



PAC*SJ
PRESERVATION ACTION
COUNCIL OF SAN JOSE

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42A South First Street
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November 19, 2025

San Jose Planning Commission

**Re: Agenda Item 5c: Proposed amendments to the Historic Preservation Ordinance
(Municipal Code 13.48)**

Dear Chairperson Rosario and Esteemed Commissioners,

PAC*SJ is writing to express our strong objections to Historic Preservation Ordinance amendments currently being proposed under **PP25-005**. We are specifically concerned with the proposed addition of clause **13.48.240.D**, which would create an all-purpose, ill-defined override option for a wide range of public *and* private projects impacting City Landmarks and Historic Districts to circumvent the requirements of the Historic Preservation Ordinance. We believe that this would create procedural confusion, unpredictability, and the inconsistent application of development standards and regulations, and would fundamentally undermine the purpose and application of the Historic Preservation Ordinance. The San Jose Historic Landmarks Commission, which reviewed these proposed Ordinance amendments over the course of two meetings in October and November, shared PAC*SJ's concerns and recommended that specific and reasonable findings requirements be incorporated into the ordinance amendment, and that clear distinction be made between public and private development proposals. Unfortunately, the [Draft Ordinance to Amend Chapter 13.48](#), attached to the Planning Commission Memorandum, does not include any of the additional safeguarding language recommended by the HLC.

SAINTE CLAIRE HISTORIC PRESERVATION FOUNDATION V. CITY OF SAN JOSE

PAC*SJ acknowledges that these Ordinance amendments are in response to the 2024 Sixth District Court of Appeal decision *Sainte Claire Historic Preservation Foundation v. City of San José*, which overturned an Historic Preservation Permit for the St. James Park Capital Vision and Performing Arts Pavilion Project. To be clear, PAC*SJ was *not* a party in that lawsuit and is *not* opposed to the Pavilion Project, and we remain supportive of reasonable ordinance amendments limited *only* to the specific issues raised in the Sainte Claire decision. Unfortunately, the current proposal far exceeds the scope necessary to address this specific case.

The Court provided several options for a response that could allow the Project to move ahead, while retaining protections for other City Landmarks and Districts. It

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recognized that “San Jose has authority to amend its historic preservation ordinance. For example, the city could clarify what the ordinance means by ‘detriment’ or by ‘historic district.’” The Draft Ordinance *does* propose these amendments, and we support those. But significantly, the court further observed that the City “could adopt a different standard for issuing permits to itself and other public entities rather than private entities.” The Draft Ordinance *does not* follow the Court’s guidance in limiting this exemption to public projects, which is an established and common distinction in many equivalent Historic Preservation Ordinance jurisdictions across California. This is our primary objection to **13.48.240.D** as proposed.

CEQA V. THE HISTORIC PRESERVATION ORDINANCE

Another of the City’s stated intentions in amending the Ordinance is to better align it with CEQA’s “overriding considerations” provisions. This is an understandable motive and not inherently problematic on its face. But PAC*sj is compelled to point out two major differences in purpose between CEQA and the Ordinance. First, CEQA applies to all properties designated or found eligible for historic designation at the federal, state, or local level – a vastly larger number of properties than those protected by the Historic Preservation Ordinance, which only protects City Landmarks and City Landmark Districts that have been so designated by City Council Resolution for the expressed purpose of promoting their preservation. Second, CEQA requires agencies to disclose environmental impacts, and while it establishes a process for considering preservation alternatives, it does not itself prescribe a preservation outcome. In contrast, the very purpose of the Ordinance is to prescribe preservation outcomes unless very specific findings can be met. It is, and was always intended to be, distinct from CEQA regulations. As the Court itself observed, “this Ordinance would provide little more than redundancy and superfluity if it operated in complete parallel to CEQA and afforded nothing over and above CEQA’s protections.”

Significantly, the Historic Preservation Ordinance already provides for exemptions based on technical or financial infeasibility, which requires that projects proposing significant alterations to City Landmarks and Districts demonstrate specific hardship findings that are reviewed by the Historic Landmarks Commission and City Council. The hardship findings required in the existing Ordinance are consistent with Landmarks and Districts General Plan Policy LUC-13.2 which calls for a landmark or property in a historic district to be rehabilitated in place unless “... the City concurs that no other option is feasible.” We believe the current hardship exemption remains the most appropriate mechanism for weighing impacts from privately-initiated projects, as has been exercised in at least



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four privately-initiated development projects within the last few years, all of which were approved by the Historic Landmarks Commission and City Council without court challenge.

For these reasons, PAC*sj urges the Commission to recommend that City Council approve the proposed amendments to Municipal Code 13.48, with the overrides in Section (D) applying only to public projects, allowing the Draft Ordinance and the public Project to move ahead.

Sincerely,

Ben T. Leech
Executive Director
Preservation Action Council of San José

cc: Michael Mulcahy, City Council Liaison to HLC (district6@sanjoseca.gov)
Anthony Tordillos, District 3 Councilmember (district3@sanjoseca.gov)
Dana Peak, Historic Preservation Officer (dana.peak@sanjoseca.gov)