



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: May 13, 2024

SUBJECT: FILE NO. PP24-001 - AN ORDINANCE AMENDING VARIOUS SECTIONS OF TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE (ZONING ORDINANCE OR ZONING CODE) RELATED TO OUTDOOR USES OF PRIVATE PROPERTY TO: (A) INCORPORATE REQUIREMENTS FOR OUTDOOR DINING AND OTHER OUTDOOR ACTIVITIES ASSOCIATED WITH AN ON-SITE BUSINESS AND FOR THOSE WITHIN ONE-HUNDRED-FIFTY (150) FEET OF RESIDENTIALLY ZONED PROPERTY WITHIN PART 10.5 OF CHAPTER 20.80 OF TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE; AND (B) DELETE CURRENT REFERENCES TO OUTDOOR DINING WITHIN CHAPTER 20.40, CHAPTER 20.50, CHAPTER 20.55, CHAPTER 20.75, AND CHAPTER 20.100 IN TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE TO BE ADDRESSED BY REGULATIONS LISTED WITHIN REVISED PART 10.5 OF CHAPTER 20.80; AND 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 10-0-1 (Garcia absent) to recommend the City Council take the following actions:

1. Consider the Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report, 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; and
2. Adopt an ordinance of the City of San José amending various sections of Title 20 of the San José Municipal Code (Zoning Ordinance or Zoning Code) related to outdoor uses of

private property to: (a) Incorporate requirements for outdoor dining and other outdoor activities associated with an on-site business and for those within one-hundred-fifty (150) feet of residentially zoned property within Part 10.5, “Conversion of Parking to Other Outdoor Uses” of Chapter 20.80, “Specific Use Regulations,” of Title 20 of the San José Municipal Code; and (b) Delete current references to outdoor dining within Chapter 20.40, “Commercial Zoning District,” Section 20.40.520, Outdoor Uses Within 150 Feet of Residentially Zoned Property; Chapter 20.50, “Industrial Zoning District,” Section 20.50.210, “Outdoor Uses – IP District;” and Chapter 20.55, “Urban Village and Mixed Use Zoning Districts,” Part 3, “Uses Allowed,” Section 20.55.201, “General Use Regulations;” and Chapter 20.75, “Pedestrian Oriented Zoning Districts,” Part 4, “General Regulations,” Section 20.75.320, “Outdoor Uses Within 150 Feet of Residentially Zoned Property; and Chapter 20.100, “Administration and Permits,” Part 4, “Adjustments,” Section 20.100.500, “Adjustments” to be addressed by regulations listed within revised Part 10.5 of Chapter 20.80, including hours of operation, separation criteria, permit processing and noise parameters; and to make other technical, non-substantive, or formatting changes within those sections of Title 20 of the San José Municipal Code.

SUMMARY AND OUTCOME

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

BACKGROUND

The proposed Zoning Code update would incorporate necessary modifications to streamline permitting for the conversion of parking lots to outdoor dining and other outdoor uses within 150 feet of residentially zoned property. This ordinance includes updates to regulations for hours of operation, separation criteria, permit processing, noise, safety, and nuisances.

ANALYSIS

A complete analysis of the issues regarding the Zoning Code update is contained in the Planning Commission staff report dated May 8, 2024 (attached).

Climate Smart San José Analysis

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, incorporating updates, and supporting current trends.

EVALUATION AND FOLLOW-UP

If the proposed Zoning Code update changes are approved by the City Council, the new Ordinance will be effective 30 days after the second reading. Businesses will be able to use a streamlined permit process for outdoor dining and other outdoor uses on private property within 150 feet of a residentially zoned property.

COORDINATION

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

PUBLIC OUTREACH

This memorandum will be posted on the City Council Agenda website for the May 21, 2024 Council Meeting.

Staff conducted an outreach meeting with interested stakeholders and individuals on April 4, 2024. The attached Planning Commission staff report contains a description of community outreach related to this ordinance.

Staff followed Council Policy 6-30: Public Outreach Policy regarding public outreach for this proposal. 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 Department website. An informational webpage was also published on the City's website. Staff has been available to respond to questions from the public.

COMMISSION RECOMMENDATION AND INPUT

On May 8, 2024, the Planning Commission conducted a public hearing on the proposed Zoning Code updates. Staff presented a background and summary of the proposed changes for the Commission.

There were no public comments on the item.

Commissioner Bickford asked staff if there were any changes to the existing seating requirements in the proposed ordinance. Staff responded that although there are no changes to the existing seating capacity or square footage of tent cover, the proposed draft Ordinance further clarified the language about those requirements.

Vice Chair Ornelas-Wise asked if staff considered implementing a separate permit process for businesses who want to include amplified sound during events to promote their business around downtown or in other areas of the city. Staff responded that within Downtown San José, amplified sound is allowed subject to Zoning Code requirements. For outdoor dining and other outdoor uses within 150 feet of residentially zoned properties, the current requirements are more restrictive for the Adjustment Permit and Administrative Permit. Staff further noted that business operators will still have the option to apply for a Special Use Permit if they choose to incorporate amplified sound.

Vice Chair Ornelas-Wise recalled an incident during the COVID-19 pandemic when a business in the city had outdoor dining where someone tried to park, crashed, and subsequently lost their life. Vice Chair Ornelas-Wise asked staff about safety measures included in the proposed draft ordinance. Staff clarified that applicants are required to comply with the City of San José's Fire Department permit regulations. Staff further noted that the requirements include safety measures such as fire extinguishers on site, and barriers to delineate the outdoor use within the parking lot. Vice Chair Ornelas-Wise also asked staff whether there would be requirements for no parking signages, and staff responded that regulations require physical barriers for segregation of parking and outdoor uses for safety.

Commissioner Bickford noted that many of the applicants are small business owners. She inquired on how the permit fees compared to what business operators incurred during the pre-pandemic, during, and post-pandemic phases while sharing her concerns on creating additional financial burden. Staff responded that after multiple stakeholder meetings and discussions with small business operators, they were agreeable to the cost of the Administrative Permit that included enforceable permit conditions. Commissioner Bickford asked staff whether the cost of the permit would be a one-time fee, and staff affirmed this statement.

Chair Lardinois expressed his support for the proposed Ordinance as the Al Fresco Program was successful, and the proposed update presented an opportunity to explore and find a good fit for businesses with outdoor dining and other uses within the surrounding communities.

Commissioner Oliverio made a motion to recommend approval of the staff recommendation. Commissioner Casey seconded this motion. The Planning Commission voted 10-0-1 (Garcia absent) to recommend the City Council approve this item per staff's recommendation.

CEQA

A Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report, adopted through Resolution No. 76041 on November 1, 2011, and Supplemental Environmental Impact Report Resolution No. 77617, adopted on December 15, 2015, and Addenda thereto, has been prepared in accordance with the California Environmental Quality Act, as amended. Pursuant to Section 15168 of the California Environmental Quality Act

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Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program Environmental Impact Reports adequately describe the activity for purposes of the California Environmental Quality Act. The project does not involve new significant effects beyond those analyzed in the Final Program Environmental Impacts Reports.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

Chris Burton

Secretary, Planning Commission

For questions, please contact Martina Davis, Planning Division Manager, at (408) 535-7888 or martina.davis@sanjoseca.gov

ATTACHMENT

Planning Commission Staff Report



Memorandum

TO: PLANNING COMMISSION**FROM:** Christopher Burton**SUBJECT:** File No. PP24-001**DATE:** May 8, 2024

| | |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Project | Zoning Ordinance Update |
| Applicability | Citywide in applicable Zoning Districts |
| Project Description | 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: (1) Incorporate requirements for outdoor dining and other outdoor activities associated with an on-site business and for those within one-hundred-fifty (150) feet of residentially zoned property within Part 10.5, “Conversion of Parking to Other Outdoor Uses” of Chapter 20.80, “Specific Use Regulations,” of Title 20 of the San José Municipal Code; and (b) Delete current references to outdoor dining within Chapter 20.40, “Commercial Zoning District,” Section 20.40.520, Outdoor Uses Within 150 Feet of Residentially Zoned Property;” Chapter 20.50, “Industrial Zoning District,” Section 20.50.210, “Outdoor Uses – IP District;” and Chapter 20.55, “Urban Village and Mixed Use Zoning Districts,” Part 3, “Uses Allowed,” Section 20.55.201, “General Use Regulations;” and Chapter 20.75, “Pedestrian Oriented Zoning Districts,” Part 4, “General Regulations,” Section 20.75.320, “Outdoor Uses Within 150 Feet of Residentially Zoned Property; and Chapter 20.100, “Administration and Permits,” Part 4, “Adjustments,” Section 20.100.500, “Adjustments” to be addressed by regulations listed within revised Part 10.5 of Chapter 20.80, including hours of operation, separation criteria, permit processing and noise parameters; and to make other technical, non-substantive, or formatting changes within those sections of Title 20 of the San José Municipal Code. |
| CEQA Clearance | Determination of Consistency with the City of San José and Addenda thereto, in accordance with the California Environmental Quality Act as amended. |
| Project Planner | Rina Horie |

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; and

2. Adopt an ordinance of the City of San José amending various sections of Title 20 of the San José Municipal Code (Zoning Ordinance or Zoning Code) related to outdoor uses of private property to:
 - (a) Incorporate requirements for outdoor dining and other outdoor activities associated with an on-site business and for those within one-hundred-fifty (150) feet of residentially zoned property within Part 10.5, “Conversion of Parking to Other Outdoor Uses” of Chapter 20.80, “Specific Use Regulations,” of Title 20 of the San José Municipal Code; and (b) Delete current references to outdoor dining within Chapter 20.40, “Commercial Zoning District,” Section 20.40.520, Outdoor Uses Within 150 Feet of Residentially Zoned Property; Chapter 20.50, “Industrial Zoning District,” Section 20.50.210, “Outdoor Uses – IP District;” and Chapter 20.55, “Urban Village and Mixed Use Zoning Districts,” Part 3, “Uses Allowed,” Section 20.55.201, “General Use Regulations;” and Chapter 20.75, “Pedestrian Oriented Zoning Districts,” Part 4, “General Regulations,” Section 20.75.320, “Outdoor Uses Within 150 Feet of Residentially Zoned Property; and Chapter 20.100, “Administration and Permits,” Part 4, “Adjustments,” Section 20.100.500, “Adjustments” to be addressed by regulations listed within revised Part 10.5 of Chapter 20.80, including hours of operation, separation criteria, permit processing and noise parameters; 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, Zoning Code to streamline regulations related to outdoor dining and other outdoor uses on private property associated with an on-site business, as described in the Analysis section below.

PROJECT BACKGROUND

San José has long regulated outdoor uses of private property through the Zoning Ordinance. The most common outdoor use on private property is outdoor dining associated with a restaurant. Generally speaking, outdoor uses within 150 feet of residentially zoned property require a Special Use Permit, whereas outdoor uses not within 150 feet have required either an Adjustment Permit or Site Development Permit. During the COVID-19 pandemic, the *Order to Shelter-In-Place* issued by the County of Santa Clara impacted local businesses and resulted in a significant reduction of patrons. In 2020, the City Council approved the *Al Fresco Initiative* to support those hard-hit businesses by directing staff to waive fees, simplify plan checks, and shorten plan reviews for outdoor dining. This initiative created a no-permit registration process to allow outdoor uses on private property that met a short checklist of requirements.

The *Al Fresco Initiative* was popular, with more than 100 businesses registering for private property outdoor uses. It became clear that streamlining permitting was necessary for businesses to be able to continue to use these outdoor spaces that had been established during the pandemic, and to best facilitate new outdoor uses. Staff identified that the primary constraint to allowing new or continued outdoor uses after the pandemic was the City’s mandatory minimum parking requirements because most outdoor uses the City saw established during the pandemic were placed in parking lots.

Between 2019 to 2022, the City reevaluated car parking and transportation demand management policies to advance Climate Smart San José and Envision San José 2040 General Plan transportation and land use goals. Planning Staff created an ordinance for the Parking and Transportation Demand Management (TDM) Policy that removed mandatory minimum parking requirements throughout most of the City, removing this aforementioned constraint. This ordinance included a revision and additional text to expand and modify processes for issuing outdoor event permits, outdoor vending permits, and conversion of existing parking to outdoor use in Chapter 20.80, “Specific Use Regulation”. However, one area that was outside of the scope of this ordinance was to modify the Special Use Permit requirement for outdoor uses within 150 feet of residentially zoned property. Because of potential incompatibility between outdoor uses and residences staff determined modifying this requirement would need more careful analysis and consideration than was possible as part of the Parking/TDM ordinance. The Special Use Permit requirement has remained a barrier for businesses who wanted to create permanent outdoor use areas near residentially zoned property.

As part of the approval of the Parking/TDM ordinance in December 2022, the City Council directed staff to modify the Zoning Ordinance further by providing simpler compliance and greater flexibility for outdoor dining in zoning designations and districts outside of downtown. More specifically, to streamline the permit process to enable businesses and restaurants to continue using their private parking lots within 150 feet of residentially zoned property. Further, they directed staff to suspend the enforcement of outdoor dining and outdoor uses on private property that were previously permitted through the *Al Fresco Initiative* until this update was complete.

CURRENT ZONING REQUIREMENTS

The current zoning requirements for the conversion of previously permitted vehicular parking areas into areas designated for outdoor dining and other outdoor uses associated with an on-site business are distinguished by specific conditions. The three types of permits applicants may apply for in the current ordinance is an Adjustment Permit, Administrative Permit, or Special Use Permit. An Adjustment Permit currently has an initial fee of \$987, an Administrative Permit has an initial fee of \$3,615, and a Special Use Permit has an initial fee of \$16,700. The Adjustment Permit is for smaller conversions of parking spaces to outdoor dining that does not affect on-site vehicular circulation and does not contain more than 50 seats or 800 square feet of outdoor use area. The zoning ordinance specifies that the existing facility must meet on-site bicycle requirements; in areas no longer used for parking, wheel stops, and striping shall be removed; and seating areas shall be differentiated from parking area through grade differentials (minimum 6 inches) or permanent barriers that are architecturally consistent with the site.

If the outdoor use area is within 150 feet of residentially zoned property, the following requirements apply:

1. The outdoor dining area must be completely separated from residentially zoned property by a non-residential building or by a minimum distance of one hundred feet that includes a public street with a minimum public right-of-way dimension of eighty feet; and
2. The outdoor dining area may not include any equipment to produce any noise that does not comply with the performance standards of the zoning district in which it is situated; and
3. The outdoor dining area may not operate between the hours of 10:00 p.m. and 6:00 a.m.

The second type of permit is an Administrative Permit. The criteria and requirements of this permit process are the same as for a Permit Adjustment, except for that the outdoor use may include changes to site circulation (e.g., reconfiguring drive aisles, removing driveways). The outdoor use area must conform to the following additional requirements:

1. Circulation and drive aisles shall be modified as necessary to ensure continuous safe operation of the remaining parking and drive aisles; and
2. Driveways and curb cuts that are no longer utilized shall be removed; and
3. If the dining area will include a temporary canopy larger than 700 square feet or a tent larger than 400 square feet in the outdoor dining area, it will also require a permit from the San José Fire Department; and
4. No amplified sound that is audible to adjacent sites with the exception of downtown. No amplified sound that is disturbing or unreasonably loud to persons on neighboring property shall be audible to adjacent sites in downtown; and

Lastly, the third type of permit is a Special Use Permit. This permit is required when the conversion of existing parking to outdoor dining is not in conformance with any of the aforementioned requirements. When the proposed outdoor dining project does not fall under the conditions required for an Adjustment Permit or Administrative Permit, applicants would need to apply for a Special Use Permit. The most common reason a Special Use Permit is required is due to the 150-foot distance requirement to residentially zoned property. In all cases, outdoor use areas must be in conformance with the relevant Airport Comprehensive Land Use Plan, where applicable.

PROPOSED DRAFT ORDINANCE AMENDMENTS

Following the direction by City Council, the proposed draft ordinance would allow outdoor uses on private property within 150 feet of a residentially zoned property to apply for an Administrative Permit, making this now a simpler, less expensive process than having applicants apply for a Special Use Permit. Also following the direction by Council, the additional criteria listed under the Administrative Permit ensures a safe and neighborhood-friendly operation that prohibits any conducts that may create a “public nuisance.” The draft ordinance update incorporates the following significant changes:

1. The description includes a reference to ‘outdoor dining uses within 150 feet of residentially zoned property’ (*Title 20, Chapter 20.80, Part 10.5, Section 20.80.891*).
2. For an Adjustment Permit, the conversion of existing parking to outdoor dining now includes references to other outdoor activity areas and three requirements (*Title 20, Chapter 20.80, Part 10.5, Section 20.80.893*):
 - a. On-site vehicular circulation is not impacted
 - b. Outdoor dining and other outdoor activity area is completely separated
 - c. Operating hours are limited to Mondays through Thursdays from 7:00 a.m. to 9:00 p.m. and Fridays through Sundays from 7:00 a.m. to 10:00 p.m.
3. Any conversion of existing parking to outdoor dining or other outdoor activity area that would not be in conformance with the updated ordinance Part 10.5 may still be allowed through a Special Use Permit.
4. The conditions of issuance for the Administrative Permit have been updated to include the following (*Title 20, Chapter 20.80, Part 10.5, Section 20.80.895*):
 - a. Outdoor dining or other outdoor activity areas shall be designed to maintain necessary clearances for circulation and access to public right of way
 - b. Chain link fencing is prohibited
 - c. Outdoor dining area or other outdoor activity areas must not have electrical cords that may cause injury
 - d. A maximum of fifty (50) seats and 800 square feet may be allowed per establishment
 - e. If the dining area or other outdoor activity area will include a temporary canopy larger than 700 square feet or a tent larger than 400 square feet in the outdoor dining area, it will also require a permit from the San José Fire Department
 - f. For outdoor dining or other outdoor activity area outside of downtown that is within 150 feet of residentially zoned property, no amplified sound is allowed unless the outdoor dining or other outdoor activity area is completely separated from residentially zoned property by a non-residential building or by a minimum distance of one hundred feet that includes a public street with a minimum right-of-way dimension of eighty feet. If the outdoor dining or other outdoor activity area is completely separated from residentially zoned property by a non-residential building or by a minimum distance of one hundred feet that includes a public street with a minimum public right-of-way dimension of eighty feet, amplified sound is permitted where it is not audible to adjacent sites
 - g. For outdoor dining or other outdoor activity area that is not within 150 feet of a residential zoning district, no amplified sound that is audible to adjacent sites with the exception of downtown. No amplified sound that is disturbing or unreasonably loud to persons on neighboring property shall be audible to adjacent sites in downtown
 - h. The outdoor dining or other outdoor activity area shall not produce any noise that does not comply with the performance standards of the Zoning district it is situated within

- i. Outdoor dining or other outdoor activities shall not operate between the hours of 12:00 midnight and 6:00 a.m.; Where the outdoor dining and other outdoor activities is within 150 feet of a residential zoning district the use shall not operate between the hours of 9:00 p.m. to 7:00 a.m. on Monday through Thursday, and 10:00 p.m. to 7:00 a.m. on Friday through Sunday
 - j. The outdoor dining or other outdoor activity area is operated in a manner that does not create a private or public nuisance
5. Other Chapters of Title 20 (20.40.520, 20.50.210, 20.55.201, and 20.75.320) reference back to Title 20, Chapter 20.80, Part 10.5.
 6. For consistency, Title 20, Chapter 20.100, Section 20.100.500 has been updated to describe the same requirements as described in the conditions of issuance in Part 10.5 of Chapter 20.80.

ANALYSIS

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 conforms to State mandates and requirements, is consistent with General Plan approvals, and reflects the goals, policies, and implementation of the General Plan.

General Plan Goals and Policies: Title 20 - Zoning Ordinance

The proposed amendments to Title 20 would update and clarify certain sections of the Zoning Code to allow for conformance with changes to the General Plan. The proposed amendments to Title 20 are consistent with the following General Plan policy:

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.*

Analysis: The amendments to Sections 20.40.520, 20.50.210, 20.55.201, 20.75.320, and Chapter 20.80, Part 10.5 are all City Council directed changes proposed as part of the File Number PP22-015 Parking and Transportation Demand Management Ordinance and supplemental memos. These changes help ensure that the Zoning Ordinance is maintained and is consistent with any General Plan amendments.

General Plan Goals and Policies: Economic Development

IE-1.11 Allow interim development of employment lands with alternative employment uses such as small expansions of existing uses when the interim development would not limit the site's ability to be redeveloped in the future in accordance with the long-term plan for the site.

IE-1.13 Achieve goals related to Quality Neighborhoods, including diverse housing options, a walkable/bikeable public street and trail network and compact, mixed-use development where infrastructure exists to distinguish San José as a livable and attractive city, to promote interaction among community members, and to attract talented workers to the City.

Analysis: The proposed ordinance update to outdoor dining and other outdoor uses associated with an on-site business encourages economic development because the conditions of issuance for the permits promotes maximum utilization of the site, vibrant and attractive use of private parking lots, and community and neighborhood interaction. The current conditions of the permits available for outdoor dining and other outdoor uses were applicable during the emergency order, but as the City continues to transition to a post-pandemic environment, a change in the conditions for permitting outdoor dining and outdoor uses need to adapt and be written to anticipate the future. The proposed draft ordinance update follows the goals and policies of the General Plan—one that envisions a future for the City to 2040; therefore, the draft ordinance update is consistent with the General Plan.

General Plan Goals and Policies: Complete Neighborhoods

VN-1.2 Maintain existing and develop new community services and gathering spaces that allow for increased social interaction of neighbors, (i.e., community centers and gardens, libraries, schools, commercial areas, churches, and other gathering spaces).

VN-1.3 Encourage the development and maintenance of compatible neighborhood retail and services within walking distance of residences as a means to promote the creation of “complete” neighborhoods.

Analysis: The draft ordinance update will allow for a streamlined permit process for existing restaurants and businesses to encourage more outdoor dining and other outdoor activity areas associated with an on-site business throughout the City. One of the main barriers to applying for permits has been the cost of the permit and processing time. By updating the existing ordinance, restaurants and businesses may increase applying for permits to have outdoor dining and other outdoor uses. These outdoor spaces will help in creating a “complete” neighborhood—that is, one that encourages compatibility with businesses and neighboring residential communities.

General Plan Goals and Policies: Transportation

Goal CD-2 – Function: Create integrated public and private areas and uses that work together to support businesses and to promote pedestrian activity and multi-modal transportation.

VN-1.9: Cluster parking, make use of shared parking facilities, and minimize the visual impact of surface parking lots to the degree possible to promote pedestrian and bicycle activity and to improve the City’s aesthetic environment.

Analysis: The proposed draft ordinance update is consistent with the goal to create integrated public and private areas and uses that work together to support businesses and to promote pedestrian activity and multi-modal transportation. The conversion of private parking areas to outdoor dining minimizes the visual impact of parking lots and encourages more pedestrian activity. By reducing the number of parking spaces on a typical lot to make space for outdoor dining or other outdoor uses encourages alternative modes of transportation when transporting to said business or restaurant.

Other Agency Coordination

Staff referred the proposed ordinance amendment to the Airport Land Use Commission (ALUC) meeting scheduled on April 24, 2024, to determine if the amendment is consistent with the San José International Airport (SJC) and Reid-Hillview Airport (RHV) Comprehensive Land Use Plans (CLUP). An update on the ALUC’s action will be provided to the City Council.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

A Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), adopted through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted on December 15, 2015, and Addenda thereto, has been prepared in accordance with the California Environmental Quality Act, as amended. 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.

PUBLIC OUTREACH

On April 4, 2024, staff held a community meeting to discuss the proposed code changes and updates. The published notice for this community meeting was emailed to 140 recipients. Approximately nine members of the public attended this virtual event. Two attendees inquired about applicable permit types and criteria. Staff provided clarification on the options as proposed in the draft ordinance update and site circulation requirements that could impact the permit type.

Based on stakeholders' requests, staff held one in-person and two virtual meetings with operators on April 10, 2024, and April 15, 2024, respectively, to better understand their outdoor dining use requirements, identify applicable permits, and consider other potential conditions for this draft ordinance update. When staff inquired whether the operators encountered any challenges related to outdoor dining within 150 feet of residentially zoned properties, they mentioned that the adjacent neighborhood community were frequent patrons of their restaurant, and there were no concerns related to noise or public nuisance.

Staff also created an informational webpage on the proposal which was posted to the City's website on March 7, 2024. This report and attachments were posted on the City's website. Staff has been available to respond to questions from the public.

Staff followed Council Policy 6-30: Public Outreach Policy, in that the notices for the public hearing posted on the City's website and published in the San José Post-Record.

Project Manager: Rina Horie

Approved by: /s/ Martina Davis, Division Manager for Christopher Burton, Planning Director

| ATTACHMENTS: | |
|--------------|------------------------------|
| Exhibit A: | Draft Ordinance |
| Exhibit B: | Determination of Consistency |

PP24-001

Links to Attachment A-B

Click on the title to view document.

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|---------------------------------------------------------|
| Exhibit A: Draft Ordinance |
| Exhibit B: Determination of Consistency |