



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Christopher Burton
Robert Sapien, Jr.

SUBJECT: SEE BELOW

DATE: June 10, 2024

Approved:

Date:

6/10/24

SUPPLEMENTAL

SUBJECT: PP23-007 – AN ORDINANCE AMENDING VARIOUS SECTIONS OF TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE (ZONING ORDINANCE OR ZONING CODE)

REASON FOR SUPPLEMENTAL

The purpose of this supplemental memorandum is to:

- (a) Provide additional information on fire sprinkler systems in Accessory Dwelling Units (ADU) and include an additional recommendation from the Fire Department for City Council consideration requiring fire sprinkler systems in qualifying Accessory Dwelling Units to be sold as condominiums; and
- (b) Incorporate additional changes to the draft ordinance as recommended by the Planning Commission to work with the Zero Emission Vehicle (ZEV) operator on its request to further modify the ordinance language. This change would allow outdoor inventory vehicle storage specifically for the proposed enumerated use of sale and lease of ZEV and equipment within the DC Downtown Zoning District.

Currently, the draft ordinance incorporates new changes by Planning, Building, and Code Enforcement staff related only to item (b) as recommended by the Planning Commission. Item (a) includes specific recommendation by Fire Department staff to City Council for further consideration.

BACKGROUND

Fire protection sprinkler systems are proven to help reduce the loss of life and property during fire emergencies. Since 2011, the California Fire Code requires all new residential occupancies to contain a fire protection sprinkler system. Moreover, it does not exempt condominiums from this requirement. The current ADU regulations contained in the state law restricts the City of San

José from requiring sprinkler systems when an ADU is constructed on a parcel of land with an existing single-family residence that does not contain a fire protection sprinkler system. With the recent passing of Assembly Bill 1033, discussions among state fire agencies, the Office of the State Fire Marshal, and the California Department of Housing and Community Development are being held to provide a clear direction on how to successfully implement Assembly Bill 1033 and to address trends found in the National Fire Incident Reporting System regarding the increasing number of structure fires across the country over the last nine years.

On May 22, 2024, the Planning Commission conducted a public hearing on the proposed Zoning Code updates. One member of the public representing Zero Emission Vehicles business operator (Lucid Motors) requested modification to the proposed code update to allow outdoor storage of approximately 15 inventory vehicles for ZEV use within the Downtown Zoning District.

The Planning Commission voted 9-2-0 (Tordillos and Young opposed) on Item 2.b. and pulled for a separate vote to recommend that the City Council adopt amendments to Chapter 20.70 for indoor sales of ZEV, and for Planning staff to work with the interested business operator on its request to allow outdoor storage, ahead of the City Council hearing on June 11, 2024.

Staff has since interacted with the interested party to accommodate the request as summarized in the Analysis section below.

ANALYSIS

Item (a): Additional Recommendation by Fire Department

The Office of the State Fire Marshal and the California Department of Housing and Community Development agree that Assembly Bill 1033 does not limit the ability of local jurisdictions to set ordinance-accepting criteria to include fully-sprinklered ADUs. Both agencies have also agreed that creating a sprinklered ADU acceptance restriction for condominium conversion does not constitute requiring an ADU to be sprinklered, as allowing the separate conveyance of ADUs per Assembly Bill 1033 is an “opt-in” provision and would not be mandated for ADUs that would not be sold. Placing a restriction is prudent to close a workaround that provides a path to build substandard condominiums without proper fire protection sprinkler systems.

The Fire Department recommends the City Council approve the draft ordinance with an additional amendment to *Section 20.80.185 ADU Condominium Requirements*, to include language that narrows the scope of qualifying ADUs to contain fire protection systems. Property owners can continue to construct ADUs without fire sprinkler systems if they meet the current requirements of the Fire Code, but if owners want to convey the ADUs and take advantage of the new state law authorizing conveyances, then the ADUs must include fire sprinkler systems. This action will eliminate the risk of substandard condominiums as units are transferred. The proposed changes are notated below:

Subject to the provisions of Section 20.80.180, to achieve the purposes of this Chapter, all projects shall conform to the following requirements:

*A. A maximum of two **fully sprinklered** ADU condominium units shall be allowed on lots that presently allow ADUs and could include an attached Accessory Dwelling Unit and/or a detached Accessory Dwelling Unit built in accordance with Part 2.75, (Accessory Dwelling Units), Chapter 20.80. In conjunction with the ADU condominium, the parcel map approved pursuant with this section may also include the subdivision of up to two primary dwelling units, in conformance with Part 8, Senate Bill 9 implementation, into condominiums. This allowance shall not exceed a total of four condominium units on each single-family, two-family, or multi-family lot under any circumstances.*

*B. All structures and buildings included as part of a condominium project, with the exception of a permitted nonsprinklered single-family home, **shall be fully sprinklered** **and** conform to the building and zoning requirements applicable to the zoning district in which the project is proposed to be located. Designation of individual condominium units shall not be deemed to reduce or eliminate any of the building and zoning requirements applicable to any such buildings or structures.*

Allowing the conversion of nonsprinklered ADUs to nonsprinklered condominiums circumvents the California Fire Code requirements for condominium construction and presents a risk that can potentially compromise neighborhood safety by allowing further densification of the built environment without requiring proper fire protection systems.

Item (b): Additional Changes as Recommended by the Planning Commission

Planning Commission's and staff's primary concern with allowing outdoor vehicle storage within the Downtown Zoning district is that outdoor storage is not conducive to an urban pedestrian environment.

However, the interested business had identified a property in the periphery of Downtown that is currently more industrial in nature where there is no significant pedestrian traffic. The site is large enough to accommodate outdoor storage with adequate setbacks and screening within the existing parking lot.

There are very few sites in Downtown with similar site layout and configuration and this outdoor storage use would only be limited to ZEV vehicles. Outdoor storage uses are proposed for inventory vehicles in existing assigned parking spaces and have negligible impact on circulation and traffic. Therefore, staff believes this text amendment would result in very little adverse impact for any future users and occupants and that only a handful of sites may be able to take advantage of this new allowance.

Staff has modified the Downtown Use Table 20-140 to add a new note 14.

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Outdoor storage of inventory vehicles is permitted only if the parking spaces are fully screened and located at a minimum setback of 150 feet from the front property lines. The maximum number of parking spaces is limited to 15 percent of all parking and paved areas or a maximum outdoor storage area of 5,000 square feet, whichever is more restrictive. Any other outdoor vehicle display, storage, sales, or service is not permitted. Notwithstanding this provision, one new vehicle may be displayed on a paved area outside of any on-site parking area, provided the display vehicle is not located within the public right-of-way and does not extend past the front of any on-site buildings.

These changes to the draft Zoning Ordinance are text changes and do not result in physical changes to any proposed sites. For this reason and those discussed above, the project is still 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 would not result in new significant impacts beyond those identified in the General Plan Final and Supplemental EIRs.

COORDINATION

This memorandum and changes to the Zoning Ordinance were coordinated with the City Attorney's Office.

/s/

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