



Memorandum

TO: HONORABLE MAYOR AND
AND CITY COUNCIL

FROM: Chu Chang

SUBJECT: SEE BELOW

DATE: June 7, 2021

Approved

Date

6/10/21

SUBJECT: FILE NO. PP20-002: AN ORDINANCE AMENDING TITLE 23 OF THE SAN JOSE MUNICIPAL CODE (THE SIGN CODE) TO REPEAL SIGN VARIANCE PROVISIONS, MODIFY SIGNAGE ALLOWANCES FOR ROOF SIGNS ON BUILDINGS OF 80 FEET IN HEIGHT OR GREATER WITHIN THE DOWNTOWN SIGN INTENSIFICATION ZONE, AND TO MAKE OTHER NON-SUBSTANTIVE CODE CHANGES.

RECOMMENDATION

Approve an ordinance to amend Chapter 23.02 - General Provisions to repeal Section 23.02.1370, "Sign Variances"; amend Chapter 23.04, Part 2, Downtown Sign Zone, and incorporate changes to Section 23.04.120, "Types of Signs," to allow roof signs on buildings of 80 feet in height or greater; and to make other non-substantive, ministerial, technical, or typographical changes to various Sections of said Chapter 23.04 of the Sign Code.

OUTCOME

Approval of the proposed ordinance will amend the Sign Code to repeal the Sign Variance provision and modify signage allowances for Skyline/Roof signs within the City of San José.

BACKGROUND

The City Council routinely approves Sign Code amendments to accommodate changing trends in the sign industry, such as allowing different types of signs and larger signage to promote economic development throughout the City by allowing additional on-site signage opportunities for businesses/developments in San José. Additionally, it would approve changes that bring the Sign Code into compliance with Court rulings.

ANALYSIS

This Sign Code amendment proposes to rectify current sign provisions to align with a recent federal district court ruling that found the Sign Ordinance variance provision is unconstitutional. It would also address the need for flexibility in regulations and signage allowances for larger Downtown developments and facilitate enhanced on-site signage within an urban setting. The amendments will address changes related to Section 23.02.1270 - Sign Variances, and Section 23.04.120 - Types of Signs, G(1) and G(2) listed below:

Section 23.02.1270 - Sign Variances

In accordance with a court ruling in September 2019 that found the variance provision of the Sign Code to be unconstitutional, staff proposes to repeal this section. Although the variance provision has remained in the Sign Ordinance since the 2019 ruling, the City has not accepted any applications for a sign variance since that time.

Although variances are intended to provide relief from existing regulations, they cannot be based on vague and subjective findings for approval when concerning signage. The court found that the sign variance provision is an unlawful prior restraint under the First Amendment due to the fact that certain terms within the variance provision are vague and undefined.

The purpose of a variance is to provide flexibility based on the unique circumstances of a property that cannot be thoroughly anticipated through a standard set of requirements or fixed definitions, therefore, the consideration of a variance inherently involves a level of subjectivity and flexibility that cannot be avoided without negating the purpose in having a variance. Presently, staff does not propose any additional modifications or replacement text for the repealed section.

Section 23.04.120 – Rooftop Signs

The Sign Code has specific regulations for the quantity, size, and location of signs, and allows a variety of sign types to be used for any development, subject to specific criteria. The Sign Ordinance includes the “Downtown Sign Zone” to cater to the needs of diverse business establishments and to provide additional signage opportunities in the dense, urban environment of downtown. Staff continuously explores new signage opportunities and allowances that conform to current trends in order to attract new businesses and promote economic development.

Within the Downtown Sign Zone currently, either skyline signs (signs that are mounted at the top floor of a building that do not project above the top wall or parapet) or roof signs (signs that are mounted on a roof, projecting above the wall or parapet of the top of a building) are allowed for buildings 140 feet or greater in height above grade. Only skyline signs are allowed on buildings greater than 80 feet and less than 140 feet in height above grade. Roof signs are not allowed on buildings in this height range. It came to staff’s attention that outside of the Downtown Sign Zone for buildings that are 80 feet to 140 feet in height, the Sign Ordinance allows the option of

a roof sign or a skyline sign, so staff proposes to amend Section 23.04.120 to extend that same flexibility to install either a rooftop sign or skyline sign on buildings of this height Downtown.

Additionally, to address signage impacts within riparian habitats for skyline and roof signs, staff proposes to add a restriction that illuminated Skyline or Roof Signs located on buildings of 80 feet to 140 feet in height that are within one thousand (1,000) feet of a river or creek shall not be displayed to directly face that river or creek. This is consistent with the requirements for such signage outside of Downtown.

CONCLUSION

The City Council routinely approves Sign Code amendments to accommodate changing trends in the sign industry. Additionally, a recent federal district court ruling found the City's Sign Ordinance variance provision is unconstitutional. Approval of the proposed ordinance will amend the Sign Code to repeal the Sign Variance provision and modify signage allowances for Skyline/Roof signs within the City of San José.

EVALUATION AND FOLLOW UP

No additional follow up action with the City Council is expected at this time.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum aligns with one or more Climate Smart San José goals as it facilitates job creation within City limits by providing opportunities for tenant occupancy through enhanced signage.

PUBLIC OUTREACH

Staff continues to correspond with stakeholders who are interested in the proposed amendments to determine how the Sign Code may better address their priorities. 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 Memorandum and attachments were posted on the City's website. Staff has been available to respond to questions from the public. In addition, staff posted a webpage on the Planning Division website that details this change.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

Determination of Consistency to the Envision San José 2040 General Plan EIR (Resolution No. 76041), Envision San José General Plan Supplemental EIR (Resolution No. 77617), and Addenda thereto.

/s/
CHU CHANG, Acting Director
Planning, Building and Code Enforcement

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

Attachment: Determination of Consistency

**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. PP20-002 Sign Code Update of the San José Municipal Code.

Project Description: An ordinance of the City of San José amending Title 23 (Sign Ordinance or Sign Code) of the San José Municipal Code to repeal Sign Variance provisions, to modify signage allowances for skyline/roof signs within the Downtown Sign Intensification Zone, and to make other non-substantive code changes.

Specifically, the proposed changes amend Chapter 23.02 - General Provisions to repeal Section 23.02.1370, "Sign Variances"; amend Chapter 23.04, Part 2, Downtown Sign Zone, and incorporate changes to Section 23.04.120, "Types of Signs," to modify signage allowances for skyline/roof signs; and to make other non-substantive, ministerial, technical, or typographical changes to various Sections of said Chapter 23.04 of the Sign 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:

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|---|---|--|
| <input checked="" type="checkbox"/> Transportation | <input checked="" type="checkbox"/> Land Use | <input checked="" type="checkbox"/> Noise and Vibration |
| <input checked="" type="checkbox"/> Air Quality | <input checked="" type="checkbox"/> Biological Resources | <input checked="" type="checkbox"/> Geology and Soils |
| <input checked="" type="checkbox"/> Hydrology & Water Quality | <input checked="" type="checkbox"/> Hazardous Materials and Hazards | <input checked="" type="checkbox"/> Public Facilities & Services |
| <input checked="" type="checkbox"/> Cultural Resources | <input checked="" type="checkbox"/> Aesthetics | <input checked="" type="checkbox"/> Energy |
| <input checked="" type="checkbox"/> Population and Housing | <input checked="" type="checkbox"/> Greenhouse Gas Emissions | <input checked="" type="checkbox"/> Public Facilities & Services |
| <input checked="" type="checkbox"/> Cumulative Impacts | <input checked="" type="checkbox"/> Growth Inducing Impacts | <input checked="" type="checkbox"/> Agriculture |
| <input checked="" type="checkbox"/> Mineral Resources | <input checked="" type="checkbox"/> Hazardous Materials and Hazards | <input checked="" type="checkbox"/> 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

The City Council routinely approves Sign Code amendments to accommodate changing trends in the sign industry, such as allowing additional and larger signage to promote economic development throughout the City by allowing additional on-site signage opportunities for businesses/developments in San Jose. The proposed amendments make changes to Title 23, as part of the ongoing maintenance, to repeal Section 23.02.1370, “Sign Variances,” and to incorporate changes to Chapter 23.04, Part 2, Downtown Sign Zone, Section 23.04.120, “Types of Signs,” to modify signage allowances for skyline/roof signs.

ANALYSIS

The project will consist of amending Title 23 of the San José Municipal Code to reflect the goals and policies of the General Plan and promote enhanced signage for business. The proposed changes to the Municipal Code would further the General Plan policies and goals and provide updated codes to which future redevelopment shall adhere.

No specific development proposal is part of this amendment to Title 23. Future proposals will be subject to further project specific review by the applicable department. 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 Sign Code will require additional environmental review at the time such actions are proposed.

Chu Chang, Acting Director
Planning, Building and Code Enforcement

5/25/21
Date

/s/ Martina Davis
Deputy

Project Manager
Aparna Ankola