

# **FINAL MAY 18, 2006 HHC DRAFT**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF SANTA CLARA COUNTY TO ADD DIVISION C17 TO TITLE C OF THE SANTA CLARA COUNTY CODE, TO AMEND CHAPTER V OF DIVISION A6 OF THE SANTA CLARA COUNTY CODE, TO REPEAL SECTION C1-91 OF ARTICLE 7, AND TO AMEND THE TEXT OF SECTION 3.50.070 OF THE ZONING ORDINANCE.**

## **Summary**

This ordinance enacts Division C17 of the Santa Clara County Ordinance Code pertaining to the adoption of the Historic Preservation Ordinance, amends Chapter V of Division A6 of the Santa Clara County Ordinance Code pertaining to the Historical Heritage Commission, repeals Section C1-91 pertaining to demolition permit restrictions for designated heritage resources, and amends text of Section 3.50.070 of the Zoning Ordinance referencing Section C1-91 demolition permit restrictions to refer instead to Division C17.

## **THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ORDAINS AS FOLLOWS:**

**SECTION 1: Division C17 of the Ordinance Code of the County of Santa Clara adopting the Historic Preservation Ordinance is hereby enacted as follows:**

### **HISTORIC PRESERVATION ARTICLE I. INTRODUCTION**

- |              |                                     |
|--------------|-------------------------------------|
| <b>C17-1</b> | <b>Title of Chapter.</b>            |
| <b>C17-2</b> | <b>Purpose and Intent.</b>          |
| <b>C17-3</b> | <b>Definitions.</b>                 |
| <b>C17-4</b> | <b>Heritage Resource Inventory.</b> |

#### **C17-1 Title of Chapter.**

This Chapter shall be known as the Historic Preservation Ordinance of the County of Santa Clara.

#### **C17-2 Purpose and Intent.**

The Historical Preservation Ordinance is adopted for the preservation, protection, enhancement, and perpetuation of resources of architectural, historical, and cultural merit within Santa Clara County and to benefit the social and cultural enrichment, and general welfare of the people. The purpose of this Chapter is to:

- A. Identify, protect, preserve, and enhance historic resources (as defined in Section C17-3(J) below) representing distinctive elements of the cultural, social, economic, political, and architectural history of Santa Clara County;
- B. Provide a mechanism to compile, update and maintain the Heritage Resource Inventory;

- C. Enhance the visual identity of Santa Clara County by maintaining the scale and character of historic resources and their settings, and integrating the preservation of historic resources into public and private development;
- D. Encourage, through public and private action and collaboration with other organizations, the maintenance and rehabilitation of historic resources;
- E. Promote public knowledge, participation, understanding, and appreciation of Santa Clara County's rich history and sense of place;
- F. Foster civic pride and a sense of identity based upon the recognition and use of Santa Clara County's historic resources;
- G. Protect and enhance Santa Clara County's attraction to tourists and visitors thereby stimulating business and industry;
- H. Promote awareness of the economic, social and cultural benefits of historic preservation in collaboration with other organizations;
- I. Provide for consistency with state and federal preservation standards, criteria, and practices; and
- J. Make available incentive opportunities to preserve Santa Clara County's historic resources as provided in Article V.

**C17-3 Definitions.**

For the purposes of this Chapter, the following words and phrases have the meanings ascribed to them in this section, unless the context or the provision clearly requires otherwise:

- A. "Alteration" means any work, other than demolition or preventative maintenance, affecting the exterior appearance and visual quality of significant historical or architectural features, or the historic context of a designated Landmark, including, but not limited to, exterior changes, additions, new construction, grading and relocation.
- B. "Building" (as applied in the context of this Chapter) means any construction, such as a house, garage or barn, created to shelter any form of human activity. Building may also refer to a historically related complex, such as a house and a barn.
- C. "Demolition" means the act or process that destroys, completely or partially, a Landmark or historic resource.
- D. "Evaluation" means the process by which the significance and integrity of a building, structure, object, or site is judged by an individual who meets the professional qualification standards published by the National Park Service in the Federal Register (Code of Federal Regulation, 36 CFR Part 61), as determined by the State Office of Historic Preservation, using the designation criteria outlined in Article II of this Chapter, Chapter 3.50 of the Zoning Ordinance or Division C16 of the County Code.
- E. "Feature" means elements embodying the historical significance or architectural style, design, general arrangement and components of all of the exterior surfaces of any Landmark or historic resource, including, but not limited to, the type of building materials, and type and style of windows, doors, or other elements related to such Landmark or historic resource.
- F. "-h Historic Preservation Combining District" means an area of historic and architectural significance, and of special character or aesthetic interest to Santa Clara County and designated as a Combining Zoning District according to the procedures and criteria outlined in Chapter 3.50 of the Zoning Ordinance.
- G. "HHC" means the Santa Clara County Historical Heritage Commission established pursuant to Chapter V of Division A6 of the County Ordinance Code.
- H. "Heritage Resource Inventory" means a compilation of historic resources located in unincorporated Santa Clara County which are listed in federal or state registers or have been designated as a Landmark pursuant to this Chapter, a -h Historic Preservation Combining District pursuant to Chapter 3.50 of the Zoning Ordinance, or a Heritage

Trees pursuant to Division C16 of the Santa Clara County Ordinance Code, or that potentially meet the designation criteria outlined in Article II of this Chapter, Chapter 3.50 of the Zoning Ordinance or Division C16 of the County Code.

- I. "Heritage Tree" means a tree designated as a Heritage Tree pursuant to Division C16 of the County Ordinance Code.
- J. "Historic Resource" means any evaluated building, structure, object, or site that potentially meets the designation criteria outlined in Article II of this Chapter, Chapter 3.50 of the Zoning Ordinance or Division C16 of the County Code, or that is listed in a federal or state register.
- K. "Historic Resources Survey" means a) the process of systematically identifying, researching, photographing, and documenting historic resources within a defined geographic area, and b) the resulting list of evaluated properties that may be consulted for future designation. All surveys shall be conducted in accordance with the Secretary of the Interior's Standards and Guidelines for Identification and Evaluation, as may be amended.
- L. "Integrity" means the authenticity of a resource's historic identity, evidenced by the survival of physical characteristics that existed during the resource's historic or prehistoric period.
- M. "Landmark" means a historic resource designated as a Landmark by the County of Santa Clara pursuant to the provisions of Article III of this Chapter.
- N. "Landmark Alteration Permit" means a permit approving an alteration to or demolition of a Landmark, or demolition of a historic resource listed in the Heritage Resource Inventory pursuant to the provisions of this Chapter.
- O. "Mills Act" means California Government Code Sections 50280 et seq., as it may be amended.
- P. "National Register of Historic Places" means the official inventory of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, and culture which is maintained by the Secretary of the Interior under the authority of the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq., 36 C.F.R. Sections 60, 63).
- Q. "Non-contributing" means a feature, addition or building, structure, object or site which does not add to the sense of historical authenticity or evolution of an historic resource or Landmark or where the location, design, setting, materials, workmanship, history, and/or association of the feature, addition or building, structure, object or site has been so altered or deteriorated that the overall integrity of that historic resource or Landmark has been irretrievably lost.
- R. "Object" (as applied in the context of this Chapter) means a construction, such as a statue, monument or milepost that may be, by nature of design, moveable yet related to a specific setting or environment.
- S. "Owner" means the person(s) whose name appears as the owner of a property on the last tax assessment roll of Santa Clara County.
- T. "Preventative Maintenance" means any work to prevent deterioration or damage to the structural integrity or any exterior feature of a Landmark or historic resource that does not involve a change in design, material or exterior appearance. Such work includes, but is not limited to, painting, roof repair, foundation or chimney work, or landscape maintenance.
- U. "Qualified Historical Building or Property" for the purposes of the State Historical Building Code means any building, site structure, object, district or collection of structures, and their associated sites, deemed of importance to the history, architecture or culture of an area by an appropriate local, state or federal government jurisdiction. This shall include designated buildings or properties on, or determined to be eligible for, official national,

state or local historical registers or official inventories such as the National Register of Historic Places, California Register of Historical Resources, State Historic Landmarks, State Points of Historical Interest, and officially adopted county registers, inventories, or surveys of historical or architecturally significant sites, places or landmarks.

- V. "Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings" means the illustrated version of the Standards and Guidelines for Rehabilitation developed by the Technical Preservation Services Branch, Preservation Assistance Division of the National Park Service, as it may be amended.
- W. "Secretary of the Interior's Standards for the Treatment of Historic Properties" means principles developed by the National Park Service (36 C.F.R. 68.3, as it may be amended from time to time) to help protect historic properties by promoting consistent preservation practices and providing guidance to historic building owners and building managers, preservation consultants, architects, contractors, and project reviewers on how to approach the treatment of historic properties. The Secretary of the Interior Standards for the Treatment of Historic Properties may also be referred to in this chapter as "Secretary of the Interior's Standards."
- X. "Site" (as applied in the context of this chapter) means the location of a significant event, a prehistoric or historic occupation or activity, building or structure, whether standing, ruined or vanished, where the location itself maintains historical or archaeological value regardless of the value of any existing buildings, structures or objects. Examples of a site are a battlefield, designed landscape, trail, or camp site.
- Y. "State Historical Building Code" means California Code of Regulations, Part 8 of Title 24 (California Building Standards Code), as it may be amended.
- Z. "Structure" (as applied in the context of this chapter) means a functional, man-made construction, such as a fence, bridge or tunnel, typically made for purposes other than creating shelter.

**C17-4 Heritage Resource Inventory.**

- A. In order to help carry out the goals and policies of the County's General Plan, and in particular, to further the purposes of this Chapter, an inventory of historic resources and designated Landmarks shall be maintained. This inventory shall be known as the Heritage Resource Inventory. The Heritage Resource Inventory shall serve as a resource document which can be added to and used as a foundation for the future designation of Landmarks, Heritage Trees and –h Historic Preservation Combining Districts, and evaluating proposed development of historic resources identified therein.
- B. Historic resource surveys shall be conducted in accordance with the Secretary of the Interior's Standards and Guidelines for Identification and Evaluation, as may be amended. In order to identify and evaluate the significance of a building, structure, site or object the following information is documented: 1) description of the property's physical appearance, 2) assessment of its historic, architectural, or archeological integrity; 3) statement of its significance, 4) map with clearly delineated boundaries, and 5) photographs. The survey results in a list of evaluated properties that may be consulted for future designation. The survey process shall involve public participation and the evaluation results shall be made available to the public.
- C. Historic resources evaluated in a historic resource survey that potentially meet the designation criteria outlined in Article II of this Chapter, Chapter 3.50 of the Zoning Ordinance or Division C16 of the County Code or listed in federal or state registers may be added to the Heritage Resource Inventory by the Board of Supervisors with consideration of a recommendation by the HHC. Notice shall be provided by mail to the property owner and occupant of the subject historic resource at least thirty (30) days prior to the scheduled HHC and Board of Supervisors meetings, in accordance with all

applicable laws. Notice shall include the date, time and place of the meeting, a general explanation of the proposed listing to be considered, and a general description of the property location.

- D. The Heritage Resource Inventory shall be kept on file in the Department of Planning and Development and reviewed every five (5) years, and revised if necessary, to ensure that the document remains up to date according to current preservation planning practice.

## **ARTICLE II. LANDMARK DESIGNATION**

<b>C17-5</b>	<b>Designation Criteria.</b>
<b>C17-6</b>	<b>Initiation of Designation.</b>
<b>C17-7</b>	<b>Approval of Permits When Designation is Pending.</b>
<b>C17-8</b>	<b>Notice of Public Hearing.</b>
<b>C17-9</b>	<b>Historical Heritage Commission Public Hearing.</b>
<b>C17-10</b>	<b>Board of Supervisors Public Hearing.</b>
<b>C17-11</b>	<b>Notice of Designation.</b>
<b>C17- 12</b>	<b>Designation Repeal or Amendment.</b>

### **C17-5 Designation Criteria.**

For the purposes of this Chapter, the Board of Supervisors may designate those historic resources as “Landmarks” which meet the following designation criteria:

- A. Fifty (50) years or older. If less than 50 years old, sufficient time must have passed to obtain a scholarly perspective on the events or individuals associated with the historic resource and/or the historic resource is a distinctive or important example of its type or style; and
- B. Retains historic integrity. If a historic resource was moved to prevent demolition at its former location, it may still be considered eligible if the new location is compatible with the original character of the property; and
- C. Meets one (1) or more of the following criteria of significance:
  - 1. Associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States;
  - 2. Associated with the lives of persons important to local, California or national history;
  - 3. Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master or possesses high artistic values; or
  - 4. Yielded or has the potential to yield information important to the pre-history or history of the local area, California, or the nation.

### **C17-6 Initiation of Designation**

- A. Designation may be initiated by any of the following parties:
  - 1. Owner(s) of the historic resource proposed for designation or authorized representative of the owner; or
  - 2. Historical Heritage Commission; or
  - 3. Board of Supervisors.
- B. If designation is initiated by the owner, an application for designation shall be made to the Department of Planning and Development through submittal of the prescribed application form accompanied by a non-refundable filing fee as set forth in the schedule of fees established by resolution of the Board of Supervisors and supporting documentation including, but not limited to, State of California DPR 523 series forms or other historic resource inventory forms as may be approved by the State. Such

documentation must be prepared by an individual who meets the professional qualification standards published by the National Park Service in the Federal Register (Code of Federal Regulation, 36 CFR Part 61), as determined by the State Office of Historic Preservation.

- C. If the application is determined to be incomplete, it shall be returned to the applicant and the applicant requested to submit the documentation necessary to complete the application. No additional filing fee will be required.
- D. The application shall indicate the parameters of the historic resource that is being nominated, specifying any related structures or landscape that is to be included for consideration.
- E. If designation is initiated by the HHC or Board of Supervisors, such designation must be by motion or resolution passed at a noticed public meeting based upon findings that the same documentation required for an owner-initiated designation has been prepared, the documentation is complete, and the historic resource potentially meets the requirements as a Landmark pursuant to this Chapter. The Department of Planning and Development shall notify the owner and the occupants of property 30 days prior to the HHC or Board of Supervisors meeting regarding initiation of designation.

**C17-7 Approval of Permits When Designation is Pending.**

Except as provided in Section C17-30 of this Chapter, no permit for the alteration or demolition of any historic resource for which a completed owner-initiated application for Landmark designation has been accepted by the Department of Planning and Development, or for which the HHC or Board has initiated designation by motion or resolution pursuant to this Chapter shall be issued unless and until a Landmark Alteration Permit is issued pursuant to the procedures set forth in Article III.

**C17-8 Notice of Public Hearing.**

Any public notice of a hearing required by this Chapter shall be provided at least ten (10) days prior to the scheduled hearing, in accordance with all applicable state laws. Notice shall include the date, time and place of the hearing, a general explanation of the matter to be considered, and a general description (text or diagram) of the property location. Notice shall be mailed or delivered to the following:

- A. The applicant, at the address shown on the application, and all owners and occupants of the subject property(s) at the address shown on the most current property tax roll of Santa Clara County;
- B. Any person who has filed a written request for notice on the particular application with either the Department of Planning and Development or Clerk of the Board of Supervisors; and
- C. The owners and occupants of all real property located within 300 feet of the subject property boundaries at the address shown on the most current property tax roll of Santa Clara County, or of a neighboring county. If there are fewer than 24 properties within 300 feet, the notification shall be extended to include the 24 closest property owners and occupants of said properties..

The County may in its discretion provide additional notice beyond that specified in this section.

**C17-9 Historical Heritage Commission Public Hearing.**

- A. A hearing on the application for designation shall be scheduled and a recommendation by the HHC to the Board of Supervisors shall be made within sixty (60) days of the date that the application is determined to be complete, or within sixty (60) days of the date that the HHC or Board of Supervisors initiated the proposed designation. If the HHC

- cannot act within the timeframe, the owner may request that the proposed designation be transmitted directly to the Board of Supervisors for its determination.
- B. Notice of the public hearing shall be provided pursuant to Section C17-8.
  - C. A staff report concerning the historic resource proposed for designation shall be provided to the HHC. Any appropriate historical society, individual who may have special knowledge about the historic resource that is the subject of the application under consideration (including the owner), and/or any public agency may be consulted to assist in the preparation of the report. The report shall address the significance and integrity of the historic resource as it relates to the designation criteria, provide other relevant information, and include a recommendation concerning the application and the basis therefore. The staff report shall also state whether the owner of the property supports or objects to the proposed designation.
  - D. The HHC shall conduct a public hearing and consider any evidence or input offered at the hearing. Reasonable opportunity shall be provided for interested parties to express their opinions regarding the proposed designation; however, nothing contained herein shall be construed to prevent the HHC from establishing reasonable rules to govern the proceedings of the hearing(s), or from establishing reasonable limits on the length of individual presentations.
  - E. The HHC shall recommend to the Board of Supervisors approval, modification or denial of the designation proposal. No proposal may be extended beyond the boundaries of the land described in the owner-initiated application for designation or described by the documentation provided to the HHC or the Board of Supervisors if designation was initiated by the HHC or the Board, unless the preliminary determination and hearing procedure is repeated for the enlarged boundaries. Any recommendation by the HHC shall be supported by substantial evidence that the historic resource meets the Landmark designation criteria set forth in Section C17-5 and the minutes shall reflect the factual basis upon which the recommendation was made.
  - F. A transmittal setting forth the findings and recommendation of the HHC shall be prepared and submitted to the Board of Supervisors for consideration. The HHC's records shall include a record of the public hearing speakers.

**C17-10 Board of Supervisors Public Hearing.**

- A. Within thirty (30) days of receipt of the transmittal by the Clerk of the Board of Supervisors, or as soon thereafter is practicable, a hearing shall be set by the Clerk of the Board and held by the Board of Supervisors.
- B. Notice of the public hearing shall be provided pursuant to Section C17-8. The Board of Supervisors may give such other notice as it deems appropriate or desirable.
- C. The Board of Supervisors shall conduct a public hearing on the proposed Landmark designation. The Board of Supervisors shall consider the recommendation of the HHC, open the public hearing, receive written and oral testimony, close the public hearing, and deliberate on the question of whether the Landmark designation should be approved or denied.
- D. At the conclusion of the public hearing, the Board of Supervisors shall adopt, modify or deny the recommended Landmark designation. Adoption of the designation, in whole, in part or as modified, shall be made by resolution which shall contain findings by the Board of Supervisors supported by substantial evidence that the Landmark designated property satisfies the designation criteria set forth in this Chapter.
- E. A historic resource found by resolution to meet the Landmark designation criteria shall thereafter be listed in the Heritage Resource Inventory as a Landmark and shall be subject to the provisions and entitled to pursue the incentives set forth in this Chapter.

**C17- 11 Notice of Designation.**

- A. Following adoption by the Board of Supervisors of the resolution designating the Landmark, notice and a copy of the findings shall be sent by first class mail to the owner(s) and occupants of the designated Landmark. Notice shall inform such owners and occupants that the designated Landmark will be listed in the Heritage Resource Inventory and subject to the provisions set forth in this Chapter. Staff shall also notify the HHC and any agency or department of the County requesting such notice.
- B. A certified copy of the resolution designating the Landmark, or notice of the designation, complete legal description of the Landmark and citing of the resolution and effective date thereof shall be recorded in the records of the County Recorder. Failure to record with the County Recorder does not invalidate the requirements of this Chapter.

**C17- 12 Designation Repeal or Amendment.**

- A. Designation may be repealed or amended in the same manner and procedure as was followed in Landmark designation. The action shall result from new information, the discovery of earlier misinformation or change of original circumstances, conditions or factors that justified the designation.
- B. Notice of the repeal or amendment shall be sent to the same persons or other parties as set forth in Section C17-8 and the resolution shall be repealed or amended accordingly.

**ARTICLE III. LANDMARK ALTERATION PERMITS**

- C17-13 Permit Required.**
- C17-14 Application.**
- C17-15 Permit Review Procedures.**
- C17-16 Permit Findings.**
- C17-17 Small Project Review.**
- C17-18 Determination of Hardship.**
- C17-19 Appeal Procedures.**
- C17-20 Permit Expiration.**
- C17-21 Permit Revocation.**
- C17-22 Stanford General Use Permit.**

**C17-13 Permit Required.**

This article sets forth the process of obtaining a Landmark Alteration Permit for the purpose of authorizing proposed work on a designated Landmark. A Landmark Alteration Permit is required for any alteration to or demolition of a Landmark. Approval of such work shall be required even if no other permits or entitlements are required by the County. The issuance of a Landmark Alteration Permit is not required for preventative maintenance or interior work that does not affect the appearance of the exterior.

A Landmark Alteration Permit is also required when demolition is proposed for an undesignated historic resource listed in the Heritage Resource Inventory and determined to meet the criteria of significance for a Landmark, as prescribed in Article IV.

**C17-14 Application.**

The owner or authorized representative proposing alterations to or demolition of a designated Landmark as described in this Chapter shall file an application for a Landmark Alteration Permit with the Department of Planning and Development on forms provided for such purpose. The application shall be accompanied by material required in application forms provided by the Department of Planning and Development and a non-refundable filing fee as set forth in the

schedule of fees established by resolution of the Board of Supervisors. As soon thereafter as practicable after the application is deemed complete, the application shall be forwarded to the HHC for its review and recommendation at a public hearing.

**C17-15 Permit Review Procedures.**

The HHC shall have the authority to recommend to the department director or designee the approval, approval with conditions, or denial of a Landmark Alteration Permit, except as provided for in Section C17-17. The required public notice of the HHC hearing on the review and recommendation of a Landmark Alteration Permit shall be provided according to the provisions outlined in Section C17-8. At such hearing, the applicant and other interested parties shall have the right to present evidence regarding the application for the Landmark Alteration Permit. The HHC may continue the public hearing until its next regular meeting or may defer action after closing the public hearing until its next regular meeting. Final action by the HHC shall not be deferred longer than ninety (90) days after the date on which the public hearing on the Landmark Alteration Permit was initially held.

- A. The HHC may recommend approval of the Landmark Alteration Permit as requested, or recommend approval with changes which may be necessary to enable the applicant to meet the required permit findings, or it may recommend denial of the application. The recommendation of the HHC shall be in writing and shall state the findings of fact and reasons relied upon to reach the recommendation, and such recommendation shall be forwarded to the Department of Planning and Development.
- B.. The department director shall act on the Landmark Alteration Permit application within fifteen (15) days of the hearing at which the recommendation was made by the HHC. The decision of the department director shall be final unless appealed as provided for in Section C17-19.
- C. A Landmark Alteration Permit should not be denied if that denial would result in depriving the owner of all reasonable use of, or return on, the property. The applicant may apply for a Determination of Hardship as prescribed in Section C17-18.

**C17-16 Permit Findings.**

In order to approve a Landmark Alteration Permit, the department director or designee, or Board of Supervisors on appeal, shall make one or more of the following findings:

- A. The Landmark Alteration Permit has been conditioned upon all alterations complying with the Secretary of the Interior's Standards for the Treatment of Historic Properties and the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings, as the department director or designee, or Board of Supervisors on appeal, deems reasonably necessary to secure the purposes of this Chapter, and with the California Historical Building Code and the California Health and Safety Code Section 18950 et seq, as amended, and applied to the project by the Building Official;
- B. The proposed alteration or demolition would not destroy or have a significant adverse affect on the integrity of the designated Landmark, and the Landmark will retain the essential elements that make it significant;
- C. In the case of any proposed alteration that includes detached new construction on the designated Landmark site, the exterior features of such new construction would not have a significant adverse affect or be incompatible with the exterior features of the designated Landmark.
- D. There is no feasible alternative that would avoid the significant adverse affect on the integrity of the designated Landmark. The owner shall provide facts and substantial evidence demonstrating that there is no feasible alternative to the proposed alteration or demolition that would preserve the integrity of the designated Landmark. In the case of

demolition, up to a six (6) month waiting period may be imposed by the Board of Supervisors from the date of the HHC hearing at which the HHC recommendation was made.

If the department director or designee, or Board of Supervisors on appeal, cannot make one or more of the above findings, the Landmark Alteration Permit may be denied.

**C17-17 Small Project Review.**

Applicants may obtain a Landmark Alteration Permit by going through Small Project Review if the proposed alteration or demolition is determined eligible for such review. After the application for Small Project Review is deemed complete by the Department of Planning and Development, the department director or designee shall evaluate the application within ten (10) working days to determine its eligibility for Small Project Review which includes the following:

- A. Demolition or removal of non-contributing features, including, but not limited to, non-contributing additions, garages, accessory structures or incompatible, previously replaced windows, doors or siding material;
- B. Any undertaking that does not change exterior features, including but not limited to, re-roofing if the roofing material is compatible in appearance, color and profile to the existing or original roofing material;
- C. Replacement of windows and doors if the proposed replacements match the existing or original windows and doors;
- D. Addition less than 200 square feet proposed for side or rear elevations; and
- E. Any other undertaking determined by the department director or designee to not materially alter the features or have an adverse effect on the integrity of a Landmark.

If the proposed alteration or demolition meets the Small Project Review eligibility criteria and is deemed to be consistent with the Secretary of the Interior's Standards, the department director or designee may approve the Landmark Alteration Permit and notify the HHC of such action. If a Landmark Alteration Permit is granted under Small Project Review, no public hearing shall be required.

If the proposed alteration or demolition does not meet the Small Project Review eligibility criteria and/or is not consistent with the Secretary of the Interior's Standards, the department director or designee shall forward the application to the HHC for its review and recommendation according to the standard Landmark Alteration Permit process.

**C17-18 Determination of Hardship**

A Determination of Hardship application may be filed by an owner of a designated Landmark where, in the owner's opinion, the owner has been denied, or will be denied, all reasonable use of, or return on, the subject property. Application shall be made to the Department of Planning and Development on forms provided for such purpose and shall be accompanied by a non-refundable filing fee as set forth in the schedule of fees established by resolution of the Board of Supervisors. The application shall be noticed and placed on the agenda of the HHC for its review and recommendation in the same manner prescribed in Section C17-15. The applicant shall present facts and substantial evidence to support the request for a Determination of Hardship. Following the HHC's consideration of relevant information and evidence concerning the application for Determination of Hardship, the HHC may make the following findings and recommendations to the department director or designee:

- A. The property owner has been denied, or will be denied, all reasonable use of or return from the designated Landmark as a direct result of the denial of the Landmark Alteration Permit. The HHC may also recommend relevant conditions be placed on the issuance of the related permit. The department director or designee may then issue a

Determination of Hardship approving the proposed alteration or demolition, or approving the proposed alteration or demolition with conditions.

- B. The property owner retains reasonable use of, or return from, the designated Landmark despite the denial of the proposed alteration or demolition.

After considering the recommendation of the HHC, the department director or designee may grant, grant with conditions or deny the application for a Determination of Hardship and notify the applicant by mail of the determination. The decision of the department director or designee may be appealed to the Board of Supervisors in the same manner prescribed in Section C17-19.

**C17-19 Appeal Procedures.**

Any interested person who is dissatisfied by the decision of the department director or designee may appeal the determination to the Board of Supervisors. Appeals shall be submitted in writing not more than fifteen (15) days following the date the action was taken by the department director or designee. Appeals shall be submitted to the department director or designee and shall specify the action being appealed and the grounds or reasons for the appeal. Minutes of the hearing, actions, records of the HHC, and all documents pertaining thereto shall be provided to the Department of Planning and Development. The appellant shall pay a nonrefundable filing fee as set forth in the schedule of fees established by resolution of the Board of Supervisors.

