

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING PART 10.5 OF CHAPTER 20.80 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, SECTION 20.40.520 OF CHAPTER 20.40 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, SECTION 20.50.210 OF CHAPTER 20.50 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, SECTION 20.55.201 OF CHAPTER 20.55 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, SECTION 20.75.320 OF CHAPTER 20.75 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, AND SECTION 20.100.500 OF CHAPTER 20.100 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE RELATED TO OUTDOOR DINING OR OTHER OUTDOOR USES ASSOCIATED WITH AN ON-SITE BUSINESS.

WHEREAS, pursuant to Section 15168(c)(2) of the California Environmental Quality Act of 1970 (“CEQA”) Guidelines, the City of San José (“City”) has determined that this Ordinance is pursuant to, in furtherance of, and within the scope of the previously approved program evaluated in the Final Program Environmental Impact Report for the Envision San José 2040 General Plan (the “FEIR”), for which findings were adopted by City Council through its Resolution No. 76041 on November 1, 2011, and Supplemental Environmental Impact Report (the “SEIR”), through Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto, and does not involve new significant effects beyond those analyzed in the FEIR and SEIR; and

WHEREAS, the Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council of the City of San José has considered and approves the information contained in the FEIR, as supplemented and addenda thereto, and related City Council Resolution Nos. 76041 and 77617 and the determination of consistency therewith prior to taking any approval actions on this Ordinance;

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

SECTION 1. Part 10.5 of Chapter 20.80 of Title 20 of the San José Municipal Code is amended to read as follows:

Part 10.5
Conversion of Parking to Other Outdoor Uses

20.80.891 Purpose

This part regulates the conversion of previously permitted vehicular parking areas into areas designated for outdoor dining or other outdoor uses associated with an on-site business, including outdoor dining uses within 150 feet of residentially zoned property.

The specific purposes of this part are to safeguard the urban environment by permitting such uses in a manner consistent with safe and efficient circulation of pedestrian and vehicles, protecting the safety of users of the outdoor areas and by protecting the integrity and character of the surrounding neighborhood, properties and uses.

20.80.892 Administrative Permit Required

No person shall convert a previously permitted vehicular parking area into space designated for outdoor dining or other outdoor uses associated with an on-site use on any privately owned parcel or lot except in compliance with an administrative permit issued pursuant to this title.

20.80.893 Exception - Administrative Permit

Nothing in this part shall regulate or prohibit the following uses:

1. The conversion of existing parking to outdoor dining or other outdoor activity area that does not affect on-site vehicular circulation. This may be allowed through a Permit Adjustment, pursuant to section 20.100.500.A.15. ~~may be allowed through a Permit Adjustment, pursuant to section 20.100.500.A.15.~~ if the following requirements are met:
 - a. Outdoor dining or other outdoor activity area does not affect on-site vehicular circulation.
 - b. Where the outdoor dining and other outdoor activities is within 150 feet of a residential zoning district, it shall conform to this Part except that 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; and
 - c. Where the outdoor dining and other outdoor activities is within 150 feet of a residential zoning district, it shall conform to this Part except that 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.
2. The conversion of existing parking to outdoor dining or other outdoor activity area that would not be in conformance with this Part 20.40.520, 20.55.201 or 20.75.320. ~~This conversion~~ may only be allowed through a Special Use Permit, pursuant to Chapter 20.100, Part 7.

20.80.895 Conditions of Issuance

All conversions of parking to outdoor dining or other outdoor activity area must comply with the following conditions:

1. Outdoor dining or other outdoor activity areas shall be designed to maintain necessary clearances for circulation and access to public right of way; and
2. In areas no longer used for parking, wheel stops and striping shall be removed; and
3. Circulation and drive aisles shall be modified as necessary to ensure continuous safe operation of the remaining parking and drive aisles; and
4. Seating areas shall be differentiated from parking area through grade differentials (minimum 6 inches) or permanent barriers that are architecturally consistent with the site; and
5. Driveways and curb cuts that are no longer utilized shall be removed; and
6. Chain link fencing is prohibited; and
7. Outdoor dining area or other outdoor activity areas must not have electrical cords that may cause injury; and
8. The existing facility must meet on-site bicycle parking requirements per Chapter 20.90, Part 2.5; and
9. A maximum of fifty (50) seats or and 800 square feet ~~(whichever is greater)~~ may be allowed per establishment; and

10. 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; and
11. 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 public 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; and
12. 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; and
13. 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; and
14. 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; and

15. The outdoor dining or other outdoor activity area is operated in a manner that does not create a private or public nuisance; and

16. Project must be in conformance with the relevant Airport Comprehensive Land Use Plan, where applicable.

SECTION 2. Section 20.40.520 of Chapter 20.40 of Title 20 of the San José Municipal Code is amended to read as follows:

20.40.520 Outdoor Uses Within 150 Feet of Residentially Zoned Property

No use, which in whole or in part, consists of, includes, or involves any outdoor activity or sale or storage of goods, products, merchandise or food outdoors shall occur on any lands if any part of such lands or any part of the lot on which such buildings are located is situated within one hundred fifty feet of residentially zoned property situate within or outside the city except with a special use permit as provided for in Chapter 20.100, except for the following:

- A. Seasonal sales in accordance with the provisions in Part 14, Chapter 20.80.
- B. Service windows for pedestrians or automatic teller machines for pedestrians both of which are associated with financial institutions.
- C. Cigarettes, ice, candy, food, and soft drinks dispensed from self-service, coin-operated automatic vending machines.

- D. Plant nursery sales.
- E. Outdoor dining incidental to a public eating establishment or a retail establishment or other outdoor uses associated with an on-site business shall be pursuant to and in compliance with Part 10.5 of Chapter 20.80. Outdoor dining within 150 feet of a residential zoning district that does not conform to Part 10.5 of Chapter 20.80 requires issuance of a Special Use Permit. ~~that conforms to all of the following criteria:~~
- ~~1. The outdoor dining 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; and~~
 - ~~2. The outdoor dining area does not include any equipment to produce any noise that does not comply with Section 20.40.600 of this chapter; and~~
 - ~~3. The outdoor dining area does not operate between the hours of 10:00 p.m. and 6:00 a.m.~~
- F. Outdoor vending of whole, uncut, fresh fruits and vegetables in conformance with the provisions of Part 10, Chapter 20.80.
- G. Small certified farmers' markets in conformance with the provisions of Part 3.5, Chapter 20.80.
- H. Neighborhood agriculture in compliance with the provisions of this title.

SECTION 3. Section 20.50.210 of Chapter 20.50 of Title 20 of the San José Municipal Code is amended to read as follows:

20.50.210 Outdoor Uses - IP District

All uses or activities, except parking, permitted in the IP district shall be conducted entirely within an enclosed building unless the use or activity is traditionally conducted outdoors or is pursuant to and in compliance with Part 10.5 of Chapter 20.80.

SECTION 4. Section 20.55.201 of Chapter 20.55 of Title 20 of the San José Municipal Code is amended to read as follows:

20.55.201 General Use Regulations

- A. Permanent structure required. No use shall be deemed to be a permitted use on a site in any UVC, UV, MUC, MUN, UR, or TR district unless it is being conducted as part of a business, residence, or mixed use development which maintains on that site a permanent, fully enclosed building erected pursuant to a valid building permit issued for that site, excepting only those uses specifically permitted, under this part or this title, to operate without a permanent building on site.
- B. Late night use and activity.
 - 1. No establishment other than office uses, in any, UVC, UV, MUC, MUN, UR, or TR Zoning District shall be open between the hours of 12:00 midnight and 6:00 a.m. except pursuant to and in compliance with a special use permit as provided in Chapter 20.100.

2. No outdoor activity, including loading, sweeping, landscaping or maintenance shall occur within one-hundred fifty feet of any residentially designated property between the hours of 12:00 midnight and 6:00 a.m. except pursuant to and in compliance with a conditional use permit as provided in Chapter 20.100.

C. Incidental Uses.

1. Residential. In addition to the occupancy of a dwelling as a residence, the following incidental uses are permitted:
 - a. The rental of rooms in a One-Family Dwelling to up to three (3) guests; in Two-Family Dwelling to up to two (2) guests, by each Family; and in a Multiple Dwelling Unit to up to two (2) guests per unit, if such use is clearly incidental to the occupancy of the dwelling unit by said Family as its own residence, and such rental is for a period of time longer than thirty (30) days and there are no more than six (6) persons living in the dwelling.
 - b. Use of the dwelling, including a permitted Guesthouse, for Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80.
 - c. State-licensed Family Day Care Home.
 - d. The following non-commercial activities:
 - i. A garage sale consisting of the occupants' personal property;

- ii. Sale of goods hand-produced by the occupants;
 - iii. Sales parties held for the purpose of selling goods to invited Guests. Such parties shall be held inside a permanent structure or in the rear yard of the dwelling unit.
 - iv. To qualify as a non-commercial activity:
 - I. No more than two (2) such sales are allowed in any calendar year;
 - II. No such sale can be conducted for more than four (4) consecutive days;
 - III. Such sales shall only be conducted between the hours of 9:00 a.m. and 9:00 p.m.
- D. Accessory Dwelling Units (ADUs). ADUs are permitted and shall conform to Part 4.5 of Chapter 20.30.
- E. Guesthouses. The following restrictions apply to guesthouses:
- 1. Meals and housekeeping services may be provided with the lodging, but only to resident guests.
 - 2. All cooking facilities must be in a single, common kitchen; no rooms shall have any cooking facilities.

3. No services may be provided to non-residents.
4. All required state licenses must be maintained.
5. No more than three guest rooms may have separate external entryways.

F. Live/work units.

1. All live/work uses in the Urban Village and Mixed Use zoning districts shall be subject to all of the following criteria:
 - a. All work activities shall be limited to the permitted uses of the Urban Village and Mixed Use zoning districts, specified in Table 20-138, unless otherwise noted in this chapter.
 - b. All work activities and storage shall take place in fully enclosed areas.
2. Prohibited uses:
 - a. Any use not permitted within the Urban Village and Mixed Use zoning districts, as specified in Table 20-138 or under Section 20.80.720 for home occupation uses.
 - b. Entertainment, drinking and public eating establishments.
 - c. The sale of food and/or beverages except for food or beverages prepared on-site as part of a Cottage Food Operation, in conformance with applicable public health regulations.

- d. Veterinary services, including grooming and boarding, and the breeding or care of animals for hire or for sale.
 - e. Storage or recycling, except as incidental to and in support of a permitted use in the Urban Village and Mixed Use zoning districts.
 - f. Activities involving biological or chemical substances that require a controlled environment or may pose a health hazard.
 - g. Work activities that involve hazardous material or generate odors, vibration, glare, fumes, dust, electrical interference outside the dwelling or through vertical separation between living units, greater than those generated by routine household activities.
- 3. The living unit must be occupied by an owner, employee, or volunteer of the business associated with the live/work unit.
 - 4. All live/work units must fully comply with any and all Uniform Building Code requirements applicable to the collocation of uses at the particular site.
- G. Development adjacent to Historic Landmarks or Districts
- 1. Any project within a historic district shall conform to applicable guidelines adopted, and as amended by the city council.

2. For purposes of this section, "historic district" and "historic landmark" refer to any site, building, structure, or area that has received city, state or federal landmark status.
3. New structures exceeding one hundred fifty feet and an FAR of 6:1 which are constructed within one hundred feet of a city landmark or contributing structure in a designated landmark district shall be reviewed by the Historic Landmarks Commission prior to consideration or approval of a development permit for new construction. The comments of the Historic Landmarks Commission shall be included in any development permit staff report subsequently presented to the executive director of the redevelopment agency, director of planning, planning commission or city council.

