



COUNCIL AGENDA: 01/12/21

FILE: 21-045

ITEM: 10.1(b)

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: December 17, 2020

SUBJECT: FILE NO. PP20-014. AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 (ZONING ORDINANCE OR ZONING CODE) OF THE SAN JOSE MUNICIPAL CODE TO:

(A) AMEND PART 4.5, ACCESSORY DWELLING UNITS, TO MAKE MINOR CLARIFYING TEXT ALTERATIONS AND UPDATES CONSISTENT WITH STATE LAW WITHIN SECTIONS 20.30.460, 'SINGLE-FAMILY DWELLING' LOT, 20.30.470, 'JUNIOR ACCESSORY DWELLING UNITS —SINGLE-FAMILY DWELLING LOT,' 20.30.480, 'TWO-FAMILY AND MULTI-FAMILY DWELLING LOTS, AND 20.30.495, 'TINY HOME ON WHEELS (THOW);

(B) ADD NOTES SPECIFYING PERMITTING REQUIREMENTS FOR TRANSITIONAL HOUSING USES WITHIN TABLES 20-50, 20-90, 20-140 AND 20-156 AMENDING SECTIONS 20.30.100, 20.40.100, 20.70.100 AND 20.75.200;

(C) INCORPORATE MINOR TEXT ALTERATIONS TO TABLE 20-156 AMENDING SECTION 20.75.200 TO ADD PERMITTING REQUIREMENTS FOR SOCIAL SERVICE AGENCY USES;

(D) AMEND TABLE 20-100 IN SECTION 20.40.200 TO ALLOW PROPERTY IN THE COMMERCIAL NEIGHBORHOOD ZONING DISTRICT TO UTILIZE URBAN VILLAGE PLAN DEVELOPMENT STANDARDS; (E) AMEND CHAPTER 20.100, PART 9, SINGLE-FAMILY HOUSE PERMIT, TO MAKE MINOR CLARIFYING CHANGES RELATED TO INFILL SINGLE-FAMILY ADDITIONS WITHIN SECTION 20.100.1040, 'ADDITIONAL DEVELOPMENT REQUIRING A SINGLE-FAMILY HOUSE PERMIT'; AND (F) TO MAKE OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES WITHIN THOSE SECTIONS OF TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE.

RECOMMENDATION

The Planning Commission voted 7-0 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. 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: (a) amend Part 4.5, Accessory Dwelling Units, to make minor clarifying text alterations and updates consistent with state law within Sections 20.30.460, 'Single-Family Dwelling' lot, 20.30.470, 'Junior Accessory Dwelling Units —Single-family dwelling lot,' 20.30.480, 'Two-Family and Multi-Family Dwelling lots, and 20.30.495, 'Tiny Home on Wheels (THOWs); (b) add notes specifying permitting requirements for Transitional Housing uses within Tables 20-50, 20-90, 20-140 and 20-156 amending Sections 20.30.100, 20.40.100, 20.70.100 and 20.75.200; (c) incorporate minor text alterations to Table 20-156 amending Section 20.75.200 to add permitting requirements for Social Service Agency uses; (d) amend Table 20-100 in Section 20.40.200 to allow property in the Commercial Neighborhood Zoning District to utilize Urban Village Plan development standards; (e) amend Chapter 20.100, Part 9, Single-Family House Permit, to make minor clarifying changes related to infill single-family additions within Section 20.100.1040, 'Additional Development Requiring a Single-Family House Permit'; and (f) to make other technical, non-substantive, or formatting changes within those sections of Title 20 of the San José Municipal Code.

OUTCOME

Approval of the proposed Municipal Code amendments will amend Chapters 20.30, 20.40, 20.70, 20.75, and 20.100, as described in the attached staff report.

BACKGROUND

On December 2, 2020, the Planning Commission conducted a public hearing on the proposed updates to the Zoning Code. The item was on the consent calendar and was approved by the Planning Commission with no discussion. The Commission voted 7-0 to recommend approval of staff's recommendation.

ANALYSIS

A complete analysis of the proposed quarterly updates to the Zoning Code is contained in the attached Planning Commission Staff Report.

CONCLUSION

The Planning Commission voted to recommend that the City Council approve the proposed quarterly changes to the Zoning Code pursuant to staff's recommendation. These changes provide text clarifications and further compliance with State law for accessory dwelling units (ADUs), information related to Transitional Housing, and include other minor clarifying changes.

EVALUATION AND FOLLOW-UP

If the proposed Zoning Code quarterly update changes 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 as it facilitates reduction in resources by streamlining the development review process and supporting current trends.

PUBLIC OUTREACH/INTEREST

Public outreach for this proposal complies with the City Council Public Outreach Policy 6-30 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 Department website. Staff has been available to discuss the proposal with interested members of the public.

COORDINATION

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

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 (SCH#2009072096). 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.

/s/
ROSALYNN HUGHEY, Secretary
Planning Commission

For questions, please contact Michael Brilliot, Deputy Director, at michael.brilliot@sanjoseca.gov.

Attachment: [Staff Report to Planning Commission](#)



Memorandum

TO: PLANNING COMMISSION

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: November 20, 2020

SUBJECT: **File No. PP20-014.** AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 (ZONING ORDINANCE OR ZONING CODE) OF THE SAN JOSE MUNICIPAL CODE TO: (A) AMEND PART 4.5, ACCESSORY DWELLING UNITS, TO MAKE MINOR CLARIFYING TEXT ALTERATIONS AND UPDATES CONSISTENT WITH STATE LAW WITHIN SECTIONS 20.30.460, 'SINGLE-FAMILY DWELLING' LOT, 20.30.470, 'JUNIOR ACCESSORY DWELLING UNITS —SINGLE-FAMILY DWELLING LOT,' 20.30.480, 'TWO-FAMILY AND MULTI-FAMILY DWELLING LOTS, AND 20.30.495, 'TINY HOME ON WHEELS (THOW); (B) ADD NOTES SPECIFYING PERMITTING REQUIREMENTS FOR TRANSITIONAL HOUSING USES WITHIN TABLES 20-50, 20-90, 20-140 AND 20-156 AMENDING SECTIONS 20.30.100, 20.40.100, 20.70.100 AND 20.75.200; (C) INCORPORATE MINOR TEXT ALTERATIONS TO TABLE 20-156 AMENDING SECTION 20.75.200 TO ADD PERMITTING REQUIREMENTS FOR SOCIAL SERVICE AGENCY USES; (D) AMEND TABLE 20-100 IN SECTION 20.40.200 TO ALLOW PROPERTY IN THE COMMERCIAL NEIGHBORHOOD ZONING DISTRICT TO UTILIZE URBAN VILLAGE PLAN DEVELOPMENT STANDARDS (E) AMEND CHAPTER 20.100, PART 9, SINGLE-FAMILY HOUSE PERMIT, TO MAKE MINOR CLARIFYING CHANGES RELATED TO INFILL SINGLE-FAMILY ADDITIONS WITHIN SECTION 20.100.1040, 'ADDITIONAL DEVELOPMENT REQUIRING A SINGLE-FAMILY HOUSE PERMIT'; AND TO MAKE OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES WITHIN THOSE SECTIONS OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE.

RECOMMENDATION

Staff recommends that the Planning Commission recommend the City Council take all of the following actions;

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: (a) amend Part 4.5, Accessory Dwelling Units, to make minor clarifying text alterations and updates consistent with state law within Sections 20.30.460, 'Single-Family Dwelling' lot, 20.30.470, 'Junior Accessory Dwelling Units —Single-family dwelling lot,' 20.30.480, 'Two-Family and Multi-Family Dwelling lots, and 20.30.495, 'Tiny Home on Wheels (THOW); (b) add notes specifying permitting requirements for Transitional Housing uses within Tables 20-50, 20-90, 20-140 and 20-156 amending Sections 20.30.100, 20.40.100, 20.70.100 and 20.75.200; (c) incorporate minor text alterations to Table 20-156 amending Section 20.75.200 to add permitting requirements for Social Service Agency uses; (d) amend Table 20-100 in Section 20.40.200 to allow property in the Commercial Neighborhood Zoning District to utilize Urban Village Plan development standards (e) amend Chapter 20.100, Part 9, Single-Family House Permit, to make minor clarifying changes related to infill single-family additions within Section 20.100.1040, 'Additional Development Requiring a Single-Family House Permit'; and to make other technical, non-substantive, or formatting changes within those sections of Title 20 of the San José Municipal Code.

OUTCOME

Approval of the proposed Municipal Code amendments will amend various chapters within Title 20 as described in the Analysis section below.

BACKGROUND

Staff routinely updates the Zoning Code to incorporate clarifying changes, minor modifications, technical, formatting and other non-substantive changes, to ensure that the Municipal Code follows development trends, maintains consistency with the General plan, and is in conformance to State mandates. The changes described below are intended to correct errors, add definitions, make minor modifications, clarify language, and facilitate implementation of the City's General Plan.

ANALYSIS

1. *Changes to Accessory Dwelling Unit (ADU) requirements:* In December 2019 Council adopted an amendment to the zoning ordinance to incorporate new state law requirements for ADUs that became effective on January 1, 2020. San Jose was one of the first cities in the state to update its ADU ordinance to incorporate this complex legislation, and as such City staff had to make some interpretations and rely on verbal conversations with staff from the California Department of Housing and Community Development (HCD) for clarifications. In September 2020 HCD released an official ADU handbook which provides interpretations and clarifications on the 2019 ADU legislation. Staff recommends the following updates to address this recently released HCD guidance, as well as minor modifications resulting from “clean-up” ADU state legislation passed this year:

- *Modify Section 20.30.460 (J) (e), minimum setback requirement to the side and rear property lines for an attached ADU on a property containing a single family residence:* In response to the 2019 state ADU legislation, the zoning ordinance was updated to allow a detached ADU to exceed 40% rear yard coverage, as long as it maintains four (4) foot side and rear setbacks, is less than 800 square feet in size, and is 16 feet in height or less. As part of the December 2019 zoning ordinance update, after consultation with HCD, staff recommended maintaining the setback requirement of the primary residence for an attached ADU, which means a 5' side setback and 20' rear setback in most cases. However, the September 2020 HCD guidance clarifies that the City must also allow an *attached* ADU that is no more than 800 square feet and 16' tall to have minimum 4' side and rear setbacks. Staff recommends updating Section 20.30.460(j)(e) to incorporate this setback requirement.
- *Modify Section 20.30.470(G)(3) to specify that a lot containing a single family home that has an attached ADU may also have a Junior ADU (JADU):* Currently, the zoning ordinance allows a lot to have both a detached ADU and a JADU, as required by the state law that became effective in January 2020. This legislative season the state updated the law to also require that cities allow a property containing an attached ADU to have a JADU.

- *Modify Section 20.30.480 to clarify that a Two-Family or Multi-Family lot may have both attached and detached ADUs at the same time:* State law requires the City to allow such a configuration and while the Zoning Ordinance does not specifically prohibit it, it is currently not clear that it is allowed.
 - *Fix a typo on the roof pitch requirement within 'Tiny Home on Wheels (THOW)' Section 20.30.495:* The roof pitch requirement was written as 12:2 but should have been 2:12 in accordance with industry standards. 2:12 represents a modest roof slope, and is one of the design standards for a THOW to ensure that it looks more like a residential structure than a recreational vehicle.
2. *Update Section 20.40.200, Table 20-100, to allow properties within the CN Commercial Neighborhood Zoning District to use development standards established in an Urban Village Plan where they differ from the conventional zoning standards:* Adopted Urban Village plans sometimes include setback requirements or other development standards that differ from the standard zoning requirements for certain areas within the plan. These are established through the Urban Village planning process, based on public feedback and site or area specific considerations. The Zoning Ordinance currently specifies that when a property is located in an Urban Village and is zoned CP Commercial Pedestrian then the setbacks established in the Urban Village Plan take precedence where they differ from the CP Commercial Pedestrian standards. Staff has found that many properties located in Urban Villages are zoned CN Commercial Neighborhood and are currently not required or allowed to use the specific Urban Village standards if they are different from the CN standards. Staff recommends extending the requirement that Urban Village development standards take precedence for properties in the CN district to ensure orderly development within Urban Village areas, consistent with Urban Village plans.
3. *Update Zoning District Use Tables to identify Transitional Housing:* As part of a Zoning Ordinance update adopted on May 19, 2020, City Council directed staff to bring a future zoning ordinance update “to be more explicitly consistent with Senate Bill 2 (2007), add Transitional Housing, as defined in Ordinance No. 28680, to the land use tables for all residential and mixed-use Zoning Districts.” Consistent with SB 2, Zoning Ordinance Section 20.200.1283 currently defines Transitional Housing as "residential units operated under program requirements that call for 1) the termination of any assistance to an existing program recipient and 2) the subsequent recirculation of the assisted residential unit to another eligible program recipient at some predetermined future point in time, which point in time shall be no less than six (6) months into the future,” and specifies that transitional housing may be provided in any residential housing type.

Different residential housing types have different allowances and permit requirements depending on the zoning district. For example, multiple family housing is not allowed in the R-1 Single Family or R-2 Two-Family Zoning Districts, but is a permitted use in the

RM Multiple Family Zoning District, and is allowed as part of a mixed-use development through a Conditional or Special Use Permit in the commercial zoning districts. Although it is not specifically called out in the zoning district use tables, based on the current definition of Transitional Housing (and consistent with SB 2), if transitional housing was provided in the form of individual apartments it would follow the permit requirements for multi-family housing in respective zoning district in which it is proposed. Per City Council direction, staff recommends adding notes to each residential use listed in each use table that specifies that the residential housing type may be used as transitional housing so that someone would be able to identify where transitional housing is allowed within each zoning chapter without having to consult the definitions in the last chapter of the Zoning Ordinance.

4. *Update Section 20.75.200 to allow Social Service Agencies in the Main Street Zoning Districts:* Staff proposes to include Social Service Agency as a permitted use within Table 20-156 in Chapter 20.75 – ‘Pedestrian Oriented Zoning district’. Currently the use is not included in the use table for this zoning district, which means it is not allowed. Based on research staff believes that the prior omission of the use from this chapter was unintended, and was only noted when staff received an inquiry about the potential for a social service agency to locate within that zoning district. The proposed change would rectify that omission.
5. *Update Section 20.100.1040 Single Family House Permit requirements to provide an exception for in-fill of an existing two story space:* A Single Family House Permit with a public hearing is required for any construction resulting in a single family house that exceeds 45% Floor Area Ratio (FAR). The purpose of this permit is to provide neighborhood notification and a greater level of design review on single-family homes that are relatively large in scale based on size of the lot. Under the Zoning Ordinance definition, a ground floor space that has two story ceiling height only counts as one story for purposes of calculating the Floor Area Ratio. Because the new second story space would be counted as new floor area, even though this change would result in no perceivable difference in the appearance of the home from the outside, a Single Family House Permit is required. Staff recommends exempting infilling existing second story space from the public hearing requirement for a Single-Family House Permit. This section would only be applicable to existing homes built prior to the requirement to obtain a Single-Family House Permit. This is to prevent a work-around to obtaining a Single-Family House Permit by intentionally building a home with double height spaces without floors to stay under the 45% Floor Area Ratio, and then infilling the space later to avoid the permit process in its entirety.

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 and meet current demand for affordable housing, which is a key component of the General Plan. 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. *General Land Use 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 needs as identified in its Consolidated Plan.*

The amendments to Sections 20.30.460, 20.30.470, 20.30.480, 20.30.495, 20.30.100, 20.40.100, 20.40.200, 20.50.100, 20.50.220, 20.70.100, 20.75.200 and 20.100.1040 are all technical, formatting, and minor modifications, or 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 and establish consistency with State mandates. Given the increasing costs associated with development, the ability to maximize and fully utilize existing properties and support continued investment in the City must be addressed.

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.

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 (SCH#2009072096). 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, DIRECTOR
Planning, Building and Code Enforcement

Attachments:

- 1) Draft Ordinance
- 2) Determination of Consistency

PP20-014 List of Attachments

[Attachment 1- Draft Ordinance](#)

[Attachment 2- Determination of Consistency](#)