



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** February 14, 2019

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**SUBJECT: FILE NO. PP18-092: AN ORDINANCE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE (THE ZONING CODE) FOR SAFE PARKING SHELTER OF HOMELESS PEOPLE, INCLUDING:**

- 1) **ADDING SECTIONS 20.80.1665, 20.80.1670, 20.80.1675, 20.80.1680, 20.80.1685 AND 20.80.1690 TO NEW PART 17.5, CHAPTER 20.80, ADDING DEFINITIONS OF “INCIDENTAL SAFE PARKING”, AND “SAFE PARKING AREA”, AND CREATING STANDARDS FOR SAFE PARKING PROVISIONS TO PROVIDE SHELTER FOR HOMELESS PEOPLE IN VEHICLES PARKED ON EXISTING CITY-OWNED SITES AND SITES CONSISTING OF LEGAL ASSEMBLY USES CONSTRUCTED AND OPERATING IN COMPLIANCE WITH THE SAN JOSÉ MUNICIPAL CODE; AND**
- 2) **MAKING OTHER TECHNICAL, FORMATTING OR NON-SUBSTANTIVE CHANGES IN THE ZONING CODE**

## **RECOMMENDATION**

The Planning Commission voted 4-2 (Yesney and Vora opposed) to recommend that the City Council:

- a) Consider the Negative Declaration in accordance with CEQA; and
- b) Adopt an Ordinance amending Title 20 of the Municipal Code to allow safe parking of homeless individuals in vehicles as described in the staff report, and with additional changes as outlined by the Planning Commission.

## **OUTCOME**

If adopted by the City Council, Chapter 20.80 of the Zoning Code would be amended as recommended by the Planning Commission to allow Safe Parking provisions for homeless individuals on City-owned sites and sites consisting of legal assembly uses, as described below:

- Incidental Safe Parking use may be allowed on a legal Parcel that is at least three thousand (3,000) square feet in size.
- No Assembly Building or other Structure shall be erected, enlarged or modified without an approved Development Permit as required by Chapter 20.100 of this Title
- All persons receiving Incidental Safe Parking shall shelter within the vehicles. No person shall be housed in tents, lean-tos or other temporary facilities.
- No site shall be enlarged or modified for Incidental Safe Parking use without an approved Development Permit as required by Chapter 20.100 of this Title.
- The Incidental Safe Parking use shall be operated in a manner that is fully in conformance with all State and local laws including regulations and permit requirements which are not otherwise in conflict with the provisions of this Part.
- The Incidental Safe Parking use shall comply with the requirements of Sections 20.80.1665 and 20.80.1680.
- During weekdays, vehicles using the Incidental Safe Parking use shall arrive after 7:00 p.m. and depart before 10:00 a.m.
- No fires of any kind shall be permitted.
- No audio, video or other amplified sound may be played or generated that is audible outside participants' vehicles.
- Camping tarps or equipment erected beyond the participant's vehicle are prohibited.
- A restroom or portable toilet, water, refuse disposal, and sufficient trash and recycling receptacles shall be provided for the participants.

## **BACKGROUND**

On January 30, 2019, the Planning Commission conducted a public hearing on the proposed amendments to the Zoning Code. The attached Staff Report to the Planning Commission provides the analysis, public outreach, and coordination conducted on the proposed Zoning Code amendments.

### **Staff Presentation**

Planning staff summarized the proposed amendments to the Zoning Code. Housing staff added that the proposed safe parking program would provide an alternative to the mass shelter program. The proposed ordinance, except for the outdoor use on assembly sites and city parcels, is similar in structure to the previously approved Incidental Shelter Ordinance associated with shelter within existing places of assembly. Staff elaborated on the success of the pilot program for safe parking that was initiated in November 2018 under Council directive. Staff reported that the pilot program, not associated with the proposed ordinance, reduced gang activity, provided rehabilitation resources for about eight families, and resulted in a secure lot.

No members of the public spoke on the item.

### Planning Commission Discussion

Commissioners Ballard and Griswold commented that the 7:00 a.m. departure from assembly sites is too restrictive. Staff responded that the duration would help avert peak hour traffic conflicts for the surrounding residents and that the proposed safe parking use is intended to co-exist with the existing assembly use and operating hours during the weekdays. There is no restriction on hours of operation during the weekend. Staff stated that current provisions do allow additional hours of operation, if needed, with the approval of a development permit. Staff further clarified that if the assembly use facilitates additional programs, such as indoor meal service, then the safe parking users could utilize the lot for longer duration during that program. Housing staff added that the proposed program would provide safe interim shelter and is not intended to operate as a long-term or permanent program. Through this effort, users may encounter increased opportunities to transition to an incidental shelter or transitional housing.

Commissioners Ballard and Leyba raised questions related to the management plan and inclusion of recreation vehicles. Staff clarified that the management plan was included in the Housing Registration packet. Staff noted that there is no distinction between vehicle types, as the use is intended to be an overnight use, and all vehicles are required to exit within the established time period.

Commissioner Allen suggested that if the City could provide an application that includes potential housing information, the homeless persons who have access to a smart phone or internet could access that information. Commissioner Yesney stated that the ordinance was an excellent first effort to provide interim support to homeless persons, and restrictions must be imposed to minimize impacts in propagating the use and sites. Commissioner Griswold expressed concerns about the restrictions related to hours and eating in temporary structures on lots. She supported flexibility in hours and food consumption on the assembly lots during warm weather. Staff clarified that as proposed, eating is not permitted in temporary or tent structures but if the places of assembly were to include designated indoor or outdoor spaces, those areas could be used for food consumption and would be delineated in the management plan.