H. Outdoor uses within 150 feet of residential zoning district.

1. No use, which in whole or in part, consists of, includes, or involves any outdoor activity or sale or storage of goods, products, merchandise or food outdoors shall occur on any lands if any part of such lands or any part of the lot on which such buildings are located is situated within one hundred fifty feet of residentially zoned property situated within or outside the city except with a special use permit as provided for in Chapter 20.100, except for the following:
 - a. Seasonal sales in accordance with the provisions in Part 14, Chapter 20.80.
 - b. Service windows for pedestrians or automatic teller machines for pedestrians, both of which are associated with financial institutions.

- c. Outdoor retail displays located in the front setback that are associated with a commercial use on the property.
- d. Plant nursery sales.

~~e. Outdoor dining incidental to a public eating establishment or a retail establishment that conforms to all of the following criteria:~~

~~i. The outdoor dining area is located within one hundred feet of the main street or is completely separated from any property located in a residential zoning district by a minimum distance of fifty feet; and~~

~~ii. The outdoor dining area does not include any equipment to produce any amplified sound; and~~

~~iii. The outdoor dining area does not operate between the hours of 12:00 midnight and 6:00 a.m.; and~~

~~iv. The outdoor dining area is operated in a manner that does not create a private or public nuisance.~~

e. Outdoor vending of whole, uncut, fresh fruits and vegetables in conformance with Part 10, Chapter 20.80.

f. Small certified farmers' markets that are in conformance with Part 3.5, Chapter 20.80.

I. Outdoor dining incidental to a public eating establishment or a retail establishment or other outdoor uses associated with an on-site business shall be pursuant to and in compliance with Part 10.5 of Chapter 20.80. Outdoor dining within 150 feet of a residential zoning district that does not conform to Part 10.5 of Chapter 20.80 requires issuance of a Special Use Permit.

J. Screening of non-residential uses adjacent to residentially zoned properties.

1. Any non-residential use conducted on any property shall be effectively screened at the property line from any abutting property in a residential district. The screening required hereby shall be a masonry wall or a solid wooden fence five feet in height, except that any portion thereof situate in the required setback area from abutting public streets shall be not more than four feet; and in the event such use included any outdoor activity, such screening shall also include such trees or plants as the director deems reasonable necessary to effectively screen such use from the adjoining residence district. Such screening shall at all times be maintained in good condition and be kept free at all times of signs. In addition, where a use involving outdoor activity is on a lot or parcel adjoining a residential district, such lot or parcel shall be landscaped in a manner approved by the director.

K. Wireless Communication.

1. Wireless communications antennae are allowed in Urban Village and Mixed Use districts pursuant to Table 20-50 only if all of the following criteria are met:

- a. The proposed antenna is located upon a parcel with a nonresidential use; and
 - b. The proposed antenna is located either:
 - i. More than thirty-five feet away from the nearest residential use; or at least one foot away from the nearest residential use for every foot of monopole height, whichever distance is greater; or
 - ii. More than twenty feet away from the nearest residential use if the proposed antenna is mounted on an existing utility structure within a utility corridor.
2. Wireless communications antennae of any type located on a property zoned for Urban Village or Mixed Use, with a residential use shall require a conditional use permit pursuant to the provisions of Chapter 20.100 of this title, except for certain modifications pursuant to Section 20.80.1915 of Chapter 20.80.

L. Vehicular related uses in Urban Village and Mixed Use Zoning Districts.

1. Continued operation of existing use allowed with only 10% expansion of existing structures, unless specified through an Urban Village Plan that allows greater intensity of the use. Uses allowed by the Stevens Creek and 24th and William Urban Village Plans are not subject to the maximum 10% expansion of use.

