

**(a) PP24-001 - Amendments to Various Sections of Title 20 of the San José Municipal Code (Zoning Ordinance or Zoning Code) Related to the Conversion of Private Parking to Outdoor Dining and Other Outdoor Uses Associated with an On-Site Business. – TO BE HEARD IMMEDIATELY AFTER CONSENT**

**Recommendation:**

Approve 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 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, 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: Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041) and Supplemental EIR Resolution No. 77617, and Addenda thereto. Planning Commission recommends approval (10-0-1; Garcia absent) (Item 6a on the 5/8/2024 Planning Commission agenda). (Planning, Building and Code Enforcement)

**TO BE HEARD IMMEDIATELY AFTER CONSENT**



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** May 13, 2024

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**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

HONORABLE MAYOR AND CITY COUNCIL

May 13, 2024

**Subject: Conversion of Parking to Outdoor Dining and Other Outdoor Uses Ordinance Update**

Page 5

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](mailto: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

<b>Project</b>	Zoning Ordinance Update
<b>Applicability</b>	Citywide in applicable Zoning Districts
<b>Project Description</b>	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.
<b>CEQA Clearance</b>	Determination of Consistency with the City of San José and Addenda thereto, in accordance with the California Environmental Quality Act as amended.
<b>Project Planner</b>	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.

<a href="#">Exhibit A: Draft Ordinance</a>
<a href="#">Exhibit B: Determination of Consistency</a>

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:

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TONI J. TABER, CMC  
City Clerk