



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: March 3, 2008

COUNCIL DISTRICT: Citywide
S.N.I.: All

SUBJECT:

AN ORDINANCE AMENDING CHAPTER 20.100 OF TITLE 20 (THE ZONING ORDINANCE) AND CHAPTER 23.02 OF TITLE 23 (THE SIGN ORDINANCE) OF THE SAN JOSE MUNICIPAL CODE TO PROVIDE FOR A DEVELOPMENT PERMIT ADJUSTMENT EXCEPTION FOR CITY LANDMARK PROPERTIES THAT REQUIRE HISTORIC PRESERVATION PERMIT ADJUSTMENTS

RECOMMENDATION

The Planning Commission voted 6-0-1 (Platten absent) to recommend that the City Council approve the proposed ordinance amending Chapter 20.100 of the Zoning Ordinance and Chapter 23.02 of the Sign Ordinance.

OUTCOME

The proposed revision would, for qualifying minor work, provide an exception from the current requirement that—in addition to a Historic Preservation Permit Adjustment—a Development Permit Adjustment also be obtained. Only the Historic Preservation Permit Adjustment would be required under this revision. This revision would provide a simplified and more cost-effective permitting process for owners of City Landmark properties.

BACKGROUND

The purpose of the ordinance is to allow review of proposed minor changes to City Landmark properties in a more simplified and efficient manner. The proposed ordinance revision applies to minor work that meets the criteria for review under a Historic Preservation Permit Adjustment on individually designated City Landmark sites and structures, and on sites and structures located in City Landmark Districts.

On February 27, 2008 the Planning Commission held a public hearing to consider the proposed ordinance amending the Municipal Code. The Director of Planning recommended approval of the proposed ordinance. There was no public comment in support of or in opposition to the proposed changes.

ANALYSIS

Elimination of "dual" permitting requirement

The proposed Ordinance would discontinue the current requirement that both an HP Permit Adjustment (to satisfy the requirement of Title 13, the Historic Preservation Ordinance) and a Development Permit Adjustment (to satisfy Title 20, the Zoning Ordinance) be procured for minor work on City Landmarks (individually designated or located within City Landmark Districts), when the proposed work falls within the range of work that may be approved under an HP Permit Adjustment.

The proposed revision would not expand the range of minor work that may be approved administratively with an HP Permit Adjustment. It would simply establish that the additional requirement of a Development Permit Adjustment would no longer be necessary for the minor work being reviewed under the HP Permit Adjustment. This revision would simplify the permitting procedure with regard to City Landmark properties and eliminate duplication of effort and documentation both for planning staff and owners of City Landmark properties.

POLICY ALTERNATIVES

The City Council could opt to decline to approve the proposed ordinance revision, in which case the filing of applications for both a Historic Preservation Permit Adjustment and a Development Permit Adjustment would continue to be required for minor changes to City Landmark properties.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item is a procedural streamlining measure and does not meet any of the above criteria. However, staff has followed Council Policy 6-30: Public Outreach Policy. A public hearing notice for this item was published in the Mercury News. As standard practice, the staff report and the Historic Landmarks Commission and Planning Director Hearing agendas are posted on the "Hearings and Meetings" and "Calendar of Events" sections of the Planning Division web site, and staff has been available to discuss the proposal with members of the public. An announcement of the proposed ordinance revision was published in the Mercury News and has

HONORABLE MAYOR AND CITY COUNCIL

March 3, 2008

Subject: Ordinance Revision

Page 3

been posted on the Historic Preservation page of the Planning Division's web site since late January 2008.

Prior to the Planning Commission's hearing on this item, the proposed ordinance revision was referred to the Historic Landmarks Commission as an agenda item at the HLC's February 6, 2008 hearing. HLC expressed support of the revision.

COORDINATION

Preparation of the proposed ordinance has been coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with City Council Policy: Preservation of Historic Landmarks, and the Historic, Archaeological, and Cultural Resources San Jose 2020 General Plan policies, in that the proposed revision is a procedural streamlining measure that would not affect the current policy structure regarding the protection of historic resources.

COST SUMMARY/IMPLICATIONS

By discontinuing a "dual" permitting requirement for qualifying minor changes to City Landmark properties, the proposed revision would result in owners of City Landmark properties filing an estimated six to 10 fewer Development Permit Adjustments per year (total citywide), at a cost of \$292 per application.

BUDGET REFERENCE

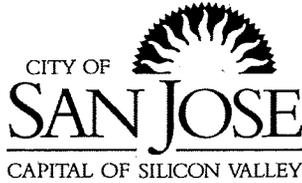
Not applicable.

CEQA

Not a project.


JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions, please contact Sally Zarnowitz, Historic Preservation Officer, at 535-7834.



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: February 20, 2008

COUNCIL DISTRICT: Citywide

AN ORDINANCE AMENDING CHAPTER 20.100 OF TITLE 20 (THE ZONING ORDINANCE) AND CHAPTER 23.02 OF TITLE 23 (THE SIGN ORDINANCE) OF THE SAN JOSE MUNICIPAL CODE TO PROVIDE FOR A DEVELOPMENT PERMIT ADJUSTMENT EXCEPTION FOR CITY LANDMARK PROPERTIES THAT REQUIRE HISTORIC PRESERVATION PERMIT ADJUSTMENTS.

RECOMMENDATION

Planning staff recommends that the Planning Commission forward a recommendation that the City Council approve the proposed ordinance amending Chapter 20.100 of the Zoning Ordinance and Chapter 23.02 of the Sign Ordinance. The proposed ordinance revision applies to minor work that meets the criteria for review under a Historic Preservation Permit Adjustment on individually designated City Landmark sites and structures, and on sites and structures located in City Landmark Districts. The proposed revision would, for qualifying minor work, provide an exception from the current requirement that a Development Permit Adjustment also be obtained. This revision would provide a simplified and more cost-effective permitting process for owners of City Landmark properties.

This proposed ordinance change was presented to Historic Landmarks Commission on February 6, 2008 and is tentatively scheduled to go before City Council for final consideration on March 25, 2008. The Planning Commission's comments and recommendation will be provided to the City Council.

BACKGROUND

Historic Preservation Ordinance

The Historic Preservation Ordinance (Section 13.48 of Title 13 of the Municipal Code) requires issuance of a Historic Preservation (HP) Permit for work performed on properties that are individually designated as City Landmarks, or located in City Landmark Districts (City Landmark properties).

The Historic Preservation Permit Adjustment process was created in 2003, in an effort to provide a streamlined process for minor work on designated City Landmark Structures and buildings in City Landmark Districts. An HP Permit Adjustment allows for minor work to the building or

site where the work is in keeping with approved guidelines and does not affect or degrade the significance of the property. Like a Development Permit Adjustment, an HP Permit Adjustment is approved by the Director of Planning and does not require a public hearing.

Examples of projects that may be approved under an HP Permit Adjustment include the construction of accessory structures that do not exceed 500 square feet in area, signage, storefront alterations, and repair of damaged building elements, such as a porch. The specific language outlining what types of minor work can be approved under an HP Permit Adjustment is attached to this memo (Section 13.48.330 of Title 13, the Historic Preservation Ordinance). Proposed work must fit within these parameters in order to qualify for review under an HP Permit Adjustment instead of a full HP Permit, which does provide for a public hearing.

In a situation where staff believes that an HP Permit Adjustment application does not meet approved guidelines and staff cannot support the proposal, an applicant may pursue approval through the full HP Permit process. Such Permits are subject to public hearings and noticing, and are reviewed by the Historic Landmarks Commission. Recommendations on the Permit may be made by the Commission to the Director of Planning, who subsequently approves, approves with modifications, or denies the HP Permit. The Director's decision on the HP Permit may be appealed to the City Council.

Prior to the advent of the HP Permit Adjustment process in 2003, owners of designated City Landmarks and buildings located within designated City Landmark districts were required to obtain a full HP Permit for all proposed exterior changes. In the one exception, the "pre - HP Permit Adjustment" Historic Preservation Ordinance allowed for minor work (defined as repair or replacement of materials with materials of the same type) without need of an HP Permit in the Hensley Historic District.

Zoning Ordinance

The Zoning Ordinance (Title 20 of the Municipal Code) requires Planning approval of a development permit for all exterior changes to commercial, industrial, and multi-family residential buildings, as well as single-family houses in Planned Development (PD) zoning districts. Most exterior changes to single-family houses do not require Planning approval and are handled with Building Permits, unless the house is on the Historic Resources Inventory. For single-family houses that are designated as City Landmark properties on the Inventory, either an HP Permit or an HP Permit Adjustment is currently required, depending on the extent of the proposed changes to the house.

The Zoning Ordinance allows minor changes to commercial, industrial, and multi-family residential buildings to be approved administratively under a Development Permit Adjustment. Section 20.100.500 of the Zoning Ordinance (see attached) outlines the types of small projects that may be administratively approved under a Development Permit Adjustment. Under the current ordinance, the requirement for a Development Permit Adjustment for minor work proposed at commercial, industrial, or multi-family residential buildings that are designated City Landmark properties is in addition to (not in lieu of) the requirement for an HP Permit Adjustment for the same work

Sign Ordinance

The Sign Ordinance (Title 23 of the Municipal Code) establishes the regulations (e.g., number, size, height) and permitting procedures for signs. The ordinance sets forth that a Sign Permit Adjustment approved by the Director of Planning is required for new signs or substantial changes to existing signs. The proposed revision would establish that an HP Permit Adjustment is, like a Development Permit or Development Permit Adjustment, an acceptable means of approving signs that conform to the Sign Ordinance's provisions. This revision would align with the existing provision that includes signs within the range of changes that may currently be approved with an HP Permit Adjustment. The net effect of the revision would be that, for City Landmark properties, *only* an HP Permit Adjustment, rather than an HP Permit Adjustment and a Development Permit Adjustment, would be necessary for approval of sign changes that meet the provisions of the Sign Code.

ANALYSIS

Elimination of "dual" permitting requirement

The proposed Ordinance would discontinue the current requirement that both an HP Permit Adjustment (to satisfy the requirement of Title 13, the Historic Preservation Ordinance) and a Development Permit Adjustment (to satisfy Title 20, the Zoning Ordinance) be procured for minor work on City Landmarks (individually designated or located within City Landmark Districts), when the proposed work falls within the range of work that may be approved under an HP Permit Adjustment.

The proposed revision would not expand the range of minor work that may be approved administratively with an HP Permit Adjustment. It would simply establish that the additional requirement of a Development Permit Adjustment would no longer be necessary for the minor work being reviewed under the HP Permit Adjustment. This revision would simplify the permitting procedure with regard to City Landmark properties and eliminate duplication of effort and documentation both for planning staff and owners of City Landmark properties.

The range of work that may be approved under an HP Permit Adjustment is slightly more limited than the work that may be approved under a Development Permit Adjustment. The primary difference is that a nonresidential addition of up to 5,000 square feet may be approved with a Development Permit Adjustment on a non-City Landmark property. However, the list of work that may be approved under an HP Permit Adjustment does not include construction of any new square footage. The addition would require a full HP Permit if the site is a Landmark property. Please refer to the attached excerpt from the Preservation Ordinance which lists the work that may be approved under an HP Permit Adjustment; no change is proposed to this list. The currently proposed revision would only eliminate the existing "dual adjustment" permitting requirement when a proposed project falls within the range of work that is approvable under the currently existing HP Permit Adjustment parameters. There will continue to be some situations in which a full HP Permit would be required in addition to a Development Permit Adjustment.

PLANNING COMMISSION

February 27, 2008

Subject: Historic Preservation Permit Adjustment ordinance revision

Page 4

The proposed ordinance revision is a streamlining measure that would simplify the existing regulatory logistics for qualifying minor changes to City Landmark properties. The proposed change would also eliminate what may be a small existing disincentive (an additional \$292 application fee for the Development Permit Adjustment) for property owners to obtain the required City approvals before performing minor exterior work on City Landmark properties.

The proposed ordinance revision was referred to the Historic Landmarks Commission as an agenda item at the HLC's February 6, 2008 hearing. HLC expressed support of the revision.

Conclusion

Staff recommends that the Commission forward a recommendation that the City Council approve the proposed ordinance revision. The proposed revision would simplify the permitting procedure for minor changes to City Landmark properties, eliminate duplication of effort for planning staff and property owners, and eliminate a potential disincentive regarding the stewardship of Landmark properties.

PUBLIC OUTREACH

As standard practice, the staff report and the Historic Landmarks Commission and Planning Director Hearing agendas are posted on the "Hearings and Meetings" and "Calendar of Events" sections of the Planning Division web site, and staff has been available to discuss the proposal with members of the public.

An announcement of the proposed ordinance revision was published in the Mercury News and has been posted on the Historic Preservation page of the Planning Division's web site since late January 2008.

COORDINATION

Preparation of the proposed ordinance has been coordinated with the City Attorney's Office.

CEQA

Not a project.


for JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

Attachments:

Proposed Ordinance Language Revisions (Titles 20 and 23)
Excerpt from Historic Preservation Ordinance (Title 13)

Proposed Zoning Ordinance Revision:

20.100.500 Adjustments

- A. The Director may, at the Director's sole discretion, approve an adjustment for the following:
1. An extension of the term of an approved Development Permit for a period of up to but not exceeding one (1) year; provided, however, that no more than two (2) such term extensions may be approved.
 2. Changes to an approved Development Permit but only for minor modification of architectural elements or landscape details, (including but not limited to minor storefront alterations, relocation of doors, equipment screening, minor landscape furniture and structures, benches, small trellises, and planters) which do not affect the use, intensity, general character, architectural style, circulation or other site function of the project.
 3. Signs which conform to Title 23, minor changes to approved sign programs, and sign programs that are a condition of a Development Permit.
 4. Additions, accessory buildings and minor structures such as trellises, patio covers, swimming pools and decks for one-family residences which were approved and are subject to an existing Planned Development Permit.
 5. Building Mounted Wireless Communications Antenna.
 6. Tract sales, model home sales, or leasing offices associated with an approved housing development.
 7. Temporary construction or storage yards in connection with the construction of houses or other buildings in an adjacent subdivision or lot or parcel.
 8. Solar Photovoltaic Electrical Power Generation Systems.
 9. The creation, on or above ground through installation, construction, or replacement, of less than one (1) gross acre of impervious surface.
 10. The replacement, repaving, reconfiguration, or re-striping of parking spaces on existing surfaces.
 11. Building additions of less than five thousand (5,000) square feet in area or less than 50% of the building area prior to the addition, whichever is smaller, to non-residential buildings.
 12. Generators meeting performance standards for noise and air pollution.
- B. An application for an adjustment must be filed on the form provided by the Director on or before the date that is three (3) business days prior to the expiration of the Development Permit proposed for adjustment and accompanied by the fees as set forth in the Schedule of Fees adopted by resolution of the City Council.
- C. The decision to grant, deny or condition an adjustment is an administrative determination and requires no hearing or notice. The action of the Director shall be final. If the Director denies an adjustment, nothing herein shall preclude the applicant from thereafter filing an application for a Development Permit.
- D. Where property was developed prior to the requirement of a Site Development Permit, adjustments for projects as set forth in Section 20.100.610(A) may be approved without the necessity of the issuance of a full Site Development Permit.
- E. If a structure or site is designated on the City of San Jose Historic Resources Inventory pursuant to Chapter 13.48 of Title 13 of this Code as a City Landmark Structure and/or a structure located in a City Landmark Historic District, then proposed work that is within the parameters outlined in Section 13.48.340.D of Part 3 of Title 13 shall be governed by and considered pursuant to the provisions of Chapter 13.48 that require issuance of a Historic Preservation Permit or Historic Preservation Permit adjustment. Notwithstanding the



provisions of Section 20.100.500 setting forth the requirements for development permit adjustments, no additional development permit adjustment issued pursuant to Title 20 of this Code shall be required for work performed on a site or structure currently designated City Landmark Structure or structure located in a City Landmark Historic District for which a Historic Preservation Permit or Historic Preservation Permit Adjustment has been issued.

Proposed Sign Code revision:

23.02.1300 Permit Required.

- A. No person shall erect or alter, or cause to be erected or altered, any sign except pursuant to a development permit issued in accordance with Chapter 20.100 or pursuant to approval in accordance with Section 23.02.1300.C below, unless exempted from such requirement by Section 23.02.1310.
- B. A sign may be approved in conjunction with any development permit issued pursuant to Chapter 20.100. No separate application required by the requirements of this Title shall apply.
- C. Signs not approved in conjunction with a development permit issued pursuant to Chapter 20.100, and the alteration of existing signs may be approved by:
 - 1. An adjustment to a development permit pursuant to Section 20.100.500; or
 - 2. An amendment to a development permit issued pursuant to Chapter 20.100; or
 - 3. A sign permit or sign permit adjustment issued pursuant to Section 23.02.1330; or
 - 4. A Historic Preservation Permit or Historic Preservation Permit Adjustment issued pursuant to Chapter 13.48. *
- D. No permit shall be required for changing the message within an existing sign.

for reference only
(no changes proposed)

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

Sections:

- 13.48.500 Purpose.**
- 13.48.510 Application for historical property contracts.**
- 13.48.520 Provisions of historical property contracts.**
- 13.48.530 Public hearings.**
- 13.48.540 Findings.**
- 13.48.550 Automatic renewal or notice of nonrenewal.**
- 13.48.560 Notice of nonrenewal.**
- 13.48.570 Cancellation.**
- 13.48.580 Procedure to amend contract.**

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.

(Ord. 23651.)

13.48.510 Application for historical property contracts.

A. An owner of property which has been designated a city landmark pursuant to Part 2 of this chapter ("landmark property") may request that the city enter into an historical property contract concerning the landmark property. The request shall be made by filing an application with the director of planning. All owners of the landmark property must sign the application.