

Ordinance

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 (ZONING ORDINANCE OR ZONING CODE) OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTION 20.30.150 TO MODIFY AND ADD CLARIFYING LANGUAGE FOR CURRENT SECONDARY UNIT (ADU) PROVISIONS, TO OMIT THE MINIMUM UNIT SIZE LIMITATION FOR TWO BEDROOMS ON ANY LOT GREATER THAN 9,000 SQUARE FEET, ALLOW A NEW DETACHED SECONDARY UNIT AT A MINIMUM DISTANCE OF 45 FEET FROM THE FRONT PROPERTY LINE, TO ALLOW CONNECTING OPENING BETWEEN A SECONDARY DWELLING UNIT AND ATTACHED GARAGE, AND TO INCLUDE REQUIREMENTS FOR UNENCLOSED OVERHANGING BALCONIES, STAIR LANDINGS AND PORCHES; AMEND SECTION 20.30.280 TO ADD CLARIFYING LANGUAGE TO ALLOW REAR SETBACK EXCEPTION FOR NEW CONSTRUCTION; AMEND SECTION 20.40.230 TO INCLUDE MAXIMUM HEIGHT EXCEPTION LIMITATIONS; AMEND SECTION 20.90.410 TO ADD CLARIFYING LANGUAGE TO OFF-STREET LOADING PROVISIONS; AMEND SECTION 20.100.910 TO MODIFY REQUIREMENTS FOR LOT SIZES FOR EXEMPTION FROM A PLANNED DEVELOPMENT PERMIT AMENDMENT FOR SINGLE-FAMILY RESIDENCES; AMEND SECTION 20.100.1300 TO DELETE MAXIMUM HEIGHT EXCEPTION LIMITATIONS; AMEND SECTION 20.200.1310 TO ADD CLARIFYING LANGUAGE TO UTILITY FACILITY DEFINITION; AND TO MAKE OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES WITHIN THOSE SECTIONS OF TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE.

WHEREAS, pursuant to Section 15168(c)(2) of the CEQA Guidelines, the City of San José 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 City 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. Section 20.30.150 of Chapter 20.30 of Title 20 of the San José Municipal Code is amended to read as follows:

20.30.150 Secondary Units

Notwithstanding any other provision of this title to the contrary, secondary dwellings that meet all of the following criteria shall be allowed pursuant to the provisions of this Chapter:

- A. Zoning District. A secondary dwelling that is attached to or detached from a one-family dwelling shall be permitted only in: (1) the R-1 zoning districts, the R-2 zoning district or the R-M zoning district in accordance with the provisions of Section 20.30.100, (2) in planned development zoning districts that are authorized in accordance with Chapter 20.60 of this Title if (a) the planned development is subject to the standards and allowed uses of an R-1 zoning district, or (b) the

secondary dwelling conforms to the development and use standards of the planned development district, or (3) in low density cluster development issued under previously existing provisions of this title if (a) the cluster development conforms with the development standards of the R-1 zoning district, or (b) the secondary dwelling conforms to the development and use standards of the low density cluster permit.

- B. Minimum Lot Size. The minimum lot size on which a Secondary Dwelling may be allowed is three thousand (3,000) square feet.
- C. Density. A secondary dwelling shall not be included in calculation of residential density for the purpose of determining general plan conformance.
- D. Maximum Secondary Dwelling Floor Area. The increased floor area of an attached secondary dwelling shall not exceed fifty percent (50%) of the existing living area of the primary dwelling or fifty percent (50%) of the proposed living area of the primary dwelling if the primary dwelling is being built or enlarged concurrently with construction of the secondary dwelling unit. A secondary dwelling shall not exceed the following maximum gross floor area:
 - 1. Six hundred square feet for a secondary dwelling on a lot with an area of at least three thousand (3,000) square feet up to five thousand four hundred forty-four (5,444) square feet;
 - 2. Seven hundred square feet for a secondary dwelling on a lot with an area of at least five thousand four hundred forty-five (5,445) and up to nine thousand (9,000) square feet;

3. Eight hundred square feet for a secondary dwelling on a lot with an area greater than nine thousand (9,000) square feet and up to ten thousand (10,000) square feet;
4. Nine hundred (900) square feet for a secondary dwelling on a lot with an area greater than ten thousand (10,000) square feet.

Table 20-55

Minimum Lot size	Maximum gross floor area
At least 3,000 square feet and up to 5,444 square feet	600 square feet
At least 5,445 square feet and up to 9,000 square feet	700 square feet
Greater than 9,000 Square feet and up to 10,000 square feet	800 square feet
Greater than 10,000 Square feet	900 square feet

E. Required Facilities. A secondary dwelling shall include all of the following facilities:

1. A kitchen (including a sink, food preparation counter, storage cabinets, and permanent cooking facilities such as an oven and range or cooktop, that meet Building Code standards); and
2. A full bathroom (including sink, toilet, and shower and/or bath facilities.

F. Bedroom Requirement and Maximum Bedroom Area. A secondary dwelling is required to contain a combined sleeping and living area or one bedroom and shall include no more than one bedroom and one living area, except for units on lots with an area greater than nine thousand (9,000) square feet, ~~that are eight hundred (800) square feet to nine hundred (900) square feet~~ which may contain

two bedrooms. The floor area of the bedroom shall not exceed four hundred (400) square feet.

- G. Bathroom Limit. A secondary dwelling shall contain no more than one bathroom.
- H. Maximum Accessory Storage Area. The total size of any closet or other enclosed storage area within the secondary dwelling shall not exceed sixty (60) square feet of floor area.
- I. Required Secondary Dwelling Parking.
 - 1. One additional on-site parking space, in addition to the required on-site parking spaces for the one-family dwelling, is required for a secondary dwelling, except as provided in subsection 3 below. Tandem parking that otherwise complies with setback and paving requirements set forth in Sections 20.90.120 and 20.90.140 and Chapter 20.95 of the Municipal Code, shall be allowed.
 - 2. The required on-site parking space for a secondary dwelling may be located on a garage driveway in the front setback area of the lot on which a secondary dwelling is situated provided that the driveway is at least eighteen (18) feet in length.
 - 3. No additional parking shall be required for a secondary dwelling that meets any of the following criteria:
 - a. The secondary dwelling is located within one-half mile of, and has a path of travel that is always publicly accessible to a site

containing an existing public rail-transit station or at least one public bus stop.

- b. The secondary dwelling is located within a historic district identified in the city's historic resources inventory as defined in Chapter 13.48 of Title 13 of this Municipal Code.
 - c. The secondary dwelling is part of the existing primary residence, or within, or part of, an existing Accessory Building.
 - d. When on-street parking permits are required but not offered to the occupant of the secondary dwelling.
 - e. When there is a motor vehicle that is operated as part of a regional fleet by a public agency or publicly-leased motor-vehicle-sharing organization and provides hourly and daily service located within one block of the secondary dwelling.
- J. Required Replacement Parking for Primary Dwelling Parking Demolished or Converted for Secondary Dwelling Construction. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of a Secondary Dwelling, any required off-street parking spaces that were provided by such garage, carport, or covered parking structure, shall be replaced in accordance with Section 20.90.220.B.2.
- K. Development Standards. Secondary dwellings shall comply with all of the following development standards:

1. The secondary dwelling shall be subject to the setback requirements for a one-family dwelling in the zoning district in which the one-family dwelling is located, as set forth in this chapter except as follows:
 - a. Conversion of Existing Accessory Building - No setback over the setback specified for an Accessory Building shall be required for an existing Accessory Building, or garage, that is converted to a Secondary Dwelling, unless required to meet current Building and Fire Code requirements.
 - b. New detached Secondary Dwelling - No setback over the setback specified for an Accessory Building shall be required for the first story of a new detached Secondary Dwelling, unless required to meet current Building and Fire Code requirements.
 - c. Second Story Secondary Unit - A minimum setback of five (5) feet from the side and rear lot lines shall be required for any second story of a detached Secondary Dwelling.
 - d. Additional setback requirements may apply under the Building and Fire Codes or as a result of "no-build" easements.
2. An attached secondary dwelling shall share a common wall with the one-family dwelling, or shall share an integral roof structure having the same framing system and roof covering as the one-family dwelling and shall be separated from the one-family dwelling by no more than ten (10) feet at any given point.
3. A detached secondary dwelling shall be located in the rear yard of the lot of the one-family dwelling or shall be required to meet minimum setback

requirements for an accessory building in accordance with Section 20.30.500, except that a new detached secondary dwelling unit that maintains a minimum interior side setback of five (5) feet may be located at a distance of 45 feet from the front property line.

