



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

SUBJECT: Urgency and Regular Ordinances
to Control Feral Pig Population

DATE: October 2, 2020

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

The purpose of this supplemental memorandum is to provide the City Council with the legal requirements for adoption of an urgency ordinance.

BACKGROUND

On September 30, 2020, the Rules & Open Government Committee recommended to the Council that staff be directed to prepare a temporary urgency ordinance to amend Section 10.32.140 of the San Jose Municipal Code to allow a person with a State trapping license to use a bow or crossbow in the City of San José for the purpose of wild pig depredation on private property pursuant to a permit approved by the California Department of Fish and Wildlife. A proposed urgency ordinance has been posted to the agenda webpage for the City Council's October 6, 2020 meeting. Consistent with the City's past practice, this Office prepared and posted to the agenda webpage for this meeting a regular ordinance for the City Council's consideration.

ANALYSIS

Under Section 604 of the City Charter, a regular ordinance requires a majority of six (6) members of the Council to approve the ordinance for publication of the ordinance's title and at least six days later adopt the final ordinance. Per Charter Section 605, the adopted ordinance would become effective at the expiration of thirty (30) days from adoption or such later date specified by the City Council.

In order for the City Council to approve an urgency ordinance that becomes effective immediately upon adoption, Section 605 of the City Charter requires an ordinance to be declared by the Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety, contain a statement of facts constituting such urgency and be adopted by the affirmative vote of not less than eight (8) members of the Council. If the City Council intends to adopt an urgency ordinance, it

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of the San Jose Municipal Code**

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will need to make a determination of urgency based on the information before it and justify why such a measure is needed to preserve public peace, health or safety. Under San José Municipal Code Section 10.32.140, no person may use a bow or crossbow in the City of San José unless an exception applies.

The City Attorney's Office has drafted a temporary urgency ordinance that, if approved, would permit a licensed trapper pursuant to a depredation permit issued by the California Department of Fish and Wildlife to use a bow or crossbow in the City limits for the purpose of wild pig depredation on private property. If the Council makes the necessary factual determination for the urgency, the ordinance would take effect immediately upon adoption and be effective until the end of year, or through December 31, 2020. The proposed urgency ordinance includes facts related to the urgency taken from the memorandum submitted by Councilmembers Khamis and Jimenez to the Rules & Open Government Committee.

Also included is a regular ordinance that can be adopted along with or in lieu of an urgency ordinance if the Council so desires. Assuming a second reading at the next Council meeting on October 20, 2020, the regular ordinance would become effective on November 20, 2020.

NORA FRIMANN
City Attorney

By 
Mark Vanni (Oct 2, 2020 16:16 PDT)

Mark Vanni
Deputy City Attorney

Attachments

cc: David Sykes

For questions, please contact Mark Vanni, Deputy City Attorney, at (408) 535-1997.

DRAFT

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE TO AMEND SECTION 10.32.140 OF CHAPTER 10.32 OF TITLE 10 OF THE SAN JOSE MUNICIPAL CODE TO ALLOW PERSONS WITH A DULY ISSUED AND APPROVED TRAPPING LICENSE AND WILD PIG DEPREDATION PERMIT FROM THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE TO UTILIZE BOW AND CROSSBOW EQUIPMENT FOR WILD PIG DEPREDATION WITHIN THE LIMITS OF THE CITY UNDER SPECIFIED CIRCUMSTANCES AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

WHEREAS, on November 5, 2013, the City Council adopted Ordinance No. 29336 as an urgency ordinance to allow persons with duly issued and approved wild pig depredation permits from the California Department of Fish and Wildlife to discharge firearms within the limits of the City under specified circumstances, which was to remain in effect only until February 5, 2014; and

WHEREAS, on February 4, 2014, the City Council adopted Ordinance No. 29377 as an urgency ordinance, to remain in effect through February 2, 2015, to extend the provisions of Ordinance No. 29336; and

