

LANDMARK PRESERVATION COMMISSION
RESOLUTION NO. 2018-04

RESOLUTION RECOMMENDING TO THE CITY COUNCIL AMENDMENTS TO CHAPTER 10 "MODESTO LANDMARK PRESERVATION" OF TITLE 9 OF THE MODESTO MUNICIPAL CODE. (CITY OF MODESTO)

WHEREAS, Chapter 10 of Building Regulations, Title 9 of the Modesto Municipal Code, was adopted by Ordinance 2619-C.S., effective December 15, 1988, which established the Modesto Landmark Preservation Program, and

WHEREAS, said Chapter was amended by Ordinance 2864-C.S., effective September 16, 1993, which allowed Modesto to enter into Landmark Preservation Contracts, in conformance with California's Mills Act, and

WHEREAS, said Chapter, was amended by Ordinance 3021-C.S., effective February 13, 1997, established the Landmark Preservation Commission, and

WHEREAS, said Chapter was amended by Ordinance 3131-C.S., effective May 27, 1999, included administrative amendments to the Ordinance, and

WHEREAS, additional clarity is needed and changes have occurred in the administration of the Landmark Preservation Program that necessitate the alignment of the code more closely with current practice, and

WHEREAS, a public hearing was held by the Landmark Preservation Commission on November 19, 2018, in Room 3001, 1010 Tenth Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, the proposed minor administrative code amendments are exempt from CEQA subject to the General Rule that CEQA only applies to projects that may have a significant effect on the environment, pursuant to Section 15061(b)(3) of the California Code of Regulations.

THEREFORE BE IT RESOLVED by the Landmark Preservation Commission that it hereby recommends to the Council an amendment to MMC Title 9 "Building Regulations," Chapter 10, "Modesto Landmark Preservation" as follows:

9-10.01 - Public Policy and Purpose.

It is hereby declared as a matter of public policy that the recognition, preservation, enhancement, perpetuation and use of structures, natural features, sites and areas within the City of Modesto having historic, architectural, archeological, cultural, engineering or aesthetic significance is required in the interest of the health, economic prosperity, cultural enrichment and general welfare of the people. The purpose of this chapter is to:

(a) Safeguard the heritage of the City by providing for the protection of landmarks representing significant elements of its history;

(b) Enhance the visual character of the City by encouraging and regulating the compatibility of architectural styles on or adjacent to landmark preservation sites reflecting unique and established architectural traditions;

(c) Foster public appreciation of and civic pride in the beauty of the City and the accomplishments of its past;

(d) Strengthen the economy of the City by protecting and enhancing the City's attractions to residents, tourists and visitors;

(e) Stabilize and improve property values within the City; and,

(f) Promote the private and public use of landmarks and landmark sites for the education, prosperity and general welfare of the people.

9-10.02 - Definitions.

For purposes of this chapter the following words or phrases shall have the meanings respectively ascribed to them by this section.

(a) Significance: The quality of the information, example, interest or meaning represented by the site for understanding and appreciating the past, development or culture.

(b) Historic Significance: Associated with activities, processes, events, trends or persons of importance to the community, state or nation.

(c) Architectural Significance: Possessing distinctive characteristics of a style, place, period, method or materials of construction, builder or architect.

(d) Cultural Significance: A significant setting of manmade or natural features (including significant trees or other plant life located thereon), or a combination, possessing meaning primarily by long association or identification with the community and/or its citizens.

(e) Archaeological Significance: A setting possessing the potential to reveal information important to historic or prehistoric studies.

(f) Engineering Significance: A work demonstrating a technology, design or method characteristic of a historic period or activity.

(g) Modesto Landmark Preservation Site: An area, district, building, structure or object, which has been designated for preservation for reasons of its significance by the City Council.

(h) Resource, Historic Resource: An area, district, building, site, structure, or object that is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, or cultural history of Modesto or the region. Resources might not be designated as a landmark, but are eligible for Landmark status.

9-10.03 - Modesto Landmark Preservation Commission Established.

(a) This chapter establishes the Modesto Landmark Preservation Commission with the following responsibilities:

(1) To promote public recognition and appreciation for Modesto's history, Landmark Preservation Sites, and resources;

- (2) To conduct continuing surveys and research in order to identify and classify, as to their relative importance, properties that have historic, architectural, archaeological, engineering or cultural significance to the community;
- (3) To recommend historic resources which meet the criteria of significance stated herein for designation as Modesto Landmark Preservation Sites;
- (4) To protect Modesto Landmark Preservation Sites by public review of all proposed alterations, relocations, demolitions or new construction affecting those resources ; and,
- (5) To advise property owners and educate the public in appropriate maintenance, rehabilitation or restoration methods. To encourage continued uses, compatible with their character, of Modesto Landmark Preservation Sites and historic resources.

(b) The Modesto Landmark Preservation Commission, hereinafter the "Commission," shall consist of five (5) or seven (7) voting members appointed by the Modesto City Council in conformance with Section 1102 of the Charter of the City of Modesto. All said members shall be registered voters residing in the City of Modesto. The said voting members should be selected from the following if possible:

- (1) At least one (1) member should be an architect, or if an architect should not be available, an experienced person of the building trades;
- (2) At least one (1) member should be a professional or experienced person in the areas of history, architectural history, archaeology, planning, real estate, design, building trades, landscape architecture or law;
- (3) At least one (1) member should be a person with a background in finance, accounting, appraising or related fields;
- (4) At least one (1) member should be a member of the McHenry Museum and Historical Society;
- (5) The other members shall be drawn from persons with a demonstrated interest and/or expertise in historic preservation; and,
- (6) One (1) member should also be a member of the Modesto Culture Commission and would serve on both commissions. Alternatively, a person recommended by the Culture Commission may be appointed by the City Council to serve only on the Landmark Preservation Commission.

(c) The Commission, when formed, shall be organized and operated pursuant to the rules and regulations set forth in the Modesto Municipal Code for the purpose of carrying out the intent of this chapter, which rules and regulations are not inconsistent with the laws of the City of Modesto and the State of California.

(d) The Commission shall make an annual report by September 1, containing a statement of its activities and plans to the Mayor, the City Council and the City Manager.

(e) The Commission shall meet monthly to initiate surveys and nominations of properties, to review potential Modesto Landmark Preservation Sites, to make recommendations of properties to City Council for designation, and to prepare the Commission's annual report.

In addition, the Commission will meet at its earliest convenience, when called by the Chairman, to review such building permits or applications as are referred to it by the City Chief Building Official or Community Development Director. The City Chief Building Official or Community Development

Director shall refer to the Commission such building permits or applications on projects which they determine should be considered for preservation in accordance with the intent of this chapter.

(f) To accomplish the intent and purpose of this chapter, the City of Modesto shall provide the Commission with adequate staff support and supplies, including the assistance designated by the City Manager to perform the duties prescribed under this chapter.

(Added by Ord. 2619-C.S., § 1, amended by Ord. 3021-C.S., § 1, and Ord. 3131-C.S., § 5, effective 5-27-99)

9-10.04 - Applications.

Requests for approval regarding any matters pertaining to this chapter shall be filed with the Community & Economic Development Department on a City application form, together with any required fees, plans, maps, reports, special studies, exhibits and any other information deemed necessary by the Department. An application may be initiated by the City, or owner(s), or lessee(s) of property or their agent(s), or person(s) who have contracted to purchase property contingent upon their ability to acquire the necessary permits under this Chapter or their agent(s). Property owner authorization is required in all cases.

9-10.05 - Designation of Modesto Landmark Preservation Sites.

(a) The Commission shall conduct a continuing survey of properties and shall provide procedures for citizens to nominate properties for consideration as Modesto Landmark Preservation Sites. The Commission shall conduct research and documentation of properties which it has reason to believe are significant to the community.

(b) The Commission shall recommend sites to the City Council for designation as Modesto Landmark Preservation Sites. In order to be recommended for designation, the Commission must determine that the site being considered possesses historic, architectural, cultural, archaeological or engineering significance as defined above. Furthermore, in making its recommendation, the Commission shall consider the following conditions:

(1) That the location and setting is compatible with future preservation and use;

(2) That the physical condition is such that preservation, maintenance or adaptive use is economically feasible;

(3) That the distinguishing characteristics of significance are for the most part original and intact or capable of restoration; and

(4) That the existing or proposed use is compatible with the preservation and maintenance of the site.

(c) The eligibility of a site for designation as a Modesto Landmark Preservation Site shall be determined by the Modesto Landmark Preservation Commission in a public hearing. The Modesto Landmark Preservation Commission shall adopt a resolution of recommendation for each site or for a district. Notice of the public hearing shall be made in the same manner as specified in Title 10, Chapter 9, Section 201, and the public hearing shall be conducted in the same manner as specified in Title 10, Chapter 9, Section 202.

(d) The Commission shall forward its recommendations, together with its findings of significance and eligibility, to the City Council.

The City Council, upon recommendation of the Commission, may, by resolution, designate a Modesto Landmark Preservation Site, and an appropriate presentation and/or identifying plaque may be provided for. Prior to such designation, the City Council shall hold a public hearing pursuant to the same notice provisions as required for the Landmark Preservation Commission meeting in accordance with the Modesto Municipal Code.

(e) The Modesto Landmark Preservation Sites shall be recorded as follows:

(1) The office of the City Clerk shall record with the Stanislaus County Recorder the legal description of all buildings, lands, sites or areas designated as Modesto Landmark Preservation Sites by the Council, and shall send a copy to the Chief Building Official. In addition, the same may be made available to the public in form and fashion as the Commission or City Council deems appropriate.

(2) Modesto Landmark Preservation Records.

(i) The Commission shall keep current and public a list of all properties designated as Modesto Landmark Preservation Sites, or included in the State or National Register of Historic Places, or included in a historic resource survey and make the same available to the public in form and fashion as the Commission or City Council deems appropriate.

(ii) The Commission will provide the Chief Building Official and the Community & Economic Development Director with current lists and maps showing Modesto Landmark Preservation Sites, Districts, and historic resources for their use in referring applications to the Commission.

9-10.06 - Additional Powers and Duties of the Commission.

The Commission shall have the following powers and duties in addition to those otherwise specified in this chapter:

(a) The Commission shall request, as needed, the Planning Commission, the Board of Zoning Adjustment, various City departments or the City Council to adopt measures required or appropriate for the preservation, protection or maintenance of Modesto Landmark Preservation Sites and other historic resources, including but not limited to variances or amendments to the Zoning Code, rules governing construction, demolition, alteration or use, or the removal or repair of blighting influence incompatible with the physical well-being of designated properties:

(b) The Commission shall have the authority to provide general preservation plans and guidelines to owners of Modesto Landmark Preservation Sites and other historic resources, regarding maintenance, restoration, and rehabilitation;

(c) The Commission shall have the authority to promote public recognition and appreciation for Modesto's history, Modesto Landmark Preservation Sites and other historic resources. It shall periodically publish a register of designated and potential Modesto Landmark Preservation Sites and Districts, along with guidelines and preservation programs available at that time; and

(d) The Commission shall have the authority to initiate solicitation of gifts and contributions to be made to the City to support the activities and purposes of the Commission. The Commission shall assist the City staff in the preparation of applications for grant funds made by the City for the purpose of City Landmark Preservation.

9-10.07 - Review of Permits.

(a) The Chief Building Official shall immediately refer building permit applications which propose to alter, renovate, or demolish landmarks or landmark-eligible resources to the Community & Economic Development Director. The Director will then determine whether an application must be made to the Landmark Preservation Commission for its written approval prior to issuance of a building permit. No building permit shall be issued until the Landmark Preservation Commission issues written approval or the Director indicates that the resource is not subject to review by the Landmark Preservation Commission. "Alteration" includes but is not limited to remodeling, repair, signs or fences that will change the exterior appearance. "Demolition" may include the whole or any part of a building.

(b) Every request for approval in relation to a property or resource designated as a Modesto Landmark Preservation Site shall be accompanied by a City application form, as specified in this chapter, which shall be provided to the Modesto Landmark Preservation Commission.

(c) Building permits for these applications shall not be issued until receiving written approval from the Modesto Landmark Preservation Commission, subject, however, to subsections (g), (h), and (j) of this section.

(d) At its next regular meeting the Modesto Landmark Preservation Commission may consider the application to determine if the work adversely affects the preservation, historic and architectural character of the Modesto Landmark Preservation Site or landmark eligible resource.

(1) The Modesto Landmark Preservation Commission shall conduct a public hearing for the purpose of receiving the recommendations from concerned citizens and the applicant. Notice of the public hearing shall be as follows:

(i) A public notice of the hearing shall be prepared which at a minimum identifies the hearing body and describes the location of the resource, nature of the historical designation, and the date, the time and place of the hearing. The notice shall be distributed as follows:

(A) Mailing of a notice to the owner or authorized agent of the property owner and the project applicant. Mailing of a notice to every property owner as shown on the updated equalized assessment roll of the County of Stanislaus, who owns property, any part of which is within three hundred (300) feet of the resource involved. Mailing of a notice to the elementary and high school districts serving the area. The notice shall be deposited in the United States mail not less than ten (10) days prior to the hearing.

(B) Additional means of distribution may be used at the discretion of the secretary or City Clerk. Additional means of distribution may include mailing of notices not otherwise required or posting notices in the immediate area of the resource.

(2) If it is determined that the work to be performed does not adversely affect the site, the application shall be approved and the Chief Building Official or Community Development Director shall be informed in writing within ten (10) working days of the Commission's action.

(3) If it is determined that the work to be performed does adversely affect the site or district, the application shall be disapproved and the Chief Building Official or Community Development Director shall be informed in writing within ten (10) working days of the Commission's action. The Commission shall furnish the permit applicant with a copy of the decision together with recommendations for changes necessary before the Commission will reconsider the permit application.

(e) When reviewing an application as described under subsection (d) of this section, the Commission shall consider the following criteria to decide whether the work affects the Modesto Landmark Preservation Site in the following cases:

(1) Proposed Alteration or Addition to an Existing Building, Structure or Site. The Commission will consider whether or not the work will adversely impair the significance or character of the historic resource. The Commission's written findings shall refer to the following criteria:

(i) The distinguishing original qualities, character or appearance shall not be destroyed. The removal or alteration of historic or original material, or distinctive architectural features shall be avoided. In the event that removal or alteration of historic or original material is determined to be necessary, the work shall be done in such a way as to minimize the adverse effect.

(ii) Deteriorated architectural features shall be repaired rather than replaced. In the event that replacement is determined to be necessary, the replacement shall be an accurate duplication of the design, color, texture and other visual qualities of the original, substantiated by historic, physical or pictorial evidence rather than on conjecture.

(iii) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting, other cleaning methods, sealants, coating and paints shall not damage or appreciably change the material, color and texture of original surfaces.

(iv) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy original, historic, architectural or cultural material, and such design is compatible with the size, scale, color, material and character of the resource, neighborhood or environment.

(v) Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

(2) Proposed Demolition or Removal of a Building or Structure. The Commission will consider whether or not the demolition or removal is necessary, and its effect on the surrounding buildings and neighborhood. The Commission's written finding shall refer to the following criteria:

(i) Consideration shall be given to the significance or architectural merit of the building itself, and the contribution the building makes to the historic or architectural character of the neighborhood or district.

(ii) Consideration will be given to the economic value, usefulness and replacement cost of the building as it now stands and as remodeled or rehabilitated, in comparison to the value or usefulness of any proposed structures designated to replace the present building or buildings.

(iii) Consideration will be given to the present structural integrity of the building to determine whether or not it constitutes a clear and present danger to the life and safety of the public. The Commission may contract for a professional estimate of the structural integrity and an estimate of the cost of correcting dangerous deficiencies, with Council approval.

(iv) Consideration will be given to the effect of demolition and of proposed new construction on the adjacent buildings and on the architectural and historic character of the neighborhood or district.

(3) Proposed New Construction or Relocation. The Commission will consider the effect of the work on the historic and architectural character of the surrounding buildings and neighborhood. The Commission's written findings shall refer to the following criteria:

(i) Contemporary design for new construction shall not be discouraged, but should be compatible with scale, color, texture, materials and other visual qualities of the surrounding buildings and neighborhood.

(ii) The new building should be compatible with the height, width, depth, massing and setback of the surrounding buildings.

(iii) The amount of solid wall to window and door openings, and the placement of window and door openings, should be proportional to that of the surrounding buildings and neighborhood.

(f) The recommendations of the Commission will be consistent with the California State Historical Building Code; and to the extent that a recommendation is inconsistent, the standards of the California State Historical Building Code shall prevail.

(g) If within forty-five (45) days from the filing of the completed application, the Commission has neither approved or denied the building permit application, the plans and permit application shall be deemed to have been approved by the Commission, and if all other requirements of the City have been met, the appropriate department head shall authorize a permit for the proposed work. By vote of the Commission and notification of the department head, the forty-five (45) day period may be extended by fifteen (15) days in cases where professional study or recommendation is required and the forty-five (45) day period is not sufficient to do the work. No permit shall be issued or work commenced in the event the Commission disapproves the application in accordance with this chapter.

(h) In emergency situations where immediate repair is needed to protect the safety of the structure and its inhabitants, the Chief Building Official may approve temporary or limited repair without prior Modesto Landmark Preservation Commission action. In the case of a permit issued pursuant to this paragraph, the Chief Building Official shall immediately notify the Modesto Landmark Preservation Commission of its action and specify the facts or conditions constituting the emergency situation.

(i) If the approval of any board or commission other than the City Council alters, amends or modifies any condition of approval established by the Landmark Preservation Commission, that board or commission shall notify the Landmark Preservation Commission of the change and the reasons for the change within five (5) days of that approval.

(j) The permit applicant or any party aggrieved by the decision of the Modesto Landmark Preservation Commission shall, within fifteen (15) days of the date of the Modesto Landmark Preservation Commission's order and decision, have a right to appeal such order and decision to the City Council. The appeal shall be made by delivering to the City Clerk two (2) copies of a Notice of Appeal and statement of reasons setting forth the grounds for the appeal. The City Clerk shall transmit one (1) copy of the Notice of Appeal and statement to the City Council and one copy to the Modesto Landmark Preservation Commission. The Modesto Landmark Preservation Commission, in any written order denying a permit application, shall advise the applicant of this right to appeal to the City Council and include this paragraph in all such orders.

9-10.08 - Penalty for Violation.

In addition to any and all remedies which the City may be entitled to by way of obtaining temporary restraining orders, preliminary injunctions and permanent injunctions in connection with the enforcement of this chapter, an owner or occupant of any area, place, building, structure or other object within a duly designated Modesto Landmark Preservation Site who violates the provision of this chapter shall be guilty of an infraction. Any architect, builder, contractor, agent, person or corporation who assists in the commission of a violation of this chapter shall be guilty of an infraction. For each day an owner or occupant of any area, place, building, structure or other object within a duly designated Modesto Landmark Preservation Site allows any work to be performed on any area, place, building, structure or other object in violation of this chapter, it shall constitute a separate violation and separate infraction, and shall be punishable as such. A Modesto Landmark Preservation Site on which there exists any remodeling, repairing, construction, demolition, or a building moved in violation of this chapter is hereby declared a nuisance; and the imposition of the penalties herein prescribed shall not prevent the City of Modesto from instituting an appropriate action or proceeding to prevent an unlawful remodeling, repair, construction, building, building moving or demolition, or to restrain, correct or abate a violation.

9-10.09 - Repository for Documents.

A separate file shall be kept by the Secretary to the Commission which shall be the repository for at least one (1) copy of all Commission minutes, forms, studies, reports, recommendations and correspondence. All minutes and records will be available for public inspection during normal business hours.

9-10.10 - Landmark Preservation Contracts.

Any owner of a resource which has been designated as a Modesto Landmark Preservation Site shall be eligible to apply for the property tax incentive program through the use of an Historical Property Contract pursuant to Sections 50280 through 50290 of the California Government Code. All applications filed for Landmark Preservation Contracts shall be considered by the Landmark Preservation Commission at a public hearing. The recommendation of the Landmark Preservation Commission shall be forwarded to the City Council for consideration at a public hearing.

The foregoing resolution was introduced at the regular meeting of the Landmark Preservation Commission held on November 19, 2018, by Commissioner Roddick, who moved its adoption, which motion was seconded by Commissioner Leamon , and carried by the following vote:

Ayes: Goriel, Leamon, Roddick, Lippert
Noes: None
Absent: Cahill, Cavanah
Recused: None

BY ORDER OF THE LANDMARK PRESERVATION COMMISSION OF THE CITY OF MODESTO.

Original, signed copy on file in CEDD

Steve Mitchell, Acting Secretary