2. New vehicle related uses allowed only pursuant to the provisions of the Stevens Creek and 24th and William Urban Village Plans, as amended.
3. Sale, leasing, or brokerage of passenger vehicles, pick-up trucks not exceeding 25 feet in length, and motorcycles are allowed to include the following incidental uses as part of their operation:
 - a. Accessory installation, passenger vehicles and pick-up trucks
 - b. Car wash, detailing, not open to the public
 - c. Fuel service station or charge station, including incidental service or repair, not open to the public
 - d. Glass sales, installation, and tinting
 - e. Sale, vehicle parts, with onsite installation
 - f. Tires, batteries, lube, oil change, smog check station, air conditioning servicing of passenger vehicles and pick-up trucks

SECTION 5. Section 20.75.320 of Chapter 20.75 of Title 20 of the San José Municipal Code is amended to read as follows:

20.75.320 Outdoor Uses within One Hundred Fifty Feet of Residentially Zoned Property

No use, which in whole or in part, consists of, includes, or involves any outdoor activity or sale or storage of goods, products, merchandise or food outdoors shall occur on any

lands if any part of such lands or any part of the lot on which such buildings are located is situated within one hundred fifty feet of residentially zoned property situated within or outside the city except with a special use permit as provided for in Chapter 20.100, except for the following:

- A. Seasonal sales in accordance with the provisions in Part 14, Chapter 20.80.
- B. Service windows for pedestrians or automatic teller machines for pedestrians, both of which are associated with financial institutions.
- C. Outdoor retail displays located in the front setback that are associated with a commercial use on the property.
- D. Plant nursery sales.
- E. Outdoor dining incidental to a public eating establishment or a retail establishment ~~that conforms to all of the following criteria~~ or other outdoor uses associated with an on-site business shall be pursuant to and in compliance with Part 10.5 of Chapter 20.80. Outdoor dining within 150 feet of a residential zoning district that does not conform to Part 10.5 of Chapter 20.80 requires issuance of a Special Use Permit.:
 - ~~1. The outdoor dining area is located within one hundred feet of the main street or is completely separated from any property located in a residential zoning district by a minimum distance of fifty feet; and~~
 - ~~2. The outdoor dining area does not include any equipment to produce any amplified sound; and~~

~~3. The outdoor dining area does not operate between the hours of 12:00 midnight and 6:00 a.m.; and~~

~~4. The outdoor dining area is operated in a manner that does not create a private or public nuisance.~~

F. Outdoor vending of whole, uncut, fresh fruits and vegetables in conformance with Part 10, Chapter 20.80.

G. Small certified farmers' markets that are in conformance with Part 3.5, Chapter 20.80.

SECTION 6. Section 20.100.500 of Chapter 20.100 of Title 20 of the San José Municipal Code is amended to read as follows:

20.100.500 Adjustments

A. The director may, at the director's sole discretion, approve an adjustment for the following elements of a previously-issued development permit, subject to and in accordance with the provisions of this section:

1. General Extensions. An extension of the term of an approved development permit for a period of up to but not exceeding one year; provided, that no more than two such term extensions may be approved for any development permit.
2. Changes to an approved development permit, but only for minor modification of architectural elements or landscape details, (including but not limited to minor storefront alterations, relocation of doors, equipment

screening, minor landscape furniture and structures, benches, small trellises, and planters) which do not affect the use, intensity, general character, architectural style, circulation or other site function of the project.

3. Signs which conform to Title 23, minor changes to approved sign programs, and sign programs that are a condition of a development permit.
4. Additions, accessory buildings and minor structures such as trellises, patio covers, swimming pools and decks for one-family residences which were approved and are subject to an existing planned development permit, site development permit, or a low density cluster permit issued under previously existing provisions of this title.
5. Building mounted wireless communications antenna.
6. Tract sales, model homes sales, or leasing offices associated with an approved housing development.
7. Temporary construction or storage yards in connection with the construction of houses or other buildings in an adjacent subdivision or lot or parcel.
8. Solar photovoltaic systems.
9. The creation, on or above ground through installation, construction, or replacement, of less than one gross acre of impervious surface.

10. The replacement, repaving, reconfiguration, or re-striping of parking spaces on existing surfaces.
11. Building additions of less than five thousand square feet in area to nonresidential buildings, except that the maximum building addition size for a fast food restaurant, a twenty-four-hour convenience market, or a convenience market with gas pumps shall be one thousand square feet in area and the maximum building addition to a bank with a drive through shall be three thousand square feet in area.
12. Generators meeting performance standards for noise and air pollution.
13. Above-ground storage tanks of two thousand gallons or less in zoning districts other than industrial zoning districts and an above-ground storage tank of twenty thousand gallons or less in an industrial zoning district.
14. Building additions of less than two hundred square feet in total area or less than ten percent of the building area prior to the addition, whichever is smaller, to two-family dwellings, provided that current parking regulations are being met and would continue to be met after the completion of any addition.
15. The conversion of on-site vehicle parking to landscaping or outdoor seating (maximum 50 seats) or other outdoor activity areas associated with an on-site business in conformance with 20.40.520 and 20.55.201. H as long as the site meets minimum on-site bicycle parking requirements, and

- a. In areas no longer used for parking, wheel stops and striping shall be removed; and
 - b. Seating areas shall be differentiated from parking area through grade differentials (minimum 6 inches) or permanent barriers; and
 - c. A maximum of fifty (50) seats ~~or~~and 800 square feet ~~(whichever is greater)~~ may be allowed per establishment; and
 - d. Outdoor dining area or other outdoor activity areas associated with an on-site business only replaces parking spaces and does not affect drive aisles; and
 - e. Must be in conformance with the relevant Airport Comprehensive Land Use Plan, where applicable.
- B. Adjustments may be issued only where issuance of the adjustment would be consistent and comply with all applicable local laws in effect at the time of issuance, including without limitation the city's general plan, the provisions of this title, and the provisions of Title 21 of this Code.
- C. An application for an adjustment must be filed on the form provided by the director on or before the date that is three business days prior to the expiration of the development permit proposed for adjustment and accompanied by the fees as set forth in the schedule of fees adopted by resolution of the city council.
- D. The decision to grant, deny or condition an adjustment is an administrative determination and requires no hearing or notice. The action of the director shall be final, and nothing herein shall be deemed or construed to confer on an

applicant a right to an adjustment or to require the director to issue an adjustment. If the director denies an adjustment, nothing herein shall preclude the applicant from thereafter filing an application for an appropriate development permit.

- E. Where property was developed prior to the requirement of a site development permit, adjustments for projects as set forth in Section 20.100.610(A) may be approved without the necessity of the issuance of a full site development permit.
- F. If a structure or site is designated on the City of San José Historic Resources Inventory pursuant to Chapter 13.48 of Title 13 of this Code as a city landmark structure and/or a structure located in a city landmark historic district, then proposed work that is within the parameters outlined in Section 13.48.340D. of Part 3 of Chapter 13.48 of Title 13 of this Code shall be governed by and considered pursuant to the provisions of Chapter 13.48 that require issuance of a historic preservation permit or historic preservation permit adjustment. Notwithstanding the provisions of this Section 20.100.500 setting forth the requirements for development permit adjustments, no additional development permit adjustment issued pursuant to Title 20 of this Code shall be required for work performed on a site or structure that is designated as a city landmark structure, or on a structure located in a city landmark historic district, for which a historic preservation permit or historic preservation permit adjustment has been issued.

SECTION 7. Section 20.100.820 of Chapter 20.100 of Title 20 of the San José Municipal Code is amended to read as follows:

20.100.820 Findings

- A. In addition to any findings required by any other section of this title, the director, planning commission or city council as appropriate, may issue a special use permit only if all the following findings are made:
1. The special use permit, as approved, is consistent with and will further the policies of the general plan and applicable specific plans and area development policies; and
 2. The special use permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and
 3. The special use permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency; and
 4. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety, or general welfare; and
 5. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to

integrate the use with existing and planned uses in the surrounding area;
and

6. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.
7. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

8. Project must be in conformance with the relevant Airport Comprehensive Land Use Plan, where applicable.

- B. The director, planning commission, or city council as appropriate, shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate such findings.

PASSED FOR PUBLICATION of title this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk