

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 (ZONING ORDINANCE OR ZONING CODE) OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTION 20.30.150 TO ALLOW SECONDARY UNITS IN LOW DENSITY RESIDENTIAL CLUSTER DEVELOPMENT; AMEND SECTION 20.30.500 TO ADD CLARIFYING LANGUAGE TO INCLUDE CORNER SETBACK REQUIREMENT FOR ACCESSORY STRUCTURES; AMEND SECTION 20.50.125 TO ADD CLARIFYING LANGUAGE TO PERMITTED INCIDENTAL OFFICE USE IN LIGHT INDUSTRIAL AND HEAVY INDUSTRIAL ZONING DISTRICTS; AMEND SECTION 20.100.500 TO ALLOW ADDITIONS AND ACCESSORY STRUCTURES FOR LOW DENSITY CLUSTER DEVELOPMENT; AMEND SECTION 20.100.1300 FOR CLARITY TO INCORPORATE SAFETY GUARDRAILS WITHIN THE MAXIMUM HEIGHT LIMITATIONS FOR ELEVATOR SHAFTS AND STAIRWELLS; AMEND SECTION 20.200.181 TO REPLACE DEFINITION OF CATERING FACILITY WITH CATERER; AND TO MAKE OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES WITHIN THOSE SECTIONS OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE**

**WHEREAS**, pursuant to Section 15168(c)(2) of the CEQA Guidelines, the City of San José has determined that this Ordinance is pursuant to, in furtherance of and within the scope of the previously approved program evaluated in the Final Program Environmental Impact Report for the Envision San José 2040 General Plan (the “FEIR”), for which findings were adopted by City Council through its Resolution No. 76041 on November 1, 2011, and Supplemental Environmental Impact Report (the “SEIR”), through Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto, and does not involve new significant effects beyond those analyzed in the FEIR and SEIR; and

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

**WHEREAS**, this Council of the City of San José has considered and approves the information contained in the FEIR, as supplemented and addenda thereto, and related City Council Resolution Nos. 76041 and 77617 and the determination of consistency therewith 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 20.30.150 of Chapter 20.30 of Title 20 of the San José Municipal Code is amended to read as follows:

**20.30.150 Secondary Units**

Notwithstanding any other provision of this title to the contrary, secondary dwellings that meet all of the following criteria shall be allowed pursuant to the provisions of this Chapter:

- A. Zoning District. A secondary dwelling that is attached to or detached from a one-family dwelling shall be permitted only in: (1) the R-1 zoning districts, the R-2 zoning district or the R-M zoning district in accordance with the provisions of Section 20.30.100, ~~or~~ (2) in planned development zoning districts that are authorized in accordance with Chapter 20.60 of this Title if (a) the planned development is subject to the standards and allowed uses of an R-1 zoning district, or (b) the secondary dwelling conforms to the development and use standards of the planned development district, or (3) in low density cluster development issued under previously existing provisions of this title if (a) the cluster development conforms with the development standards of the R-1 zoning district, or (b) the secondary dwelling conforms to the development and use standards of the low density cluster permit.

- B. Minimum Lot Size. The minimum lot size on which a Secondary Dwelling may be allowed is three thousand (3,000) square feet.
- C. Density. A secondary dwelling shall not be included in calculation of residential density for the purpose of determining general plan conformance.
- D. Maximum Secondary Dwelling Floor Area. The increased floor area of an attached secondary dwelling shall not exceed fifty percent (50%) of the existing living area of the primary dwelling or fifty percent (50%) of the proposed living area of the primary dwelling if the primary dwelling is being built or enlarged concurrently with construction of the secondary dwelling unit. A secondary dwelling shall not exceed the following maximum gross floor area:
  - 1. Six hundred square feet for a secondary dwelling on a lot with an area of at least three thousand (3,000) square feet up to five thousand four hundred forty-four (5,444) square feet;
  - 2. Seven hundred square feet for a secondary dwelling on a lot with an area of at least five thousand four hundred forty-five (5,445) and up to nine thousand (9,000) square feet;
  - 3. Eight hundred square feet for a secondary dwelling on a lot with an area greater than nine thousand (9,000) square feet and up to ten thousand (10,000) square feet;
  - 4. Nine hundred (900) square feet for a secondary dwelling on a lot with an area greater than ten thousand (10,000) square feet.

**Table 20-55**

Minimum Lot size	Maximum gross floor area
At least 3,000 square feet and up to 5,444 square feet	600 square feet
At least 5,445 square feet and up to 9,000 square feet	700 square feet
Greater than 9,000 Square feet and up to 10,000 square feet	800 square feet
Greater than 10,000 Square feet	900 square feet

- E. Required Facilities. A secondary dwelling shall include all of the following facilities:
1. A kitchen (including a sink, food preparation counter, storage cabinets, and permanent cooking facilities such as an oven and range or cooktop, that meet Building Code standards); and
  2. A full bathroom (including sink, toilet, and shower and/or bath facilities.
- F. Bedroom Requirement and Maximum Bedroom Area. A secondary dwelling is required to contain a combined sleeping and living area or one bedroom and shall include no more than one bedroom and one living area, except for units that are eight hundred (800) square feet to nine hundred (900) square feet which may contain two bedrooms. The floor area of the bedroom shall not exceed four hundred (400) square feet.
- G. Bathroom Limit. A secondary dwelling shall contain no more than one bathroom.
- H. Maximum Accessory Storage Area. The total size of any closet or other enclosed storage area within the secondary dwelling shall not exceed sixty (60) square feet of floor area.

I. Required Secondary Dwelling Parking.

1. One additional on-site parking space, in addition to the required on-site parking spaces for the one-family dwelling, is required for a secondary dwelling, except as provided in subsection 3 below. Tandem parking that otherwise complies with setback and paving requirements set forth in Sections 20.90.120 and 20.90.140 and Chapter 20.95 of the Municipal Code, shall be allowed.
2. The required on-site parking space for a secondary dwelling may be located on a garage driveway in the front setback area of the lot on which a secondary dwelling is situated provided that the driveway is at least eighteen (18) feet in length.
3. No additional parking shall be required for a secondary dwelling that meets any of the following criteria:
  - a. The secondary dwelling is located within one-half mile of, and has a path of travel that is always publicly accessible to a site containing an existing public rail-transit station or at least one public bus stop.
  - b. The secondary dwelling is located within a historic district identified in the city's historic resources inventory as defined in Chapter 13.48 of Title 13 of this Municipal Code.
  - c. The secondary dwelling is part of the existing primary residence, or within, or part of, an existing Accessory Building.

- d. When on-street parking permits are required but not offered to the occupant of the secondary dwelling.
  - e. When there is a motor vehicle that is operated as part of a regional fleet by a public agency or publicly-leased motor-vehicle-sharing organization and provides hourly and daily service located within one block of the secondary dwelling.
- J. Required Replacement Parking for Primary Dwelling Parking Demolished or Converted for Secondary Dwelling Construction. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of a Secondary Dwelling, any required off-street parking spaces that were provided by such garage, carport, or covered parking structure, shall be replaced in accordance with Section 20.90.220.B.2.
- K. Development Standards. Secondary dwellings shall comply with all of the following development standards:
- 1. The secondary dwelling shall be subject to the setback requirements for a one-family dwelling in the zoning district in which the one-family dwelling is located, as set forth in this chapter except as follows:
    - a. Conversion of Existing Accessory Building - No setback over the setback specified for an Accessory Building shall be required for an existing Accessory Building, or garage, that is converted to a Secondary Dwelling, unless required to meet current Building and Fire Code requirements.
    - b. New detached Secondary Dwelling - No setback over the setback specified for an Accessory Building shall be required for the first

story of a new detached Secondary Dwelling, unless required to meet current Building and Fire Code requirements.

- c. Second Story Secondary Unit - A minimum setback of five (5) feet from the side and rear lot lines shall be required for any second story of a detached Secondary Dwelling.
  - d. Additional setback requirements may apply under the Building and Fire Codes or as a result of "no-build" easements.
2. An attached secondary dwelling shall share a common wall with the one-family dwelling, or shall share an integral roof structure having the same framing system and roof covering as the one-family dwelling and shall be separated from the one-family dwelling by no more than ten (10) feet at any given point.
  3. A detached secondary dwelling shall be located in the rear yard of the lot of the one-family dwelling or shall be required to meet minimum setback requirements for an accessory building in accordance with Section 20.30.500.
  4. A detached secondary dwelling shall be located at least six (6) feet away from the one-family dwelling.
  5. A detached one story secondary dwelling shall be limited to a maximum height of eighteen (18) feet. A two story detached accessory dwelling may have a maximum roof height of twenty four (24) feet above grade. Roof height shall be determined in accordance with San José Municipal Code Section 20.200.510.

6. A detached secondary dwelling may be attached to an existing or proposed accessory building, including a garage so long as current building code requirements and requirements to address fire or safety hazards are met. A detached secondary dwelling that is attached to an existing or proposed accessory building, including a detached secondary dwelling constructed above an existing or proposed accessory building, shall not have any connecting opening between the accessory building and secondary dwelling, unless all connected areas meet current residential building and fire code requirements, and the maximum gross square footage for all connected areas does not exceed the limits set forth in Section 20.30.150.D above.
  7. The cumulative total of the rear yard covered by the secondary dwelling, accessory buildings, and accessory structures, except pools, shall not exceed forty percent (40%) of the rear yard.
  8. If situated on a lot that is equal to or greater than one-half ( $\frac{1}{2}$ ) an acre in size, a secondary dwelling shall be located more than one hundred (100) feet ~~(100)~~ from a riparian corridor as measured from top of bank or vegetative edge, whichever is greater.
  9. A secondary dwelling shall be subject to provisions in this Municipal Code that prevent adverse impacts on a real property that is listed in the California Register of Historic Places, otherwise known as the California Register of Historic Resources.
- L. Design Standards. Secondary dwellings shall comply with the following design standards:



1. An attached secondary dwelling shall incorporate architectural style, and similar materials and color of the one-family dwelling, including but not limited to roofing, siding, and windows and doors.
  2. A new detached secondary dwelling located on a site that is listed on the California Register of Historic Places, otherwise known as the California Register of Historic Resources, shall incorporate architectural style, and similar materials and colors, including but not limited to roofing, sidings, wand windows and doors of the one-family dwelling.
  3. The front door of any attached secondary dwelling shall not be located on the same facade as the front door of the one-family dwelling if that facade fronts onto a street, unless all other locations for placement of the secondary dwelling front door would require a passageway as defined in Government Code Section 65852.2(i)(5). For a detached secondary dwelling constructed above an existing or proposed accessory building, including a garage, an exterior stairway or fully enclosed interior stairway access may be allowed.
  4. Minimum sill height for openings for a second story detached secondary dwelling unit shall be maintained at five (5) feet, measured from the interior floor level, along the building walls parallel to the nearest side and rear property lines, and located within a minimum setback of fifteen (15) feet from those property lines.
- M. Application - Owner Certification. As part of the building permit application process for a secondary dwelling, the owner of record shall submit a declaration, under penalty of perjury, stating that the secondary dwelling is not intended for sale separate from the primary residence, but may be rented. Nothing in this section shall be deemed to affect the legal status of a secondary

dwelling built with a lawfully issued permit if the property is subsequently transferred or sold, or if the one-family dwelling or secondary dwelling is subsequently rented or leased.

- N. Code Compliance - One-Family Dwelling. An application for a secondary dwelling building permit shall not be deemed complete, and a building permit shall not be issued, if the city determines that the one-family dwelling will continue to have uncorrected violations involving applicable zoning and building code requirements, or fire or safety hazards.
- O. Other Permits Required. Nothing in this section supersedes requirements for obtaining development permits pursuant to this title, or for properties subject to the historic preservation permit requirements set forth in Chapter 13.48 of Title 13 of the San José Municipal Code.

P. Notwithstanding Subsection O above, additional development permits shall not be required for the following:

1. A new detached Secondary Unit located on a site that is listed on the San José Historic Resources Inventory, not including sites within a City Historic District or listed as City Landmark.
2. A new detached or attached Secondary Unit located in a planned development zoning district otherwise subject to requirements of Section 20.100.500 (A)(4).
3. A new detached Secondary Unit located in a low density cluster development, in accordance with provisions of this part and with San José Municipal Code Section 20.30.500, and otherwise subject to

minimum side setback requirements of the primary dwelling unit and requirements of Section 20.100.500 (A)(4).

4. A new attached Secondary Unit, located in a low density cluster development, otherwise subject to requirements of Section 20.100.500 (A)(4).

**PQ.** Compliance with Building and Zoning Codes. A secondary dwelling shall be built in accordance with the building code set forth in Title 24 of the San José Municipal Code ("Municipal Code") and in conformance with Title 20 of the San José Municipal Code.

**QR.** Located on One Lot. A secondary dwelling shall be located within the same subdivision unit and on the same legal parcel as the one-family dwelling to which it is ancillary.

**SECTION 2.** Section 20.30.500 of Chapter 20.30 of Title 20 of the San José Municipal Code is amended to read as follows:

**20.30.500 Development Standards**

- A. All accessory buildings and accessory structures in the residential zoning districts shall conform to the development regulations set forth below in Table 20-70.
- B. When the right column of Table 20-70 includes a reference to a section number or a footnote, the regulations cited in the section number or footnote apply.

**Table 20-70  
Accessory Buildings and Structures Development Regulations**

<b>Front Setback (feet)</b>
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Retaining walls	None	
Swimming pool, built-in	30	
Detached garage on a lot with two intersecting front property lines	25	Note 1
Detached garage with a maximum length of twenty feet that maintains a minimum side setback of five feet	45	
All other accessory buildings and structures	60	
<b>Side Setback (feet)</b>		
Swimming pool, built-in		
Interior lot	5	
Corner lot	9	
All other accessory buildings and structures	None	Notes 2, 3, 9
<b>Rear Setback (feet)</b>		
Swimming pool, built-in	5	
All other accessory buildings and structures	None	Notes 2, 3, 9
<b>Height (feet)</b>		
Retaining wall	2	Note 4
All other accessory buildings and structures	12	Note 5
Maximum number of stories	1	
<b>Area (square feet)</b>		
Maximum size (cumulative square feet)	650	Notes 6, 7, 8

**Notes:**

1. Measured from front property line which is opposite the designated side property line.
2. On a corner lot, no accessory buildings, or accessory structures, excluding fences, shall be built within ten feet of the side property line of the street side.

3. With respect to accessory buildings or accessory structures, where any such building or structure is proposed to be constructed on a corner lot which abuts upon a key lot which is for residential use, such building or structure shall be set back not less than four feet from the rear lot line of such lot, provided that the setback for swimming pools shall not, in any event, be reduced to less than five feet.
4. Maximum height of two feet measured from existing grade, unless a greater height is otherwise approved with a development permit.
5. No accessory building or structure shall exceed twelve feet in height except that for an accessory building with a sloped roof, the height halfway up any slope of a pitched, gable or hip roof may not exceed twelve feet and no portion of the roof shall exceed a height of sixteen feet except that a roof with a solar photovoltaic system on top of an accessory building shall not exceed a height of twenty-one feet above grade.
6. The size of an individual accessory building or accessory structure or the total aggregate square footage of all accessory buildings and accessory structures built on any property may be increased to exceed six hundred fifty square feet only pursuant to a special use permit, as provided for in Chapter 20.100 of this title.
7. For purposes of this section, the calculation of square footage shall not include any square footage of an accessory building or accessory structure that is entirely below grade.
8. Per Section 20.200.020, an accessory building shall not contain living space or sleeping quarters, and shall be limited to two plumbing

connections to serve an appliance or fixture, and unconditioned space as defined in Title 24 of the San José Municipal Code.

9. Increased setbacks may be required based upon fire and life safety requirements in this Code.

SECTION 3. Section 20.50.125 of Chapter 20.50 of Title 20 of the San José Municipal Code is amended to read as follows:

**20.50.125 Incidental Office Use, LI Light Industrial and HI Heavy Industrial Districts**

A. Incidental office use is a permitted use in the LI Light Industrial and HI Heavy Industrial Districts, only when the incidental office use meets all of the following conditions:

1. The incidental office use is directly related to and supportive of an existing industrial permitted, conditional, or special use operating on the site; and
2. The incidental office use: ~~a. Occupies~~ a total of no more than fifteen (15) percent or up to 5,000 square feet, whichever is greater, of the ~~building floor-site~~ area used and occupied by the existing subject industrial permitted, conditional, or special use.

B. No additional parking will be required for the incidental office use if the incidental office use occupies no more than fifteen (15) percent or up to 5,000 square feet, whichever is greater, of the ~~building floor-site~~ area used and occupied by the existing subject industrial permitted, conditional, or special use.

SECTION 4. Section 20.100.500 of Chapter 20.100 of Title 20 of the San José Municipal Code is amended to read as follows:

**20.100.500 Adjustments**

- A. The director may, at the director's sole discretion, approve an adjustment for the following elements of a previously-issued development permit, subject to and in accordance with the provisions of this section:
1. General Extensions. An extension of the term of an approved development permit for a period of up to but not exceeding one year; provided, that no more than two such term extensions may be approved for any development permit.
  2. Changes to an approved development permit, but only for minor modification of architectural elements or landscape details, (including but not limited to minor storefront alterations, relocation of doors, equipment screening, minor landscape furniture and structures, benches, small trellises, and planters) which do not affect the use, intensity, general character, architectural style, circulation or other site function of the project.
  3. Signs which conform to Title 23, minor changes to approved sign programs, and sign programs that are a condition of a development permit.
  4. Additions, accessory buildings and minor structures such as trellises, patio covers, swimming pools and decks for one-family residences which were approved and are subject to an existing planned development

permit or a low density cluster permit issued under previously existing provisions of this title.

5. Building mounted wireless communications antenna.
6. Tract sales, model homes sales, or leasing offices associated with an approved housing development.
7. Temporary construction or storage yards in connection with the construction of houses or other buildings in an adjacent subdivision or lot or parcel.
8. Solar photovoltaic systems.
9. The creation, on or above ground through installation, construction, or replacement, of less than one gross acre of impervious surface.
10. The replacement, repaving, reconfiguration, or re-striping of parking spaces on existing surfaces.
11. Building additions of less than five thousand square feet in area to nonresidential buildings, except that the maximum building addition size for a fast food restaurant, a twenty-four-hour convenience market, or a convenience market with gas pumps shall be one thousand square feet in area and the maximum building addition to a bank with a drive through shall be three thousand square feet in area.
12. Generators meeting performance standards for noise and air pollution.



13. Above-ground storage tanks of two thousand gallons or less in zoning districts other than industrial zoning districts and an above-ground storage tank of twenty thousand gallons or less in an industrial zoning district.
  14. Building additions of less than two hundred square feet in total area or less than ten percent of the building area prior to the addition, whichever is smaller, to two-family dwellings, provided that current parking regulations are being met and would continue to be met after the completion of any addition.
- B. Adjustments may be issued only where issuance of the adjustment would be consistent and comply with all applicable local laws in effect at the time of issuance, including without limitation the city's general plan, the provisions of this title, and the provisions of Title 21 of this Code.
- C. An application for an adjustment must be filed on the form provided by the director on or before the date that is three business days prior to the expiration of the development permit proposed for adjustment and accompanied by the fees as set forth in the schedule of fees adopted by resolution of the city council.
- D. The decision to grant, deny or condition an adjustment is an administrative determination and requires no hearing or notice. The action of the director shall be final, and nothing herein shall be deemed or construed to confer on an applicant a right to an adjustment or to require the director to issue an adjustment. If the director denies an adjustment, nothing herein shall preclude the applicant from thereafter filing an application for an appropriate development permit.

- E. Where property was developed prior to the requirement of a site development permit, adjustments for projects as set forth in Section 20.100.610(A) may be approved without the necessity of the issuance of a full site development permit.
- F. If a structure or site is designated on the City of San José Historic Resources Inventory pursuant to Chapter 13.48 of Title 13 of this Code as a city landmark structure and/or a structure located in a city landmark historic district, then proposed work that is within the parameters outlined in Section 13.48.340.D of Part 3 of Chapter 13.48 of Title 13 of this Code shall be governed by and considered pursuant to the provisions of Chapter 13.48 that require issuance of a historic preservation permit or historic preservation permit adjustment. Notwithstanding the provisions of this Section 20.100.500 setting forth the requirements for development permit adjustments, no additional development permit adjustment issued pursuant to Title 20 of this Code shall be required for work performed on a site or structure that is designated as a city landmark structure, or on a structure located in a city landmark historic district, for which a historic preservation permit or historic preservation permit adjustment has been issued.

SECTION 5. Section 20.100.1300 of Chapter 20.100 of Title 20 of the San José Municipal Code is amended to read as follows:

**20.100.1300 General**

Pursuant to and in accordance with the provisions hereinafter set forth in this part, the director or the planning commission on appeal may, but shall not under any circumstances be required to, grant the following variances and exceptions:

A. Development variance.

1. Variances hereinafter referred to as "development variances," to the height, number of stories, frontage, setback, coverage, density, area, off-street parking, fencing, loading and landscaping requirements and regulations of this title.

B. Development exception.

1. Certain exceptions, hereinafter referred to as "development exceptions" as follows:
  - a. Exceptions permitting an incursion by buildings or structures of up to, but not more than, five feet into the rear setback area prescribed by this title, provided, however, that no exception granted hereunder shall permit the vertical projection of any building or structure to be closer than ten feet, measured horizontally, to the rear property line.
  - b. Exceptions permitting elevator shafts and stairwells to cause the associated Structure to exceed the general zoning district height limitation for the zoning district in which the Structure is located, but only up to seventeen (17) feet above the general zoning district height limitation and subject to design review, including but not limited to screening and safety guardrail requirements.
    - i. This exception shall not apply to allow any Structure, including all elevator shafts and stairwells, to exceed the height limitations applicable under Chapter 20.85 of this Title.

- c. Exceptions permitting church steeples, church bell towers, church roofs, wireless communication antenna and associated structures which exceed in height the height limitations prescribed in this title; provided, however, that the following exception from these provisions shall apply.
  - i. Wireless communication antennae that meet the height limitations of Section 20.80.1900 or 20.80.1910, as applicable, shall not be subject to the development exception requirements set forth in this part.
- d. Exceptions from the area requirements for a lot or parcel in any residential district having an area of less than three thousand square feet, provided such area is not less than the area of such lot or parcel on March 1, 1977 (or, if the lot was created after March 1, 1977, then as approved by the city) and that no such exception shall permit any diminution in such area and provided further that if such lot or parcel has or is to have a structure or structures thereon, no such exception shall be issued for such lot or parcel unless all such structures are dwelling structures or structures accessory thereto, and all such structures comply with the height and setback requirements of this title. An exception permitted by this subsection may be issued at the same time as an exception provided for in Subsection 1. above.
- e. Exceptions to the off-street parking and loading requirements and regulations of this title.

SECTION 6. Section 20.200.181 of Chapter 20.200 of Title 20 of the San José Municipal Code is amended to read as follows:

**20.200.181 Catering Facility-Caterer**

~~A catering facility is a place where the commercial preparation and cooking of food occurs. A person or company employed to provide and serve food for a large group and usually at a location separate from where the food is prepared. A caterer must provide customer interface, such as a showroom or area for sales and tasting, or may be combined with a public eating establishment.~~

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk