



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

**SUBJECT: PAWNBROKER ORDINANCE
UPDATE**

DATE: June 18, 2021

SUBJECT: PP21-005. AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE (ZONING ORDINANCE) TO ADD PART 11.5 TO TITLE 20.80 OF THE ZONING ORDINANCE WHICH WOULD ADD CONDITIONAL USE PERMIT REQUIREMENTS FOR PAWNBROKERS.

RECOMMENDATION

The Planning Commission voted unanimously (7-0) against recommending that the City Council take the following actions:

1. Adopt an ordinance of the City of San José amending sections of Title 20 (Zoning Ordinance or Zoning Code) to amend Chapter 20.80 Specific Use Regulations to add Part 11.5 to add criteria for issuing a Conditional Use Permit for pawnshops and pawnbrokers that meet certain distance criteria from sensitive uses, and to make other technical, non-substantive, or formatting changes within those sections of title 20 of the San José Municipal Code.

OUTCOME

If adopted, this ordinance would require additional findings to be made by the determining body for newly proposed Pawnbroker uses during the Conditional Use Permit application process.

BACKGROUND

Currently, Title 20 (Zoning Ordinance or Zoning Code) allows a pawnbroker use in the Commercial, Downtown, and Pedestrian Oriented (Alum Rock) Zoning Districts through issuance of a Conditional Use Permit. Title 6 (Business Licenses and Regulations) of the Municipal Code requires issuance of a permit by the Police Department and caps the total number of allowed pawnbroker businesses at six.

June 18, 2021

Subject: Pawnbroker Ordinance Update

Page 2

On October 22, 2020 Councilmembers Esparza and Jones issued a memorandum to the Rules and Open Government Committee that highlights a link between pawnbrokers and crime, and identifies that the current criteria for a Conditional Use Permit for a pawnbroker do not specifically require the decision-making body to analyze the impact of a pawnbroker on the surrounding community, nor do the current criteria prevent a concentration of pawnbrokers in proximity to each other.

At the City Council's Rules and Open Government Committee meeting on October 28, 2020, the Committee directed staff to update the Conditional Use Permit requirements for pawnbrokers to mirror requirements for consideration of applications of off-sale of alcohol as recommended in the memo.

On June 9, 2021, the Planning Commission held a public hearing on the proposed ordinance. Staff provided an overview of the proposed amendment.

One community member spoke against the proposed ordinance. The community member was a pawnshop owner who stated that the problem with stolen property is not related to pawnshops because they are already heavily regulated and that San José residents rely on their services.

Commissioner Oliverio stated that the internet is the largest distributor of stolen goods and that Pawnshops are easier for the San Jose Police Department to monitor, so he disagreed that Pawnshops expressly cause crime. Commissioner Oliverio asked staff if the sensitive uses proposed under this ordinance were different from those found under cannabis and whether cannabis also needed to make the same findings under this ordinance proposal. Staff responded that the proposed pawnbroker ordinance was modeled after the findings for a determination of public convenience or necessity for off-sale of alcohol so there are more sensitive uses proposed to be considered under the pawnbroker ordinance than in the current cannabis ordinance. However, cannabis uses are strictly prohibited if they are within the radius of the sensitive uses defined under the cannabis ordinance, whereas the pawnbroker ordinance would only require additional findings to support that use. He also asked staff if massage parlors are controlled for concentration. Staff's response was that those uses are considered a personal service and are not controlled in that manner.

Commissioner Garcia acknowledged Commissioner Oliverio's point that pawnshops causing crime may not be the case. He asked staff if Payday Loan type businesses are similarly regulated. Staff responded that the cash loan businesses are already regulated in the municipal code.

Commissioner Garcia and Commissioner Oliverio asked to see a map of existing pawnshop locations in San Jose. A map of existing pawnshop locations is attached to this memo.

Vice Chair Bonilla asked staff what the origin of this project was. Staff responded that there is a concern of possible impacts which may occur if Pawnshop concentration isn't controlled. Staff further clarified Bonilla's follow-up question about whether Pawnshops are known to cause crime in the city by reiterating that there are only six total licenses available which has not

caused issues of concentration, and staff were not aware of any San Jose specific data that showed increased crime tied specifically to local pawnshop businesses (the Police Department confirmed this after the hearing). Vice Chair Bonilla stated that he did not see a need for an ordinance to further control or restrict pawnshops. He stated that there may be need for this ordinance if Pawnshop saturation existed in San José, but we should be careful mischaracterizing Pawnshops as a crime-attractor and that we should not fix a problem that doesn't exist.

Vice Chair Bonilla motioned that the Planning Commission not recommend the proposed ordinance for approval, which was seconded by Commissioner Oliverio.

The Planning Commission voted unanimously (7-0) to not recommend the proposed ordinance for approval.

ANALYSIS

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

CONCLUSION

The Planning Commission voted (7-0) to recommend the proposed ordinance not be approved by the City Council.

Approval of the proposed ordinance will allow for the oversight on the concentration of Pawnbrokers and allow for further analysis of potential impacts to the neighborhood where a Pawnbroker may locate.

EVALUATION AND FOLLOW-UP

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

CLIMATE SMART SAN JOSE

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City Council Agenda website for the June 29, 2021 Council Meeting.

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 Jose Post-Record and emailed to a list of interested groups and individuals. The staff report and attachments were posted on the City's website. Staff has been available to respond to questions from the public. Staff has contacted the six existing pawnbroker businesses in the city to inform them of the proposed ordinance change, as it will affect them should they chose to relocate their businesses.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's Office.

CEQA

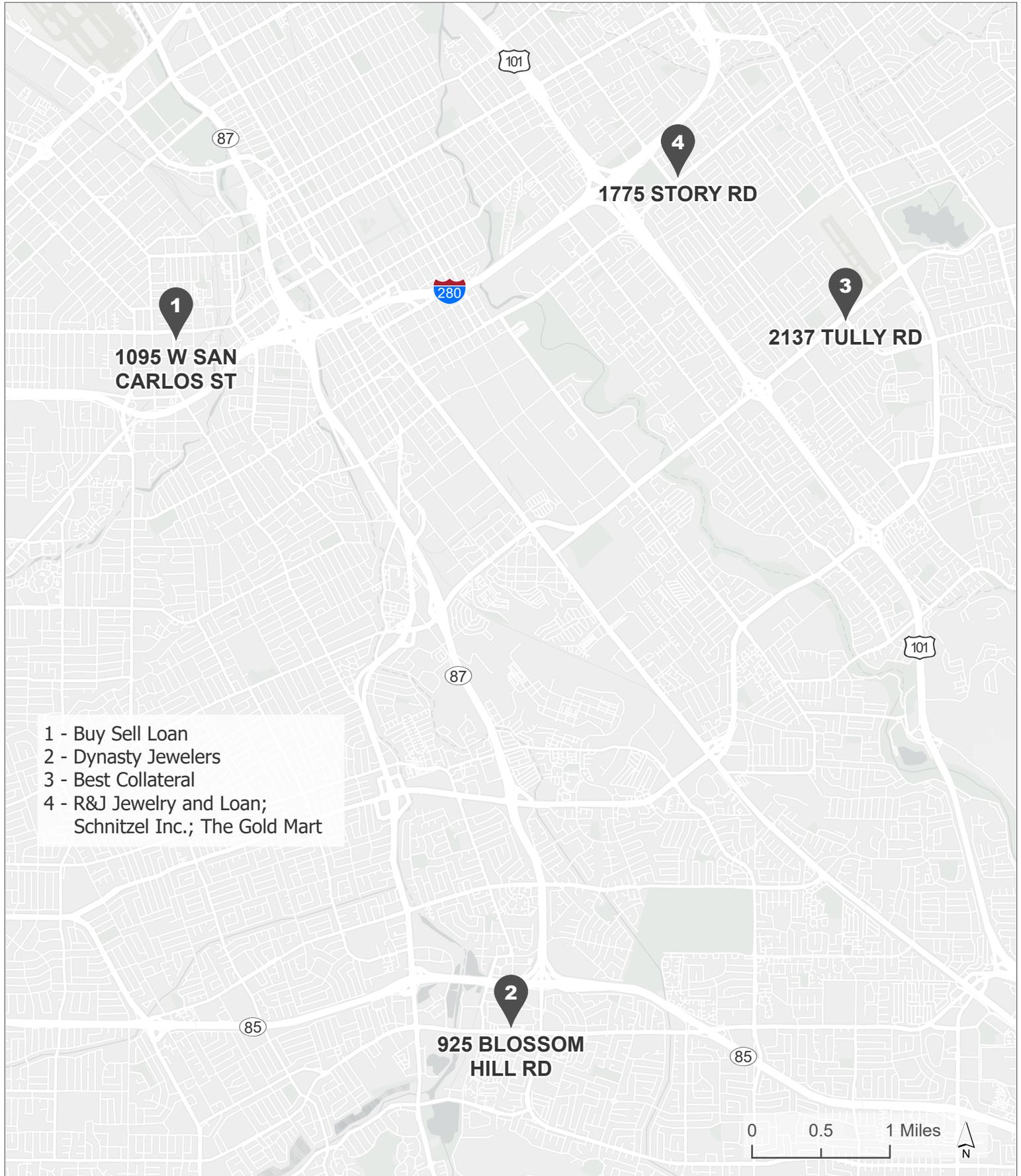
Pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure & Policy Making resulting in no changes to the physical environment)

/s/
Chu Chang, Acting Secretary
Planning Commission

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

Attachment: Pawnbroker Location Map
Planning Commission Staff Report

San José Pawnbroker Locations





Memorandum

TO: PLANNING COMMISSION

FROM: Acting Director Chu Chang

SUBJECT: File No. PP21-005

DATE: May 26, 2021

COUNCIL DISTRICT: Citywide

Project	Pawnbroker Zoning Update
Applicability	Commercial, Downtown, and Pedestrian Oriented Zoning Districts Citywide
Project Description	An ordinance of the City of San José amending Title 20 of the San José Municipal Code (Zoning Ordinance) to add Part 11.5 to Title 20.80 of the Zoning Ordinance which would add Conditional Use Permit requirements for Pawnbrokers.
CEQA Clearance	Not a project. General Procedure & Policy Making resulting in no changes to the physical environment. Public Project number PP17-008.
Project Planner	Alexandre Hughes

RECOMMENDATION

Staff recommends that the Planning Commission recommend the City Council:

Adopt an ordinance of the City of San José amending sections of Title 20 (Zoning Ordinance or Zoning Code) to amend Chapter 20.80 Specific Use Regulations to add Part 11.5 to add criteria for issuing a Conditional Use Permit for pawnshops and pawnbrokers that meet certain distance criteria from sensitive uses, and to make other technical, non-substantive, or formatting changes within those sections of title 20 of the San José Municipal Code.

PROJECT BACKGROUND

Currently, Title 20 (Zoning Ordinance or Zoning Code) allows a pawnbroker use in the Commercial, Downtown, and Pedestrian Oriented (Alum Rock) Zoning Districts through issuance of a Conditional Use Permit. Title 6 (Business Licenses and Regulations) of the Municipal Code requires issuance of a permit by the Police Department and caps the total number of allowed pawnbroker businesses at 6. A Pawnbroker as defined by Title 6 "...means every person who keeps a place of business where personal property is received, and for which money is advanced, with the right or privilege granted to the person to whom said money is advanced to reclaim such property upon the repayment of said money, together with all legal charges incident thereto. This chapter does not regulate banks, savings and loan institutions, credit unions or other banking organizations regulated by state or federal law."

On October 22, 2020 Councilmembers Esparza and Jones issued [a memorandum to the Rules and Open Government Committee](#) that highlights a link between pawnbrokers and crime, and identifies that the current criteria for a Conditional Use Permit for a pawnbroker do not specifically require the decision-making body to analyze the impact of a pawnbroker on the surrounding community, nor do the current criteria prevent a concentration of pawnbrokers in proximity to each other. At the City Council's Rules and Open Government Committee meeting on October 28, 2020, the Committee directed staff to update the Conditional Use Permit requirements for pawnbrokers to mirror requirements for consideration of applications of off-sale of alcohol per the recommendation contained in the memo.

Approval of the proposed Municipal Code amendments will add additional Conditional Use Permit requirements for pawnbrokers by creating distance criteria from a pawnbroker to another pawnbroker business and from pawnbrokers and sensitive uses. The proposed criteria would limit concentration of pawnbroker businesses in close proximity to one another, and would require that the Planning Commission consider additional findings when considering a Conditional Use Permit for a pawnbroker that meets certain location criteria, as described in the Analysis section below.

ANALYSIS

The proposed Zoning Ordinance amendment would add Part 11.5 to Title 20 Chapter 20.80 to add requirements for the decision maker to consider when evaluating a Conditional Use Permit for a Pawnbroker businesses. The criteria and findings mimic those required for issuance of a Determination of Public Convenience or Necessity for off-sale of alcohol contained in Municipal Code Chapter 6.84. The proposed criteria are as follows:

1. A conditional use permit may be issued pursuant to the applicable provisions of this Title for the establishment of a Pawnbroker only if the decision-making body first makes the following additional findings, where applicable:
 - a. If a proposed Pawnbroker location is within five hundred (500) feet of another Pawnbroker, it cannot result in a total of more than three (3) Pawnbroker establishments within a one thousand (1,000) foot radius from the proposed location; or
 - b. If a proposed location results in more than three (3) Pawnbrokers within a one thousand (1,000) foot radius, even if none are within five hundred (500) feet of another Pawnbroker, a finding that the resulting concentration of such uses will not:
 - i. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 - ii. Impair the utility or value of property of other persons located in the vicinity of the area; or
 - iii. Be detrimental to public health, safety, or general welfare.
2. A conditional use permit may be issued pursuant to the applicable provisions of this Title for the establishment of a Pawnbroker only if the decision-making body first finds that the building in which the proposed use would be located is situated and oriented in such a manner that it would not adversely affect the area or nearby uses, under the following circumstances:
 - a. If a proposed Pawnbroker is within five hundred (500) feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, neighborhood revitalization area designated by the City for targeted neighborhood enhancement services or programs, parolee/probationer home, emergency shelter, supportive housing, transitional housing and transitional housing development, or within one hundred fifty (150) feet from any residentially zoned property; or

- b. If a proposed Pawnbroker is located within an area in which the Chief of Police has determined based upon quantifiable information that the proposed use would be:
 - i. Detrimental to the public health, safety, or welfare of persons located in the area; or
 - ii. Would increase the severity of existing law enforcement or public nuisance problems in the area.

The proposed ordinance does not set a hard limitation on where a Pawnbroker use may locate but rather it adds additional criteria to be evaluated under the Conditional Use Permit process and all Conditional Use Permits are appealable to Planning Commission. Staff analyzed the criteria listed above and found that the majority of San José would fall within the criteria where the additional findings would apply.

However, the analysis concludes that there are approximately 250 locations that do not trigger the need for these findings under the Conditional Use Permit process. An additional 157 locations are possible if those properties were rezoned to align with their General Plan land use designations, for a total of 407 possible locations that would not trigger the proposed Conditional Use Permit findings. Locations with zoning that do not align with their General Plan land use designation will be rezoned by through work being undertaken by Planning staff to bring the Zoning Ordinance into conformance with the General Plan.

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. 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. Community Design Policy CD-5.3: Promote crime prevention through site and building designs that facilitate surveillance of communities by putting “eyes on the street.” Design sites and buildings to promote visual and physical access to parks and open space areas. Support safe, accessible, and well-used public open spaces by orienting active use areas and building facades towards them.

The proposed amendments to Title 20 would provide additional considerations for review of a pawnbroker use that will allow for better implementation of the goals and policies of the General plan, and both continue to allow pawnbrokers while mitigating potential negative impacts. These changes help ensure that the Zoning Ordinance appropriately reflects the goals and policies of the General Plan.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Not a Project. General Procedure & Policy Making resulting in no changes to the physical environment.

Public Project number PP17-008.

PUBLIC OUTREACH

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 Jose 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 has contacted the six existing pawnbroker businesses in the city to inform them of this proposed ordinance change, as it will affect them should they chose to relocate their businesses.

Project Manager: Alexandre Hughes

Approved by: /s/ , Deputy Director for Chu Chang, Acting Planning Director

Attachments:

1) Draft Ordinance

PP21-005 Link to Attachments

1. [Draft Ordinance](#)

[Correspondence Received After May 19, 2021](#)