Commissioner Ballard made a motion to modify the hours of operation by extending the morning hours from 7 a.m. to 10 a.m., and to allow eating, food preparation, and cooking outside of vehicles and in temporary tents and structures. Commissioner Griswold seconded the motion. The Commission voted 4-2 (Yesney and Vora opposed) to recommend approval with the additional amendments.

### ANALYSIS

A complete analysis of the issues regarding the Zoning Ordinance changes is contained in the attached Planning Commission Staff Report.

### **EVALUATION AND FOLLOW-UP**

Staff evaluated the need for additional environmental analysis based on the Planning Commission's recommendation. The environmental consultant reviewed the proposed changes, including the outdoor eating, cooking activity and extended exit hours up to 10:00 a.m. It was determined that the Initial Study/Negative Declaration does not need to be recirculated (Attachment 3).

### **PUBLIC OUTREACH**

Public outreach for this proposal complies with the City Council's Public Outreach Policy and the Municipal Code. A public hearing notice, including the Planning Commission and City Council hearing dates was published in the San José Post-Record and emailed to a list of interested groups and individuals. Staff posted the hearing notice, staff report, and draft ordinance on the PBCE Department website. Staff has been available to discuss the proposal with interested members of the public.

### **COORDINATION**

The preparation of the proposed ordinance and this memorandum were coordinated with the City Attorney's Office and Housing Department.

### **CEQA**

File No. PP18-092: Initial Study/Negative Declaration for the Incidental Safe Parking Municipal Code Amendments. Based on the Planning Commission recommendation, an environmental determination is included with this memorandum (Attachment 3).

/s/  
Rosalynn Hughey, Secretary  
Planning Commission

For questions please contact Michael Brilliot, Deputy Director, (408) 535-7831.

#### Attachments:

1. Staff Report to Planning Commission
2. Draft Ordinance
3. Environmental Determination



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Rosalynn Hughey

**SUBJECT:** SEE BELOW

**DATE:** January 18, 2019

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**SUBJECT: PP18-092: Amendments to Title 20 of the San José Municipal Code (the Zoning Code) for shelter of homeless people to implement Council direction related to shelter of homeless people in the City, this ordinance proposes amending and adding sections to Part 17, Chapter 20.80 of the San José Municipal Code (the Zoning Code), to create safe parking provisions to provide shelter to homeless people in vehicles parked on existing City-owned sites and sites consisting of legal assembly uses constructed and operating in compliance with the San José Municipal Code; adding definitions of “Incidental Safe Parking” and “Safe Parking Area” to Chapter 20.80; and to make other technical, formatting or non-substantive changes in the Zoning Code.**

## **RECOMMENDATION**

Recommend that the Planning Commission:

1. Consider the Negative Declaration in accordance with CEQA; and
2. Recommend that the City Council adopt an ordinance amending Title 20 (the Zoning Code) of the San Jose Municipal Code to allow safe parking of homeless people in vehicles as described above.

## **OUTCOME**

If adopted by the City Council, the proposed ordinance would amend the Zoning Code provisions pertaining to Safe Parking for the shelter of homeless people on City-owned sites and sites consisting of legal assembly uses, based on City Council direction to staff as discussed in the public hearings held in October 2017 and March 2018.

## **BACKGROUND**

The 2017 biennial homeless census counted 4,350 homeless persons in San José. Out of the total 4,350 individuals, 74% were unsheltered (living in vehicles, on the streets, in abandoned structures, or in homeless encampments). The biennial point-in-time homeless census counted 104 families with children experiencing homelessness in San José with 340 individuals living in these families. This represents approximately 8% of the total homeless population counted in the census in San José.

From January 2017 to December 2017, there were 486 calls to the City of San José's Homeless Concerns Hotline over concerns about homeless persons residing in their vehicles (132 calls for people inhabiting their cars and 354 calls for people inhabiting recreation vehicles or RVs). During the same timeframe, there were 125 occupied vehicles reported to the City of San José's Vehicle Abatement Program due to individuals living in their vehicles.

### **Council Direction**

Given the clear need to establish alternative housing options for homeless individuals in the City, the Mayor and the City Council initiated actions to support the development of a Safe Parking Program. In October 2017, the City Council ranked and approved the establishment of a Safe Parking Program as number 13 of 27 items on the Council Priority list. In March 2018, the Mayor's March budget message allocated a one-time funding of \$3 million dollars to prioritized various homeless strategies including the development of a Safe Parking Program and Ordinance. In June 2018 the Council again voted to place a Safe Parking Ordinance as Council Priority 13 out of 27 priorities. At this time, City Council directed staff to explore and develop an ordinance which would allow for a "safe parking" use in public and privately-owned parking lots for people who live in their vehicles.

Given the number of people found living in their vehicles over the past year, the City Council tasked the Housing Department with issuing an RFP to implement a Safe Parking Pilot Program in the spring of 2018. The Safe Parking Pilot Program developed by the Housing Department is a parking program operated on City-owned property outside of the public right of way and managed by a non-profit homeless service provider. Safe Parking is identified as a potential tool to address the safety of the community and the homeless participants. It creates a safe and secure lots for car and recreation vehicle dwellers to park and sleep, increases access to available services, reduces traffic and the number of people living illegally in their vehicles on the streets, decreases enforcement actions and resulting legal costs to homeless persons, and will provide resources to secure permanent housing and economic stability. This Pilot Program was approved by City Council on October 16, 2018.

## **ANALYSIS**

### **Site Selection**

When determining what type of sites were appropriate for Safe Parking purposes, staff referred back to the prior approved Incidental Shelter Ordinance passed by City Council in August 2017. The approved Incidental Shelter Ordinance allowed legal places of assembly to have year-round incidental shelter use within existing buildings. The proposed ordinance for Safe Parking will allow similar assembly use sites to offer the homeless a safe parking option. These assembly uses must be legal places of assembly and conform to the Zoning Code requirements. Sites that already have an Incidental Shelter use may not also have a safe parking use. City-owned sites are also considered eligible sites to have safe parking opportunities. Safe Parking is not deemed an Emergency Residential Shelter.

### **Zoning Code**

The proposed ordinance will create a streamlined process to allow safe parking as a permitted incidental use without the requirement of an approved Development Permit provided the use can meet specific performance standards and other requirements set forth in the new Part 17.5. A Place of Assembly use includes, but is not limited to, all religious assembly sites, and other places where the public can assemble, such as gymnasiums, libraries, movie theaters, nightclubs, schools and community centers. Therefore, Safe Parking for homeless persons may be offered on a voluntary basis on any City-owned or leased site or on a site consisting of a legal assembly use subject to the following limitations:

1. The Parcel containing the Incidental Safe Parking use shall be located within the City's Urban Service Area.
2. The portion of a Parcel containing the Incidental Safe Parking use shall not be located at a distance closer than a minimum of sixty-five (65) feet from any residential use that is located on another Parcel, measured from the nearest point on the boundary of Safe Parking area to the nearest Parcel line of a Parcel containing a residential use.
3. 3. The Parcel containing the Incidental Safe Parking use shall comply with City Council Policy Number 4-3 on Outdoor Lighting for Private Developments, as may be amended from time to time.
4. Incidental Safe Parking uses shall be registered with the Housing Department and periodically update registration, on such forms as may be approved by the Director of Housing.
5. Sites containing Incidental Safe Parking uses shall be inspected for compliance with the Housing Registration requirements and Fire Code.
6. Quiet hours on any Parcel containing an Incidental Safe Parking use shall be maintained between 10:00 p.m. and 7:00 a.m., seven (7) days a week, 365 days a year. Quiet hours do not preclude outdoor activities, such as smoking in designated outdoor areas or exiting the Site.
7. Any Site containing an Incidental Safe Parking use including public access and parking shall be maintained in a clean and safe condition, and in compliance with a management plan that is completed as part of registration with the Housing Department.

The proposed ordinance amendments would add the following performance standards (see attached draft Zoning Code changes):

1. Incidental Safe Parking use may be allowed on a legal Parcel that is at least three thousand (3,000) square feet in size.
2. No Assembly Building or other Structure shall be erected, enlarged or modified without an approved Development Permit as required by Chapter 20.100 of this Title.
3. All persons receiving Incidental Safe Parking shall shelter within the vehicles. No person shall eat or be housed in tents, lean-tos or other temporary facilities.
4. No site shall be enlarged or modified for Incidental Safe Parking use without an approved Development Permit as required by Chapter 20.100 of this Title.
5. The Incidental Safe Parking use shall be operated in a manner that is fully in conformance with all State and local laws including regulations and permit requirements which are not otherwise in conflict with the provisions of this Part.
6. The Incidental Safe Parking use shall also comply with the requirements of Section 20.80.1665
7. No fires of any kind shall be permitted.
8. No audio, video or other amplified sound may be played or generated that is audible outside participants' vehicles.
9. No cooking or food preparation shall be performed outside of the participants' vehicles.
10. Camping tarps or equipment erected beyond the participant's vehicle are prohibited.
11. A restroom, water, and trash dumping shall be provided for the participants.

A use permit may be required on a case-by-case basis subject to specific findings of the above listed requirements.

### **Housing Department Registration**

The Housing Department will use some of the allocated funding to provide support to homeless service providers to help provide services at sites that are eligible to be Safe Parking sites in the city. The Housing Department will require a mandatory registration process for those sites electing to be a Safe Parking location. The Housing Department will provide guidelines for the operation of a Safe Parking site, materials required to complete the registration process, and relevant information for safe parking operators. The registration process will require a program contact, a site layout plan, a service management plan, and an emergency disaster plan.



The Housing Department will provide a template to assist incidental Safe Parking operators to assess the facility's conformance to applicable Municipal Code regulations and the Housing Department's registration process. Upon receipt of a registration packet, the Housing Department will arrange an inspection of the site to ascertain that the requirements of registration have been met. The Safe Parking registration packet is attached to this staff report.

### **GENERAL PLAN CONSISTENCY**

The Envision San José 2040 General Plan 2040 (General Plan) includes goals, policies, and actions related to the shelter of homeless people in the City. Additionally, the General Plan's Housing Element Work Plan includes investing in activities that will end homelessness. The Housing Element Work Plan incorporates policies, programs, and partnerships to meet San José's changing housing needs, with a goal to increase the supply of permanent supportive housing for homeless people, and explores opportunities to create homes with supportive services in the City. The proposed changes to the Zoning Code are consistent with the following General Plan policies:

1. Housing-Social Equity and Diversity Policy H-1.2: Facilitate the provision of housing sites and structures across location, type, price and status as rental or ownership that respond to the needs of all economic and demographic segments of the community including seniors, families, the homeless and individuals with special needs.

2. Housing-Affordable Housing Policy H-2.7: Support strategies in collaboration with other jurisdictions and agencies to end homelessness by creating permanent housing solutions combined with services such as medical, education, and job placement.

*Analysis: The proposed Safe Parking Ordinance will allow places of assembly to legally provide homeless individuals living in their cars a place to sleep and be safe during the most vulnerable times of the night. The operator of these sites will also be charged with providing services to these individuals. This includes helping them find permanent housing opportunities. While this program is not a permanent housing situation for the homeless individual living in a vehicle, it is a step closer to providing a home base and some sort of stability for these individuals. With an ordinance that legalizes sleeping and parking in vehicles overnight at a specific location, the City is able to alleviate the concern of being cited or fined for living in a car.*

### **PUBLIC OUTREACH/INTEREST**

Staff posted information about the proposed Zoning Code changes on the Planning Division's website in compliance with applicable requirements of the San José Municipal Code and State law. Staff has been available to discuss this item with interested members of the public. Staff will also send e-mail notification of this agenda item to its list of self-subscribed e-mail addresses that have requested notification prior to the scheduled Planning Commission hearing date.

PLANNING COMMISSION

December 12, 2018

**Subject: Zoning Code Changes for Safe Parking**

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Stakeholder and neighborhood outreach meetings were scheduled and facilitated by Housing Department staff in coordination with District 7 staff, where the pilot program site was proposed. The first meeting with the stakeholders, held on August 29, 2018, discussed the pilot program and the proposed ordinance, and included management staff from SJPD, Library and Parks, Recreation and Neighborhood Services, the proposed operator, principals of the nearby schools, the president of the neighborhood association and a representative from the District Attorney's office. The second stakeholder meeting took place on October 9, 2018 to review the Operations Plan.

Beginning on August 29, 2018, the Housing Department conducted outreach to the eight neighbors who surround the proposed pilot site. Ongoing communication about the pilot program and proposed ordinance has been maintained with the eight neighbors. The Housing Department distributed 400 flyers to homes surrounding the proposed site to inform them of a community meeting on September 4, 2018. Fourteen residents participated in the community meeting. The Housing Department participated in a Neighborhood Association Meeting on September 5, 2018 to address the comments and concerns of the neighborhood. On September 6, 2018, the Housing Department spoke directly to the Chief of Police regarding questions and concerns about the Safe Parking Pilot Program due to neighborhood concern. The Housing Department also spoke briefly about the Pilot Program at the Neighborhood Services & Education Committee on September 13, 2018.

The feedback from stakeholders and neighbors was similar in that both groups were interested in bringing more resources to the community, including safety patrols, gang interventions, and housing for car dwellers. The Pilot Program would provide much needed services to the community.

The proposed changes to the Zoning Code, with guidance and registration provided by the Housing Department, are intended to address issues raised by the public.

**COORDINATION**

Preparation of this report and the draft Zoning Ordinance were coordinated with the Housing Department and the City Attorney's Office.

PLANNING COMMISSION

December 12, 2018

**Subject: Zoning Code Changes for Safe Parking**

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**CEQA**

The Director of Planning, Building and Code Enforcement Department approved preparation of an Initial Study/ Negative Declaration (IS/ND) for the Incidental Safe Parking Use Municipal Code Amendments. The IS/ND was completed in compliance with the California Environmental Quality Act (CEQA), as amended, to reflect the independent analysis of the project by the City. The IS/ND identified potentially significant environmental impacts but determined that the proposed project would not have a significant impact on the environment. The environmental resources with potential significant impacts identified in the IS/MND were aesthetics, air quality, greenhouse gas emissions, hydrology and water quality, and noise. The City's Envision San José 2040 General Plan policies and municipal code regulations would ensure that any potentially significant impacts would be reduced to a less than significant level. The IS/ND was circulated for public review from December 21, 2018 to January 22, 2019, a total of 30 days. The IS/ND identified that the implementation of the project would not result in any significant effects to the environment. The IS/ND, associated appendices, response to comments, and other related environmental documents are available on the Planning website at: <http://www.sanjoseca.gov/index.aspx?nid=5674>.



ROSALYNN HUGHEY, DIRECTOR  
Planning, Building and Code Enforcement

For questions, please contact Aparna Ankola, Project Manager, Ordinance and Policy Team at 408-535-7845.

Attachments:

- 1) Draft Zoning Code changes
- 2) Draft CEQA Resolution
- 3) Safe Parking Registration Packet

## **Part 17.5 – INCIDENTAL SAFE PARKING USE ON PLACES OF ASSEMBLY AND CITY PARCELS**

### **20.80.1660 - Definitions.**

The following definitions are for purposes of this Part:

1. "Assembly Building" means a Building that is primarily used for Assembly Use.
2. "Assembly Use" means a use involving the gathering of persons to participate in a group or common activity or to observe a presentation, performance, or exhibition.
3. "Incidental Safe Parking" means the providing of shelter of homeless people as an incidental use to an existing primary Assembly Use or other use identified in this Part provided that the safe parking use occupies less than fifty (50%) percent of the paved square footage of the Site, and where the shelter is provided in vehicles located in designated paved "Safe Parking Area(s)".
4. "Place of Assembly" means a Site that contains Assembly Uses including but not limited to religious assemblies, gymnasiums, libraries, theaters, schools, and community centers
5. "Safe Parking Area" means the paved area(s) where the vehicles are parked for the Incidental Safe Parking use.

### **20.80.1665 - Permit required.**

A. An Assembly Use may provide Incidental Safe Parking to homeless persons in compliance with Section 20.80.1840, and will not need to amend their current permit or obtain a new permit.

B. If a legal Assembly Use does not comply with Section 20.80.1680, Incidental Safe Parking may only be provided if:

1. The use is specifically allowed by a conditional use permit or Planned Development permit issued for the Assembly Use; or
2. With an amendment to an existing conditional use permit or Planned Development permit for Assembly Use; or
3. With a special use permit if no conditional use permit or Planned Development permit is required for the Assembly Use.

C. A management plan shall be submitted as part of any permit application for Incidental Safe Parking on Assembly Building site(s).

### **1. 20.80.1670 - Findings.**

A. The Director or Planning Commission may issue a special use permit only after finding that:

1. The Incidental Safe Parking use at the location requested will not adversely affect the health, safety, or welfare of persons residing or working in the surrounding area.

2. The proposed site is adequate in size and shape to accommodate the Incidental Safe Parking use.

B. The application shall be denied where the information which is either submitted by the applicant or presented at the public hearing fails to satisfactorily substantiate such findings.

### **20.80.1675 - Conduct of use.**

An Assembly Use that is a legal use may provide Incidental Safe Parking to homeless persons subject to each of the following limitations:

1. Incidental Safe Parking use may be allowed on a legal Parcel that is at least three thousand (3,000) square feet in size.
2. No Assembly Building or other Structure shall be erected, enlarged or modified without an approved Development Permit as required by Chapter 20.100 of this Title
3. All persons receiving Incidental Safe Parking shall shelter within the vehicles. No person shall eat or be housed in tents, lean-tos or other temporary facilities.
4. No site shall be enlarged or modified for Incidental Safe Parking use without an approved Development Permit as required by Chapter 20.100 of this Title.
5. The Incidental Safe Parking use shall be operated in a manner that is fully in conformance with all State and local laws including regulations and permit requirements which are not otherwise in conflict with the provisions of this Part.
6. The Incidental Safe Parking use shall comply with the requirements of Sections 20.80.1665 and 20.80.1680.
7. During weekdays, vehicles using the Incidental Safe Parking use shall arrive after 7:00 p.m. and depart before 7:00 a.m.
8. No fires of any kind shall be permitted.
9. No audio, video or other amplified sound may be played or generated that is audible outside participants' vehicles.
10. No cooking or food preparation shall be performed outside of the participants' vehicles.
11. Camping tarps or equipment erected beyond the participant's vehicle are prohibited.
12. A restroom, water, and trash dumping shall be provided for the participants.

### **20.80.1680 – Safe Parking Exception to Permit Requirement.**

Notwithstanding Sections 20.80.1665 and 20.80.1670 of this Part, no conditional use permit or special use permit shall be required for any Safe Parking use that meets and remains in full compliance with all of the following requirements:

1. The Parcel containing the Incidental Safe Parking use shall be located within the City's Urban Service Area.

2. The portion of a Parcel containing the Incidental Safe Parking use shall not be located at a distance closer than a minimum of sixty-five feet from any residential use that is located on another Parcel, measured from the nearest point on the boundary of Safe Parking area to the nearest Parcel line of a Parcel containing a residential use. The minimum setback distance may be reduced to thirty-five feet in the event the adjacent residential use is separated by a solid six-foot or greater noise barrier with no adjacent second story residential facades. To be effective, a noise barrier must be solid over the face and at the base of the barrier (i.e., no cracks or gaps), and be constructed from materials having a minimum surface weight of three pounds per square foot (3 lbs./sq.ft). One-inch (nominal thickness) wood fence boards are suitable as well as concrete or masonry block. Any Safe Parking use that does not adhere to these minimum setbacks shall

## **Part 17.5 – INCIDENTAL SAFE PARKING USE ON PLACES OF ASSEMBLY AND CITY PARCELS**

### **20.80.1660 - Definitions.**

The following definitions are for purposes of this Part:

1. "Assembly Building" means a Building that is primarily used for Assembly Use.
2. "Assembly Use" means a use involving the gathering of persons to participate in a group or common activity or to observe a presentation, performance, or exhibition.
3. "Incidental Safe Parking" means the providing of shelter of homeless people as an incidental use to an existing primary Assembly Use or other use identified in this Part provided that the safe parking use occupies less than fifty (50%) percent of the paved square footage of the Site, and where the shelter is provided in vehicles located in designated paved "Safe Parking Area(s)".
4. "Place of Assembly" means a Site that contains Assembly Uses including but not limited to religious assemblies, gymnasiums, libraries, theaters, schools, and community centers
5. "Safe Parking Area" means the paved area(s) where the vehicles are parked for the Incidental Safe Parking use.

### **20.80.1665 - Permit required.**

A. An Assembly Use may provide Incidental Safe Parking to homeless persons in compliance with Section 20.80.1840, and will not need to amend their current permit or obtain a new permit.

B. If a legal Assembly Use does not comply with Section 20.80.1680, Incidental Safe Parking may only be provided if:

1. The use is specifically allowed by a conditional use permit or Planned Development permit issued for the Assembly Use; or
2. With an amendment to an existing conditional use permit or Planned Development permit for Assembly Use; or
3. With a special use permit if no conditional use permit or Planned Development permit is required for the Assembly Use.

C. A management plan shall be submitted as part of any permit application for Incidental Safe Parking on Assembly Building site(s).

### **1. 20.80.1670 - Findings.**

A. The Director or Planning Commission may issue a special use permit only after finding that:

1. The Incidental Safe Parking use at the location requested will not adversely affect the health, safety, or welfare of persons residing or working in the surrounding area.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE INCIDENTAL SAFE PARKING USE AMENDMENTS TO TITLE 20 OF THE SAN JOSE MUNICIPAL CODE PROJECT NEGATIVE DECLARATION, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED**

**WHEREAS**, prior to the adoption of this Resolution, the Planning Director of the City of San José prepared an Initial Study and approved for circulation a Negative Declaration for Incidental Safe Parking Use Municipal Code Amendments under Planning File No. PP18-092 (the “Initial Study/Negative Declaration”), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”); and

**WHEREAS**, the Incidental Safe Parking Use Municipal Code Amendments (the “Project”) analyzed under the Initial Study/Negative Declaration consists of a Director-initiated amendment to Title 20 of the San José Municipal Code to create standards that could allow homeless individuals and families to sleep overnight in their personal vehicles, by allowing “safe parking” as an incidental permitted use to an existing assembly use or on City properties, where the safe parking is provided on existing paved parking areas and operating in compliance with the San José Municipal Code within the City of San José, California; and

**WHEREAS**, the Initial Study/Negative Declaration concluded that implementation of the Project would not result in certain significant effects on the environment; and

**WHEREAS**, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

**WHEREAS**, the City Council has reviewed and considered the Initial Study/Negative Declaration for the Project and intends to take actions on the Project in compliance with CEQA and State and local guidelines implementing CEQA; and

**WHEREAS**, the Initial Study/Negative Declaration for the Project are on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein;

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

**THAT THE CITY COUNCIL** does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with State and local guidelines implementing CEQA, and (3) the Initial Study/Negative Declaration represents the independent judgment and analysis of the City of San José, as lead agency for the Project. The City Council designates the Director of Planning at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

**THAT THE CITY COUNCIL** does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt



the Negative Declaration prepared for the Project (Planning File No. PP18-092). The Initial Study/Negative Declaration are: (1) on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113 and (2) available for inspection by any interested person.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
SAM LICCARDO  
Mayor

ATTEST:

\_\_\_\_\_  
TONI J. TABER, CMC  
City Clerk

DRAFT



## **San José Safe Parking**

### **REGISTRATION PACKET**

#### **INTRODUCTION**

If your organization or business is interested in offering a designated parking area within San José for persons residing in their vehicle or recreational vehicle to safely park, the City Housing Department can offer some guidance on what is needed to conduct a safety evaluation and review best practices. The maximum number of vehicles shall be determined by the Fire Marshall. Please complete the following packet to participate in San José Safe Parking.

#### **CHECKLIST**

Please complete the following.

- Contact Information .....Page 2
- Management Plan.....Page 3
- Emergency Evacuation Plan

#### **SITE VISIT**

Once the packet is received by the City, a site visit will be scheduled with the identified point of contact. The site visit will include a safety evaluation conducted by the Housing Department and/or the Fire Department to recommend the maximum occupancy for designated parking spaces, lighting and an emergency evacuation plan.

#### **EVALUATION**

Registrants will be periodically asked to provide a summary of their experience and any feedback on the following, if applicable and feasible:

- Total number served
- Success stories
- Lessons learned
- Unmet needs
- Other thoughts and comments

#### **SUBMIT PACKET**

Please submit the registration packet for San José Safe Parking to Lorena Diez in the City Housing Department via email ([lorena.diez@sanjoseca.gov](mailto:lorena.diez@sanjoseca.gov)) or mail (Attention: Lorena Diez, 200 E. Santa Clara St., 12<sup>th</sup> Floor San José, CA, 95113). Please feel free to call Lorena at 408-975-4456 with questions.



**San José Safe Parking**  
**REGISTRATION PACKET**

**CONTACT INFORMATION**

Property owner: \_\_\_\_\_

Property Address: \_\_\_\_\_

Primary contact name: \_\_\_\_\_

Primary contact phone: \_\_\_\_\_

Primary contact email: \_\_\_\_\_

Alternate contact name: \_\_\_\_\_

Alternate contact phone: \_\_\_\_\_

Alternate contact email: \_\_\_\_\_



**San José Safe Parking  
REGISTRATION PACKET**

**MANAGEMENT PLAN**

Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Hours of operation: \_\_\_\_\_ P.M. - \_\_\_\_\_ A.M.

Participant Eligibility (check all that apply)

- By referral only (by \_\_\_\_\_)
- Walk ins welcome
- Intake (for example, general personal information, program rules, behavioral expectations, etc.)
- Pets allowed
- Other \_\_\_\_\_

Target Population (check all that apply)

- Anyone
- Single individuals
- Families
- Other \_\_\_\_\_

Services (check all that apply)

- Restrooms
- Water
- Trash cans
- Janitorial/maintenance services
- Onsite staff/volunteers/assistance for participants
- Security
- Interested in bringing services to participants from an established organization
- Electricity hook-up
- Black/grey water disposal
- Designated smoking area identified
- Other \_\_\_\_\_

The following  
items were  
received after  
packets were  
distributed.