- A. The department director or designee shall mail a copy of the notice of appeal to all parties of record which shall include the date, time and place when the appeal will be presented to the Board of Supervisors. Failure to receive a mailed notice shall not invalidate the actions of the Board of Supervisors taken as a result of the appeal.
- B. Within thirty (30) days of the notice to appeal, or as soon thereafter as is practicable, the Board of Supervisors shall hold a de novo hearing on the Landmark Alteration Permit and shall approve, approve with conditions or deny the permit.

**C17-20 Permit Expiration.**

A Landmark Alteration Permit shall remain valid for a period of two (2) years (unless a different period was specified as a condition of approval) following the date the action was taken by the department director or designee, or if appealed, the date the Board of Supervisors granted the permit. Time extensions for similar time periods may be subsequently granted by the department director or designee upon application prior to expiration of the Landmark Alteration Permit.

**C17-21 Permit Revocation.**

The department director or designee may, in writing, revoke a Landmark Alteration Permit for reasons of 1) non-compliance with any terms or conditions of the Landmark Alteration Permit; or 2) finding of fraud or misrepresentation used in the process of obtaining the Landmark Alteration Permit.

**C-17-22 Stanford University General Use Permit**

Properties subject to the Stanford University General Use Permit ("GUP") shall be subject to the provisions and regulations of said Permit rather than this Chapter for as long as the GUP, or any equivalently protective permit is in effect with the following exception: The various provisions of this Chapter shall apply to the GUP properties where this Division imposes additional processes or protections not reasonably similar to those found in the GUP.

**ARTICLE IV. DEMOLITION REVIEW FOR UNDESIGNATED RESOURCES LISTED IN THE HERITAGE RESOURCE INVENTORY**

**C17-23 Landmark Alteration Permit Required for Proposed Demolition.**

**C17-23 Landmark Alteration Permit Required for Proposed Demolition.**

The Department of Planning and Development shall screen demolition permit applications to identify historic resources listed in the Heritage Resource Inventory. When the Department of Planning and Development identifies that the subject historic resource proposed for demolition is listed in the Heritage Resource Inventory and meets the criteria of significance for a Landmark as prescribed in Article II, the applicant shall be informed that a Landmark Alteration Permit is required for such demolition. Review of the proposed demolition shall then proceed according to the Landmark Alteration Permit review procedures outlined in Article III.

**ARTICLE V. PRESERVATION INCENTIVES**

**C17-24 Incentive Programs.**

**C17-25 Mills Act Contracts.**

**C17-26 State Historical Building Code.**

**C17-27 Other Government-Sponsored Incentive Programs.**

**C17-24 Incentive Programs.**

In order to further the goal of historic preservation in Santa Clara County and the purposes of this Chapter, the HHC shall develop economic and other incentive programs to support the preservation, maintenance, and appropriate rehabilitation of designated Landmarks and recommend to the Board of Supervisors the adoption and implementation of such programs. Such incentives may include:

- A. Zoning Ordinance modifications
  1. Allow for greater flexibility or exemptions from ordinance provisions such as parking requirements, use, setbacks, or landscape improvements.
  2. Allow flexibility in size limit of secondary dwellings in order to preserve the historic integrity of a designated Landmark proposed for use as a secondary dwelling.
  3. Provide development incentives that promote cluster development to direct new development away from sensitive designated Landmarks and their landscapes.
  4. Provide for the transfer of development rights.
- B. Reduction or waiver of fees for the appropriate permits required to carry out proposed improvements to a designated Landmark;
- C. Expedited processing of permit applications involving a designated Landmark;
- D. Promotion of Landmarks through listing in the Heritage Resource Inventory, brochures or other forms of media;
- E. Recognition and plaque program (honorary and educational activity, with no legal ramifications)
  1. The HHC may recommend and the Board of Supervisors may formally recognize by resolution historic resources that materially benefit the cultural, historic, architectural or aesthetic character of the local community; represent a type of building or are associated with a use which was once common but is now rare in the local community; and/or possess a distinctive location or physical characteristics that represent an established or familiar visual feature to of the local community. Recognition would be accompanied by the presentation of a plaque to be placed on the exterior of the recognized historic resource.

2. Plaques, or other symbols of recognition, may also be awarded for exemplary rehabilitation of designated Landmarks.
- F. Historic preservation technical assistance including workshops and education material made available to owners of designated Landmarks.

**C17-25 Mills Act Contracts.**

Owners of designated Landmarks and historic resources located in –h Historic Preservation Combining Districts may make application to the County for a Mills Act contract. Such owners may qualify for property tax relief if they pledge to rehabilitate and maintain the historical and architectural character of the property for a minimum ten-year period. Owner-occupied single-family residences and income-producing commercial properties may qualify for the Mills Act. The Mills Act is state-sponsored legislation granting local governments the authority to directly participate in the historic preservation program. Contracts are automatically renewed for one year each year and are transferred to new owners when the property is sold.

**C17-26 State Historical Building Code.**

The County implements the State Historical Building Code, hereafter known as SHBC, through the adoption of Santa Clara County Code Section C3-1. The SHBC provides alternatives to the standard building regulations for the preservation, rehabilitation, relocation, related construction, change of use or continued use of a Qualified Historical Building or Property. Such regulations are intended to provide alternative solutions for the preservation of a Qualified Historical Building or Property, to provide access for persons with disabilities, to provide a cost effective approach to preservation, and to provide for the reasonable safety of the occupants or users. The SHBC is applicable to the issuance of building permits for changes to the interior and exterior of said Qualified Historical Building or Property.

**C17-27 Other Government-Sponsored Incentive Programs.**

The County shall make available information to owners of historic resources regarding where to find more detailed information to pursue the following programs:

- A. Federal Historic Preservation Tax Incentives Program.  
Administered jointly by the U.S. Department of the Interior and the Department of the Treasury, the Federal Historic Preservation Tax Incentives Program makes available a rehabilitation tax credit that equals 20% of the amount spent in a certified rehabilitation of a certified historic structure (listed or eligible for listing in the National Register of Historic Places) or 10% of the amount spent to rehabilitate a non-historic building constructed before 1936. The rehabilitated structure must be an income-producing property, such as a residential rental property or commercial property.
- B. Affordable Housing Tax Credits.  
The Tax Reform Act of 1986 (IRC Section 42) established an investment tax credit for the acquisition, construction or rehabilitation of low-income housing. The credit is approximately 9% per year for 10 years for each unit acquired, constructed or rehabilitated without other Federal subsidies and approximately 4% for 10 years for units involving the 20% Federal rehabilitation tax credit, Federal subsidies or tax-exempt bonds. Units must meet tests for cost per unit and number of units occupied by individuals with incomes below area median income. The law sets a 15-year compliance period. Credits are allocated by State Housing Credit Agencies.
- C. Historic Preservation Easements.  
A preservation easement is a voluntary legal agreement that protects a significant historic resource - an entire structure, or just the façade or interior, or a historic landscape. Under the terms of an easement, a property owner grants a portion of, or

interest in, their property rights to a charitable or governmental organization whose mission includes historic preservation. Once recorded, an easement becomes part of the property's chain of title and usually runs with the land in perpetuity binding the owner who grants the easement and future owners. When the owner donates an easement he/she can claim a charitable deduction on federal income tax. The value of the easement is based on the difference between the appraised fair market value of the property prior to conveying an easement and its value with the easement restriction in place. Federal estate taxes for property heirs also may be reduced because the fair market value of the property was reduced during the donor's lifetime by the easement restriction.

## **ARTICLE VI. GENERAL PROVISIONS**

<b>C17-28</b>	<b>Preventative Maintenance.</b>
<b>C17-29</b>	<b>Remedies for Noncompliance.</b>
<b>C17-30</b>	<b>Unsafe or Dangerous Conditions.</b>
<b>C17-31</b>	<b>Fees.</b>
<b>C17-32</b>	<b>Severability.</b>
<b>C17-33</b>	<b>Other Laws.</b>

### **C17-28 Preventative Maintenance.**

The owner, person or persons having legal custody and control of a designated Landmark or historic resource listed in the Heritage Resource Inventory shall be encouraged to implement preventative maintenance in order to prevent deterioration and decay of such designated Landmark or historic resource.

### **C17-29 Remedies for Noncompliance.**

Any person who violates any provision of this Chapter without being subject to the following penalties:

- A. Any person or entity which violates the provisions of this Chapter may be liable civilly for an amount in the court's discretion.
- B. Any action or development undertaken without the issuance of a Landmark Alteration Permit or in violation of the terms and conditions of a Landmark Alteration Permit may be subject to a stop work notice issued by the Building Official. Failure to stop work after issuance of a stop work notice shall constitute a misdemeanor.
- C. A court may order injunctive relief to restrain, enjoin or cause correction or removal of any violation of this Chapter.
- D. Remedies under this article are cumulative and do not supersede or limit any and all other remedies, civil or criminal. Judgment or settlement shall include expenses including administrative and attorney's fees in the full amount needed to reimburse the County for any enforcement costs related to the violations.
- E. No further development of a Landmark which is the subject of demolition in violation of this Chapter may be permitted in excess of the floor area of the Landmark itself existing at the time of violation, or the dwelling unit density, for a period of three (3) years from the unlawful demolition.
- F. Civil fines in excess of attorney's fees and administrative costs which are collected for violations of this chapter shall be placed in a County trust fund to be utilized for designated Landmark and historic resource protection and historic preservation education.

### **C17-30 Unsafe or Dangerous Conditions.**

None of the provisions of this Chapter shall prevent the construction, reconstruction, alteration, restoration, stabilization or demolition of a designated Landmark, or any exterior feature thereof, which the Building Official or designee has declared necessary to correct an unsafe or dangerous condition where there is a threat to public health and safety. Only such work as is reasonably necessary to correct the unsafe or dangerous condition may be performed pursuant to this Subsection.

**C17-31 Fees.**

The Board of Supervisors, by resolution, may adopt fees for the costs of processing applications and appeals pursuant to this Chapter.

**C17-32 Severability.**

Should any section or other portion of this Chapter be determined to be unlawful or unenforceable by a court of competent jurisdiction, the remaining section(s) and portion(s) of this Chapter shall be considered severable and shall remain in full force and effect.

**C17-33 Other Laws.**

There are many other laws, regulations and ordinance that apply to land use, development, and construction activities. The provisions of this Historic Preservation Ordinance are intended to be in addition to and not in conflict with these other laws, regulations and ordinances. If any provision of this Historic Preservation Ordinance conflicts with any duly adopted and valid statutes of the federal or state government of the State of California, the federal and state statutes shall take precedence.

**SECTION 2. Chapter V of Division A6 (Board and Commissions) of the Ordinance Code of the County of Santa Clara is hereby amended as follows (deletions are indicated by strike-out and additions by underline):**

**CHAPTER V. HISTORICAL HERITAGE COMMISSION**

- A6-60 Declaration of policy.**
- A6-61 Membership.**
- A6-62 Organization.**
- A6-63 Powers and duties.**
- A6-64 Expenditures by commission.**
- A6-65 Staff to the commission**

**Sec. A6-60. Declaration of policy.**

It is the policy of the County of Santa Clara to protect, preserve, and promote the historical and cultural heritage of this county so that this and future generations may know and appreciate the significant historical places, people and events that have been a part of this area of our state and nation. In order to accomplish this policy, there is hereby established, pursuant to and in accordance with sections ~~604 and 604~~ 506 of the charter, a Santa Clara County Historical Heritage Commission, hereafter known as the HHC.

**Sec. A6-61. Membership.**

The ~~commission~~ HHC shall consist of eleven (11) members. Two (2) members shall be allocated to each supervisorial district at least one (1) of whom shall be a resident of the district. Each of the individual supervisors shall make the appointments for their respective supervisorial district. The eleventh (11<sup>th</sup>) member shall be an at large nomination appointed by an individual supervisor on a rotational basis. The rotational sequence for making this one (1) appointment

shall be determined by the Board of Supervisors and thereafter shall continue as so designated. ~~Persons appointed shall have previously demonstrated their interest and participation in matters relating to the historical and cultural heritage of Santa Clara County.~~

- A. Each commissioner shall have a demonstrated interest, competence or knowledge in historic preservation.
- B. Three (3) commissioners shall be professionals in the disciplines of architecture, history, architectural history, planning, archaeology or other historic preservation-related disciplines such as urban planning, American studies, cultural geography, or cultural anthropology to the extent that such professionals are available in the community.
- C. HHC membership shall also include lay members who have demonstrated special interest, competence, experience or knowledge in historic preservation and the cultural resources and historical growth of Santa Clara County.
- D. The term of each commissioner shall be four (4) years, unless appointed to fulfill the unexpired term of a commissioner who has resigned or been permanently removed from the HHC. Any reappointment of a commissioner whose term of office has expired shall be for a further term of four (4) years. Commissioners may serve a maximum of two (2) consecutive terms.

**Sec. A6-62. Organization.**

~~The commission~~ HHC shall organize itself in accordance with section ~~604~~ 506 of the charter. It shall prepare rules and regulations for the conduct of its meetings.

**Sec. A6-63. Duties.**

~~The commission~~ HHC is advisory to the Board of Supervisors. ~~It shall investigate, study and make recommendations to the board of supervisors and appropriate county departments in the following areas: In addition to the responsibilities conferred by Division C17 of the Santa Clara County Code, the primary duties of the commission shall be to:~~

- (a) ~~On all matters pertaining to the recognition, inventorying, acquisition and preservation of sites, buildings, events, documents and artifacts pertaining to the historical and cultural heritage of Santa Clara County.~~
- (b) ~~On nominations for state points of historic interest and the nomination for inclusion in the National Register of Historic Places.~~
- (c) ~~On the maintenance of the Santa Clara County Inventory of Historic Sites and Landmarks.~~
- (d) ~~On such other matters as are referred to it by the board of supervisors.~~
- A. Provide to the Board of Supervisors recommendations regarding the acquisition, preservation, public display, and disposition of sites, buildings, documents and artifacts pertaining to the historical and cultural heritage of Santa Clara County.
- B. Support, initiate or collaborate with other organizations to promote and enhance knowledge of the history and cultural heritage of Santa Clara County.
- C. Conduct studies and surveys of historic properties in unincorporated areas of Santa Clara County.
- D. Recommend to the Board of Supervisors additions to and deletions from the Heritage Resource Inventory.
- E. Compile, maintain, and update information in the Heritage Resource Inventory.
- F. Recommend to the Board of Supervisors approval of Landmark designations.
- G. Review and make recommendations on applications for Landmark Alteration Permits.
- H. Review and make recommendations on land development applications for properties located within –h Historic Preservation Combining Districts as provided for in Chapter 3.50 of the Zoning Ordinance.
- I. Recommend to the Board of Supervisors approval of Mills Act contracts.

- H. Recommend to the Planning Commission and Board of Supervisors amendments to the heritage resources element of the Santa Clara County General Plan.
  - I. Advise Department of Planning and Development staff or the Board of Supervisors regarding review called for under the California Environmental Quality Act, National Environmental Protection Act, and National Historic Preservation Act on actions affecting historic properties in Santa Clara County.
  - J. Advise Department of Planning and Development staff or the Board of Supervisors regarding recommendations to the State Office of Historic Preservation on nominations of property located within Santa Clara County to the National Register of Historic Places.
- ~~The commission shall work with other civic and municipal groups interested in the historical heritage of the County of Santa Clara.~~

**Sec. A6-64. Expenditures by commission.**

No expenditures or requisitions for services and supplies for commissioners shall be made, and no claims for reimbursement shall be submitted for payment, without the approval of a majority of the members of the commission. ~~The secretary of the commission~~ Clerk of the Board of Supervisors shall be responsible for preparing and processing all expenditures, requisitions and claims.

**Sec. A6-65. Secretary. Staff to the commission.**

~~The clerk of the board of supervisors shall be ex officio secretary of the commission and shall provide secretarial assistance to the commission.~~

The following staff shall assist the HHC in the performance of the duties of this Chapter.

- A. Clerk of the Board of Supervisors shall keep all official records on behalf of the HHC.
- B. County shall provide professional historic preservation staff to support the HHC.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Santa Clara, State of California, on \_\_\_\_\_, 2006, by the following vote:

AYES: Supervisors  
 NOES: Supervisors  
 ABSENT: Supervisors

\_\_\_\_\_  
 James T. Beall, Jr.; Chair, Board of Supervisors

ATTEST:

\_\_\_\_\_  
 Phyllis A. Perez, Clerk Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
 Kimberly Kernan, Deputy County Counsel