

ORDINANCE 1593

AN ORDINANCE OF THE CITY OF BANNING, CALIFORNIA, ADDING CHAPTER 2.46 (HISTORIC PRESERVATION COMMISSION) TO TITLE 2 (ADMINISTRATION) AND CHAPTER 17.58 (HISTORIC PRESERVATION) TO DIVISION IV (ADMINISTRATION) OF TITLE 17 (ZONING) OF THE BANNING MUNICIPAL CODE, ESTABLISHING A HISTORIC PRESERVATION COMMISSION, ADOPTING REASONABLE STANDARDS FOR HISTORIC PRESERVATION, AND MAKING A DETERMINATION OF EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City Council of the City of Banning does hereby ordain as follows:

SECTION 1. Findings and Purpose.

- A. The City of Banning was incorporated in 1913 and possesses numerous distinctive structures and other aesthetic qualities that enhance the City's value as an attractive, historic community.
- B. Certain of these properties, by virtue of their age, architectural style, aesthetic appeal, or association with local history, are of great historical significance and value.
- C. These irreplaceable historical properties should be preserved for future generations.
- D. Adoption of reasonable regulations is necessary as a means of documenting and preserving these properties.
- E. Creation of a commission to advise the City Council on matters related to such historical properties is necessary to assist in documenting, protecting, and preserving these properties.
- F. On June 7, 2023, the Planning Commission at a duly noticed public hearing adopted Resolution 2023-12 recommending City Council adopt an ordinance amending Title 2 (Administration) and Title 17 (Zoning) of the Banning Municipal Code to adopt reasonable standards for historic preservation.
- G. On June 27, 2023, the City Council at a duly noticed public hearing considered Ordinance 1593, amending Title 2 (Administration) and Title 17 (Zoning) of the Banning Municipal Code to adopt reasonable standards for historic preservation, and, after receipt of public comment, continued the item off calendar and directed Planning Division staff to work with the board of the San Gorgonio Pass Historical Society to consider additional recommended revisions to the proposed historic preservation standards.
- H. On October 10, 2023, the City Council at a duly noticed public hearing considered and introduced Ordinance 1593, amending Title 2 (Administration) and Title 17 (Zoning) of the Banning Municipal Code to adopt reasonable standards for historic preservation, with minor amendments to the version presented to the City Council on June 27, 2023.

- I. On _____, 2023, the City Council held second reading and adopted Ordinance 1593.
- J. The City Council hereby finds and determines:
 - (i) This Ordinance is consistent with the goals and policies of the City's General Plan to document, maintain, preserve, conserve, and enhance archaeological and historic structures, sites, artifacts, traditions, and other elements of the City's cultural heritage.
 - (ii) This Ordinance is internally consistent with the City's zoning ordinance.
 - (iii) The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act ("CEQA"), and has determined that the code amendments contained in Section 2 and the zoning text amendments contained in Section 3 of this Ordinance are categorically exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty there is no possibility these amendments may have a significant effect on the environment.

SECTION 2. Addition of Chapter 2.46 to Title 2. A new Chapter 2.46 is hereby added to Title 2 (Administration and Personnel) of the Banning Municipal Code and shall read as follows:

"Chapter 2.46 - HISTORIC PRESERVATION COMMISSION

Sections:

- 2.46.10 - Declaration of existence.**
- 2.46.20 - Membership; term and vacancies.**
- 2.46.30 - Organization.**
- 2.46.40 - Duties.**
- 2.46.50 - Terminology.**

2.46.10 - Declaration of existence.

The city recognizes and establishes the historic preservation commission, which shall serve in an advisory capacity to the city council and make recommendations and determinations relating to the designation, preservation, protection, enhancement, and perpetuation of the city's historical properties.

2.46.20 - Membership; term and vacancies.

- A. Commission. The historic preservation commission shall consist of five members at large.
- B. Appointment and removal. After receiving applications from those interested, along with their credentials, the mayor shall appoint the members of the historic preservation commission subject to the city council's approval and confirmation of each appointment to one of five numbered positions: Position 1, Position 2, Position 3, Position 4, and Position 5. Members shall serve at the pleasure of the city council and may be removed at any time by a majority vote of a quorum of the city council.

C. Member qualifications. Members of the historic preservation commission shall:

1. Have a demonstrated interest, competence, or knowledge in historic preservation and the local history, and pre-history, of the City of Banning. Members who meet the Secretary of Interior's Historic Preservation Professional Qualifications Standards are preferred.
2. Reside within the corporate limits of the city.
3. Serve without compensation.
4. Not be a member of any other standing commission, board, or committee of the city nor an employee thereof.

D. Term.

1. Members shall serve a term of four years, which shall be staggered every two years concurrent with city elections. In order to stagger the terms of the commission, the initial terms for commission member Position 1 and Position 2 shall be for two years, and all subsequent terms of Positions 1 and 2 shall be for four years. The initial terms and all subsequent terms for commission member Position 3, Position 4, and Position 5 shall be for four years.
2. Members shall remain a member until a successor is appointed.

E. Absences. Any member who is unexcused for two consecutive regular meetings or six meetings within a 12-month period, whether the six meetings are excused or not, will be deemed to have resigned their position and the City Council may appoint a new member in the same manner as the initial appointment under subsection B of this section to serve the remaining term of the resigned member.

2.46.30 - Organization.

- A. Officers. The commission shall, at the first regularly scheduled meeting of each calendar year, annually elect a chairperson for the term of one year, and such other officers as the commission may deem advisable.
- B. Meeting times and places. The city council shall designate the time and place for the inaugural meeting of the commission. Thereafter, the commission shall designate the time and place for its meetings. Meeting places and times shall be noticed in accordance with the Ralph M. Brown Act and the commission shall have regular meeting dates.
- C. Commission rules. The commission shall adopt such rules and regulations for its own organization as are necessary to carry out its duties and function. The commission shall keep records of all its actions and proceedings.
- D. Public meetings. As the commission is created and appointed by the city council, members of the commission and all proceedings of the commission be subject to the Ralph M. Brown Act.
- E. Staff Support. City community development staff and the city attorney's office will provide support to the commission.

2.46.40 - Duties.

The commission shall have the following duties:

- A. Conduct or cause to be conducted a comprehensive survey to identify potential historic resources.
- B. Promote public interest in and understanding of historical resources and the preservation thereof.
- C. Consult with and advise public officials and agencies; civic, educational, professional and other organizations; and citizens generally, in relation to the preservation of historical resources.
- D. Consider all inquiries and requests for the preservation or cataloging of historic resources located within the city limits.
- E. Compile and maintain the inventory of identified resources.
- F. Compile and maintain a current register of historic resources.
- G. Consider requests by property owners for nontechnical advice on proposed work on historic resources.
- H. Make recommendations to city council on whether resources should be designated as historic resources.
- I. Make recommendations to city council on whether to grant, condition, or deny certificates of appropriateness and hardship permits for the demolition, removal, or substantial alteration of any historic resource.
- J. Develop and recommend to the city council standards, including design guidelines, to be used by the commission and the city council in reviewing applications for designation and permits for the demolition, removal, or substantial alteration of any historic resource.
- K. Perform such other duties as are specified by ordinance of the city council.

2.46.50 - Terminology.

All terms defined in Section 17.58.30 shall have the same meaning herein."

SECTION 3. Addition of Chapter 17.58, to Division IV of Title 17. A new Chapter 17.58 (Historic Preservation) is hereby added to Division IV (Administration) of Title 17 (Zoning) of the Banning Municipal Code and shall read as follows:

"Chapter 17.58 - HISTORIC PRESERVATION

Sections:

- 17.58.10 - Purpose and intent.**
- 17.58.20 - Area of application.**
- 17.58.30 - Definitions.**
- 17.58.40 - Historic designation criteria.**
- 17.58.50 - Procedure for identification and designation of historic resource; Notice of sale or transfer.**

17.58.60 - Certificate of appropriateness for demolition, removal, or substantial alteration.

17.58.70 - Hardship showing.

17.58.80 - Exemptions.

17.58.90 - Enforcement.

17.58.10 - Purpose and intent.

The purpose of this chapter is to promote the public health, safety, and general welfare by providing for the identification, protection, enhancement, perpetuation, and use of historic resources, such as buildings, structures, sites, and places that reflect special elements of the city's architectural, artistic, cultural, historical, and social heritage. This chapter intends to safeguard the city's historic resources; enhance the city's value as an attractive, historic community; and integrate the preservation of historic resources and information about such resources into the land management and development process.

17.58.20 - Area of application.

This chapter shall apply to all historic resources, publicly and privately owned within the corporate limits of the city.

17.58.30 - Definitions.

As applicable to this chapter, the following words and phrases shall be defined as follows:

Historic resource is a property, structure, site, improvement or natural feature, including any associated landscaping, that has been designated by the historic preservation commission and included on the registry of historic resources.

Ordinary maintenance and repair is routine work that does not, by law, require a permit; involves regular, customary, or usual care of an existing building, structure, or object for the purpose of preserving said property in a safe and sanitary condition; and does not involve a change in design, material, or appearance.

Resource is a property, structure, site, improvement or natural feature, including any associated landscaping.

Substantial alteration is any alteration of any historic resource, or part thereof, which so changes the resource as to remove, alter, destroy, lessen, or detract from its historical value or character, but does not include ordinary maintenance and repair work.

17.58.40- Historic designation criteria.

- A. For the purposes of this chapter, a resource may be designated a historic resource if, following the process in Section 17.58.50, the city council, upon recommendation from the historic resources commission determines it satisfies any of the following requirements:

1. The resource is the first, last, only, or most significant historical property of its type in the city.
2. The resource is associated with an individual person or group having significant influence on the history or development of the city.
3. The resource is an example or contains an example of a period, style, architectural movement, or construction of historical, aesthetic, or architectural interest.
4. The resource is a part of, or contributes aesthetically to, the historical heritage of the city.

B. The city council and the historic resources commission may consider age of a resource when determining whether any of the factors in this section are satisfied. However, age alone is not determinative of a resource's historical significance.

17.58.50 - Procedure for identification and designation of historic resource; notice of sale or transfer.

A resource shall be identified, and if owner consent is provided, designated as a historic property by the city council, upon the recommendation of the historic preservation commission in the following manner:

- A. Identification and initiation of designation. The owner of the resource, or a resident of the city, may apply to the historic preservation commission to designate a resource as historic. Applications by owners and residents shall be accompanied by such historical and architectural information as required by applicable forms made available by the community development director or designee to make an informed recommendation, and the application fee in an amount set by resolution of the city council. The historic preservation commission may also identify properties for consideration of designation on its own motion.
- B. Owner consent required. An application, or identification by the commission, for designation shall include written consent of the resource owner. If owner consent is not obtained, the identified resource will not be considered for designation and inclusion in the register of historic resources.
- C. Inventory of identified resources. The commission shall maintain a list of resources identified by the commission, including those for which a designation application has been submitted but owner consent to such designation has not been obtained. The list shall include any relevant public information for the identified resources and shall be made available to the public, except for any information exempt from disclosure under state law, including, without limitation, records of Native American graves, cemeteries, sacred places, features and objects exempt from disclosure pursuant to California Government Code Section 7927.000 and the California Code of Regulations Title 14, Section 15120(d). Inclusion of a resource on the inventory does not

trigger any requirements by or restrictions on the owner of the resource under this chapter.

- D. Delay of work pending designation determination. No alteration, demolition, or removal of resources for which the owner's consent to designation has been obtained shall be allowed until the designation determination is made by the commission.
- E. Public hearing. The commission shall schedule a public hearing on all proposed designations for which the owner of the resource has consented. If an application for designation originates from a resource owner or a city resident, the public hearing shall be held within ninety days of the commission's receipt of a complete application.
- F. Notice of hearing. Notice of the date, place, time, and purpose of the public hearing shall be given by first class mail to applicants, owners, and occupants of the resource and to property owners within three hundred feet of the resource at least ten days prior to the date of the public hearing and shall be advertised once in a newspaper of general circulation at least ten days before the public hearing. Additional methods of notice may be provided in any other manner deemed desirable and practicable.
- G. Commission recommendations. After the public hearing, the commission shall make a recommendation in writing to the city council on whether to approve, conditionally approve, or disapprove the application for designation and set forth the reasons for the decision based on the criteria in Section 17.58.40. The commission shall specify which part or parts of the resource it recommends be included in the city's register of historic resources.
- H. City council review. The commission shall notify the city clerk of the commission's recommendation, who shall set the matter for public hearing at a city council meeting. Notice of the public hearing before the city council shall be provided in the same manner as Section 17.58.50.E. After the city council's public hearing on the matter, the city council shall by resolution affirm, modify, or reject the commission's recommendation regarding whether the resource should be designated a historic resource based on the criteria in Section 17.85.40. If the city council designates a resource as a historic resource, the commission shall enter the historic resource in the city's register of historic resources. The register shall contain a description of each resource, the reason(s) for its inclusion in the register, and an inventory detailing those parts or characteristics of the resource which are being classified as historic. Copies of the register shall be available to the public.
- I. Notice of designation. Notice of the designation shall be sent to applicants and owners of the designated resource. Within thirty days of receipt of the notice of designation, the owner shall have recorded in the office of the county recorder that said resource has been designated a historical resource and is subject to all restrictions applicable to such resource under this code. Failure to send any notice to owners whose

address is not a matter of public record shall not invalidate any proceedings in connection with a designation and failure of an owner to record the designation shall not affect the application of any provisions of this chapter.

J. Amendment or rescission. Designation of a historic resource may be rescinded or amended in the same manner and procedure as for designation. A designation may be rescinded if the applicant presents facts clearly demonstrating to the satisfaction of the city council, upon recommendation of the historic preservation commission, that the failure to remove the resource from the register of historic resources would cause immediate and substantial hardship (pursuant to the standards in Section 17.58.80) to the owner of the resource which was not reasonably foreseeable at the time the resource was placed on the register of historic resources.

K. Notice of transfer. Owner, or their legal representatives, assignees, or heirs shall give written notice to the historic preservation commission of the sale or transfer of ownership of any designated historic resource within ten days of the sale or transfer.

17.58.60 - Certificate of appropriateness for demolition, substantial alteration, or removal.

A. Certificate of appropriateness required. Except as provided in Sections 17.58.80 or 17.58.90, it is unlawful for any person to demolish, remove, substantially alter, or engage in any work on a historic resource without first notifying the community development department of the resource's status as a registered historic resource and without first having applied and been granted a certificate of appropriateness from the city council, upon recommendation of the historic preservation committee for such work pursuant to the provisions of this chapter.

B. Applications. An owner of a historic resource may request a certificate of appropriateness by filing a written application with the community development department on a form provided by the department and including all required information and payment of applicable fees. The community development director shall refer the application to the commission for review.

C. Public hearing. The historic preservation commission shall hold a public hearing on an application for a certificate of appropriateness within sixty days of receipt of referral from the community development department. Any interested person or persons shall be allowed to appear in person or by petition at the hearing on the matter. The time limits in this section shall be extended by the community development director when necessary to comply with the provisions of the California Environmental Quality Act (CEQA), with the written consent of the owner, or to allow city staff an additional period of time not exceeding thirty days in which to analyze information submitted to the city at or near the end of the sixty day period in which to act on the application. A public hearing shall be

scheduled and notice provided per this article and CEQA where applicable.

D. Notice of hearing. Notice of the date, place, time, and purpose of the public hearing shall be given by first class mail to applicants, owners, and occupants of the resource and to property owners within three hundred feet of the resource at least ten days prior to the date of the public hearing and shall be advertised once in a daily newspaper of general circulation at least ten days before the public hearing. Notice may also be given in any other manner deemed desirable and practicable.

E. Commission recommendation. After close of the public hearing, the historic preservation commission shall make a recommendation in writing to the city council regarding the approval, modification, or rejection of the proposed demolition, removal, or substantial alteration of the historic resource pursuant to the standards in Subsection G of this section.

F. City council review. The historic preservation commission shall notify the city clerk of the commission's recommendations, who shall set the matter for public hearing at a city council meeting. Notice of the public hearing before the city council shall be provided in the same manner as Subsection D of this section. Upon review of the commission's recommendation, the city council may grant, deny, or modify the requested permit pursuant to the standard in Subsection G of this section.

G. Standards for review. Except as provided in Section 17.58.80, the historic preservation commission shall only recommend approval, and the city council shall only approve, a permit for the destruction, removal, or substantial alteration of a historic resource if the commission or the city council finds the proposed work will neither adversely affect the exterior architectural features of the resource nor adversely affect the character or historical, architectural, or aesthetic interest, character defining elements, or value of the resource. In evaluating applications for demolition, removal, or substantial alteration of a historic resource, the commission and the city council shall consider the following:

1. Consistency with the architectural style, design, arrangement, texture, materials, color, and character defining elements of the historic resource.
2. Consistency with the U.S. Department of the Interior National Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings, as may be amended from time to time.
3. The goals and policies of this chapter.
4. The goals and policies of the general plan, any applicable specific plan, and the regulations of the city.

17.58.70 - Hardship showing.

- A. An owner of a historic resource may apply for a hardship permit for the demolition, removal, or substantial alteration of a historic resource that may adversely affect the exterior architectural features of the resource or adversely affect the character or historical, architectural, or aesthetic interest or value of the resource. Such application shall include facts and information clearly demonstrating a substantial hardship pursuant to Subsection C of this Section and that such substantial hardship was not reasonably foreseeable.
- B. City Council may approve a hardship permit if, upon recommendation of the historic preservation committee, the city council finds:
 - 1. The failure to receive the permit would cause immediate and substantial hardship to the owner of the resource.
 - 2. That immediate and substantial hardship was not reasonably foreseeable at the time the resource was placed on the register of historic resources.
- C. For the purposes of this chapter, an immediate and substantial hardship exists when the preservation of the integrity of the historic resource:
 - 1. Is infeasible from a technical, mechanical, or structural standpoint, and/or
 - 2. Would leave the resource with no reasonable economic value because it would require an unreasonable expenditure considering current market value, permitted uses of the resource, the value of transferable development rights and the cost of compliance with applicable local, state, and federal codes.
- D. The historic preservation commission and the city council may request the applicant provide material evidence supporting the claim of immediate and substantial hardship.

17.58.80 - Exemptions.

- A. The following do not require review a certificate of appropriateness:
 - 1. Ordinary maintenance and repair.
 - 2. Demolition, removal, repair, alteration, or other work the community development director determines is immediately necessary to protect the public health and safety and general welfare. The director shall notify the historic preservation commission in writing within five days of issuing any emergency approval.
 - 3. Alterations to the interior of any structure, including designated structures.
 - 4. Landscaping, unless landscaping is specifically designated as part of a historical resource.
 - 5. Painting of a building.

6. Demolition, removal, or substantial alteration of a noncommercial property owned by a religiously affiliated association or corporation not organized for profit provided the criteria in Government Code Section 37361(c) are met, including objection by the religiously affiliated association or corporation and demonstration of a substantial hardship.
- B. From time to time the Commission and City Council may add specific guidelines or manuals for reference by Staff and Resource owners.

17.58.90 - Enforcement.

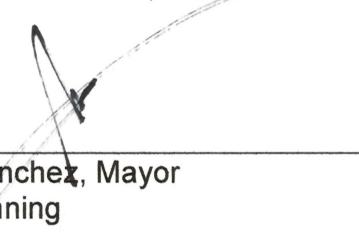
- A. For any action or development covered by this chapter that is undertaken without the issuance of a permit or that is not in full compliance with the terms and conditions of a permit issued pursuant to this chapter, the building official shall order the action stopped by written notice.
- B. It shall be a misdemeanor for any person to carry out any work in violation of such a stop work order or in violation of this chapter.
- C. In addition to other penalties, if a registered historic resource is demolished without a permit required by this chapter, no building permit shall be issued for any use of the site for five years."

SECTION 4. If any section, subsection, paragraph, clause or phrase in this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining section or portions of this Ordinance or any part thereof. The Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, irrespective of any one or more sections, subsections, subdivisions, paragraphs, sentence, clauses or phrases may be declared invalid or unconstitutional.

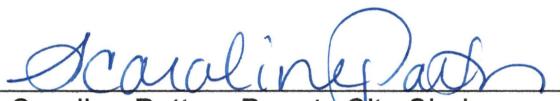
SECTION 5. The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Banning's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 6. This Ordinance will become effective on the thirty-first (31st) day following its passage and adoption.

PASSED, APPROVED AND ADOPTED this 24th day of October, 2023.


Alberto Sanchez, Mayor
City of Banning

ATTEST:



Caroline Patton, Deputy City Clerk
City of Banning

APPROVED AS TO FORM AND
LEGAL CONTENT:



Serita Young, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

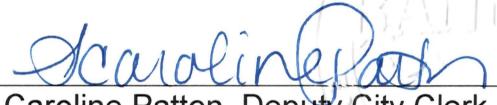
I, Caroline Patton, Deputy City Clerk of the City of Banning, California, do hereby certify that Ordinance 1593 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 10th day of October 2023, and was duly adopted at a regular meeting of said City Council on the 24th day of October 2023, by the following vote, to wit:

AYES: Flynn, Gonzales, Minjares, Sanchez, and Wallace.

NOES:

ABSENT:

ABSTAIN:


Caroline Patton, Deputy City Clerk
City of Banning, California