**From:** Planning Commission 1

**Sent:** Monday, January 28, 2019 17:51

**To:** Ankola, Aparna <[aparna.ankola@sanjoseca.gov](mailto:aparna.ankola@sanjoseca.gov)>; Mahamood, Reema <[reema.mahamood@sanjoseca.gov](mailto:reema.mahamood@sanjoseca.gov)>; Hughey, Rosalynn <[Rosalynn.Hughey@sanjoseca.gov](mailto:Rosalynn.Hughey@sanjoseca.gov)>; Manford, Robert <[Robert.Manford@sanjoseca.gov](mailto:Robert.Manford@sanjoseca.gov)>; Todorov, Vera <[vera.todorov@sanjoseca.gov](mailto:vera.todorov@sanjoseca.gov)>; Phan, Johnny <[Johnny.Phan@sanjoseca.gov](mailto:Johnny.Phan@sanjoseca.gov)>

**Cc:** Planning Commission 1 <[PlanningCom1@sanjoseca.gov](mailto:PlanningCom1@sanjoseca.gov)>; Planning Commission 3 <[PlanningCom3@sanjoseca.gov](mailto:PlanningCom3@sanjoseca.gov)>

**Subject:** PP18-092: Amendments to Title 20 (Safe Parking Program)

Hello Planning Team, (cc PC Chair Allen)

I reviewed the Memorandum and associated attachments for the subject agenda item / Title 20 amendments. Here are a few comments / questions:

- 1) I noticed that the memorandum makes reference to recreation vehicles (RVs), but the proposed code amendment language does not define vehicles nor make any delineation between RVs or passenger vehicles (e.g. cars, SUVs, mini/vans, small pickups). I know some other cities make a distinction and do NOT allow RVs in their safe parking, because they don't want long-term residents. **Did the council provide any direction on this topic?**

There are two discrepancies between the memo and the draft code language:

- 2) The draft code language (red text) contains arrival and departure time windows in the performance standards (attachment page 9); the corresponding memo language (page 4) does not: *7. During weekdays, vehicles using the Incidental Safe Parking use shall arrive after 7:00 p.m. and depart before 7:00 a.m.* **Was this an addition that was not copied to both lists or a deletion not reflected in both sets?**
- 3) The draft code language contains a reduction in the setback requirement from 65 to 35 feet if there is a noise barrier and no residential second-story façade, or a provision for noise analysis (attachment page 9), but the corresponding memo language (page 3, #2) does not make any mention of these exceptions: *The minimum setback distance may be reduced to thirty-five feet in the event the adjacent residential use is separated by a solid six-foot or greater noise barrier with no adjacent second story residential facades. To be effective, a noise barrier must be solid over the face and at the base of the barrier (i.e., no cracks or gaps), and be constructed from materials having a minimum surface weight of three pounds per square foot (3 lbs./sq.ft). One-inch (nominal thickness) wood fence boards are suitable as well as concrete or masonry block. Any Safe Parking use that does not adhere to these minimum setbacks shall provide an analysis prepared by a qualified noise consultant demonstrating compliance with the City's noise standards for uses adjacent to residential uses.* **Likewise, was this an addition not copied to both lists or a deletion not reflected in both sets?**
- 4) I would lastly suggest a minor cleanup in the language used on performance standard #11 regarding the facilities provided. (Memo Page 4 /attachment page 9 - Zoning 20.80.1675 Conduct of Use #12). At present it reads, *11. A restroom, water, and trash dumping shall be provided for the participants.* Instead of referring to "trash dumping," I would suggest language

like “collection of” or “disposal of” garbage and recycling, so that it reads: *11. A restroom, water, and disposal of garbage and recycling shall be provided for the participants.*

I was concerned about using any wording like “solid waste” (9.10.280), because that’s a much larger class of materials, but there’s a whole lot of code in Title 9 (Health and Safety). Garbage is defined neatly at 9.10.120, to which Title 20 refers in 20.70.480. Wherever we can point to existing definitions, we increase consistency and reduce admin burden. Maybe counsel can guide us to the most appropriate language?

Hope this helps. Thank you!

--John

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*John S. Leyba, Planning Commissioner, City of San Jose*  
phone: 408-926-5646 -- email: [PlanningCom1@sanjoseca.gov](mailto:PlanningCom1@sanjoseca.gov)

PP18-092

5.a.

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From: Planning Commission 5

Sent: Monday, January 28, 2019 1:36 PM

To: Ankola, Aparna

Subject: PP18-092

Hi Aparna,

I had a few questions regarding this item.

First, were we supposed to get the CEQA analysis? Can I get a pdf?

Second, can you explain the rationale behind the prohibition on eating in tents and temporary facilities? I understand the rationale for sleeping, but I am having an issue with applying it to eating outside. It seems overly restrictive to limit the ability of places of assembly to provide temporary outdoor eating areas and, more particularly, temporary structures for shade to provide homeless individuals an opportunity to eat outside, particularly when the weather is warm.

Third, in the Public Outreach section, there is a sentence that the "Pilot Program would provide much needed services to the community." What services are being brought to the community? I didn't see any discussion of how this would come to pass and I was curious whether this policy amendment is being tied to safety patrols or other community services?

Fourth, why are the hours from 7 pm to 7 am only? Were longer hours explored?

Your assistance is much appreciated.

Sincerely,

Melanie



PP18-092

5.a.

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**From:** Planning Commission 7  
**Sent:** Tuesday, January 29, 2019 6:11 PM  
**To:** Ankola, Aparna  
**Cc:** Manford, Robert; Do, Sylvia; Nusbaum, Jenny  
**Subject:** PP18-092

Aparna - I am curious about the Pilot Project referred to in this staff report; a pilot program is usually intended to evaluate a new effort to see what refinements or changes might be needed. Other than mentioning that the Council approved it in October 2018, there isn't any indication that it happened or is happening. The references on page 6 seem to imply that it has not yet happened ("The Pilot Program would provide much needed services to the community.")

The recommendation is to approve the project, which is the full ordinance. It wouldn't make sense to approve the ordinance and then implement the Pilot Program. If the Pilot Program has already occurred, what happened? Was it a success? What was learned from it?

If the Pilot Program has not yet occurred, how will it relate to the ordinance - if the pilot is a failure (i.e., unforeseen problems), what will the City do vis-a-vis the ordinance?

Michelle Yesney  
Planning Commissioner  
Melanie

# Fw: Incidental Safe Parking

Ankola, Aparna

Wed 2/6/2019 3:20 PM

To: Ankola, Aparna <aparna.ankola@sanjoseca.gov>;

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**From:** Akoni Danielsen <ADanielsen@davidjpowers.com>

**Sent:** Monday, February 4, 2019 11:59 AM

**To:** Mahamood, Reema

**Cc:** Walsh, Susan; Hemphill, Kelly; Henninger, Ragan

**Subject:** RE: Incidental Safe Parking

Here is suggested text to explain why the PC recommended changes don't require IS/ND recirculation. I'd still appreciate seeing the strikethrough, underline text to be sure what I drafted remains appropriate.

The Initial Study/Negative Declaration for the project circulated for public review from December 21, 2018 through January 21, 2019. At the January 30, 2019 Planning Commission hearing, the Planning Commission voted to recommend the City Council approve the proposed Incidental Safe Parking Municipal Code Amendments, with several recommended changes to the proposed Conduct of Use provisions in Muni Code Section 20.80.1675. These changes pertain to allowing homeless persons to cook outside their vehicles, and to allow the parked vehicles to remain on a site beyond the hour of 7:00 a.m. (as proposed in the draft ordinance) to 10:00 a.m. For reasons explained below, these recommended changes to the draft ordinance, should they be incorporated by the City Council in whole or in part, do not constitute substantial changes to the project that necessitate recirculation of the IS/ND for additional public review.

CEQA Guidelines Section 15073.5 provides the circumstances under which an IS/ND must be recirculated to allow for additional public review and comment. Recirculation of the IS/ND is required when substantial revision of the ND is required to disclose significant new information including:

- (1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or
- (2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance and new measures or revisions must be required.

Recirculation is not required under the following circumstances:

- (1) Mitigation measures are replaced with equal or more effective measures.
- (2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.
- (3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.
- (4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.

**Outdoor Cooking or Food Preparation.** The project description (Code of Conduct, 20.80.1675) in the IS/ND included a prohibition on cooking or food preparation outside of vehicles. The Planning Commission's recommended change to allow for outdoor cooking would not implicate a new significant effect in that the use of camping stoves, grills, and other food preparation outside of vehicles would be subject to the management plan for the incidental safe parking use on a given site. The management plan would include provisions for regular parking lot cleaning and proper disposal of refuse that would be generated during cooking or meal preparations occurring outside of vehicles, if such activity is allowed in the final ordinance adopted by City Council. The additional activity associated with outdoor cooking or food preparation would not substantially increase the noise, odors, lighting, or other spill-over effects of homeless parking their vehicles on a given site, as compared to what was presented in the IS/ND.

**Extended Parking Hours.** The project description (Code of Conduct, 20.80.1675) in the IS/ND included a provision that cars would arrive on a site no earlier than 7:00 p.m. and depart no later than 7:00 a.m. This was intended to reduce overlap between the primary daytime use of a site, to ensure adequate parking was available for the primary use on the site, and to reduce the number of homeless vehicles that would be traveling to/from the site during the AM/PM commute peak hours. The Planning Commission's recommended change to allow for parking of vehicles beyond 7:00 a.m. to as late as 10:00 a.m. would not implicate a new significant effect in that the City no longer uses level of service (vehicular delay) at intersections as the basis for determining a project's transportation impacts under CEQA. Rather, the City now uses Vehicle Miles Traveled (VMT) according to Council Policy 5-1 for determining a project's transportation impacts, and for an incidental Safe Parking location, the time that vehicle depart or arrive at a given site has no bearing on the overall VMT for that site. To the extent homeless vehicles departing after 7:00 a.m. are contributing to increased congestion on roadways surrounding a given Safe Parking site, that is an 'operational traffic' concern the City can address (as needed) as part of a Local Transportation Analysis (LTA), unrelated to CEQA. The potential for cars parked after 7:00 a.m. at a given Safe Parking location to cause a shortfall for required parking under Title 20 would be reviewed by the City on a case-by-case basis as that Safe Parking location was reviewed by the City, to ensure the primary daytime use of the site was adequately parked. For these reasons, the extended parking of homeless vehicles until 10:00 a.m. would not result in a new transportation impact, as compared to what was presented in the IS/ND.

In summary, pursuant to Section 15073.5 of the CEQA Guidelines, the changes recommended by the Planning Commission would not substantially alter the project nor result in new significant impacts, and thereby would not create a need to recirculate the IS/ND for additional public review.

**Akoni Danielsen** | Vice President & Principal PM

[David J. Powers & Associates, Inc.](#)

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Main: 408.248.3500 | Direct: 408.454.3406 | Cell: 510.458.4163

[adanielsen@davidjpowers.com](mailto:adanielsen@davidjpowers.com)

*DJP&A is a certified Green Business, DBE, and MWBE.*