4. A detached secondary dwelling shall be located at least six (6) feet away from the one-family dwelling.
5. A detached one story secondary dwelling shall be limited to a maximum height of eighteen (18) feet. A two story detached accessory dwelling may have a maximum roof height of twenty four (24) feet above grade. Roof height shall be determined in accordance with San José Municipal Code Section 20.200.510.
6. A detached secondary dwelling may be attached to an existing or proposed accessory building, including a garage so long as current building code requirements and requirements to address fire or safety hazards are met. A detached secondary dwelling that is attached to an existing or proposed accessory building, including a detached secondary dwelling constructed above an existing or proposed accessory building, shall not have any connecting opening between the accessory building and secondary dwelling, unless all connected areas meet current residential building and fire code requirements, and the maximum gross square footage for all connected areas does not exceed the limits set forth in Section 20.30.150.D above.

a. Notwithstanding the provisions of Section 20.30.150.K(6) above, a detached secondary dwelling that is attached to an existing or proposed garage may have a connecting opening, provided the

garage does not have a connecting opening to any other accessory structure not used as a garage.

7. The cumulative total of the rear yard covered by the secondary dwelling, accessory buildings, and accessory structures, except pools, shall not exceed forty percent (40%) of the rear yard.
 8. If situated on a lot that is equal to or greater than one-half ($\frac{1}{2}$) an acre in size, a secondary dwelling shall be located more than one hundred feet (100) from a riparian corridor as measured from top of bank or vegetative edge, whichever is greater.
 9. A secondary dwelling shall be subject to provisions in this Municipal Code that prevent adverse impacts on a real property that is listed in the California Register of Historic Places, otherwise known as the California Register of Historic Resources.
- L. Design Standards. Secondary dwellings shall comply with the following design standards:
1. An attached secondary dwelling shall incorporate architectural style, and similar materials and color of the one-family dwelling, including but not limited to roofing, siding, and windows and doors.
 2. A new detached secondary dwelling located on a site that is listed on the California Register of Historic Places, otherwise known as the California Register of Historic Resources, shall incorporate architectural style, and similar materials and colors, including but not limited to roofing, sidings, ~~w~~and windows and doors of the one-family dwelling.

3. The front door of any attached secondary dwelling shall not be located on the same facade as the front door of the one-family dwelling if that facade fronts onto a street, unless all other locations for placement of the secondary dwelling front door would require a passageway as defined in Government Code Section 65852.2(i)(5). For a detached secondary dwelling constructed above an existing or proposed accessory building, including a garage, an exterior stairway or fully enclosed interior stairway access may be allowed.
4. Minimum sill height for openings for a second story detached secondary dwelling unit shall be maintained at five (5) feet, measured from the interior floor level, along the building walls parallel to the nearest side and rear property lines, and located within a minimum setback of fifteen (15) feet from those property lines.
5. Any second story balconies, unenclosed entry landings, and decks shall comply with the following requirements:
 - a. Maintain minimum setback of fifteen (15) feet from the rear and side property line measured from the projecting face.
 - b. Not be provided along the building walls parallel to the nearest side and rear property lines.
6. Any portion of balconies and landings with areas greater than fifty percent enclosed with walls and covered shall be included in the total unit floor area.

7. Any porches or balconies that project beyond the footprint of the secondary dwelling unit shall be included in the cumulative total of the rear yard tabulation.

- M. Application - Owner Certification. As part of the building permit application process for a secondary dwelling, the owner of record shall submit a declaration, under penalty of perjury, stating that the secondary dwelling is not intended for sale separate from the primary residence, but may be rented. Nothing in this section shall be deemed to affect the legal status of a secondary dwelling built with a lawfully issued permit if the property is subsequently transferred or sold, or if the one-family dwelling or secondary dwelling is subsequently rented or leased.
- N. Code Compliance - One-Family Dwelling. An application for a secondary dwelling building permit shall not be deemed complete, and a building permit shall not be issued, if the city determines that the one-family dwelling will continue to have uncorrected violations involving applicable zoning and building code requirements, or fire or safety hazards.
- O. Other Permits Required. Nothing in this section supersedes requirements for obtaining development permits pursuant to this title, or for properties subject to the historic preservation permit requirements set forth in Chapter 13.48 of Title 13 of the San José Municipal Code.
- P. Notwithstanding Subsection O above, additional development permits shall not be required for the following:
1. A new detached Secondary Unit located on a site that is listed on the San José Historic Resources Inventory, not including sites within a City Historic District or listed as City Landmark.

2. A new detached or attached Secondary Unit located in a planned development zoning district otherwise subject to requirements of Section 20.100.500 (A)(4).
 3. A new detached Secondary Unit located in a low density cluster development, in accordance with provisions of this part and with San José Municipal Code Section 20.30.500, and otherwise subject to minimum side setback requirements of the primary dwelling unit and requirements of Section 20.100.500 (A)(4).
 4. A new attached Secondary Unit, located in a low density cluster development, otherwise subject to requirements of Section 20.100.500 (A)(4).
- Q. Compliance with Building and Zoning Codes. A secondary dwelling shall be built in accordance with the building code set forth in Title 24 of the San José Municipal Code ("Municipal Code") and in conformance with Title 20 of the San José Municipal Code.
- R. Located on One Lot. A secondary dwelling shall be located within the same subdivision unit and on the same legal parcel as the one-family dwelling to which it is ancillary.

SECTION 2. Section 20.30.280 of Chapter 20.30 of Title 20 of the San José Municipal Code are amended to read as follows:

20.30.280 Rear Setback — Exception – New Construction of or Additions to Single-Family Residences

In the R-1 residence districts, new construction of a one-family dwelling or an addition, added to an existing one-family dwelling, that is a single story or an open or enclosed patio, where the maximum height of said new construction or addition with a sloped roof as measured halfway up any slope of the roof does not exceed twelve feet, and no portion of said addition exceeds a maximum height of sixteen feet above grade, shall have a minimum rear setback of fifteen feet, provided that such addition shall not occupy more than fifty percent of the area between the minimum required rear setback as designated in Section 20.30.200 and said fifteen-foot rear setback. (Ords. 26248, 26455, 29821.)

SECTION 3. Section 20.40.230 of Chapter 20.40 of Title 20 of the San José Municipal Code is amended to read as follows:

20.40.230 Maximum Height - Exception, Number of Stories – Exception

- A. Notwithstanding the provisions of Section 20.40.200, in any commercial district, the maximum height restrictions shall not apply to SRO residential hotels, SRO living unit facilities and mixed commercial/residential projects. (Ords. 26248, 29218.)
- B. The director or the planning commission on appeal may, but shall not under any circumstances be required to, grant the following development exceptions permitting elevator shafts and stairwells to cause the associated structure to exceed the general zoning district height limitation for the zoning district in which the structure is located, but only up to seventeen (17) feet above the general zoning district height limitation and subject to design review, including but not limited to accessible bathroom, roof canopies, mechanical equipment, screening and safety guardrail requirements, subject to the requirements below.
 - i. This exception shall not apply to allow any structure(s), including all elevator shafts and stairwells, to exceed the height limitations applicable under Chapter 20.85 of this Title.

- ii. The maximum roof area coverage by all structure(s) and equipment shall not exceed of thirty (30%) percent of the total roof area.
- iii. This exception may apply to any mechanical equipment and appurtenances required for the operation and maintenance of the building, including devices for the collection of solar or alternative energy, and screening for those features.

SECTION 4. Section 20.90.410 of Chapter 20.90 of Title 20 of the San José Municipal Code is amended to read as follows:

20.90.410 Required Off-Street Loading Spaces

- A. Any building, or part thereof, constructed, erected, or moved within or onto any lot or parcel of land in any district for any use as described in Subsection B., having a floor area of ten thousand square feet or more shall provide at a minimum one off-street loading space, plus one additional such loading space for each twenty thousand square feet of floor area.
- B. This section shall apply to buildings intended for use by a manufacturing plant, storage facility, warehouse facility, goods display facility, retail store, wholesale store, market, hotel, hospital, mortuary, laundry, dry cleaning establishment, or other use or uses similarly requiring the receipt or distribution by vehicles or trucks of material or merchandise; and
- C. Such off-street loading space(s) shall be maintained during the existence of the building or use they are required to serve.

- D. Notwithstanding other requirements of this section, the decision maker may approve a development with no ~~off~~ ~~on~~-street loading space based on a finding that the project includes adequate provision for loading taking into consideration the nature of the allowed uses, the configuration of buildings and their relationship to the street.

SECTION 5. Section 20.100.910 of Chapter 20.100 of Title 20 of the San José Municipal Code is amended to read as follows:

20.100.910 Planned Development Permit Required

Unless the base zone is being utilized:

- A. No building or structure shall be erected, constructed, enlarged, placed or installed or moved onto any site nor shall there be any exterior alteration of any structure which is in a planned development district, and no building permit or installation permit shall be issued for such work, except pursuant to and in accordance with a planned development permit.
- B. No use shall be added, changed, modified, enlarged or altered on any site which is in a planned development district except pursuant to and in accordance with a planned development permit.
- C. A planned development permit may be issued for all or any part of the property situated in a planned development district.
- D. A planned development permit or amendment to a planned development permit may be issued for:

1. The use of new dwelling units, which are not yet occupied for residential purposes, as model homes or sales offices in connection with the sale of dwelling units in a planned development district.
 2. The use of structures, such as mobile homes, as sales offices in connection with the sale of dwelling units in a planned development district.
 3. The use of land in the planned development district for off-street parking or other uses incidental to the sales office or model home operation. Such use shall be limited to the duration of the sales office or model home operation.
- E. A planned development permit is not required for building additions, exterior alterations, and accessory structures on parcels six-eight thousand square feet or less which are used for single-family detached residential use if the additions, alterations, or structures:
1. Meet the development regulations of the R-1-8 residence district; and
 2. The construction would not require the issuance of a single-family house permit, pursuant to Part 9 of this Chapter 20.100, if the property were not situated in a planned development zoning district; and
 3. The addition, alterations or accessory structures otherwise conform to the requirements of the planned development zoning district.
- F. A planned development permit is not required for mechanical equipment in planned development districts consisting solely of detached, one family dwelling uses. The setbacks for all mechanical equipment in these planned development districts must meet the setback requirements set forth in the particular planned development district. If no setback standards have been set forth for a particular

planned development district, the setbacks requirements shall be those standards set forth in Section 20.60.080.

- G. A valid planned development permit, issued under this part, is required prior to the issuance of any building permit or installation permit for the creation, replacement, alteration or reconfiguration of impervious surface on any portion of a site not used solely for one single-family residence within a planned development district.

SECTION 6. Section 20.100.1300 of Chapter 20.100 of Title 20 of the San José Municipal Code is amended to read as follows:

20.100.1300 General

Pursuant to and in accordance with the provisions hereinafter set forth in this part, the director or the planning commission on appeal may, but shall not under any circumstances be required to, grant the following variances and exceptions:

A. Development variance.

1. Variances hereinafter referred to as "development variances," to the height, number of stories, frontage, setback, coverage, density, area, off-street parking, fencing, loading and landscaping requirements and regulations of this title.

B. Development exception.

1. Certain exceptions, hereinafter referred to as "development exceptions" as follows:

a. Exceptions permitting an incursion by buildings or structures of up to, but not more than, five feet into the rear setback area prescribed by this title, provided, however, that no exception granted hereunder shall permit the vertical projection of any building or structure to be closer than ten feet, measured horizontally, to the rear property line.

~~b. Exceptions permitting elevator shafts and stairwells to cause the associated Structure to exceed the general zoning district height limitation for the zoning district in which the Structure is located, but only up to seventeen (17) feet above the general zoning district height limitation and subject to design review, including but not limited to screening and safety guardrail requirements.~~

~~i. This exception shall not apply to allow any Structure, including all elevator shafts and stairwells, to exceed the height limitations applicable under Chapter 20.85 of this Title.~~

eb. Exceptions permitting church steeples, church bell towers, church roofs, wireless communication antenna and associated structures which exceed in height the height limitations prescribed in this title; provided, however, that the following exception from these provisions shall apply.

i. Wireless communication antennae that meet the height limitations of Section 20.80.1900 or 20.80.1910, as applicable, shall not be subject to the development exception requirements set forth in this part.

dc. Exceptions from the area requirements for a lot or parcel in any residential district having an area of less than three thousand square feet, provided such area is not less than the area of such lot or parcel on March 1, 1977 (or, if the lot was created after March 1, 1977, then as approved by the city) and that no such exception shall permit any diminution in such area and provided further that if such lot or parcel has or is to have a structure or structures thereon, no such exception shall be issued for such lot or parcel unless all such structures are dwelling structures or structures accessory thereto, and all such structures comply with the height and setback requirements of this title. An exception permitted by this subsection may be issued at the same time as an exception provided for in Subsection 1. above.

ed. Exceptions to the off-street parking and loading requirements and regulations of this title.

SECTION 7. Section 20.200.1310 of Chapter 20.200 of Title 20 of the San José Municipal Code is amended to read as follows:

20.200.1310 Utility Facility

Any building, structure, plant, equipment or use for the provision and operation of utility services including, but not limited to water, sewage disposal, telephone service, telegraph service, communications services, telecommunications or cable television. Utility facility does not include electrical power generation facilities but does include electrical transmission facilities, and may include an incidental resident caretaker unit.

PASSED FOR PUBLICATION of title this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk