

**DRAFT**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20, CHAPTER 20.80 OF THE SAN JOSE MUNICIPAL CODE TO ADD PART 17.5, SECTIONS 20.80.1660, 20.80.1665, 20.80.1670, 20.80.1675, 20.80.1680, 20.80.1685, AND 20.80.1690 ADDING DEFINITIONS OF “INCIDENTAL SAFE PARKING” AND “SAFE PARKING AREA,” AND TO CREATE SAFE PARKING PROVISIONS 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 JOSE MUNICIPAL CODE; AND TO MAKE OTHER TECHNICAL, FORMATTING, OR NON-SUBSTANTIVE CHANGES**

**WHEREAS**, the City of San José’s 2017 biennial homeless census counted 4,350 homeless persons in San José, and out of that total, determined 74% were unsheltered (living in vehicles, on the streets, in abandoned structures, or in homeless encampments); and

**WHEREAS**, 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, and allocated a one-time funding of \$3 million dollars to prioritize various homeless strategies including the development of a Safe Parking Program and Ordinance; and

**WHEREAS**, “Safe Parking” is identified as a potential tool to address the safety of the community and the homeless participants, creating safe and secure lots for car and recreational vehicle dwellers to park and sleep, increasing access to available services, reducing traffic and the number of people living illegally in their vehicles on the streets,

decreasing enforcement actions and resulting legal costs to homeless persons, and providing resources to secure permanent housing and economic stability; and

**WHEREAS**, the City seeks to 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; and

**WHEREAS**, 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 while alleviating the concern of being cited or fined for living in a car; 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 of the City of San José, on December 20, 2018, prepared and approved a Negative Declaration; and

**WHEREAS**, pursuant to Section 15164 of the CEQA Guidelines, 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

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

**WHEREAS**, this City Council has reviewed and considered the adopted Incidental Safe Parking Use Project Negative Declaration and related City Council Resolution No. \_\_\_\_\_, 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. Chapter 20.80 of Title 20 of the San José Municipal Code is amended to add a new part to be numbered, entitled and to read as follows:

**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 another 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 20.80.1680 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).

**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:

- A. Incidental Safe Parking use may be allowed on a legal Parcel that is at least three thousand (3,000) square feet in size.
- B. 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.

- C. All persons receiving Incidental Safe Parking shall shelter within the vehicles, except as otherwise provided in the approved management plan that is completed as part of registration with the Housing Department. No person shall be housed in tents, lean-tos or other temporary facilities.
- D. 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.
- E. 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.
- F. The Incidental Safe Parking use shall also comply with the requirements of Section 20.80.1665 or Section 20.80.1680.
- G. During weekdays, vehicles using the Incidental Safe Parking use shall arrive after 7:00 p.m. and depart before 10:00 a.m.
- H. No fires of any kind shall be permitted.
- I. No audio, video or other amplified sound may be played or generated that is audible outside participants' vehicles.
- J. Camping tarps or equipment erected beyond the participant's vehicle are prohibited.
- K. A restroom or portable toilet, water, refuse disposal, and sufficient trash and recycling receptacles 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:

- A. The Parcel containing the Incidental Safe Parking use shall be located within the City's Urban Service Area.
- B. 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 tall 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.
- C. 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.

- D. 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.
- E. Sites containing Incidental Safe Parking uses shall be inspected for compliance with the Fire Code and Housing Department requirements.
- F. 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.
- G. 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.
- H. Incidental Safe Parking use shall comply with the requirements of Section 20.80.16765.

**20.80.1685 – Incidental Safe Parking – City Property**

Notwithstanding this Part, an Incidental Safe Parking use may be provided on a Parcel owned or leased by the City, provided that the Safe Parking Area(s) shall include no more than 49% of the paved area.

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**20.80.1690 – Incidental Safe Parking Generally**

Council Policy 6-16 (Uses of Public Property) and Chapter 6.46 of Title 6 of this Code (regulating Mobilehomes and Mobilehome Parks) shall not apply to Incidental Safe Parking.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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

ATTEST:

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