. A statement that any interested person may appear in person or by agent and be heard.

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- F. The historic landmarks commission shall transmit its report and recommendation to the planning commission within thirty days of the close of the public hearing, in any event, no later than one hundred twenty days from city council initiation.
 - G. After such public hearings, the historic landmarks commission and the planning commission shall recommend approval, disapproval, or modified approval of the proposed designation. In recommending approval or modified approval, the historic landmarks commission and the planning commission may recommend that such designation be subject to such conditions as they deem reasonably necessary to secure the purposes of this chapter. The recommendations of both commissions for approval, disapproval or modified approval shall be advisory only and shall not be binding.
 - H. In recommending approval or modified approval, the historic landmarks commission and the planning commission shall find that said proposed historic district is a geographically definable area of urban or rural character, possessing a significant concentration or continuity of site, buildings, structures or objects unified by past events or aesthetically by plan or physical development.
 - I. The planning commission shall transmit its report and recommendation, together with any report and recommendation from the historic landmarks commission, to the city council within one hundred fifty days of the initiation; provided that no action shall be taken by the planning commission during the ninety-day review period of the historic landmarks commission unless it has received the report and the recommendation of the historic landmarks commission.
 - J. The city council shall hold a public hearing on any proposed designation so transmitted, notice of which shall be given in the same manner as specified in subsection E. of this section. Failure of the planning commission to report its recommendation to the city council within the time prescribed in subsection I. of this section shall be deemed a recommendation for denial of said district, and at the expiration of such period the council may hold its public hearing despite the failure of the planning commission to submit said recommendation. The city council by written resolution may approve, modify and approve, or deny the proposed designation. The council may make such designation subject to such conditions as it deems reasonably necessary to secure the purposes of this chapter. The council shall not make any such designation unless, with respect thereto, it makes the findings specified in subsection H. of this section.
 - K. When a district has been so designated by the city council, as provided above, the city clerk shall promptly notify the owners of the property included therein by mailing to them a certified copy of the resolution of the council in the manner prescribed for mailing notices in this section, or such other address as the owner may request at the time of the hearing. The city clerk shall transmit a certified copy of said resolution to the director of planning, director of neighborhood preservation, director of public works, and the building official.
 - L. The property included in any such designation shall be subject to the provisions set forth in Part 3 of this chapter as well as any conditions set forth in the designation resolution.

(Ords. 20884, 21704, 23408.)

13.48.130 Notice of amendment or rescission of designation.

- A. When a landmark has been designated as a landmark and when property has been designated as an historic district, such designation may thereafter be rescinded or amended by the city council. The procedure for amending or rescinding the designation shall be the same as that for designation of a landmark or a district in the first instance. The council may rescind a designation in whole or in part when it deems it to be in the public interest to do so. The council may amend a designation when the findings required for designation in the first instance may be made with respect to the amended designation.

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- B. The city clerk shall promptly notify the owners of the affected landmark or property by mailing a certified copy of the resolution amending or rescinding the designation, and shall cause a copy of the appropriate resolution to be recorded in the office of the recorder of Santa Clara County. The clerk shall also send a certified copy of said resolution to the director of planning, the director of neighborhood preservation, director of public works, the building official and the occupant of the property.

(Prior code § 8958; 13.48.120; Ords. 20884, 21704.)

Part 3 HISTORIC PRESERVATION (HP) PERMITS

13.48.210 Compliance required.

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

(Ords. 20884, 21704, 23408, 28320.)

13.48.220 Ordinary maintenance allowed - Public safety.

- A. Nothing in Section 13.48.210 shall be construed to require an HP permit for the ordinary maintenance or repair of any exterior features of a landmark or property within an historic district which does not involve a change in design, material, color or external appearance thereof.

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- B. An HP permit shall be required for work done pursuant to any notice and order of the enforcement official issued pursuant to Section 17.40.270 of Chapter 17.40 of Title 17 of this Code (dangerous building ordinance), except that in cases of imminent danger, the enforcement official may order such work as is immediately necessary to abate the imminent danger, provided that any such work shall be done in the manner which is least likely to materially change the exterior appearance of the building or structure. Nothing in this provision shall preclude orders made pursuant to Section 17.40.310 to vacate and/or restrict a building or structure from use or occupancy pending repair.

(Prior code § 8960; 13.48.140; Ord. 20884.)

13.48.230 Application to perform work - Contents - Fees.

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

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

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

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

(Ords. 20884, 21291, 21704.)

13.48.240 Action by director or city council.

- A. In taking action on an application for an HP permit, the director or the council on appeal shall consider the comments and recommendations of the historic landmarks commission as well as hear and consider all evidence presented to him or it at the public hearings. The director or the council on appeal 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 council on appeal finds that, subject to such conditions as they may impose, the work will not be detrimental to an historic district or to a structure or feature of significant architectural, cultural, historical, aesthetic, or engineering interest or value and is consistent with the spirit and purposes of this chapter, the director or the council on appeal 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 council on appeal finds that the work will be detrimental to an historic district or to a structure or feature of significant architectural, cultural, historical, aesthetic or engineering interest or value or is inconsistent with the purposes of this chapter, despite any conditions that the director or the council on appeal may impose, the director or the council on appeal shall deny such HP permit, except as provided in Section 13.48.260.

(Ord. 20884.)

13.48.250 Design criteria.

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

(Ords. 20884, 21704, 27033.)

13.48.260 Hardship.

- A. If the director or the council on appeal is unable to make the findings required under Section 13.48.240 for issuance of an HP permit, either with or without conditions, the director or the council on appeal may nevertheless issue an HP permit, either with or without conditions, if the director or the council on appeal finds that denial of the HP permit would cause immediate and substantial hardship on the applicant because rehabilitation in accordance with the chapter is infeasible from a technical, mechanical, or structural

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standpoint, or if the economics of rehabilitation in accordance with this chapter would require an unreasonable expenditure in light of the feasible uses of such property.

- B. Before a permit for removal, relocation, or demolition is granted under this section, the application may be suspended by the director or the city council on appeal for a period of up to one hundred eighty days in order that such steps may be taken as are reasonably likely to result in the preservation of the building or structure involved. These efforts may include consultation with civic groups, public agencies, and interested citizens, and the exploration of possible acquisition.

(Prior code § 8963; 13.48.170; Ord. 20884.)

13.48.270 Time for director's action - Appeal.

- A. The director of planning shall act on such application within sixty days after the acceptance of said application is complete or within fifteen days after his receipt of the comments and recommendations of the historic landmarks commission, whichever is sooner. The applicant may, at any time prior to the director's hearing, request in writing an extension of time in order to enable him to submit additional or amended documentation. Such extension will grant the applicant a period of thirty days, during which period the time for the director's action under this section shall be tolled. Only one such extension shall be granted. If the director fails to take action within the time above provided, the director shall not thereafter take action, and the application shall be deemed denied and such denial shall be deemed to be appealed to the city council by the applicant.
- B. Before the director may take action on the application, he must conduct at least one public hearing thereon. He may, before taking action, conduct more than one public hearing.
- C. Any action taken by the director shall be in writing and shall be filed by him in his office. At the time he files the same, he shall mail notice thereof to the applicant and to all other persons who, in writing on a form provided by the director, have requested such notice. A separate request for notice must be filed for each structure within an historic district and for each landmark.
- D. Any action taken by the director may be appealed to the city council by the applicant or any person who is a taxpayer of the City of San José, within the meaning of Section 526a of the Code of Civil Procedure of the state of California, by filing with the director a written notice of appeal within ten days after the action of the director is filed.
- E. The action of the director shall not be final during said ten-day period and unless a notice of appeal therefrom is filed within said ten-day period, the action of the director is final and the proceedings shall terminate at the conclusion of said ten-day period. No HP permit issued by the director shall have any force or effect prior to the time that his action issuing the same shall have become final. If, within said ten-day period, a notice of appeal from the action of the director is filed, then, in such event, the action of the director shall not become final and his action shall, on the filing of such notice within said ten-day period, become null and void, the proceedings shall not terminate at the conclusion of said ten-day period, and the matter shall come before the city council for action.
- F. Within five days after the filing of a timely notice of appeal from the director's action, or within five days after the expiration of the time above provided within which the director may take action, the director shall file with the city clerk a copy of the application together with copies of the notice of appeal and of the vacated action of the director or his written statement that the matter is on appeal by reason of his failure to take action within the time required.

(Ords. 20884, 21704.)

13.48.280 Council action - Finality.

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

(Ord. 20884.)

13.48.290 Hearings.

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

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

- B. The director of planning shall set the date for all hearings conducted by him in all proceedings under this chapter. The date of any such hearing shall be not less than fifteen days after the date of the filing of the documents required to be filed under Section 13.48.230 and shall be within the time allowed for director's action under subsection A of Section 13.48.270.
- C. The city clerk shall set the date of the first hearing conducted by the council in all proceedings for issuance of HP permits under this chapter. The date of said first hearing shall be not less than fifteen nor more than forty days from and after the date the director files with the council the documents required to be filed with him under subsection F of Section 13.48.270. If the council conducts more than one hearing in any proceeding, the date of all subsequent hearings after the first shall be set by the council.
- D. If the council takes action on the matter within thirty days after it completes its first hearing thereon, then on the taking of such action, the proceedings shall terminate forthwith. If the council fails to take action within such thirty-day period, it shall not thereafter do so and the proceedings shall terminate at the conclusion of said thirty-day period and upon such termination of proceedings the appeal shall be deemed denied, except that at any time prior to the expiration of the thirty-day period and before the council has taken action, the applicant may request that council extend the time period in order to enable him to submit additional or amended documentation. Such extension, if authorized by council, will grant the applicant a period of thirty days during which period time for council action shall be tolled. Only one such extension may be granted.

(Ords. 20884, 21704.)

13.48.300 Fees for appeals.

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

(Prior code §§ 8969, 13.48.230; Ords. 21291, 21704.)

13.48.310 Resubmittal of application.

Whenever an application for an HP permit is denied, no subsequent application which is the same, or substantially the same, may be submitted, filed or reconsidered for a period of one year from the effective date of the final action; provided, that an application may be withdrawn by the applicant at any time prior to the first public hearing conducted by the director of planning, and such withdrawal shall not be considered a denial of such application.

(Prior code §§ 8970, 13.48.240; Ords. 20884, 21704.).

13.48.320 Applicability.

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

(Prior code §§ 8971, 13.48.250; Ord. 20884.)

13.48.330 Historic preservation permit amendment.

- A. Any historic preservation (HP) permit holder may, at any time, file an application form for an HP permit amendment with the director. An HP permit amendment shall mean any addition, deletion, or modification to any HP permit, provided that such amendment does not alter the general character, use, or intensity of nor degrade the protections of the historic elements of a structure or site provided through the HP permit to be amended.
- B. The procedures set forth in this part for the processing of an application for a HP permit shall apply equally to and in the same manner as an application for an amendment except as otherwise hereinafter expressly set forth. The review of the application for an amendment shall be limited to consideration of those conditions or specifications proposed to be amended in the application.

(Ord. 27033.)

13.48.340 Historic preservation permit adjustment.

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

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

- B. An application for an HP permit adjustment must be filed on a form provided by the director and accompanied by the fees set forth in the schedule of fees adopted by resolution of the city council.
- C. The decision to grant, deny or condition an HP permit adjustment is an administrative determination and requires no hearing or notice. The action of the director on an HP permit adjustment application shall be final. If the director denies an HP permit adjustment, nothing herein shall preclude the applicant from thereafter filing an application for an HP permit or HP permit amendment.
- D. Notwithstanding the provisions of Section 13.48.210.A., the director may, at the director's sole discretion, approve an HP permit adjustment only for the following:
 - 1. An extension of the term of an approved HP permit for a period of up to but not exceeding one year; provided, however, that no more than two such term extensions may be approved.
 - 2. Changes to an approved HP permit, but only for minor modifications of architectural elements, basic color change, landscape details (including but not limited to equipment screening, minor landscape furniture and structures, benches, small trellises and planters), or installation of new or additional pavement that do not affect the historic significance, use, intensity, general character, architectural style, circulation or other site function of the property.
 - 3. Signs that conform to Title 23, minor changes to existing and approved sign programs, that do not affect the general character or architectural style of the site.
 - 4. Accessory structures that do not exceed five hundred square feet in area and that are consistent with applicable design guidelines and standards.

(Ord. 27033.)

Part 4 HISTORICAL PROPERTY CONTRACTS

13.48.500 Purpose.

The purpose of this part is to establish a procedure for the administration of historical property contracts pursuant to Section 50280 et seq. of the California Government Code, as amended, known as the California Mills Act of 1972.

(Ords. 23651, 29098.)

13.48.510 Application for historical property contracts.

- A. An owner of property which has been designated a city landmark or is pending a city landmark designation pursuant to Part 2 of this chapter ("landmark property") may request that the city enter into an historical property contract concerning the pending or designated landmark property. The request shall be made by filing an application with the director of planning. All owners of the pending or designated landmark property must sign the application.
- B. No application shall be accepted for filing unless an application fee in the amount established by resolution of the city council in the schedule of fees is paid to the director of planning at the time such application is filed.

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- C. An application must include a legal description of the pending or designated landmark property, an explanation of the manner in which the proposed contract will promote the preservation and, if necessary, the restoration and rehabilitation of the landmark property, and such other information as the director of planning may require in order to evaluate the application.
 - D. An application for an historical property contract may be filed at any time; however, the city council's final action on the proposed contract shall not occur until and unless a pending city landmark designation has first been approved by the city council.

(Ords. 23651, 29098.)

13.48.515 Inspection.

After receipt of a complete application for a historical property contract, the owner of the landmark property shall allow city to inspect the interior and exterior of the landmark property to determine with the owner the specific conditions of the landmark property requiring preservation, restoration and/or rehabilitation to conform to the rules and regulations of the office of historic preservation of the California Department of Parks and Recreation, the United States Secretary of the Interior Standards for Rehabilitation, the California State Historical Building Code, and the requirements of the city.

(Ord. 29098.)

13.48.520 Provisions of historical property contracts.

- A. Each historical property contract shall include all of the following:
 - 1. A description of the landmark property subject to the contract;
 - 2. A provision that the term of the contract is a minimum period of ten years;
 - 3. Specific conditions requiring preservation of the landmark property and, where appropriate, restoration and rehabilitation of the landmark property to conform to the rules and regulations of the office of historic preservation of the California Department of Parks and Recreation, the United States Secretary of the Interior Standards for Rehabilitation, the California State Historical Building Code, and the requirements of the city;
 - 4. Provision for the periodic examination of the interior and exterior of the landmark property by the City of San José and the County of Santa Clara as may be necessary to determine the owner's compliance with the contract, which periodic examination shall occur at least five years after the effective date of the original contract and then at least every five years thereafter;
 - 5. A requirement that the property owner(s) annually expend an amount equal to a minimum of ten percent of the tax savings attributed to this contract to the preservation and maintenance of the landmark property, and make this documentation available to the City of San José at the time of the periodic examination described above;
 - 6. A provision that the contract is binding upon, and shall inure to the benefit of, all successors in interest to the owner(s); and that a successor in interest shall have the same rights and obligations under the contract as the original owner(s) who entered into the contract; and
 - 7. A provision requiring the owner or an agent of the owner to record the contract with the Santa Clara County recorder's office within six months of the effective date of the contract if the contract was not recorded pursuant to the provisions of Section 13.48.530F. below

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- B. An historical property contract may contain such other provisions as the city council deems appropriate to ensure the preservation of the landmark property.

(Ords. 23651, 29098.)

13.48.530 Public hearings.

- A. Every application for an historical property contract shall be considered by the historic landmarks commission at a public hearing. The director of planning shall, subject to the rules of the commission, set a date for the hearing. Notice of the commission's hearing on the historical property contract shall be given in the manner set forth in Section 13.48.110 of this chapter.
- B. After such public hearing, the historic landmarks commission shall recommend to the city council approval, disapproval or conditional approval of the historical property contract.
- C. The director of planning shall submit to the city clerk a copy of the completed application together with a copy of the director's report to the city council thereon, including the recommendations of the historic landmarks commission. Upon receipt thereof, the city clerk shall set the application for public hearing by the city council. The hearing shall be set not less than ten nor more than sixty calendar days after the clerk receives the director's report. Notice of the hearing on the historical property contract shall be given in the manner set forth in Section 13.48.110 of this chapter.
- D. At the conclusion of the public hearing, the city council shall determine whether or not to adopt a resolution approving an historical property contract for the property which is the subject of the application.
- E. When a resolution approving an historical property contract has been adopted by the city council, the city clerk shall promptly notify the owner(s) of the landmark property subject to the contract by mailing to them a certified copy of the resolution of the council. The clerk shall also send a certified copy of said resolution to the director of planning.
- F. No later than twenty days after the city enters into an historical property contract the city clerk shall record with the county recorder a copy of the contract.

(Ords. 23651, 29098.)

13.48.540 Findings.

The city council may, but under no circumstances shall be required to, approve an historical property contract if and only if the following findings are made:

- A. The proposed contract is consistent with the city's general plan;
- B. The proposed contract would provide greater protection for the landmark property than is otherwise provided by the provisions of Chapter 13.48 of the Municipal Code; and
- C. The proposed contract complies with the requirements of Section 13.48.520.

(Ords. 23651, 29098.)

13.48.550 Automatic renewal or notice of nonrenewal.

- A. Each historical property contract shall provide that on the anniversary date of the contract, or such other annual date as is specified in the contract, a year shall automatically be added to the initial term of the contract unless notice of nonrenewal is given.

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- B. In order to avoid automatic renewal of the contract, the owner(s) must serve written notice of nonrenewal to the city's director of planning at least ninety days prior to the renewal date.
 - C. If the city council determines not to renew the contract, it must serve its written notice of nonrenewal upon the owner(s) at least sixty days prior to the renewal date. The owner(s) may make a written protest of the City of San José's notice of nonrenewal and the city may at any time prior to the renewal date, rescind its notice of nonrenewal.
 - D. If the city or the owner(s) serve a notice of nonrenewal, the existing contract shall remain in effect for the balance of the contract period then remaining.

(Ords. 23651, 29098.)

13.48.560 Notice of nonrenewal.

The director of planning shall report to the council and the historic landmarks commission any notice of nonrenewal of an historical property contract received from a landmark property owner. The director shall record the notice of nonrenewal and file a copy with the assessor of Santa Clara County.

(Ords. 23651, 29098.)

13.48.570 Cancellation or enforcement action.

- A. The city shall cancel any historical property contract, or bring any action in court necessary to enforce the contract (including without limitation an action to enforce the contract by specific performance or injunction), if the city council determines that the owner has:
 - 1. Breached any of the conditions of the contract;
 - 2. Allowed the property to deteriorate to the point that it no longer meets the standards for a qualified historical property; or
 - 3. Failed to restore or rehabilitate the property as specified in the contract.
- B. A public hearing shall be held by the city council on a proposed cancellation. Notice of the hearing shall be mailed to the last known address of each owner of the landmark property and shall be published pursuant to Government Code Section 6061.
- C. If a contract is cancelled, the owner(s) shall pay the cancellation fee established in the Government Code.

(Ords. 23651, 29098.)

13.48.580 Procedure to amend contract.

The same procedure required by this part for approval of an historical property contract shall be used to amend the contract.

(Ords. 23651, 29098.)

Part 5 CONSERVATION AREAS

13.48.600 Purpose.

The purpose of this part is to establish procedures for the designation of conservation areas in order to recognize, preserve and enhance the character of qualifying neighborhoods.

(Ord. 27113.)

13.48.610 Definition.

A "conservation area" means a geographically definable area of urban or rural character with identifiable attributes embodied by: (1) architecture, urban design, development patterns, setting, or geography; and (2) history.

(Ord. 27113.)

13.48.620 Criteria.

Every potential conservation area proposed for designation shall qualify as a conservation area pursuant to Section 13.48.610 and shall meet one or both of the following additional criteria:

- A. The neighborhood or area has a distinctive character conveying: (1) a sense of cohesiveness through its design, architecture, setting, materials, or natural features; and (2) its history; or
- B. The neighborhood or area reflects significant geographical or developmental patterns associated with different eras of growth in the city.

(Ord. 27113.)

13.48.630 Designation.

- A. Any potential conservation area may be nominated for designation as a conservation area in accordance with all of the processes set forth for the designation of an historic district under Part 2 of this chapter, subject to the provisions of Subsection B. below.
- B. All of the processes, proceedings and fee provisions applicable to the designation of an historic district under Part 2 of this chapter shall be applicable to the designation of a conservation area as if the term "conservation area" replaced the term "historic district" in the provisions of said Part 2 of this chapter, except as those processes, proceedings and fee provisions are specifically modified as follows:
 - 1. Any geographically defined area that meets the criteria set forth in Section 13.48.620 may be nominated as a conservation area by the city council, the planning commission, the historic landmarks commission or by application of persons who own at least fifty-one percent of the parcels of land proposed to be included in the conservation area or the authorized agents of those property owners.
 - 2. Each application for a proposed conservation area designation shall include all of the following materials and information to the satisfaction of the director of planning, building and code enforcement and in accordance with all applicable standards and guidelines of the federal, state and local governments for historic preservation:
 - a. Descriptions of why or how the proposed conservation area meets the definition set forth in Section 13.48.610 and the criteria of Section 13.48.620; and

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- b. A statement of significance for the proposed conservation area and related documentation for each contributing resource within the proposed conservation area; and
 - c. A historic resource survey of the proposed conservation area completed to the reasonable satisfaction of the Director of planning, building and code enforcement in order to ensure that the proposed conservation area is adequately researched and documented according to accepted historic preservation standards; and
 - d. Drawings, photographs or other descriptive material of the proposed conservation area; and
 - e. A description of and an assessor's parcel map that shows the real properties to be included in the proposed conservation area, together with an identification of contributing properties; and
 - f. Any other information requested by the Director of planning, building and code enforcement as reasonably needed to process the designation application; and
 - g. The filing fee as set forth in the schedule of fees adopted by resolution of the city council.
3. In recommending approval or modified approval of a proposed conservation area, both the historic landmarks commission and the planning commission, as a part of their respective recommendation on a proposed conservation area, shall examine and make a determination regarding whether a proposed conservation area meets the criteria of Section 13.48.620.
 4. The city council, by resolution, may approve, modify and approve, or deny a proposed conservation area designation. The city council may make such designation subject to conditions as the council deems reasonably necessary to effectuate the purpose of this part. The city council shall not make any designation of a conservation area unless, with respect thereto, the council makes a finding that the conservation area meets the criteria set forth in Section 13.48.620.
- C. Once a conservation area has been designated by the city council, the council may thereafter rescind or amend such designation. The procedure to amend or rescind a designation shall be the same as that for designation of a conservation area. The council may rescind a designation in whole or in part when it determines that such rescission is in the public interest. The council may amend a designation when the findings required for designation of a conservation area may be made with respect to the proposed amended designation.
 - D. The city clerk shall promptly notify the owners of the affected parcels of land by mailing a certified copy of the resolution of the city council amending or rescinding the designation, and shall cause a copy of the appropriate resolution to be recorded in the office of the recorder of Santa Clara County. The city clerk also shall send a certified copy of said resolution to the director of planning, building and code enforcement and the occupants of the affected parcels of land.

(Ord. 27113.)

13.48.640 Historic resources inventory.

The historic preservation officer shall cause properties located within conservation areas approved and designated by city council to be placed in the city's historic resources inventory.

(Ord. 27113.)

13.48.650 Work and design guidelines.

- A. Changes to the exterior of any structure located on property within a conservation area shall be performed in a manner consistent with any and all design guidelines approved or accepted by the city council for the preservation of historic structures and for the particular type of structure proposed for change.
- B. Changes to the exterior of any structure located on property within a conservation area may trigger the requirement for a single-family house permit pursuant to the provisions of Part 9 of Chapter 20.100 of Title 20 of this Code.

(Ord. 27113.)

13.48.660 No right to a conservation area.

Under no circumstances shall any applicant or applicants have the right to establish a conservation area.

(Ord. 27113.)