

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 5.09.500 OF CHAPTER 5.09 OF TITLE 5; SECTIONS 15.14.515 AND 15.14.770 OF CHAPTER 15.14 OF TITLE 15; SECTION 20.80.460 OF CHAPTER 20.80, SECTIONS 20.95.020 AND SECTION 20.95.110 OF CHAPTER 20.95, AND SECTIONS 20.100.465, 20.100.480, 20.100.910, 20.100.1030 AND 20.100.1090 OF CHAPTER 20.100 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO MAKE AMENDMENTS RELATED TO COMPLIANCE WITH THE MUNICIPAL REGIONAL STORMWATER PERMIT**

**WHEREAS**, the State Water Resources Control Board administers permitting under the Federal Clean Water Act; and

**WHEREAS**, the City of San Jose operates under the Municipal Regional Stormwater Permit (MRP), issued by the Water Board; and

**WHEREAS**, under the anticipated MRP, the City is required to take certain actions related to new and redevelopment projects to include measures to treat and prevent increases in stormwater runoff; 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 Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 General Procedure and Policy Making; 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 "not a project" determination under CEQA 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 5.09.500 of Chapter 5.09 of Title 5 of the San José Municipal Code is hereby amended to read as follows:

**5.09.500 Standards for Site Development**

- A. City Standard Conditions. Site Development for Emergency Bridge Housing Communities shall comply with the City standard conditions for Bridge Housing Communities developed in consultation with the City's Department of Planning, Building and Code Enforcement entitled "Conditions/Provisions for Bridge Housing Communities required for CEQA Compliance" and approved by the Director of the Department of Planning, Building and Code Enforcement.
- B. Environmental Review. Development of Emergency Bridge Housing Communities shall be subject to review under the California Environmental Quality Act of 1970 ("CEQA"), together with related State CEQA Guidelines and [Title 21](#) of the San José Municipal Code.
- C. Air Quality. Emergency Bridge Housing Communities shall comply with the CEQA guidelines of the Bay Area Air Quality Management District dated May 2017.

- D. Biological. Emergency Bridge Housing Communities shall comply with the federal Migratory Bird Treaty Act and with City of San José habitat conservation plan, to the extent applicable.
- E. Cultural. Development of Emergency Bridge Housing Community sites shall obtain a Historic Resources Assessment report; and in the event that report identifies historic resources, impact and analysis study will be required.
- F. Geology and Soils. Development of Emergency Bridge Housing Community sites shall comply with the requirements of the City's National Pollutant Discharge Elimination System permits, to the extent applicable.
- G. Greenhouse Gas Emission. Emergency Bridge Housing Communities shall comply with the State Greenhouse Gas Emission reporting rules, to the extent applicable.
- H. Emergency Response Plan. Emergency Bridge Housing Communities shall prepare prior to occupancy an Emergency Response Plan developed in consultation with the Fire Department.
- I. Hydrology. Development of Emergency Bridge Housing Community sites shall comply with the requirements of the City's National Pollutant Discharge Elimination System permits and any California Department of Transportation permits, to the extent applicable. Emergency Bridge Housing Communities shall not include more than ~~405~~,000 square feet of impervious surfaces.
- J. Land Use. Development of Emergency Bridge Housing Communities shall comply with the Santa Clara Valley Habitat Plan, to the extent applicable.

- K. Noise and Vibration. Development of Emergency Bridge Housing Communities should be on sites with exterior noise levels not in excess of 70dbA (24 hour *leq*) in the Emergency Sleeping Cabin areas or as determined by the Authority Having Jurisdiction. Interior noise levels shall be further limited as determined by the Authority Having Jurisdiction.
- L. Emergency Access. Emergency Bridge Housing Communities shall prepare prior to construction an Emergency Vehicle Access Plan developed in consultation with the Fire Department.
- M. Utilities and Service Systems. Development of Emergency Bridge Housing Community sites shall comply with the requirements of the City's National Pollutant Discharge Elimination System permits and any California Department of Transportation permits, to the extent applicable.

SECTION 2. Section 15.14.515 of Chapter 15.14 of Title 15 of the San José Municipal Code is hereby amended to read as follows:

**15.14.515 - Discharge into storm drain prohibited.**

- A. No person ~~It shall be, and it is~~ unlawful to, discharge any sewage, industrial waste or other polluted waters into any storm sewer or natural outlet or channel without a valid National Pollutant Discharge Elimination System (NPDES) permit.
- B. No person shall, and it is unlawful to, place, leave, abandon, or maintain sewage, industrial wastes, or other pollutant where it is likely to enter any storm sewer system, natural outlet, or channel without a valid National Pollutant Discharge Elimination System (NPDES) permit.

SECTION 3. Section 15.14.770 of Chapter 15.14 -of Title 15 of the San José Municipal Code is hereby amended to read as follows:

**15.14.770 Best Management Practices.**

- A. The CityDirector may develop best management practices (BMPs), by ordinance, Resolution, Director order, or in individual wastewater discharge permits, to implement local limits, federal regulations, and the requirements under this Chapter.
- B. All industrial users shall follow BMPs established by ordinance, individual wastewater discharge permit, or implement BMPs in their operations to minimize the discharge of pollutants to the sanitary sewer system and ensure appropriate monitoring, treatment, and other measures are being taken to prevent violations.
- C. When an industrial user develops BMPs in response to an enforcement action, the user shall continue to implement those BMPs and any associated record keeping unless approved to discontinue.
- D. Industrial users subject to BMPs as a means of complying with the standards of this Title shall maintain documentation to demonstrate compliance with the applicable BMP standards.
- E. Periodic reports on continued compliance for BMP regulated dischargers shall require the discharger to certify that the BMPs have been implemented during the reporting period.
- F. All persons shall implement BMPs or make reasonable efforts on their properties to prevent the discharge of pollutants to the storm sewer system and ensure appropriate monitoring, treatment, and other measures are taken to prevent unauthorized discharges.
- GG. When a person develops BMPs in response to an enforcement action, order, or NPDES permit, the BMPs and associated record keeping must be implemented

~~and continued until the regulatory authority authorizes the BMPs to stop, unless approved to discontinue by the regulatory authority~~

SECTION 4. Section 20.80.460 of Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

**20.80.460 Evaluation criteria for issuance of permit.**

Prior to the issuance of any Development Permit which allows for the demolition, removal or relocation of a Building, the Director, or on appeal the Planning Commission or City Council, shall determine whether the benefits of permitting the demolition, removal or relocation outweigh the impacts of the demolition, removal or relocation. In making such a determination, the following shall be considered:

1. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
2. The failure to approve the permit would jeopardize public health, safety or welfare;
3. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
4. The approval of the permit should maintain the supply of existing housing stock in the City of San José;
5. Both inventoried and non-inventoried Buildings, Sites and districts of historical significance should be preserved to the maximum extent feasible;
6. Rehabilitation or reuse of the existing Building would not be feasible; and
7. The demolition, removal or relocation of the Building without an approved replacement Building should not have an adverse impact on the surrounding neighborhood.

8. The permit applicant has provided evidence that either the existing Building or Structure is not a Multiple Dwelling or Mobilehome Park or that the permit applicant has complied with all relocation obligations under state and local law, including but not limited to the obligations in Chapters 17.20, 17.23 and 20.200 of the Municipal Code.
9. The permit applicant has provided evidence of compliance with all applicable pre-demolition permit conditions and all other requirements in City Council Policy 6-28, Management of Pollutants During the Demolition of Applicable Projects.

SECTION 5. Section 20.95.020 of Chapter 20.95 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

**20.95.020 Applicability**

The provisions of this chapter shall apply:

- A. Whenever the creation, on or above ground through installation, construction, or replacement, of five thousand square feet or more of impervious surface will occur through a proposed development or redevelopment of real property for uncovered parking (stand-alone or part of another use), restaurant, auto service facility or retail gasoline outlet use including sidewalks and any other portions of the public right of way that are developed or redeveloped as a part of the project; or
- B. Whenever the creation, on or above ground through installation, construction, or replacement, of ~~ten~~ five thousand square feet or more of impervious surface will occur through a proposed development or redevelopment of real property, for any use except for development of detached single-family home projects, which are not part of a larger plan of development; or

- C. Whenever the creation, on or above ground through installation, construction, or replacement, of two thousand five hundred or more, but less than ~~ten-five~~ thousand square feet, of impervious surface will occur for any use through a proposed development of real property (a small project); or
- D. Whenever the creation, on or above ground through installation, construction, or replacement of ~~two-ten~~ thousand ~~five-hundred~~ square feet or more of impervious surface (collectively over the entire project site) will occur for the development or redevelopment of a detached, single-family home project which is not part of a larger plan of development, or
- E. Whenever a proposed development of real property requires the demolition of a structure.

**SECTION 6.** Section 20.95.110 of Chapter 20.95 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

**20.95.110 Conformance.**

- A. Design Requirements. Whenever the creation, on or above ground through installation, construction, or replacement of impervious surface will occur as part of a proposed development of real property, that development shall be designed, comply, and be maintained in conformance with "City Council Policy 6-29 Post-Construction Urban Runoff Management," and in conformance with the provisions of this chapter and Chapter 20.100 of this title, all as the same may be amended from time to time.
- B. Demolition. Whenever a proposed project of real property requires the demolition of a structure, that project shall comply with City Council Policy 6-28,



*Management of Pollutants During the Demolition of Applicable Projects and all other requirements of federal and state law, rule, or regulation, and this Code.*

SECTION 7. Section 20.100.465 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

**20.100.465 Storm water management – all projects**

- A. Any proposed development of real property that will create, on or above ground through installation, construction, or replacement, five thousand (5,000) square feet or more of impervious surface including within the public right of way shall be designed, comply, and be maintained in conformance with City Council Policy 6-29, *Post Construction Urban Runoff Management* City Council Policy 8-14 *Post-Construction Hydromodification Management*, and the provisions of this Code.
- B. Any proposed development of real property that will require the demolition of a structure shall comply with City Council Policy 6-28, *Management of Pollutants During the Demolition of Applicable Projects* and all other requirements of federal and state law, rule or regulation, and this Code.

SECTION 8. Section 20.100.480 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

**20.100.480 Storm water management - Projects disturbing one acre or more**

- A. All development projects with an approved development permit that result in a land disturbance of one (1) acre or more shall, prior to the commencement of any clearing, grading or excavation, comply with the City of San José National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit as follows:

1. The applicant shall develop, implement and maintain a storm water pollution prevention plan (SWPPP) to control the discharge of storm water pollutants including sediments associated with construction activities.
  2. The applicant shall file a notice of intent (NOI) with the state water resources control board (SWRCB).
- B. Along with these documents, the applicant may also be required to prepare an erosion control plan. The erosion control may include BMPs as specified in the California Storm Water Best Management Practice Handbook for reducing impacts on the city's storm drainage system from construction activities.
- C. Prior to the issuance of a grading permit, the applicant shall submit copies of the NOI and erosion control plan (if required) to the city project engineer, department of public works.
- D. The applicant shall maintain a copy of the most current SWPPP on site and shall provide a copy to any city representative or inspector on demand.
- E. The applicant shall implement and maintain all best management practices (BMPs) or control measures identified in the SWPPP and/or erosion control plan.
- F. Any proposed development of real property that will create, on or above ground through installation, construction, or replacement of one acre; ten thousand (10,000) square feet or more of impervious surface shall be designed in conformance and comply with City Council Policy No. 8-146-29, entitled City

~~Council Policy on Post Construction Urban Runoff Management~~Post-Construction Hydromodification Management, and the provisions of this chapter.

SECTION 9. Section 20.100.910 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

**20.100.910 Planned development permit required**

Unless the base zone is being utilized:

- A. No building or structure shall be erected, constructed, enlarged, placed or installed or moved onto any site nor shall there be any exterior alteration of any structure which is in a planned development district, and no building permit or installation permit shall be issued for such work, except pursuant to and in accordance with a planned development permit.
- B. No use shall be added, changed, modified, enlarged or altered on any site which is in a planned development district except pursuant to and in accordance with a planned development permit.
- C. A planned development permit may be issued for all or any part of the property situated in a planned development district.
- D. A planned development permit or amendment to a planned development permit may be issued for:
  - 1. The use of new dwelling units, which are not yet occupied for residential purposes, as model homes or sales offices in connection with the sale of dwelling units in a planned development district.

2. The use of structures, such as mobile homes, as sales offices in connection with the sale of dwelling units in a planned development district.
  3. The use of land in the planned development district for off-street parking or other uses incidental to the sales office or model home operation. Such use shall be limited to the duration of the sales office or model home operation.
- E. A planned development permit is not required for building additions, exterior alterations, and accessory structures on parcels eight thousand square feet or less which are used for single-family detached residential use if the additions, alterations, or structures:
1. Meet the development regulations of the R-1-8 residence district; and
  2. The construction would not require the issuance of a single-family house permit, pursuant to Part 9 of this [Chapter 20.100](#), if the property were not situated in a planned development zoning district; and
  3. The addition, alterations or accessory structures otherwise conform to the requirements of the planned development zoning district.
- F. A planned development permit is not required for mechanical equipment in planned development districts consisting solely of detached, one family dwelling uses. The setbacks for all mechanical equipment in these planned development districts must meet the setback requirements set forth in the particular planned development district. If no setback standards have been set forth for a particular

planned development district, the setbacks requirements shall be those standards set forth in [Section 20.60.080](#).

- G. A valid planned development permit or amendment, issued under this part, is required ~~prior to the issuance of any building permit or installation permit~~ for the creation, replacement, alteration or reconfiguration of impervious surface on any portion of a site not used solely for one single-family residence or for the creation, replacement, alteration or reconfiguration of 10,000 square feet or more of impervious surface on any portion of a site used for one single-family residence within a planned development district.

SECTION 10. Section 20.100.1030 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

**20.100.1030 Single-family house permit required.**

- A. A valid single-family house permit issued under this part is required prior to the issuance of a building permit for a single-family house that is a covered activity, as the terms building permit and covered activity are defined in Sections 18.40.210 and 18.40.220 of Chapter 18.40 of Title 18 of this Code, if:
1. The single-family house is located within one hundred feet of a riparian corridor as measured from top of bank or vegetative edge, whichever is greater; and
  2. The single-family house site is equal to or greater than one-half acre in size. Proof of payment of all applicable fees that are required under Title 18 Chapter 18.40 of this Code must be submitted to the director prior to issuance of a building permit for any project that is subject to payment of fees under Part 3 of Chapter 18.40 of Title 18 of this Code.

- B. A valid single-family house permit issued under this part is required prior to the issuance of a building permit for the following activities, unless specifically exempted by Subsection C D. below:
1. Erection, construction, enlargement, placement or installation of a single-family house on any site; or
  2. Exterior alteration of a single-family house.
- C. A valid single-family permit issued under this part is required if the project results in the creation, replacement, alteration or reconfiguration of 10,000 square feet or more of impervious surface on a site used for a single-family house, regardless of whether a building permit or grading permit is required. Such project is subject to City Council Policy No. 6-29, entitled *City Council Policy on Post Construction Urban Runoff Management*. The project is also subject to the administrative procedures set forth in this part unless the project otherwise requires a public hearing.
- D. No single-family house permit is required under Subsection B. above if any of the following applicable criteria and conditions is met:
1. The issuance of the building permit will result in a single-family house in any residential district with a floor area ratio equal to or less than forty-five hundredths or height equal to or less than thirty feet and/or equal to or less than two stories; or the site is not an historic resource listed on the historic resources inventory pursuant to Chapter 13.48 of Title 13 of this Code.
  2. The site is located in a planned development zoning district. All construction in a planned development zoning district shall be governed by the provisions of Part 8 of this chapter that may require issuance of a planned development permit for the review of any single-family house construction, addition, or alteration.

3. The issuance of building permits is for exterior alterations or maintenance of an existing single-family house which alterations or maintenance:
  - a. Would not expand the exterior footprint or increase the overall square footage of the existing single-family house or result in height that is greater than thirty feet and/or greater than two stories; and
  - b. Meet the development regulations of the R-1-8 residential zoning district; and
  - c. If the house is listed as a historic resource on the city's historic resources inventory, would solely repair pieces of existing features on a single-family house that is a historic resource, but is not a city landmark or located in a city landmark historic district, with like materials of the same size, shape, pattern and substance and in a manner that fully conforms to approved design guidelines.
4. The single-family houses are approved with a single site development permit issued pursuant to Part 5 of this chapter. A site development permit may be approved if the site is located:
  - a. In an R-1 residential zoning district; and
  - b. Includes construction of more than five new single-family houses.
5. The issuance of building permits will result in a single-family house in any residential zoning district with a floor area ratio equal to or less than forty-five hundredths and a height greater than thirty feet and/or two stories, provided that all of the following additional criteria or conditions are met:
  - a. The proposed house will be located on a site within a flood zone with a one hundred-year flood depth that requires elevation of the first finished floor of the proposed house to a height of at least five feet above grade; and
  - b. The height of the proposed house will be equal to or less than thirty feet plus the required one hundred-year flood depth elevation or the

maximum height of the residential zoning district in which the proposed house will be located, whichever height is less; and

- c. The site is not an historic resource listed on the historic resources inventory pursuant to Chapter 13.48 of Title 13 of this Code.
- 6. The issuance of building permits is for a solar photovoltaic system mounted on the surface of a single-family house in a manner that conforms with the provisions of this title.

**ED.** If the site is a historic resource listed on the historic resources inventory of the city pursuant to Chapter 13.48 of Title 13 of this Code and the site is a city landmark house and/or a house located in a city landmark historic district, then all work performed on a city landmark or in a city landmark historic district shall be governed by the provisions of Chapter 13.48 of Part 3 of Title 13 of this Code that require issuance of a historic preservation permit. No single-family house permit shall approve work performed on a city landmark house or a house located in a city landmark historic district.

**SECTION 11.** Section 20.100.1090 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

**20.100.1090 Findings.**

- A. The director, or planning commission on appeal, shall grant the single-family house permit only after making the following applicable findings:
  - 1. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.
  - 2. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are



aesthetically harmonious with adjacent development or the character of the neighborhood.

3. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.
4. For projects that require a single-family house permit under Section 20.100.1030 A. of this part, the director, or the planning commission, as set forth in Table 20-260, shall grant the single-family house permit after review of project design, only if the director or the planning commission finds that the project complies with Title 18, Chapter 18.40 of this Code.

5. For projects that require a single-family house permit under Section 20.100.1030 C. of this part, the director shall grant the single-family permit only if the director finds that the project complies with Chapter 20.95 of this Code.

- B. The director, or planning commission on appeal shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate such findings.

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PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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MATT MAHAN  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk