

ORDINANCE NO. 30608

**A CODIFIED ORDINANCE OF THE CITY OF SAN JOSE
AMENDING TITLE 20 (ZONING ORDINANCE OR ZONING
CODE) OF THE SAN JOSE MUNICIPAL CODE TO ADD
SECTION 20.70.700 TO TITLE 20 OF THE SAN JOSE
MUNICIPAL CODE TO CLARIFY THAT PROJECT-
SPECIFIC ORDINANCES FOR THE DOWNTOWN WEST
MIXED-USE PLAN SHALL GOVERN DEVELOPMENT
WITHIN THE DOWNTOWN WEST PLANNED
DEVELOPMENT ZONING DISTRICT AND SUPERSEDE
ANY CONFLICTING PROVISIONS IN TITLE 20**

WHEREAS, the City of San José and Google LLC (“Project Sponsor” or “Google”) entered into a non-binding Memorandum of Understanding (“MOU”), dated December 4, 2018, to collaborate on the development of Downtown San José, a key “Growth Area” identified in the Envision San José 2040 General Plan (“General Plan”); and

WHEREAS, the MOU described the City’s and Google’s shared vision to create a vibrant, welcoming, and accessible urban destination consisting of a mix of land uses that are well-integrated with the intermodal transit station, adjacent neighborhoods, and Downtown based on shared goals; and

WHEREAS, following an extensive public process involving the City, residents of San José, and other stakeholders, the Project Sponsor submitted project applications for the Downtown West Mixed-Use Plan (the “Project” or “Downtown West”) on October 10, 2019, proposing amendments to the General Plan (“General Plan Amendment”), a Project-specific amendment to the Diridon Station Area Plan (“DSAP Amendment”) that is separate from the City’s DSAP amendment efforts, rezoning to a Planned Development Zoning District and General Development Plan, and Planned Development Permit; and

WHEREAS, on October 7, 2020, Google submitted additional Project applications for a Vesting Tentative Map, two Historic Landmark Boundary amendments to adjust the

landmark boundaries of the San José Water Company and Southern Pacific Depot Historic District, amendment of an existing Historic Preservation Permit, and other permits and approvals required to implement the Project (File Nos. GP19-009, PDC19-039, PD19-029, HL20-004, HL20-005, HP20-002, PT20-027); and

WHEREAS, the Project advances a plan that re-envision a significant portion of the Diridon Station Area Plan as a mixed-use area that includes development of: up to 7.3 million gross square feet (gsf) of commercial office space; up to 5,900 residential units; up to 500,000 gsf of active uses (commercial retail/restaurant, arts, cultural, live entertainment, community spaces, institutional, childcare and education, maker spaces, non-profit, and small-format office space); up to 300 hotel rooms; up to 800 limited-term corporate accommodations; up to 100,000 gsf of event and conference space; up to 4,800 publicly accessible commercial parking spaces and up to 2,360 unbundled parking spaces for residential use; a "District Systems" approach to delivery of on-site utilities, including designated infrastructure zones with up to two (2) on-site centralized utility plants totaling up to 130,000 gsf; one or more on-site logistics centers to serve the commercial on-site uses that would occupy a total of about 100,000 gsf; a total of approximately 15 acres of parks, plazas and open space, including areas for outdoor seating and commercial activity (such as retail, cafes, and restaurants), green spaces, landscaping, mid-block passages, riparian setbacks, and trails; and various other improvements to the public realm to improve transit access and pedestrian and bicycle circulation and facilitate connectivity, both within the site and to and from surrounding neighborhoods; and

WHEREAS, On December 30, 2019, Governor Gavin Newsom certified the Project as an environmental leadership development project under Public Resources Code § 21178 et. seq. the Jobs and Economic Improvement through Environmental Leadership Act of 2011 (Assembly Bill [AB] 900, as amended by Senate Bill 734 [2013], AB 246 [2017], Senate Bill 7 [2021], which is currently pending approval); and

WHEREAS, the Project has complied with requirements related to AB 900 as of the date of adoption of this Ordinance and would comply with post-adoption AB 900 requirements if SB 7 is enacted; and

WHEREAS, pursuant to Section 20.10.070 of the San José Municipal Code, a Planned Development Zoning District shall be individually designed to meet the needs of the territory so zoned and that development of the subject property can occur only pursuant to an effective Planned Development Permit issued in strict conformity with the adopted general development plan; and

WHEREAS, by Ordinance No. 30609, City Council approved the Downtown West Planned Development Zoning District (“Downtown West PD Zoning District”), which consists of approximately 80 acres of real property that is generally bounded by Lenzen Avenue and the Union Pacific Railroad (UPRR) tracks to the north; North Montgomery Street, Los Gatos Creek, the Guadalupe River, Barack Obama Boulevard (formerly South Autumn Street and Bird Avenue), and Royal Avenue to the east; Auzerais Avenue to the south; and Diridon Station and the Caltrain rail tracks to the west; and

WHEREAS, the specific land use regulations and development standards applicable to the Downtown West PD Zoning District are established in the Downtown West General Development Plan (“GDP”), dated ~~April~~ May 2021, which guides the content of the Downtown West Planned Development Permit (“Downtown West PD Permit”), which consists of the following components, as such documents may be amended from time to time: Downtown West Design Standards and Guidelines (“DWDSG”) dated March 1, 2021 (and the Errata dated May 7, 2021), Downtown West Improvement Standards (“DWIS”) dated April 5, 2021, Conceptual Infrastructure Plan Sheets dated March 31, 2021, and the Conformance Review Implementation Guide (“Implementation Guide”)

dated ~~May 12~~April 9, 2021 (collectively, these documents are referred to as the “Downtown West PD Permit”); and

WHEREAS, the Downtown West PD Rezoning and accompanying GDP, adopted by Ordinance No. 30609, establishes use regulations and development standards, including but not limited to permitted land uses, building heights, open space requirements, design standards, and a review and approval process for subsequent approvals, that are unique to Downtown West; and

WHEREAS, the regulations and standards established in the Downtown West PD Zoning District and GDP, adopted by Ordinance No. 30609 and other Project approvals, are intended to control and govern development of the Project within the Downtown West PD Zoning District notwithstanding any contrary provision in Title 20, including but not limited to any greater restrictions on the use of buildings or premises, height of buildings, or open space requirements; and

WHEREAS, development of the Project is intended to occur in phases and the GDP authorizes and establishes the Downtown West PD Zoning District Design / Conformance Review (“Conformance Review”) process, a subsequent review process for the design and development of vertical improvements, open space, and horizontal improvements within the Downtown West PD Zoning District; and

WHEREAS, pursuant to the Conformance Review process, the Project Sponsor may request the following types of relief from DWDSG standards, which are further described in the GDP: Minor Modifications (deviation of less than 10% from a numerical standard or minor deviation from a qualitative standard), Exceptions (waiver of a DWDSG standard), Deferral (deferring compliance of a DWDSG standard), and Amendment (deviations that require an amendment to the Downtown West PD Permit); and

WHEREAS, the Conformance Review process authorizes the Director of Planning, Building, and Code Enforcement (“Director of PBCE”) to review and approve Conformance Review applications for vertical improvements and open space for consistency with the General Plan, GDP, and Downtown West PD Permit, and authorizes the Director of Public Works (“PW Director”) to review 35%, 65%, and 95% improvement plan sets for consistency with the GDP, Downtown West PD Permit, Infrastructure Plan, and other applicable Project approvals and documents; and

WHEREAS, Ordinance No. 30609 approving the Downtown West Planned Development Zoning Ordinance amends Title 21 of the San José Municipal Code to provide specific CEQA procedures that apply to all subsequent approvals associated with development of the Project, including Conformance Review applications, notwithstanding anything to the contrary elsewhere in Title 21; and

WHEREAS, the Implementation Guide sets forth the Conformance Review process, including but not limited to application submittal requirements and City review timelines for the City’s review and approval of Conformance Review applications for vertical improvements, open space improvements, and horizontal improvements; and

WHEREAS, the Director of PBCE’s determination on a Conformance Review application shall occur at a Conformance Review Hearing (as described in the Implementation Guide), which may be held on dates when Director of PBCE Hearings are also scheduled to occur for other matters; however, the Director of PBCE’s decision on a Conformance Review application shall not be subject to appeal pursuant to Section 20.100.220; and

WHEREAS, on April 28, 2021, the Planning Commission of the City of San José held a duly noticed and advertised public hearing to receive oral and written testimony regarding the planned rezoning and recommended that the subject property be zoned to the Downtown West PD Zoning District; and

WHEREAS, on May 25, 2021, the City Council of the City of San José held a duly noticed and advertised public hearing to receive oral and written testimony regarding the planned rezoning based on the recommendations of the City's Planning Commission and Director of PBCE; and

WHEREAS, the approximately 80-acre site located in the General Plan Downtown Growth Area and within the boundaries of the Diridon Station Area Plan (as amended by Resolution No. 80021) encompassed by the proposed rezoning was the subject of that certain Final Environmental Impact Report for the Downtown West Mixed-Use Plan ("FEIR"); and

WHEREAS, this Council of the City of San José has considered, approved, and certified said FEIR and adopted related findings, a Mitigation Monitoring and Reporting Program and a Statement of Overriding Considerations under separate Resolution No. 80018 on May 25, 2021 prior to taking any approval actions on the Project; and

WHEREAS, this Ordinance approving amendments to Title 20 is a companion to the following approvals relating to Downtown West: override of the Santa Clara County Airport Land Use Commission's Comprehensive Land Use Plan inconsistency determination (Resolution No. 80019); amendments to the General Plan including land use designations applicable to Downtown West (Resolution No. 80020); amendments to the Diridon Station Area Plan (Resolution No. 80021); Planned Development Rezoning, including a General Development Plan (Ordinance No. 30609); the Development Agreement for the Downtown West Mixed-Use Plan (Ordinance No. 30610); a Planned Development Permit (Resolution No. 80022); approval of a Vesting Tentative Map (Resolution No. 80023); amendments to the landmark boundaries of the San José Water Company Historic Landmark (Resolution No. 80029) and the Southern Pacific Depot Historic District (Resolution No. 80028); an amendment to Historic Preservation Permit

(HP16-002) (Resolution No. 80027); approval of Major Encroachment Permits (Resolution Nos. 80024 and 80025); approval of the Construction Impact Mitigation Plan (Resolution No. 80026); and approval of partial vacation of certain streets within Downtown West (Resolution Nos. 80030, 80031, 80032, 80033, and 80034); and

WHEREAS, the City Council of the City of San José is the decision-making body for the proposed amendment to Title 20 of the San José Municipal Code;

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

Having reviewed the materials identified in the recitals above, and having heard all testimony and comments, the City Council finds and determines as follows:

SECTION 1. The recitals above are incorporated herein.

SECTION 2. The purpose and intent of this Ordinance is to ensure that development within Downtown West shall be allowed in a manner that fully implements development of the Project consistent with the standards, requirements, and procedures set forth in the Downtown West PD Zoning District, approved by Ordinance No. 30609, including but not limited to intensity, height, land uses, and subsequent review and approval procedures, and the following specific requirements and regulations applicable to the Project:

1. The Director of PBCE's determination on a Conformance Review application shall occur at a Conformance Review Hearing (as set forth in the Implementation Guide), which may be held on dates when Director of PBCE Hearings are also scheduled to occur for other matters. A Conformance Review Hearing shall not constitute a "Director's hearing" under Section 20.100.220 and Table 20-260 (Appeal Hearing Body) of Title 20 of the Municipal Code. The Director of PBCE's decision on a Conformance Review application shall not be subject to appeal to

the Planning Commission or City Council. The decision of the Director of PBCE is final and shall not be appealable to any other approval body within the City.

2. The GDP for the Downtown West PD Zoning District establishes the maximum allowable building heights for development within the Downtown West PD Zoning District. The GDP further establishes a process where the maximum building heights for individual buildings in the Downtown West PD Zoning District may be increased without amendment to the GDP, provided that (a) such increase correlates to an increase in maximum allowable height authorized by the FAA and approved by City Council following review by the Santa Clara County Airport Land Use Commission, if applicable, and (b) Director of PBCE conducts environmental review of the building's proposed height increase to determine compliance under CEQA.
3. The GDP establishes specific residential parking standards applicable within the Downtown West PD Zoning District. The Development Agreement and the GDP also establishes specific commercial/public parking requirements applicable to the Downtown West PD Zoning District (the "Required Parking Ratio" as defined and described in the GDP and Development Agreement, approved by Ordinance No. 30609). The specific parking standards set forth in the GDP and Development Agreement shall apply and govern development within the Downtown West PD Zoning District notwithstanding anything to the contrary in Title 20. The GDP also establishes the standards and requirements for bicycle parking in the Downtown West PD Zoning District notwithstanding anything to the contrary in Title 20.
4. The GDP establishes the land uses authorized within the Downtown West PD Zoning District. The GDP identifies whether land uses are: Permitted; a Conditional Use that requires the approval of a subsequent planned development permit; a Special Use that requires the approval of a subsequent planned development

permit; and authorized upon the issuance of an Administrative Permit. Certain uses require compliance with conditions of approval that are set forth in the GDP. The land use regulations in the GDP shall control and apply within the Downtown West PD Zoning District notwithstanding anything to the contrary in Title 20.

5. The term of an Administrative Permit issued within the Downtown West PD Zoning District shall be a minimum of five (5) years, subject to a five (5) year extension. A permittee may request the renewal of an Administrative Permit pursuant to the terms of the GDP.
6. The GDP authorizes Special Events and Limited-Term Uses (as defined in the GDP) on private property within the Downtown West PD Zoning District, without any further authorization, permits, or approvals from the Director of PBCE or any other City department, except to the extent a permit is required under the San José Municipal Fire Code or the event includes amplified noise that exceeds 60 decibels (dBA) based on an hourly average noise level (hourly L_{eq}). The GDP establishes a process for obtaining a Fire Permit for Special Events and Limited-Term Uses on private property, which shall apply to the Downtown West PD Zoning District. The GDP establishes a process for obtaining an Amplified Sound Permit for Special Events and Limited-Term Uses that include amplified noise that exceeds 60 dBA based on an hourly L_{eq} , which shall apply to the Downtown West PD Zoning District. The GDP also establishes a process for coordinating review of certain Special Events with other City departments (Police Department and Department of Transportation).

SECTION 3. To ensure that Project-specific development regulations will control over Title 20 of the San José Municipal Code, notwithstanding Section 20.10.040.A and 20.10.030, this codified Ordinance hereby amends Title 20 of the San José Municipal

Code to add a new Part 7 - Downtown West Regulations and Standards, Section 20.70.700 as follows:

Part 7 - DOWNTOWN WEST REGULATIONS AND STANDARDS

20.70.700 Downtown West Planned Development Zoning District.

The standards applicable in the Downtown West Planned Development Zoning District, including but not limited to permitted land uses, building heights, open space requirements, design standards, and subsequent conformance review and approval and appealability requirements, shall be as set forth in City Council Ordinance No. 30609, which established the Downtown West Planned Development Zoning District and adopted the Downtown West General Development Plan. Notwithstanding any other provision of this Title 20, City Council Ordinance No. 30609 establishes the applicable standards and requirements for the Downtown West Planned Development Zoning District. In the event of a conflict between Title 20 and City Council Ordinance No. 30609, City Council Ordinance No. 30609 shall control and shall govern development within the Downtown West Planned Development Zoning District.

SECTION 4. This Ordinance shall take effect upon the effective date of Ordinance No. 30609, rezoning the Downtown West property to the Downtown West PD Zoning District.

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PASSED FOR PUBLICATION of title this 25th day of May, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk