COUNCIL AGENDA: 12/17/19
FILE: 19-1216
ITEM: 10.1(f)

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: December 9, 2019

SUBJECT: **FILE NO. PP19-080. AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING VARIOUS SECTIONS OF TITLE 20 (ZONING ORDINANCE OR ZONING CODE) OF THE SAN JOSÉ MUNICIPAL CODE TO ALIGN WITH RECENTLY ADOPTED CALIFORNIA STATE LAW REQUIREMENTS: (A) ADD NEW PART 4.5 "ACCESSORY DWELLING UNITS," INCLUDING SECTIONS 20.30.460 (SINGLE-FAMILY DWELLING LOT), 20.30.470 (JUNIOR ACCESSORY DWELLING UNITS), 20.30.480 (TWO-FAMILY AND MULTI-FAMILY DWELLING LOTS), 20.30.490 (AMNESTY PROGRAM); AMEND SECTION 20.30.110 (INCIDENTAL USES); AMEND SECTION 20.30.310 (MINOR ONE-STORY ADDITION); AMEND SECTION 20.80.160 (INCIDENTAL TRANSIENT OCCUPANCY); AMEND SECTION 20.90.220 (REDUCTION IN REQUIRED OFF-STREET PARKING SPACES); (B) DELETE SECTION 20.30.150 (SECONDARY UNITS) FROM PART 2 "USES ALLOWED"; (C) AMEND SECTION 20.200.325 TO ADD CLARIFYING LANGUAGE TO ACCESSORY DWELLING UNIT DEFINITION, AND ADD SECTION 20.200.342 TO INCLUDE NEW DEFINITION OF JUNIOR ACCESSORY DWELLING UNIT; AND TO MAKE OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES WITHIN SECTIONS OF TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE.**

RECOMMENDATION

The Planning Commission voted 6-0-1 (Commissioner Bonilla absent) to recommend that the City Council;

1. Consider the Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), for which findings were adopted by City Council through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto. Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the

Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs; and

2. Approve an ordinance of the City of San José amending various sections of Title 20 (Zoning ordinance or Zoning Code) of the San José Municipal Code to align with recently adopted California State law requirements: (a) add new Part 4.5 "Accessory Dwelling Units," including Sections 20.30.460 (Single-Family Dwelling Lot), 20.30.470 (Junior Accessory Dwelling Units), 20.30.480 (Two-Family and Multi-Family Dwelling Lots), 20.30.490 (Amnesty Program); amend Section 20.30.110 (Incidental Uses); amend Section 20.30.310 (Minor One-story Addition); amend Section 20.80.160 (Incidental Transient Occupancy); amend Section 20.90.220 (Reduction in required off-street parking spaces); (b) delete Section 20.30.150 (Secondary Units) from Part 2 "Uses Allowed"; (c) amend Section 20.200.325 to add clarifying language to Accessory Dwelling Unit definition, and add Section 20.200.342 to include new definition of Junior Accessory Dwelling Unit; and to make other technical, non-substantive, or formatting changes within sections of Title 20 of the San José Municipal Code.

OUTCOME

Approval of the proposed Municipal Code amendments will amend Chapters 20.30, 20.80, 20.90, and 20.200, as described in the attached staff report.

BACKGROUND

On December 4, 2019, the Planning Commission conducted a public hearing on the proposed amendments to the Zoning Code related to Accessory Dwelling Units.

Staff addressed a letter from Californians for Homeownership which stated that the proposed ordinance only accounts for ministerial review under Government Code Section 65852.2(a), but not the special ministerial approval required for the categories of ADU listed in Section 65852.2(e)(1). It mentioned that the City must approve such an ADU applying only the objective standards allowed under Section 65852.2(a) through (d), zoned to allow single-family or multifamily dwelling residential use. The letter further stated that the requirement for Junior ADUs to provide an interior entry to main living area must be eliminated. In accordance with feedback from the State Department of Housing and Community Development (HCD) on existing Section 65852.2(e), staff mentioned that the proposed Ordinance was consistent with State law and that staff would incorporate revisions based on future HCD direction. Staff indicated that ADU approvals for single-family dwellings located within a Planned Development zone are mostly in compliance with single-family standards. However, based on the potential issue raised in the letter, and to ensure that ADUs be permitted in any zone that allows residential uses in conformance with State law, staff recommended that Section 20.30.460 (A) be modified to specify that an ADU may be permitted on any single-family lot in a Planned Development Zone that allows single-family uses subject to the ADU standards of conventional zoning

districts. Staff further recommended a revision to Section 20.30.470 (B) to specify that a Junior Accessory Dwelling Unit (JADU) may include an interior entry to the main living area but is not required to provide one, in conformance with new State law AB 881.

Commissioner Yesney asked for clarification on what must be acted upon in the reduced 120 to 60-day timeframe for approval of a ministerial application. She also asked about changes to impact fees requirements. Staff responded that pursuant to State law, a ministerial building permit for an ADU must be acted upon within 60 days. Staff explained that the only impact fees applicable to construction of an ADU in San Jose are parkland fees and school fees, but that school fees are paid to school districts directly. Pursuant to new State law SB 13, unit sizes lower than 750 square feet will be exempt from the above fee requirements.

Commissioner Griswold inquired if existing converted accessory buildings along zero lot lines would meet setbacks in conformance with Building and Fire Code requirements, and whether the building setback could be reduced from four feet, as proposed, to three feet. Staff responded that setback restrictions do not apply to existing structures converted to ADUs pursuant to State law. The minimum clearance of three feet, as required by the Fire Department, is typically to the edge of an eave. Unoccupied detached garages are often located closer to the property line, although habitable units will require fire access along the setbacks. She made a recommendation to allow a reduced setback of three feet. Staff clarified that no projections or typical overhanging eaves are allowed within the three feet minimum clearance, and if the building wall is located at a three-foot distance from the property line, it may not be possible to incorporate any overhang. Therefore, the proposed ordinance requires that the distance be maintained at four feet to the building face with up to a one-foot eave projection for a new detached ADU on multi-family lots, or on single-family lots in certain scenarios. This requirement will be consistent with the required Fire Department clearance of three feet to the eave, and the State law mandate that requires a setback of four feet for any detached ADUs on multi-family lots. Additionally, Commissioner Griswold mentioned that the non-conforming side setback exception requirement, which allows a maximum 150 square feet for the addition, was unclear and recommended that staff include clarifying language.

Commissioner Griswold further commented on the historic resource standards that require differentiation of roofline and materials associated with the primary dwelling for lots listed in the Historic Resource Inventory. Staff clarified that the requirement for differentiation of roofline and materials was a recommendation from the Historic Preservation Officer and stems from historic preservation standards that discourage creating a false sense of history. Substituting the 'shall' with 'may' in the design standard or establishing it as a recommendation would not effectively address the objective standards criteria required for a ministerial process. Staff also added that homeowners are typically sensitive towards historic resource additions and design of additions are generally observed to be consistent with existing guidelines.

Commissioner Griswold inquired about the 15-foot distance requirement from the property line for entry landings. Staff stated that the distance requirement for an unenclosed entry landing would mitigate potential privacy concerns from residents of adjacent properties. The intent of the provision is to encourage landings for second story entries to be located on the side of the ADU

facing the interior of its backyard and not facing the backyards of adjacent residents. If enclosed, entry landing could be located closer to the property line along with any stairway.

Commissioner Allen requested clarification on whether Junior Accessory Dwelling Units (JADU) are allowed on single-family lots, and if ADUs are allowed on properties that have commercial uses, such as a convenience store integrated with residential uses within the same lot. Staff responded that the JADUs are only allowed on single-family lots. Staff added that State law would allow ADUs within mixed-use zoning districts and that staff is expecting guidance from the State on how to implement ADUs in various multi-family scenarios.

There was no public comment on the item. Commissioner Pierluigi Oliviero made a motion to recommend approval of the staff recommendation with additional revisions on Pages 16 and 25 to the Draft Ordinance as recommended by staff. Commissioner Caballero seconded this motion.

The Commission voted 6-0-1 (Commissioner Bonilla absent) to recommend approval of the item pursuant to staff's additional revisions and recommendation.

ANALYSIS

A complete analysis of the proposed Zoning Ordinance amendments is contained in the attached Planning Commission Staff Report.

CONCLUSION

If adopted, the proposed Ordinance provisions will comply and align with new State law requirements pertaining to Accessory Dwelling Units to streamline affordable housing and significantly utilize existing infrastructure of developed neighborhoods.

EVALUATION AND FOLLOW-UP

If the proposed Municipal Code amendments are approved by City Council, the new Ordinance will be effective 30 days after the second reading.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals.

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 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.

CEQA

A Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), for which findings were adopted by City Council through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto. Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs.

/s/
ROSALYNN HUGHEY, SECRETARY
Planning Commission

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

Attachment: Staff Report to Planning Commission

PC AGENDA: 12- 04 -19
ITEM: 5.a.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: PLANNING COMMISSION **FROM:** Rosalynn Hughey

SUBJECT: SEE BELOW **DATE:** October 15, 2019

SUBJECT: **File No. PP19-080. AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING VARIOUS SECTIONS OF TITLE 20 (ZONING ORDINANCE OR ZONING CODE) OF THE SAN JOSÉ MUNICIPAL CODE TO ALIGN WITH RECENTLY ADOPTED CALIFORNIA STATE LAW REQUIREMENTS: (A) ADD NEW PART 4.5 "ACCESSORY DWELLING UNITS," INCLUDING SECTIONS 20.30.460 (SINGLE-FAMILY DWELLING LOT), 20.30.470 (JUNIOR ACCESSORY DWELLING UNITS), 20.30.480 (TWO-FAMILY AND MULTI-FAMILY DWELLING LOTS), 20.30.490 (AMNESTY PROGRAM); AMEND SECTION 20.30.110 (INCIDENTAL USES); AMEND SECTION 20.30.310 (MINOR ONE-STORY ADDITION); AMEND SECTION 20.80.160 (INCIDENTAL TRANSIENT OCCUPANCY); AMEND SECTION 20.90.220 (REDUCTION IN REQUIRED OFF-STREET PARKING SPACES); (B) DELETE SECTION 20.30.150 (SECONDARY UNITS) FROM PART 2 "USES ALLOWED"; (C) AMEND SECTION 20.200.325 TO ADD CLARIFYING LANGUAGE TO ACCESSORY DWELLING UNIT DEFINITION, AND ADD SECTION 20.200.342 TO INCLUDE NEW DEFINITION OF JUNIOR ACCESSORY DWELLING UNIT; AND TO MAKE OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES WITHIN SECTIONS OF TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE.**

RECOMMENDATION

Staff recommends that the Planning Commission recommend the City Council;

1. Consider the Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), for which findings were adopted by City Council through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto. Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of

CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs; and

2. Adopt an ordinance of the City of San José amending various sections of Title 20 (Zoning ordinance or Zoning Code) of the San José Municipal Code to align with recently adopted California State law requirements: (a) add new Part 4.5 "Accessory Dwelling Units," including Sections 20.30.460 (Single-Family Dwelling Lot), 20.30.470 (Junior Accessory Dwelling Units), 20.30.480 (Two-Family and Multi-Family Dwelling Lots), 20.30.490 (Amnesty Program); amend Section 20.30.110 (Incidental Uses); amend Section 20.30.310 (Minor One-story Addition); amend Section 20.80.160 (Incidental Transient Occupancy); amend Section 20.90.220 (Reduction in required off-street parking spaces); (b) delete Section 20.30.150 (Secondary Units) from Part 2 "Uses Allowed"; (c) amend Section 20.200.325 to add clarifying language to Accessory Dwelling Unit definition, and add Section 20.200.342 to include new definition of Junior Accessory Dwelling Unit; and to make other technical, non-substantive, or formatting changes within sections of Title 20 of the San José Municipal Code.

OUTCOME

Approval of the proposed Municipal Code amendments will amend provisions related to Accessory Dwelling Units (ADUs) within Title 20 as described in the Analysis section below.

BACKGROUND

The proposed amendment to Chapter 20.30 will specifically incorporate necessary changes to current Code sections to better align with new California State Law requirements pertaining to Accessory Dwelling Units (ADUs). On October 9th, 2019, Governor Newsom signed four bills pertaining to ADUs that amend or introduce new State mandated ADU requirements that local jurisdictions must comply with: Senate Bill 13 (Weickowski), Assembly Bill 68 (Ting), Assembly Bill 881 (Bloom), and Assembly Bill 587 (Friedman). These bills update development standards and permit requirements for Accessory Dwelling Units and require that local jurisdictions' Accessory Dwelling Unit Ordinance conform with these laws. Collectively these laws would require the City to update the Zoning Ordinance provisions for ADUs as follows:

1. Eliminate minimum lot size
2. Increase maximum size of ADUs
3. Limit the ability to apply rear yard coverage limitations
4. Allow ADUs in duplexes and multi-family buildings
5. Allow Junior ADUs

6. Allow construction of both an ADU and a Junior ADU on a single family lot in certain circumstances
7. No longer require replacement parking where a garage or carport is demolished or converted for construction of an ADU.
8. ADUs must be rented for a minimum period of 30 days or more.
9. Allow ADUs that are owned by a qualified nonprofit corporation to be sold separately from the primary unit to a qualified low-income buyer.

The update to State laws also reduces the time the City must act on an application for an ADU from 120 days to 60 days. Further, the City shall delay enforcement of a building standard for five years upon request of owner on the basis that correcting the violation is not necessary to protect health and safety. Delay granted if enforcement agency – after consulting with entity responsible for enforcement of building standards and other regulations of the State Fire Marshal – determines that correction the violation is not necessary to protect health and safety. No delays may be granted after January 1, 2030. Finally, the City may not collect impact fees for construction of an Accessory Dwelling Unit that is less than 750 square feet, and for units 750 square feet or greater must be charged proportionately in relation to the square footage of the primary dwelling unit. This ordinance only addresses changes required to Title 20 as listed above and described in detail below in the analysis section. Changes to permit review timelines, building code enforcement, and impact fees will be implemented through separate actions, as necessary.

ANALYSIS

Title 20: Amend Chapters 20.30, 20.80 and 20.200 of the Zoning Ordinance

1. Replace the term "Secondary Units" with "Accessory Dwelling Units" throughout the Zoning Ordinance.

   The current term "Secondary Dwelling Units" will be replaced by "Accessory Dwelling Units" throughout the Zoning Ordinance, as Accessory Dwelling Unit, a term used by State law, is a more commonly used than Secondary Dwelling Unit.

2. Delete ADU regulations from Section 20.30.150 Part 2, "Uses Allowed," and create a new Part 4.5, "Accessory Dwelling Units."

   This proposed change would create a new Part 4.5 in Chapter 20.30, "Residential Zoning Districts" to consolidate all ADU related provisions into one section for better readability.

3. New Section 20.30.460 - Update the development standards for ADUs constructed on Single-Family lots

a. The City is no longer allowed to require a minimum lot size for a lot to qualify for an ADU. The Zoning Ordinance currently requires a minimum 3,000 square foot lot size in order to construct an ADU which would be eliminated.

b. The City is no longer allowed to restrict the maximum unit size to less than 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a two-bedroom unit. San Jose currently allows maximum unit sizes from 600 square feet to 900 square feet, depending on lot size. Two bedroom ADUs are currently only allowed on lots that are 9,000 square feet or greater.

   Staff has received significant interest from residents, ADU designers, and advocates in allowing two bedroom units on smaller lots to allow for additional housing opportunities for families or other households that desire the privacy of two bedrooms (such as an elderly resident and a caretaker). Staff recommends allowing two bedroom ADUs on all lot sizes.

   For lots larger than 9,000 square feet, staff recommends allowing ADUs to be built up to 1,200 square feet, the maximum size allowed by State law, to provide greater flexibility to provide housing opportunities on large lots. Table 20-55 would include the lot size and maximum floor area requirements, updated to read as follows:

Table 20-55

Lot size	Maximum gross floor area
Less than and equal to 9,000 square feet	1,000 square feet
Greater than 9,000 Square feet	1,200 square feet

c. State law mandates require that the square footage of an ADU, that is attached to a primary dwelling, not exceed 50% of the square footage of the primary dwelling, or 800 square feet, whichever is greater. Staff expects that in practice this requirement will limit the size of attached ADUs on smaller lots. There is no change to the provision in State Law that restricts an ADU that is attached to an existing or proposed single family residence to no more than 50% of the square footage of the existing or proposed residence, therefore this standard will remain. However, it will be updated to specify that if 50% of the square footage of the existing house results in an ADU of less than 800 square feet, then the maximum size of the ADU may be 800 square feet to conform with the new provision of State law that disallows any design standard that results in a less than 800 square foot attached or detached unit.

d. The Zoning Ordinance currently limits detached ADUs to no more than 40% coverage of the rear yard, inclusive of any other accessory buildings or structures. Staff recommends retaining this restriction to address neighborhood compatibility and overcrowding of structures on smaller lots, with a new exception that the rear yard coverage limitation may not result in a maximum size limitation of less than 800 square feet for the ADU, a change that is now required by State law. Current Ordinance provisions limit the cumulative coverage of an ADU and other accessory buildings and structures to forty percent (40%) of the rear yard. If the limitation on all accessory building and structures is limited to 40%, a typical rear yard measuring 1,200 square feet (60 feet x 20 feet) would amount to a total of 480 square feet which means that the new practical maximum ADU size for typical lots will be 800 square feet. Staff recommends that the cumulative total of the rear yard covered by accessory buildings, and accessory structures, except pools, to remain at forty percent (40%) of the rear yard, except that if 40% results in an ADU of less than 800 square feet then the maximum size of the ADU is 800 square feet, in conformance with State Law. Staff is recommending that ADUs that exceed 40% rear yard coverage be required to maintain a 4-foot minimum side and rear setback for Fire Department access, as in those situations a rear yard would have more obstacles for fire fighters to access the unit and the Fire Department has expressed that maintaining a side and rear setback from the property line is greatly beneficial in accessing all sides of an ADU in case of fire or another emergency.

e. The City may no longer require replacement parking for a garage or carport that is converted or demolished as part of construction of an ADU. Currently, replacement parking is required but may be provided as tandem and/or on a driveway in any setback area. This ordinance would update Section 20.90.220 to eliminate replacement parking requirements entirely to align with State law.

f. This ordinance would eliminate the requirement for a discretionary permit for properties on listed on the Historic Resources Inventory in conformance with State Law. With the ability to review ADU additions on historic properties for conformance with the City's historic design guidelines through a discretionary Single Family House Permit or Historic Preservation Permit prohibited by State law, this ordinance would add simple, specific development standards for ADU construction on historic properties that would lessen potential impacts. Based on the Your Old House Guide for Preserving San Jose Homes Design Guidelines and consultation with the City's Historic Preservation Officer, staff is recommending the following standards for ADUs that are attached to an existing historic home:

   i. The ADU additions must be located along the rear wall of the primary dwelling unit, unless the ADU is a conversion of existing space.

ii. ADUs that are constructed on the second story of an existing home must be set back at least 45 feet from the front property line, and may not overhang the lower floors of the existing structure.
iii. Construction of an ADU may not result in the enclosure of an existing porch unless that porch is located along the rear façade.
iv. The materials and roofline of an ADU that is built as an addition must be differentiated from the existing building so that it does not create a false sense of history.

The Your Old House Guide for Preserving San Jose Homes calls for detached accessory structures built on historic properties to be located to the rear of the primary structure, or side if there is a substantial setback, and for them to be subordinate to the primary dwelling in terms of mass, size, and height. The rear yard coverage, square footage, and setback requirements applicable to ADUs on all properties in the City are consistent with these design guidelines. The only additional standard staff recommends for detached ADUs constructed on properties listed on the Historic Resources Inventory is that they be set back at least 45 feet from the front façade of the primary structure.

4. <u>New Section 20.30.470 - Add Junior Accessory Dwelling Units</u>

This update will add provisions for Junior Accessory Dwelling Units within single-family dwellings, to facilitate the conversion of an existing living areas in a home into small unit that can be used flexibly. State law now requires that cities adopt an ordinance allowing Junior ADUs, and the Council directed staff to add provisions for Junior ADUs as part of the ADU Amnesty discussion at the 9/24/19 City Council meeting. A Junior ADU would be allowed in any single family home where an ADU would be allowed. Junior ADUs would be required to meet the following requirements, which are dictated by State Law:

a. A Junior ADU must be within the existing single family dwelling (including attached garages) and is limited to 500 square feet in size. Junior ADUs may not be placed in accessory structures.

b. The unit must have an entrance to the exterior as well as an entrance into the primary dwelling.

c. The unit may have its own bathroom or may share a bathroom with the primary dwelling.

d. The dwelling unit must contain a kitchen. The kitchen may be a full kitchen or an "efficiency kitchen" consisting of a sink, counter, storage, and plug-in appliances. Under previous State Law the kitchen for a Junior ADU was limited to an efficiency kitchen with only plug-in appliances but this limitation has been removed with adoption of AB 68.

e. Either the single family residence or the Junior ADU must be owner occupied. The owner must record a deed restriction that includes the owner occupancy requirement, restrictions on unit size, and prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence.

The State Law requires cities to allow the construction of both an ADU and Junior ADU on the same property containing a single family residence if:

a. The ADU is detached from the primary residence

b. The ADU does not exceed a maximum floor area of 800 square feet or height of 16 feet

c. The City cannot require more than four-foot side and rear yard setbacks for the ADU.

d. The Junior ADU must meet all requirements for a Junior ADU described above.

5. <u>New Section 20.30.480 – Allow Accessory Dwelling Units on Multiple-Family lots.</u>

The State law update requires cities to allow construction of ADUs on duplex and multi-family property. This update will allow Accessory Dwelling Units in under-utilized areas of an existing multi-family development within the existing dimensions of dwelling structure, and as new detached structures, in conformance with State Law:

a. A minimum of one attached accessory dwelling unit is permitted on a duplex or multi-family dwelling lot. Multi-family lots with 5 or more units may construct ADUs at up to 25% of the total number of existing multi-family dwelling units on the lot. For example, a duplex would be limited to adding one new attached ADU, where an apartment building comprised of twelve units could include up to three attached ADUs. These units are limited to the existing portions of multifamily dwelling structures that are not used as livable space, such as storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with State building standards for dwellings.

b. In addition to attached ADUs, a maximum of two detached ADUs may be constructed on a lot with an existing duplex or multi-family dwelling. Pursuant to State law, detached units on duplex and multi-family structures are subject to a maximum square footage of 800 square feet, maximum height limit of 16 feet, and minimum four-foot rear yard and side yard setbacks.

c. The City cannot require replacement parking for a multi-family garage, within the existing walls of a building, if it is converted to an ADU. If the parking includes uncovered spaces, those spaces shall be replaced onsite.

These are the entirety of the criteria set forth is State law, and the City is mandated to approve a Building Permit for an ADU on a multi-family property if it meets these criteria. The City may adopt an ordinance that expands on these criteria to impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. As such, staff is recommending that detached ADUs on multi-family lots are subject to the same criteria as detached ADUs on single-family lots with regards to size, height, setbacks, unless specifically modified by the requirements of State law. An example of where the Stat Law standards for detached ADUs on multi-family lots are different from the City's standards for detached ADUs on single family lots is that the Zoning Code currently allows detached ADUs on single family lots up to a maximum of 24 feet in height, whereas the State law for ADUs on multi-family lots mandates that they be no more than 16 feet in height. Should the City not adopt an ordinance with additional development standards for ADUs on multi-family lots, then the City will be required to permit them if they meet the minimum requirements of the State law described above, meaning that detached ADUs in multi-family lots would have no development standards other than side and rear setback, height, and square footage, therefore could be built within front setbacks, as State law does not specify the minimum front setback.

6. <u>New Section 20.30.490 (Amnesty Program)</u>

   Accessory dwelling units will be required to meet all program provisions set forth by the Building Department. The current Code provisions may be waived if the unit meets the required program criteria. It is likely that staff will propose an update to expand or modify this section to better address the specifics of the amnesty program as the details are worked out for that program and it comes closer to implementation in 2020.

7. <u>Amend Section 20.30.310 (Minor One-Story Addition – Exception for same side setback as existing structure)</u>

   This exception will be altered to allow Accessory Dwelling Units to retain the same setback as the primary dwelling subject to certain restrictions.

8. <u>Amend Section 20.80.160 (Incidental Transient Occupancy)</u>

   In accordance to State law requirements, incidental transient occupancy (e.g. renting an ADU on AirBNB for periods less than 30 days) will no longer be an allowed use in an Accessory Dwelling Unit.

9. <u>Amend Section 20.90.220 (Reduction in required off-street parking spaces)</u>

   Per the new State law requirements, when a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an Accessory Dwelling,

replacement spaces will longer be required. The prior law required replacement spaces that could be covered, uncovered, tandem or mechanical lifts.

The State law does not provide any exemptions for covered parking spaces when a garage is converted into a Junior ADU, however, staff is recommending allowing replacement parking for garages converted into a Junior ADU to be uncovered and/or tandem, and may be allowed in any setback area. This would allow residents who convert a garage into a Junior ADU to use the existing driveway to fulfill the parking requirement of the primary dwelling which staff expects to facilitate Amnesty units in particular.

10. Amend Section 20.200.325 and Section 20.200.342:

    Amend sections to add clarifying language to the definition of Accessory Dwelling Unit, and replace current term "Secondary Dwelling Unit"; and further include new definition for Junior Accessory Dwelling Unit.

General Plan Conformance

The Envision San José 2040 General Plan encourages the periodic review of the Zoning Ordinance and other supporting Ordinances in the Municipal Code to ensure that the document reflects the goals, policies, and implementation of the General Plan.

General Plan Goals/Policies: Title 20- Zoning Ordinance

The proposed amendments to Title 20 would provide clarity to certain sections of the Zoning Code that will allow for better implementation of the goals and policies of the General plan. Other proposed amendments will facilitate development and help streamline affordable housing, which is a key component of the General Plan. ADUs could significantly contribute to affordable housing as they utilize existing infrastructure of developed neighborhoods, and cater to the greater need for more housing options within the City. Besides offering income opportunity for homeowners, ADUs could help people provide housing to their extended family members; and therefore create more naturally affordable housing opportunities for neighborhoods. The proposed amendments to Title 20 are consistent with the following General Plan policies:

1. *General Land Use Policy LU-1.10: Review criteria in the Zoning Ordinance and update it as appropriate to reflect Land Use goals, policies, and implementation actions in this Plan.*
2. *General Land Use Policy LU-1.5: Maintain a Zoning Ordinance and Subdivision Ordinance that aligns with and supports the Land Use/Transportation Diagram and Envision General Plan goals and policies. Develop new Zoning Districts which enumerate uses and establish development standards, including heights, to achieve vital mixed-use complete communities and facilitate their implementation.*

3. *Affordable Housing Policy H-2.5: Facilitate second units on single-family residential lots, in conformance with our City's Secondary Unit Ordinance, to take advantage of a potential source of affordable housing and to assist our City in meeting its housing needs.*

The amendments to Sections 20.30.150, 20.30.460, 20.30.470, 20.30.480, 20.30.490, 20.30.310, 20.80.160, 20.90.220, 20.200.325, and 20.200.342 clarifying changes to reflect State law, and non-substantive changes proposed as part of the ongoing maintenance of the Zoning Code. These changes help ensure that the Zoning Ordinance appropriately reflects the goals and policies of the General Plan. Given the increasing costs associated with development, the ability to maximize the use of properties supports continued investment in the City, and construction of much needed housing.

PUBLIC OUTREACH/INTEREST

Staff followed Council Policy 6-30: Public Outreach Policy, in that notices for the public hearings were posted on the City's website and published in the San José Post-Record and emailed to a list of interested groups and individuals. This staff report and attachments were posted on the City's website. Staff has been available to respond to questions from the public.

Staff initiated outreach efforts to gather public input on the proposed Zoning Code changes, and held a focus group meeting for stakeholders within the ADU community on October 29th, 2019, and another community meeting on November 20, 2019 at City Hall. Approximately twelve people attended the first meeting which included design professionals and builders. Attendees were in support of the proposed changes, particularly related to increased flexibility in ADU provisions, especially regarding allowing two-bedroom units. A f2ew of the attendees expressed concerns related to change in the rear yard coverage requirement, and provisions that would eliminate the replacement of displaced parking spaces. Attendees at the subsequent community meeting supported continual change to the ADU ordinance to facilitate construction of ADUs but expressed concerns related to elimination of parking requirements and overcrowding on streets, reduced rear yards if occupied by larger unit sizes. They requested clarification related to impact fees, projects that could be categorized as new construction, and solar panel installation requirements. The State mandated elimination of the requirement for replacement parking if a garage is demolished or converted into an ADU was of particular concern to most attendees at the meeting. The community members provided input that the City should consider expansion of the residential permit parking program to address the potential added demand for street parking resulting from garage conversions.

COORDINATION

The preparation of the proposed ordinance, and this staff report were coordinated with the City Attorney's Office.

CEQA

Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), for which findings were adopted by City Council through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto. Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs.

Michael Billet for

ROSALYNN HUGHEY, DIRECTOR
Planning, Building and Code Enforcement

Attachments:

1) Draft Ordinance
2) Determination of Consistency

DRAFT

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 20.30.100, AMEND SECTION 20.30.110, REPEAL SECTION 20.30.150, AMEND SECTION 20.30.310, AND ADD PART 4.5 TO CHAPTER 20.30 OF TITLE 20; AMEND SECTION 20.80.160 OF CHAPTER 20.80 OF TITLE 20; AMEND SECTION 20.90.220 OF CHAPTER 20.90 OF TITLE 20; ADD SECTION 20.200.324 AND AMEND SECTION 20.200.325 OF CHAPTER 20.200 OF TITLE 20 TO MODIFY CURRENT ACCESSORY DWELLING UNIT (ADU) PROVISIONS TO , AMONG OTHER CHANGES, OMIT MINIMUM LOT SIZE AND LOT COVERAGE REQUIREMENTS, 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

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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 20.30.100 of Chapter 20.30 of Title 20 of the San José Municipal Code is amended to read as follows:

20.30.100 Allowed Uses and Permit Requirements

A. Permitted" land uses are indicated by a "P" on Table 20-50.

B. "Conditional" uses are indicated by a "C" on Table 20-50. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a conditional use permit as set forth in Chapter 20.100.

C. "Special" uses are indicated by an "S" on Table 20-50. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a special use permit as set forth in Chapter 20.100.

D. "Restricted" land uses are indicated by an "R" on Table 20-50. These uses may occur in such designated districts, as an independent use, but only upon issuance of and in full compliance with a valid and effective zoning code verification certificate as set forth in Chapter 20.100.

E. Land uses not permitted are indicated by a "-" on Table 20-50. Land uses not listed on Table 20-50 are not permitted.

F. When the right column of Table 20-50 includes a reference to a section number or a footnote, the regulations cited in the section number or footnote apply to the use. In addition, all uses are subject to any other applicable provision of this Title 20 and any other title of the San José Municipal Code.

Table 20-50
Residential Zoning Districts Use Regulations

Use	Zoning District				Applicable Sections & Notes
	R-1	R-2	R-M	R-MH	
Residential Uses					
One-family dwelling	P	P	P	C	Note 1; Section 20.30.110
~~Secondary dwelling unit/a~~Accessory dwelling unit (ADU)	P	P	P	-	Note 2 and Note 3; ~~Section 20.30.150~~Part 4.5, Chapter 20.30
Two-family dwelling	-	P	P	-	Note 2; Section 20.30.110
Multiple dwelling	-	-	P	-	
Guesthouse	-	-	C	-	Section 20.30.120
Mobilehome parks	-	-	-	P	
Travel trailer parks	-	-	-	C	
Residential care facility, six or fewer persons	P	P	P	P	
Residential care facility, seven or more persons	-	-	C	C	
Residential service facility, six or fewer persons	P	P	P	P	
Residential service facility, seven or more persons	-	-	C	C	
Single room occupancy living unit facility	-	-	C	-	Part 15, Chapter 20.80

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Sororities, fraternities, and dormitories occupied exclusively (except for administrators thereof) by students attending college or other educational institutions	-	-	C	-	
Residential Accessory Uses and Improvements					
Accessory buildings and structures	P	P	P	P	Note 3; Section 20.80.200
Home occupations	P	P	P	P	Part 9, Chapter 20.80
Mixed use, residential/commercial	-	-	S	-	Note 9
Agriculture					
Certified farmers' market	S	S	S	S	Note 6
Certified farmers' market, small	P	P	P	P	Part 3.5, Chapter 20.80; Note 6
Neighborhood agriculture	P	P	P	P	Part 9, Chapter 20.80
Education and Training					
Child day care center located on an existing school site or as an incident to an on-site church/religious assembly use involving no building additions or changes to the site	P	P	P	P	
Day care center	C	C	C	C	
School, elementary and secondary (public)	P	P	P	-	
School, elementary and secondary (private)	C	C	C	-	
Entertainment and Recreation					
Equestrian and riding club	C	-	-	-	
Golf course	C	-	-	-	Note 4
Private club or lodge	-	-	C	-	

Swim or tennis club	C	C	C	C	
General Services					
Bed and breakfast inn	C	C	C	-	Section 20.80.110
Outdoor vending, fresh fruits and vegetables	P	P	P	P	Note 6 and Note 7; Part 10, Chapter 20.80;
Health and Veterinary Services					
Emergency ambulance service	C	C	C	C	
Historic Reuse					
Historic landmark structure reuse	C	C	C	C	Part 8.5, Chapter 20.80
Public, Quasi-Public and Assembly Uses					
Cemetery	C	C	C	C	
Church/religious assembly	C	C	C	C	
Museums, libraries, parks, playgrounds, or community centers (privately operated)	C	C	C	C	
Museums, libraries, parks, playgrounds, or community centers (publicly operated)	P	P	P	P	
Transportation and Utilities					
Community television antenna systems	C	C	C	C	
Off-site, alternating use and alternative use parking arrangements	S	S	S	S	Section 20.90.200
Parking establishment, off-street	C	C	C	C	Section 20.90.150
Utility facilities, excluding corporation yards, storage or repair yards and warehouses	C	C	C	C	

Wireless communication antenna	C	C	C	C	Note 8; Sections 20.30.130, 20.30.140, 20.80.1900, 20.100.1300 and 20.80.1915
Wireless communication antenna, slimline monopole	S	S	S	S	Note 8; Sections 20.30.130, 20.30.140, 20.80.1900, 20.100.1300 and 20.80.1915
Wireless communication antenna, building mounted	P	P	P	P	Note 8; Sections 20.30.130, 20.30.140, 20.80.1910, 20.100.1300 and 20.80.1915
Utilities, Electrical Power Generation					
Solar photovoltaic system	P	P	P	P	Sections 20.100.610.C.7 and 20.100.1030.A.6
Stand-by/backup facilities that do not exceed noise or air standards	S	S	S	S	Note 5
Stand-by/backup facilities that do exceed noise or air standards	-	-	-	-	

Notes:

1. Only one one-family dwelling unit per lot in the R-1, R-2, R-M and R-MH districts.

2. A maximum of two primary living units per lot, with Accessory Dwelling units, are permitted in the R-2 district. Accessory ~~secondary d~~Dwelling units on a lot in the R-2 district may be permitted without a development permit in accordance with the provisions of Part 4.5~~Section 20.30.150 if there is only one primary living unit on the lot and that primary living unit is a one-family dwelling~~.

3. No lot may be used solely for an accessory structure or an accessory building.

4. No driving ranges or miniature golf facilities.

5. Stand-by or backup generators that would not otherwise require some permit from the City (including but not limited to building, electrical, or mechanical), and do meet the applicable noise and air standards are not subject to the special use permit requirement.

6. Allowed on school sites, library sites, community center sites, church/religious assembly sites, and other publicly accessible sites that contain government operations including but not limited to United States Post Offices or State of California Department of Motor Vehicles offices.

7. The activity must conform with the location and operational requirements in Section 20.80.820 of Part 10, Chapter 20.80. Allowed for up to eight hours per day for each vending facility, but not to exceed eight hours per day per lot.

8. Certain modifications of existing wireless facilities may be permitted with an administrative permit in accordance with Section 20.80.1915 of Chapter 20.80.

9. Permitted or special uses allowed in the CP commercial pedestrian zoning district may be allowed with a special use permit for a residential-commercial mixed use project, except that twenty-four-hour non-residential uses or conditional uses allowed in the CP commercial pedestrian zoning district require a conditional use permit.

SECTION 2. Section 20.30.110 of Chapter 20.30 of Title 20 of the San José Municipal Code is amended to read as follows:

20.30.110 - Incidental uses

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In addition to the occupancy of a dwelling as a residence, the following incidental uses are permitted:

A. The rental of rooms in a one-family dwelling to up to three guests; in a two-family dwelling to up to two guests, by each family; and in a multiple dwelling unit to up to two guests per unit, if such use is clearly incidental to the occupancy of the dwelling unit by said family as its own residence, and such rental is for a period of time longer than thirty days and there are no more than six persons living in the dwelling.

B. Use of the dwelling, including a ~~permitted secondary dwelling or~~ permitted guesthouse, for incidental transient occupancy in compliance with Part 2.5 of Chapter 20.80.

C. State-licensed family day care home.

D. The following non-commercial activities:

1. A garage sale consisting of the occupants' personal property;
2. Sale of goods hand-produced by the occupants;
3. Sales parties held for the purpose of selling goods to invited guests. Such parties shall be held inside a permanent structure or in the rear yard of the dwelling unit.

E. To qualify as a non-commercial activity:

1. No more than two such sales are allowed in any calendar year;

2. No such sale can be conducted for more than four consecutive days;

3. Such sales shall only be conducted between the hours of 9:00 a.m. and 9:00 p.m.

SECTION 3. Section 20.30.150 of Chapter 20.30 of Title 20 of the San José Municipal Code is hereby repealed.

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~~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, (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;~~

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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 on lots with an area greater than nine thousand (9,000) 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:

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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, except that a new detached secondary dwelling unit that maintains a minimum interior side setback of five (5) feet may be located at a distance of 45 feet from the front property line.

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.~~

~~a. Notwithstanding the provisions of Section 20.30.150.K(6) above, a detached secondary dwelling that is attached to an existing or proposed garage may have a connecting opening, provided the garage does not have a connecting opening to any other accessory structure not used as a garage.~~

~~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 (½) an acre in size, a secondary dwelling shall be located more than one hundred 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, and 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~~

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~~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.~~

~~5. Any second story balconies, unenclosed entry landings, and decks shall comply with the following requirements:~~

~~a. Maintain minimum setback of fifteen (15) feet from the rear and side property line measured from the projecting face.~~

~~b. Not be provided along the building walls parallel to the nearest side and rear property lines.~~

~~6. Any portion of balconies and landings with areas greater than fifty percent enclosed with walls and covered shall be included in the total unit floor area.~~

~~7. Any porches or balconies that project beyond the footprint of the secondary dwelling unit shall be included in the cumulative total of the rear yard tabulation.~~

~~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.~~

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~~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).~~

~~Q. 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.~~

~~R. 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 4. Section 20.30.310 of Chapter 20.30 of Title 20 of the San José Municipal Code is amended to read as follows:

20.30.310 - Minor one-story addition - Exception for same side setback as existing structure.

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One-story additions, including Accessory Dwelling Units, may be erected with the same side setback as an existing structure subject to the following restrictions:

A. No such addition shall reduce, or further diminish a nonconforming setback.

B. The total square footage of such addition shall be no more than the square footage of the existing areas encroaching within the nonconforming side setback area or one hundred fifty square feet in area, whichever is less.

C. Said addition is a single-story addition and shall not exceed twenty feet in height.

D. Only one such addition shall be permitted.

SECTION 5. A new Part 4.5 is added to Chapter 20.30 of Title 20 of the San José Municipal Code, to be numbered, entitled and to read as follows:

Part 4.5
Accessory Dwelling Units

20.30.460 Accessory Dwelling Units – Single-Family Dwelling Lot

Notwithstanding any other provision of this Ttitle to the contrary, ~~secondary~~ Aaccessory Dd~~w~~elling ~~s~~ Units that meet all of the following criteria shall be allowed pursuant to the provisions of this ~~Chapter~~Part:

A. Zoning District. An aAccessory ~~secondary~~ Dd~~w~~elling Unit that is attached to or detached from a one-family dwelling shall be permitted only ~~in~~: (1) in 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, (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~~ accessory dwelling conforms to the development and use standards of the planned development district, or (3) in ~~l~~low density cluster developments ~~issued~~ that were permitted under previously existing provisions of this title if (a) the low density cluster development conforms with the

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development standards of the R-1 zoning district, or (b) the ~~secondary~~ accessory dwelling conforms to the development and use standards of the low density cluster development permit~~,~~ or (4) on a lot, consisting of an existing single-family dwelling unit, with a General Plan Land Use/Transportation Diagram designation of Residential Neighborhood, Urban Village, Transit Residential, Urban Residential, Downtown, Mixed-use Neighborhood, Mixed-use Commercial, Rural Residential or Residential Neighborhood.

~~B. Minimum Lot Size. The minimum lot size on which a Secondary Dwelling may be allowed is three thousand (3,000) square feet.~~

B~~C~~. Density. An accessory ~~secondary~~ dwelling shall not be included in calculation of residential density for the purpose of determining general plan conformance.

C~~D~~. Maximum Accessory ~~Secondary~~ Dwelling Floor Area. The ~~increased~~ floor area of an attached accessory ~~secondary~~ dwelling shall not exceed fifty percent (50%) of the existing or proposed living area of the primary dwelling provided that an Accessory Dwelling Unit with a floor area of 800 square feet shall be permitted ~~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~~. An accessory ~~secondary~~ dwelling shall not exceed the following maximum ~~gross~~ floor area as compared to lot size:

1. One thousand (1000) ~~Six hundred~~ square feet for ~~a secondary~~an accessory dwelling on a lot with an area of ~~at least three thousand (3,000) square feet~~ up to nine thousand ~~five thousand four hundred forty-four~~ (~~5,444~~9,000) 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~~2. One thousand two hundred ~~Eight hundred~~ (~~800~~1,200) square feet for ~~a secondary~~ an accessory 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.~~

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Table 20-55

~~Minimum~~ Lot size	Maximum ~~gross~~ floor area
~~At least 3,000 square feet and up~~Up to ~~5,444~~9,000 square feet	~~600~~ 1,000 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~~ 1,200 square feet
~~Greater than 10,000 square feet~~	~~900 square feet~~

D~~E~~. Required Facilities. An accessory ~~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 a~~n oven and~~ range or cooktop and oven, that meet Building Code standards); and

2. A full bathroom (including sink, toilet, and shower and/or bath facilities).

E~~F~~. Bedroom Requirement and Maximum Bedroom Area. An accessory ~~secondary~~ dwelling is required to contain a combined sleeping and living area or one bedroom and shall include no more than ~~one~~ two bedrooms and one living area~~, except for units on lots with an area greater than nine thousand (9,000) square feet, which may contain two bedrooms~~. The floor area of ~~the~~ each bedroom shall not exceed four hundred (400) square feet.

F~~G~~. Bathroom Limit. An accessory ~~secondary~~ dwelling shall contain no more than ~~one~~ two bathrooms.

G~~H~~. Maximum Accessory Storage Area. The total size of any closet or other enclosed storage area within the ~~secondary~~ accessory dwelling shall not exceed sixty (60) square feet of floor area.

H~~I~~. Required ~~Secondary~~ Accessory 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 an accessory ~~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 an accessory ~~secondary~~ dwelling may be located on a ~~garage~~ driveway in the front and/or side setback area of the lot on which an accessory ~~secondary~~ dwelling is situated provided that the driveway is at least eighteen (18) feet in length.

3. No additional parking shall be required for an accessory ~~secondary~~ dwelling that meets any of the following criteria:

   a. The ~~secondary~~ accessory dwelling is located within one-half mile walking distance 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~~ accessory 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~~ accessory 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~~ accessory dwelling.

   e. When there is a car-~~-~~share vehicle located within one block of the accessory dwelling unit~~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~~.

I~~J~~. ~~Required R~~Replacement Parking Not Required for Primary Dwelling Parking Demolished or Converted for ~~Secondary~~ Accessory Dwelling Construction. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an Accessory ~~Secondary~~ Dwelling, any ~~required~~ off-street parking spaces that were provided by such garage, carport, or covered parking structure~~, shall be replaced in~~ are not required to be replaced in accordance with Section 20.90.220.B.2.

J~~K~~. Development Standards. ~~Secondary~~ Accessory dwellings shall comply with all of the following development standards:

1. The ~~secondary~~ accessory dwelling shall be subject to the setback requirements for a one-family dwelling in the zoning district in which the

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one-family dwelling is located, as set forth in this ~~chapter~~Part 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 an Accessory ~~a Secondary~~ Dwelling or constructed in same location and to same dimensions as an existing structure, unless required to meet current Building and Fire Code requirements.

b. New detached ~~Secondary~~ Accessory Dwelling– A setback of four feet from the side and rear lot lines, measured from the building face, shall be required for an accessory dwelling unit that exceeds 40% rear yard coverage and is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as the existing structure. No setback over the setback specified for an Accessory Building shall be required for the first story of a new detached Accessory ~~Secondary~~ Dwelling that does not exceed 40% rear yard coverage, unless required to meet current Building and Fire Code requirements.

c. Second Story Accessory ~~Secondary~~ Unit - A minimum setback of ~~five~~ four (~~5~~4) feet from the side and rear lot lines, with an overhang of one-foot or less, shall be required for any second story of a detached Accessory ~~Secondary~~ Dwelling.

d. Additional setback requirements may apply under the Building and Fire Codes or as a result of "no-build" easements or require compliance with existing easement restrictions.

2. An attached ~~secondary~~ accessory 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~~ accessory 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, except that a new detached ~~secondary~~ accessory dwelling unit that maintains a minimum interior side setback of ~~five (5)~~four (4) feet may be located at a distance of 45 feet from the front property line.

4. A detached accessory ~~secondary~~ dwelling shall be located at least six (6) feet away from the one-family dwelling.

5. A detached one story accessory ~~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~~ accessory dwelling may be attached to an existing or proposed accessory building, including a garage so long as current ~~building~~ Building C~~c~~ode requirements and requirements to address fire or safety hazards are met. A detached accessory ~~secondary~~ dwelling that is attached to an existing or proposed accessory building, including a detached accessory ~~secondary~~ dwelling constructed above an existing or proposed accessory building, shall not have any connecting opening between the accessory building and accessory ~~secondary~~ dwelling, unless all connected areas meet current ~~residential~~ B~~b~~uilding Code and F~~f~~ire C~~c~~ode requirements, and the maximum gross square footage for all connected areas does not exceed the limits set forth in Section 20.30.~~150~~460.~~D~~C above. Notwithstanding the provisions ~~of Section 20.30.150.K(6)~~ above, a detached accessory ~~secondary~~ dwelling that is attached to an existing or proposed garage may have a connecting opening, provided the garage does not have a connecting opening to any other accessory ~~structure~~building not used as a garage.

7. The cumulative total of the rear yard covered by the ~~secondary~~accessory dwelling, accessory buildings, and accessory structures, except pools, shall not exceed forty percent (40%) of the rear yard except that such ratio shall not prohibit an 800 square foot accessory dwelling unit with minimum four foot side and rear yard setbacks.

8. If situated on a lot that is equal to or greater than one-half (½) an acre in size, an accessory ~~secondary~~ dwelling shall be located more than one hundred 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.~~

K~~L~~. Design Standards. ~~Secondary~~ Accessory dwellings shall comply with the following design standards:

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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.~~ Any new addition for an attached Accessory Dwelling unit, on a property listed on the San José Historic Resources Inventory, shall be located along the rear wall of an existing primary dwelling, unless the Accessory Dwelling unit is fully enclosed within the existing building walls.
   a. The attached Accessory Dwelling unit shall not result in the enclosure of or net loss of any existing porch, unless such porch is located along the rear façade, and the enclosure of or net loss does not exceed ten percent or more of an existing porch.
   b. If an attached Accessory Dwelling unit is constructed on a second story of the primary dwelling, the Accessory Dwelling Unit shall not overhang the lower floors of the primary building, and shall be set back at least 45 feet from the front property line.
   c. The roofline and materials of the attached Accessory Dwelling unit shall be differentiated from the primary dwelling.

2. ~~A new 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, and windows and doors of the one family dwelling.~~ A detached Accessory Dwelling unit may be constructed on any property listed on the City's Historic Resources Inventory, provided the Accessory Dwelling unit is set back at least 45 feet from the front property line.

3. The front door of any attached ~~secondary~~ accessory 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~~ accessory dwelling front door would require a passageway as defined in Government Code Section 65852.2(i)(5). For a detached ~~secondary~~ accessory 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~~accessory dwelling unit shall be maintained at five (5) feet,

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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.

5. Any second story balconies, unenclosed entry landings, and decks shall comply with the following requirements:

   a. Maintain minimum setback of fifteen (15) feet from the rear and side property line measured from the projecting face.

   b. Not be located~~provided~~ along the building walls parallel to the nearest side and rear property lines.

6. Any portion of balconies and landings with areas greater than fifty percent enclosed with walls and covered shall be included in the total unit floor area~~.~~, measured to exterior framing, except that the floor area of an internal stairwell will be counted once.

7. Any porches or balconies that project beyond the footprint of the ~~secondary~~ accessory dwelling unit shall be included in the cumulative total of the rear yard coverage tabulation.

L~~M~~. Application - Owner Certification. As part of the building permit application process for an ~~secondary~~ accessory dwelling, the owner of record shall submit a declaration, under penalty of perjury, stating that the ~~secondary~~ accessory 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 an ~~secondary~~ accessory dwelling built with a lawfully issued permit if the property is subsequently transferred or sold, or if the one-family dwelling or ~~secondary~~ accessory dwelling is subsequently rented or leased.

M. The requirements of Subsection L shall not apply to an accessory dwelling unit constructed on a property developed by a Qualified Non-profit Corporation and there is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code. Accessory Dwelling Units meeting these requirements may be sold or conveyed separately from the primary residence to a qualified buyer in conformance with Government Code Section 65852.25.

~~N. Code Compliance - One-Family Dwelling. An application for an accessory secondary dwelling building permit shall not be deemed complete, and a~~

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~~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.~~

~~NO. 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, a~~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.~~An Accessory Dwelling unit located on a site that is listed on the San José Historic Resources Inventory that meets the design standards listed in 20.30.460(K)(1) and (L)(2) shall not require issuance of a Single-Family House Permit, or Historic Preservation Permit for a site that is a designated City Landmark or within a City Landmark District. When a garage, carport, or other accessory structure is demolished or converted into an Accessory Dwelling Unit, a Single-Family House Permit, or Historic Preservation Permit shall not be required for the demolition or conversion.

2. A new detached or attached accessory dwelling unit~~Secondary Unit~~ located in a planned development zoning district otherwise subject to requirements of Section 20.100.500 (A)(4).

3. A new detached accessory dwelling unit ~~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 accessory dwelling~~Secondary Unit~~, located in a low density cluster development, otherwise subject to requirements of Section 20.100.500 (A)(4).

O~~Q~~. Compliance with Building and Zoning Codes. An accessory ~~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.

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PR. Located on One Lot. An accessory ~~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.

20.30.470 Junior Accessory Dwelling Units – Single Family Dwelling Lot

Notwithstanding any other provision of this Title to the contrary, junior accessory dwelling units, for lots consisting of single-family dwellings, that meet all of the following criteria shall be allowed pursuant to the provisions of this Part:

A. Shall not exceed five hundred square feet, and constructed within the existing walls of the primary dwelling unit.

B. Shall include a separate entrance from the main entrance to the primary dwelling unit, with an interior entry to the main living area.

C. May share sanitation facilities with the existing primary dwelling.

D. Shall require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

E. Shall require the recordation of a deed restriction, which shall run with the land, and which shall be on file with the City, to include restriction on the size and attributes of the junior accessory unit that conforms with this section; and prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

F. Shall include at least an efficiency kitchen which shall include all of the following:

1. A cooking facility with appliances; and

2. A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the Junior Accessory Dwelling Unit.

G. A Junior Accessory Dwelling Unit may also be allowed on the same lot with an Accessory Dwelling Unit, provided the following criteria are met:

1. The Accessory Dwelling Unit is fully detached and the Junior Accessory Dwelling Unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling; and

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2. The Accessory Dwelling Unit shall not exceed a total floor area limitation of more than 800 square feet and a height limitation of 16 feet.

H. No additional parking shall be required for construction of a Junior Accessory Dwelling Unit.

I. When a garage is converted into a Junior Accessory Dwelling Unit, any off-street parking spaces that were provided by such garage shall be replaced in accordance with 20.90.220.B.3

20.30.480 Accessory Dwelling Units –Two-family and Multifamily Dwelling Lots

Notwithstanding any other provision of this Title to the contrary, accessory dwelling units that meet all of the following criteria shall be allowed pursuant to the provisions of this Part:

A. Accessory dwelling units may be allowed within existing portions of two-family/multifamily dwellings that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

B. At least one accessory dwelling unit may be provided per lot, subject to requirements in subsection A. The attached accessory dwelling units may be permitted, in order of application, to not exceed a maximum of 25% of total number of all units within that lot boundary.

C. No more than two detached accessory dwelling units may be allowed on a two-family/multifamily dwelling lot. A detached accessory dwelling unit shall be located along the rear property line at a minimum setback distance of 45 feet from the front property line. A maximum floor area of 800 square feet, a maximum height limit of 16 feet, and minimum rear yard and side setbacks of four feet shall apply.

D. The accessory dwelling units shall comply with, as applicable, all of the provisions of Section 20.30.460.

20.30.490 Amnesty Program

Notwithstanding any other provision of this Title, accessory dwelling units that meet all of the provisions set forth in the City of San Jose Accessory Dwelling Unit Amnesty Program shall be allowed.

SECTION 6. Section 20.80.160 of Chapter 20.90 of Title 20 of the San José Municipal Code is amended to read as follows:

20.80.160 - General.

Incidental transient occupancy meeting the criteria of this part is an allowed use in any one-family dwelling, two-family dwelling, multiple family dwelling, mobilehome, live/work unit, ~~secondary dwelling~~ or guest house. Incidental transient occupancy shall not be allowed in an Accessory Dwelling Unit.

SECTION 7. Section 20.90.220 of Chapter 20.90 of Title 20 of the San José Municipal Code is amended to read as follows:

20.90.220 - Reduction in Required Off-Street Parking Spaces

A. Alternative Transportation.

1. A reduction in the required off-street vehicle parking spaces of up to fifty percent may be authorized with a development permit or a development exception if no development permit is required, for structures or uses that conform to all of the following and implement a total of at least three transportation demand management (TDM) measures as specified in the following provisions:

   a. The structure or use is located within two thousand (2,000) feet of a proposed or an existing rail station or bus rapid transit station, or an area designated as a neighborhood business district, or as an urban village, or as an area subject to an area development policy in the city's general plan or the use is listed in Section 20.90.220.G; and

   b. The structure or use provides bicycle parking spaces in conformance with the requirements of Table 20-90.

   c. For any reduction in the required off-street parking spaces that is more than twenty percent, the project shall be required to implement a transportation demand management (TDM) program that contains but is not limited to at least one of the following measures:

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i. Implement a carpool/vanpool or car-share program, e.g., carpool ride-matching for employees, assistance with vanpool formation, provision of vanpool or car-share vehicles, etc., and assign carpool, vanpool and car-share parking at the most desirable on-site locations at the ratio set forth in the development permit or development exception considering type of use; or

ii. Develop a transit use incentive program for employees and tenants, such as on-site distribution of passes or subsidized transit passes for local transit system (participation in the regionwide Clipper Card or VTA EcoPass system will satisfy this requirement).

d. In addition to the requirements above in Section 20.90.220.A.1.c for any reduction in the required off-street parking spaces that is more than twenty percent, the project shall be required to implement a transportation demand management (TDM) program that contains but is not limited to at least two of the following measures:

i. Implement a carpool/vanpool or car-share program, e.g., carpool ride-matching for employees, assistance with vanpool formation, provision of vanpool or car-share vehicles, etc., and assign carpool, vanpool and car-share parking at the most desirable on-site locations; or

ii. Develop a transit use incentive program for employees, such as on-site distribution of passes or subsidized transit passes for local transit system (participation in the regionwide Clipper Card or VTA EcoPass system will satisfy this requirement); or

iii. Provide preferential parking with charging station for electric or alternatively-fueled vehicles; or

iv. Provide a guaranteed ride home program; or

v. Implement telecommuting and flexible work schedules; or

vi. Implement parking cash-out program for employees (non-driving employees receive transportation allowance equivalent to the value of subsidized parking); or

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vii. Implement public information elements such as designation of an on-site TDM manager and education of employees regarding alternative transportation options; or

viii. Make available transportation during the day for emergency use by employees who commute on alternate transportation (this service may be provided by access to company vehicles for private errands during the workday and/or combined with contractual or pre-paid use of taxicabs, shuttles, or other privately provided transportation); or

ix. Provide shuttle access to Caltrain stations; or

x. Provide or contract for on-site or nearby child-care services; or

xi. Incorporate on-site support services (food service, ATM, drycleaner, gymnasium, etc. where permitted in zoning districts); or

xii. Provide on-site showers and lockers; or

xiii. Provide a bicycle-share program or free use of bicycles on-site that is available to all tenants of the site; or

xiv. Unbundled parking; and

e. For any project that requires a TDM program:

i. The decision maker for the project application shall first find in addition to other required findings that the project applicant has demonstrated that it can maintain the TDM program for the life of the project, and it is reasonably certain that the parking shall continue to be provided and maintained at the same location for the services of the building or use for which such parking is required, during the life of the building or use; and

ii. The decision maker for the project application also shall first find that the project applicant will provide replacement parking either on-site or off-site within reasonable walking distance for the parking required if the project fails to maintain a TDM program.

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2. A reduction in the required off-street vehicle parking spaces for a structure or use of up to ten percent or up to two off-street vehicle parking spaces, whichever is less, may be authorized with a development permit or a development exception if no development permit is required for a particular use, for nonresidential uses in conformance with the following:

   a. In addition to the off-street bicycle parking spaces required for the structure or use, ten off-street bicycle parking spaces consisting of bicycle racks or five off-street bicycle parking spaces consisting of bicycle lockers shall be provided for every one required off-street vehicle parking space that is reduced; and

   b. The bicycle parking spaces shall conform to all of the requirements of this Cchapter.

B. One-Family Dwellings.

1. A reduction in the required off-street vehicle parking for a one-family dwelling is allowed by right if the following criteria are met:

   a. At least one covered parking space is provided; and

   b. No more than one dwelling or one One-Family Dwelling and one Secondary Dwelling occupy the lot; and

   c. The location of the required covered parking is set back a minimum of forty-five feet from the front lot line when the garage is accessed via a curb cut from the front lot line and forty feet from the side corner lot line when the garage is accessed via a curb cut from the side corner lot line; and

   d. The required covered parking is accessed by a driveway of a width no less than ten feet and no more than twelve feet; and

   e. Any curb cuts accessing the parking shall be in proportion to the driveway width; and

   f. No additional paving in the front setback shall be designated or used for parking; and

   g. The covered parking structure shall meet all other applicable regulations of this title.

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2. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an Accessory ~~Secondary~~ Dwelling, ~~and the required off-street parking spaces that were provided by such garage, carport, or covered parking structure, are required to be replaced on-site, the~~ no replacement spaces ~~may be covered spaces, uncovered spaces, or tandem spaces, or replaced by the use of mechanical automobile parking lifts and in any setback area unless specific findings are made that tandem parking and parking in setback areas are not feasible based on specific site or regional topographical or fire and life safety conditions~~ are required. A garage, carport or parking structure shall be deemed converted when all or any part of an Accessory ~~Secondary~~ Dwelling is proposed to be constructed in all or any part of the area occupied by a garage, carport or parking structure. ~~Such required replacement parking spaces shall comply with Section 20.90.140 of Chapter 20.90, and the provisions for stormwater management and treatment in Chapter 20.95.~~

~~1.~~3. When a garage is converted in conjunction with the construction of a Junior Accessory Dwelling, and the required off-street parking spaces that were provided by such garage are required to be replaced on-site, the replacement spaces may be covered spaces, uncovered spaces, or tandem spaces, or replaced by the use of mechanical automobile parking lifts and in any setback area unless specific findings are made that tandem parking and parking in setback areas are not feasible based on specific site or regional topographical or fire and life safety conditions. A garage shall be deemed converted to a Junior Accessory Dwelling Unit when all or any part of the Junior Accessory Dwelling Unit is proposed to be constructed in all or any part of the area occupied by a garage.

C. Ground Floor Commercial Uses in Neighborhood Business Districts or Urban Villages.

1. The off-street vehicle parking requirement for uses subject to Note 3 on Table 20-190 in Section 20.90.060 shall be reduced to one space per four hundred square feet of floor area, provided all of the following requirements are met:

   a. The site is designated on the general plan land use/transportation diagram with the neighborhood business district overlay or designated as urban village; and

   b. The use is located on the ground floor of a building; and

   c. No parking reduction is approved for a use pursuant to Section 20.90.220.A.1 of this chapter.

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D. Multiple Family Residential in the Main Street Districts. The decision maker may reduce the required vehicle parking spaces for a multiple-family residential use in the pedestrian oriented zoning districts with a development permit based on the following findings:

1. The project includes one or more of the following options:

   a. The project includes unbundled parking that maximizes the efficient use of available parking; or

   b. The project includes a car-share program that reduces the demand for parking spaces; or

   c. The project promotes safe pedestrian movements by eliminating or significantly reducing the need for vehicular driveways to the Main Street by means of parcel assembly or shared access or by providing a new pedestrian walkway to the Main Street that facilitates safe and convenient access for a substantial segment of the surrounding neighborhood; and

2. The project does not include a parking reduction pursuant to Section 20.90.220.G; and

3. For a project that includes ground floor commercial building space, the project is designed in a manner that ensures the availability of adequate parking for ground floor commercial uses; and

4. The project provides vehicle parking spaces at a parking ratio of no less than 0.8 parking spaces per residential unit.

E. Nonresidential Uses in a Main Street District. The decision maker may reduce the required vehicle parking spaces for non-residential uses by up to thirty percent with a development permit based on the following findings:

1. The project achieves one of the following:

   a. The project promotes safe pedestrian movements by eliminating or significantly reducing the need for vehicular driveways to the Main Street through parcel assembly or shared access or by providing a new pedestrian walkway to the Main Street that facilitates safe and convenient access for a substantial segment of the surrounding neighborhood; or

b. The project promotes the efficient use of available parking by providing shared parking facilities; and

2. The project does not include a parking reduction for ground-floor commercial building area subject to reduced parking pursuant to Section 20.90.220.A or 20.90.220.C of this title; and

3. For a project that includes ground floor commercial building space, the project is designed in a manner that ensures the availability of adequate parking for ground floor commercial uses.

F. Miniwarehouse/Ministorage.

1. A reduction in the required off-street parking may be authorized with a development permit for those miniwarehouse/ministorage buildings meeting all of the following requirements:

a. Buildings are single story; and

b. Loading spaces are available directly adjacent to those storage units contained in the single-story building.

G. Other Uses.

1. Up to a twenty percent reduction in the required off-street parking for private instruction or personal enrichment; sororities, fraternities and dormitories occupied exclusively (except for administrators thereof) by students attending college or other educational institutions; SROs; efficiency living units; emergency residential shelters; residential care/service facilities; convalescent hospitals; hotels/motels; bed and breakfast inns; senior housing uses; recreation uses; gasoline service or charge stations when combined with other uses; and performing arts rehearsal space uses may be approved with a development permit or a development exception if no development permit is required, provided that such approval is based upon the findings that the project is either within two thousand feet of an existing or proposed bus or rail transit stop; or the use is clustered with other uses that share all parking spaces on a site.

2. Up to a one hundred percent reduction in the required off-street parking for emergency residential shelters may be approved with a development permit or a development exception if no development permit is required.

SECTION 8. A new Section 20.200.324 is added to Chapter 20.30 of Title 20 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

20.200.324 Dwelling, Junior Accessory Dwelling Unit or JADU

"Junior Accessory Dwelling Unit" or "Junior Accessory Dwelling" means a residential unit that is not more than 500 square feet in size, and contained entirely within an existing or proposed single-family structure and meets all of the requirements of Section 20.30.470. A Junior Accessory Dwelling Unit may include separate sanitation facilities, or may share sanitation facilities with the existing or proposed single-family structure.

SECTION 9. 20.200.325 of Chapter 20.30 of Title 20 of the San José Municipal Code, is amended to read as follows:

20.200.325 Dwelling, ~~Secondary, or~~ Accessory Dwelling Unit or ADU

~~A "secondary dwelling~~Accessory Dwelling Unit" or "Accessory Dwelling" means an attached or detached residential dwelling which is ancillary to a one-family, two-family, or multiple-family ~~-~~dwelling and provides complete independent living facilities for one or more persons that include permanent provision for living, sleeping, eating, cooking, and sanitation on the same parcel as the one-family, two-family, or multiple-family dwelling ~~unit~~ is situated. ~~A secondary dwelling shall be considered an accessory dwelling unit for the purpose of application of state law pertaining to accessory dwelling units.~~

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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

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building and Code
ROSALYNN HUGHEY, DIRECTOR

DETERMINATION OF CONSISTENCY WITH THE ENVISION SAN JOSÉ 2040 GENERAL PLAN FINAL ENVIRONMENTAL IMPACT REPORT AND SUPPLEMENTAL PROGRAM ENVIRONMENTAL IMPACT REPORT (SCH# 2009072096)

Pursuant to Section 15168(c)(2) of the CEQA Guidelines, the City of San José has determined that the project described below is pursuant to or in furtherance of the Envision San José 2040 General Plan Final EIR (General Plan FEIR), Supplemental EIR to Envision San José General Plan EIR, and Addenda thereto. The City of San José has determined that this activity is within the scope of the earlier approved programs and the Final EIRs adequately describe the activity for purposes of CEQA.

File No. PP19-080 Quarterly Update of the San José Municipal Code.

Project Description: An ordinance of the City of San José amending Title 20 (Zoning Ordinance or Zoning Code) of the San José Municipal Code to: Amend Chapters 20.30, 20.80, 20.90, and 20.200 to make modifications, technical, formatting, or non-substantive changes within those chapters of Title 20 that are conducted as part of the ongoing maintenance of the San José Municipal Code.

Specifically, the proposed changes amending Title 20 (the Zoning Code) of the San José Municipal Code to further align with California state law requirements are: (a) add new Part 4.5 "Accessory Dwelling Units," including Sections 20.30.460 (Single-Family Dwelling units), 20.30.470 (Junior Accessory Dwelling units), 20.30.480 (Two-Family and Multi-Family dwelling units), 20.30.490 (amnesty program); amend Section 20.30.310 (Minor One-story Addition); amend Section 20.80.160 (Incidental Transient Occupancy; amend Section 20.90.220 (Reduction in required off-street parking spaces); (b) delete Section 20.30.150 (Secondary Units) from Part 2 "Uses Allowed"; (c) amend Section 20.200.325 to add clarifying language to Accessory Dwelling Unit definition, and add Section 20.200.342 to include new definition of Junior Accessory Dwelling Unit; and to make other technical, non-substantive, or formatting changes within those sections of Title 20 of the San José Municipal Code.

Location: Citywide **Council District** Citywide **County Assessor's Parcel Number** - Various

The environmental impacts of this project were addressed by the Final EIRs as described above.
The environmental impacts of this project were addressed by a Final Program EIR entitled, "Envision San José 2040 General Plan," adopted by City Council Resolution No. 76041 on November 1, 2011 supplemented by the Supplemental EIR entitled, "Envision San José 2040 General Plan Supplemental EIR," adopted by City Council Resolution No. 77617 on December 15, 2015, and addenda thereto. The Program EIR and Supplemental Program EIR were prepared for the comprehensive update and revision of all elements of the City of San José General Plan, including an extension of the planning timeframe to the year 2035. The following impacts were reviewed and found to be adequately considered by the EIRs:

☒ Transportation	☒ Land Use	☒ Noise and Vibration
☒ Air Quality	☒ Biological Resources	☒ Geology and Soils
☒ Hydrology & Water Quality	☒ Hazardous Materials and Hazards	☒ Public Facilities & Services
☒ Cultural Resources	☒ Aesthetics	☒ Energy
☒ Population and Housing	☒ Greenhouse Gas Emissions	☒ Public Facilities & Services
☒ Cumulative Impacts	☒ Growth Inducing Impacts	☒ Agriculture
☒ Mineral Resources	☒ Hazardous Materials and Hazards	☒ Public Facilities & Services

BACKGROUND

The Envision San José 2040 General Plan encourages routine review of the Zoning Ordinance and other supporting Ordinances in the Municipal Code to ensure that the document reflects the goals, policies, and implementation of the General Plan.

PROPOSED PROJECT

As previously mentioned, the proposed amendments would modify Title 20 (Zoning Ordinance or Zoning Code) of the San José Municipal Code to make technical, formatting, minor modifications, or non-substantive changes to Chapters 20.30 and 20.50 within Title 20. The intent of these updates is to make changes to the code as part of the ongoing maintenance of the San José Municipal Code.

The following analysis considers how the proposed changes to Title 20 will achieve the objectives consistent with relevant General Plan Goals, Policies, and Actions.

Section 20.30.150: Delete Section Part 2, "Uses Allowed," and move this section to a new Part 4.5, "Accessory Dwelling Units."
New Part 4.5: Add new Part 4.5, "Accessory Dwelling Units," and replace current term "Secondary Dwelling Units" with "Accessory Dwelling Units."
New Section 20.30.460 (Single-Family Dwelling units): Eliminate minimum lot size requirements to allow ADUs in dwelling units, allow maximum unit sizes of 1,000 square feet for lots less than and equal to 9,000 square feet, and 1,200 square feet for lots greater than 9,000 square feet, and to incorporate two-bedrooms, and two bathrooms in every unit, regardless of lot size; As current State law limits lot coverage requirements, and current Zoning Code provisions limit the total coverage to 40% of the rear yard, the proposed ordinance would allow a forty percent (40%) coverage of the rear yard or allow at least an 800 square foot accessory dwelling unit, whichever is greater; Update parking exemption provisions for accessory dwelling units to align with State law requirements, and eliminate replacement parking requirements; Clarify current provisions related to permits for historic resources, and provide flexibility with design conformance requirements.
New Section 20.30.470 (Junior Accessory Dwelling Unit): This update will incorporate Junior Accessory Dwelling Units, with a maximum area of 500 square feet, built within the existing walls of single-family dwellings to facilitate the conversion of living areas, and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. Owner-occupancy and deed restriction will be required. Additionally, one junior accessory dwelling unit and one accessory dwelling unit may be allowed on the same lot. One detached accessory dwelling unit with a maximum floor area of 800 square feet maximum may also be allowed, subject to a height limit of 16 feet and minimum four-foot rear yard and side yard setbacks. Any uncovered parking displaced by the detached Accessory Dwelling Unit will have to be replaced.
New Section 20.30.480 (Two-Family and Multi-Family dwelling units): This update will incorporate Accessory Dwelling Units in under-utilized areas, including storage rooms, boiler rooms, passageways, attics, basements, or garages, within the existing dimensions of dwelling units, of an existing multi-family development. A maximum of two detached accessory dwelling units may be allowed, subject to a height limit of 16 feet and minimum four-foot rear yard and side yard setbacks.
New Section 20.30.490 (Amnesty program): Accessory dwelling units will be required to meet all program provisions set forth by the Building Department upon formulation.

Section 20.30.310 (Minor one-story addition - Exception for same side setback as existing structure): This exception will be altered to allow Accessory Dwelling Units to retain the same setback as the primary dwelling subject to current restrictions.
Section 20.80.160 (Incidental Transient Occupancy)
In accordance to State law requirements, incidental transient occupancy will no longer be an allowed use in an Accessory Dwelling Unit.
Section 20.90.220 (Reduction in required off-street parking spaces)
Per the new State law requirements, when a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an Accessory Dwelling, replacement spaces will longer be required. The prior law required replacement spaces that could be covered, uncovered, tandem or mechanical lifts.
Section 20.200.325, and Section 20.200.342 (Definitions): Amend sections to add clarifying language to the definition of Accessory Dwelling Unit, and replace current term "Secondary Dwelling Unit"; and further include new definition for Junior Accessory Dwelling Unit.

ANALYSIS

The proposed amendments to Title 20 support the below-listed Goals and Policies of the General Plan by aligning certain sections of the code to better implement the General Plan, such as, but not limited to, those identified below:

- General Land Use Policy LU-1.10: Review criteria in the Zoning Ordinance and update it as appropriate to reflect Land Use goals, policies, and implementation actions in this Plan.
- General Land Use Policy LU-1.5: Maintain a Zoning Ordinance and Subdivision Ordinance that aligns with and supports the Land Use/Transportation Diagram and Envision General Plan goals and policies. Develop new Zoning Districts which enumerate uses and establish development standards, including heights, to achieve vital missed-use complete communities and facilitate their implementation.
- Affordable Housing Policy H-2.5: Facilitate second units on single-family residential lots, in conformance with our City's Secondary Unit Ordinance, to take advantage of a potential source of affordable housing, and to assist our City in meeting its housing needs.

These amendments propose to expand opportunities, facilitate expansion of existing development, and streamline design of small-scale potentially reasonably-priced housing, which is a key component of the General Plan. Given the increasing costs associated with development, the ability to maximize the utility of any given property must be facilitated.

The project will consist of amending Title 20 (Zoning Ordinance or Zoning Code) of the San José Municipal Code to reflect the goals and policies of the General Plan. The proposed changes to the Municipal Code would further the General Plan policies and goals such as Policies LU-1.10, LU-1.5, and H-2.5, and would provide updated codes that to which future redevelopment shall adhere.

No specific development proposal is part of the amendment to Title 20. Future proposals will be subject to further project specific review by the applicable department. The proposed project is to amend the existing Municipal Code to align with goals and policies of the General Plan. For the reasons discussed above, the project is within the scope of the General Plan FEIR, General Plan Supplemental EIR, and addenda thereto pursuant to CEQA, and CEQA Guidelines Section 15168(c)(2), and adoption of the Guidelines does not result in new significant impacts beyond those identified in the General Plan Final and Supplemental EIRs. Any further actions, such as actions to approve individual development projects

based on the amended Zoning Code will require additional environmental review at the time such actions are proposed.

Rosalynn Hughey, Director
Planning, Building and Code Enforcement

11/22/19
Date

Deputy

Project Manager
Aparna Ankola