WHEREAS, on February 24, 2015, the City Council adopted Ordinance No. 29532 amending Section 10.32.010 of the San José Municipal Code to codify certain provisions of Ordinance No. 29336; and

WHEREAS, activity by feral or wild pigs populations has been intermittent and recurring in the City depending on weather and seasonal conditions and remain a destructive nuisance; and

WHEREAS, many feral or wild pigs, despite the efforts of professional trappers, become "trap wise" and cannot be trapped using bait; and

WHEREAS, the City desires to adopt an urgency ordinance to be effective until December 31, 2020, to allow persons with duly issued and approved trapping licenses and wild pig depredation permits from the California Department of Fish and Wildlife to use bows and crossbows within the limits of the City under specified circumstances; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the City has certified that certain Final Program Environmental Impact Report for the Santa Clara Valley Habitat Plan Final Environmental Impact Report/Environmental Impact Statement (the "Final EIR") and the City Council adopted its related Resolution No. 76546 in connection therewith; and

WHEREAS, the City of San José has determined that no new effects would occur from and no new mitigation measures would be required for the adoption of this Ordinance and that adoption of this Ordinance is within the scope of and in furtherance of the Santa Clara Valley Habitat Plan, taken together with the Final EIR, related Resolution No. 76546, and the Addendum to the FEIR prepared for this Ordinance under File No. PP13-103; and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the Final EIR, related Resolution No. 76546 and the Addendum to the FEIR prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 10.32.140 of Chapter 10.32 of Title 10 of the San José Municipal Code is amended to read as follows:

10.32.140 Projectile Weapons Prohibited

- A. No person shall, within the limits of the City of San José, make use of any slingshot, crossbow or similar device, or discharge or propel any dart, pellet, BB, rock, bolt, arrow or any other projectile from any air rifle, air pistol, BB gun, pellet gun, slingshot, rubber sling, crossbow or other instrument or device by means of which missiles of any kind or description are hurled, shot or projected.
- B. The prohibition in subsection A. shall not apply to the use of bows and crossbows at archery and crossbow ranges within the city. Bows and crossbows shall be used at ranges in a manner that will not endanger the public health, safety and general welfare.
- C. The prohibition in subsection A. shall not apply to a person with a trapping license and wild pig depredation permit duly issued and approved by the California Department of Fish and Wildlife pursuant to California Fish and Game Code sections 4005 and 4181, who uses a bow or crossbow for the purposes of wild pig depredation in accordance with a depredation permit. This subsection C. shall be in effect through December 31, 2020.

SECTION 2. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The

facts constituting such urgency are as follows: There have been recent reports in the Almaden Valley area that feral or wild pigs continue to inflict damage to private property in San José, most recently the Coyote Creek Golf Club. Further, since wild pigs have tusks, can travel in herds, and are known carriers of diseases, their continued presence in residential and commercial areas is a menace and could lead to confrontations that endanger public health and safety. Finally, despite efforts to trap them, some feral or wild pigs have become "trap wise," meaning they can no longer be trapped, therefore alternative methods for depredation are necessary and required for such pigs.

SECTION 3. This Ordinance shall become effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San José.

ADOPTED this ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

DRAFT

ORDINANCE NO.

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WHEREAS, activity by feral or wild pigs populations has been intermittent and recurring in the City depending on weather and seasonal conditions and remain a destructive nuisance; and

WHEREAS, many feral or wild pigs, despite the efforts of professional trappers, become “trap wise” and cannot be trapped using bait; and

WHEREAS, the City desires to adopt an ordinance to allow persons with duly issued and approved trapping licenses and wild pig depredation permits from the California Department of Fish and Wildlife to use bows and crossbows within the limits of the City under specified circumstances; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the City has certified that certain Final Program Environmental Impact Report for the Santa Clara Valley Habitat Plan Final Environmental Impact Report/Environmental Impact Statement (the "Final EIR") and the City Council adopted its related Resolution No. 76546 in connection therewith; and

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WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

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NVF:MJV:CLS
9/29/2020

PASSED FOR PUBLICATION of title this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk