



CITY CLERK

CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
801 North First Street, Room 116
San José, California 95110
Telephone (408) 277-4424
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STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Lee Price, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that **"Ordinance No. 27185"**, the original copy of which is attached hereto, was passed for publication of title on the **15th day of June, 2004**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **29th day of June, 2004**, by the following vote:

- AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, DANDO, GREGORY, LeZOTTE, REED, WILLIAMS, YEAGER; GONZALES
- NOES: NONE
- ABSENT: NONE
- DISQUALIFIED: NONE
- VACANT: NONE

Said ordinance is effective as of **July 30, 2004**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **15th day of July, 2004**.

(SEAL)

LEE PRICE, CMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

ORDINANCE NO. 27185

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 20.100 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTIONS 20.100.190, 20.100.210, 20.100.220, 20.100.280, 20.100.290, and 20.100.300 TO MODIFY THE PROCESS FOR DEVELOPMENT PERMIT ACCEPTANCE AND RECORDATION, TO ADD SECTIONS 20.100.380 AND 20.100.390 RELATED TO ABANDONMENT OF PERMIT APPLICATIONS OR INACTIVE APPLICATIONS AND TO MAKE OTHER CLARIFYING CHANGES

WHEREAS, pursuant to the provisions of Title 21 of the San José Municipal Code, the Director of Planning, Building and Code Enforcement has determined that this ordinance does not constitute a project under the provisions of the California Environmental Quality Act of 1970, as amended.

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

SECTION 1. Section 20.100.190 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.190 Notice of Public Hearing.

- A. Notice of time, place, and purpose of any hearing required by this Chapter shall be as follows:
1. To the applicant and any appellants at the addresses designated for such purpose on the application; and
 2. To the owners, as shown on the last equalized assessment roll adopted by the County of Santa Clara, within a three hundred (300) foot radius of the property that is the subject of the application; and
 3. To anyone who has submitted a Request for Notice as prescribed in Section 20.100.200; and

4. To any occupant of property within a three hundred (300) foot radius of the property that is the subject of the application.
- B. The Director may increase the three hundred (300) foot radius for notice. Nothing herein shall preclude the City from requiring or providing additional notice to other persons or in any other manner.
- C. Any notice of hearing by the Director or Planning Commission shall be as prescribed by the Director and shall be mailed by the Director or authorized mail service, postage prepaid, at least ten (10) calendar days before the date set for hearing. Upon the mailing of such notice, a declaration that such notice has been mailed shall be filed in the proceedings.
- D. Any notice of hearing by the City Council shall be as prescribed by the City Clerk and shall be mailed by the City Clerk, or authorized mail service, postage prepaid, at least ten (10) calendar days before the date set for the hearing. Upon the mailing of such notice, a declaration that such notice has been mailed shall be filed in the proceedings.
- E. Notwithstanding the above, the failure of the Director or City Clerk to mail any notice or the failure of any person to receive the same shall not affect, in any way whatsoever, the validity of any proceedings taken under this Part, nor of any action or decision of the Director, Planning Commission or City Council made or taken in any such proceedings, nor prevent the Director, the Planning Commission or City Council from proceeding with any hearing at the time and place set therefor.
- F. All fees for mailings set forth in the Schedule of Fees adopted by resolution of the City Council shall be paid by the applicant prior to mailing the notice. Failure of the applicant to comply with this provision could result in a delay of a hearing and/or a decision on an application.

SECTION 2. Section 20.100.210 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.210 Decision

- A. With respect to any Permit or approval, the Director, Planning Commission, or City Council as designated by this Title, may:
 1. Deny the permit or approval; or

2. Grant a permit or approval based on the plan proposed by the applicant, and may make such permit or approval subject to conditions; or
3. Grant a permit approval based on a plan substantially different from the plan proposed by the applicant, and may make such permit or approval subject to conditions; provided, however, that any variance or such exception shall not be greater than the amount of variance or exception requested in the application, nor, in the case of a variance, be a different type of variance or for a variance which covers a different part of the subject property from that designated in the application.

B. The Director shall mail a copy of the decision to the applicant at the addresses shown for such purpose on the application.

SECTION 2A. Section 20.100.220 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

Decisions on permits or approvals pursuant to this Chapter are subject to appeal as set forth in Table 20-260, which table lists the initial decision maker and the decision-making body that will hear any appeal.

Table 20-260 Appeal Hearing Body		
Application	Initial Decision Making Body	Appeal Decision Making Body
Administrative Permit	Director of Planning	No Appeal
Site Development Permit	Director of Planning	Planning Commission
Single-Family House Permit		
Administrative Decision	Director of Planning	No Appeal
Director's Hearing	Director of Planning	Planning Commission
Planned Development Permit	Director of Planning	Planning Commission
Special Use Permit	Director of Planning	Planning Commission
Conditional Use Permit	Planning Commission	City Council
Variance	Director of Planning	Planning Commission
Exception	Director of Planning	Planning Commission
Sidewalk Café Permit	Director of Planning	City Council
Tree Removal Permit	Director of Planning	Planning Commission

SECTION 3. Section 20.100.280 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.280 Appeal - City Council Procedures

Any appeal to the City Council is subject to the following:

1. The Director shall, within ten (10) calendar days of receipt of the appeal, file a copy of the application and the Notice of Appeal with the City Clerk.
2. The Council shall hold at least one public hearing on the matter. The hearing of the City Council shall be *de novo*. The City Clerk shall set the date of the public hearing by the Council. The date of hearing shall be the first available date not less than ten (10) days after receipt of the Notice of Appeal. Within a reasonable time after the Council has concluded its hearing, it shall, by resolution, set forth its findings and decision on the matter.
3. The decision of the Council shall be final. The City Clerk shall mail a certified copy of the decision of the Council to the applicant and the appellant at the addresses shown for such purpose on the application and Notice of Appeal.

SECTION 4. Section 20.100.290 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.290 Acceptance

- A. After the time for any appeal has expired and no appeal has been filed by a qualified appellant, the Permit or other approval issued shall be deemed final, subject to the provisions of Subsection 20.100.290.D below.
- B. If the applicant fails to file a timely and valid appeal of the Permit or other approval within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 1. Acceptance of the Permit or approval by the applicant; and
 2. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions,

and conditions of the Permit or other approval and the provisions of this Title applicable to such Permit or other approval.

- C. If the applicant is a qualified tenant, such tenant shall, and it shall be the responsibility of such tenant to, inform the property owner(s) of the issuance of the Permit or other approval, together with the terms, conditions and provisions of such Permit or other approval, including without limitation provisions contained in such Permit or approval that require dedication of land, restrictive covenants or other commitments beyond the scope of a tenancy.
- D. No Permit or other approval shall have any force or effect prior to the elapse of the applicable appeal period and the recording of a certificate pursuant to the provisions of Section 20.100.300 below.

SECTION 5. Section 20.100.300 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.300 Recordation

- A. No Permit or other approval shall be effective until a Certificate of Permit or other approval has been recorded with the County Recorder's Office. Upon the Permit or other approval becoming final, in accordance with the provisions of Section 20.100.290, fulfillment of all conditions precedent to release pursuant to this Chapter and the payment of recordation fees, a certificate identifying the Permit or other approval shall be recorded by the City. The Permit or other approval shall become effective and the rights and restrictions therein shall run with the land.
- B. If any Permit or other approval is revoked after a hearing on an Order to Show Cause pursuant to this Chapter, a Certificate of Revocation shall be recorded with the County Recorder's Office.

SECTION 6. Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended by adding a new Section to be numbered and entitled and to read in its entirety as follows:

20.100.380 Privately Initiated Revocation of Permit or Approval

- A. In the event that a real property owner desires to have their property released from a final Permit or other approval previously granted and issued by the City,

the property owner may apply for such release of Permit or other approval on a form provided by the Director.

- B. Each application for release of Permit or other approval shall be subject to the following requirements:
1. For Permits or other approvals that have not been implemented in any manner and whose term of expiration has not yet elapsed, the Director may administratively accept and grant such release requests in writing.
 2. For Permits or other approvals that have been implemented in whole or in part, the Director may accept and consider such release requests and may grant a release request in writing only if the Director first determines that releasing the Permit or other approval would meet all of the following criteria:
 - a. Releasing the Permit or other approval would not result in any harm or other adverse impact upon the real property, persons located on the real property, persons or property in the area surrounding the real property or to the City; and
 - b. Releasing the Permit or other approval would not result in a situation that would constitute a violation of any applicable law.
- C. Nothing contained in this Section shall prevent or preclude the Director from determining that the protection, preservation or furtherance of the public interest, health, safety or welfare would be better served through the processing of an amendment or adjustment to the original Permit or other approval or a new Permit or other approval rather than granting a release of such Permit or other approval. The Director shall require an amendment or adjustment to a Permit or other approval or a new Permit or other approval for any release application that does not meet the criteria of Subsection 20.100.380.B.2 above.
- D. Any applicant for a release of Permit or other approval who is granted a release of the Permit or other approval shall thereafter use the real property released from the Permit or other approval only in a manner that conforms to the provisions of this Title as if no such Permit or other approval had been issued. Irrespective of prior Permits or other approvals issued, it shall be a violation of this Title to utilize any property for which a Permit or other approval has been released for any purpose that requires a Permit or other approval under this Title without having first obtained the required Permit or other approval; provided, however, that the property may be utilized in a manner that would be allowed under the provisions of Section 20.100.370 as if the Permit or other approval had been revoked rather than released.

- E. When a Permit or other approval has been released pursuant to the provisions of this Section, the City shall file a Release Certificate with the County Recorder in the same manner as a Revocation Certificate.

SECTION 7. Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended by adding a new Section to be numbered and entitled and to read in its entirety as follows:

20.100.390 Inactive Applications

- A. The Director of Planning shall have the authority to pursue a final decision on any Permit or other approval application on file with the Director for a period of at least six (6) months where there is inactivity on the application on the part of the applicant for at least six (6) consecutive months.
- B. Alternatively, if an applicant fails to process his or her application on file with the Director and such inactivity by the applicant on the application continues for a period of at least six (6) consecutive months and additional work would be required by the Director to continue to process the application, the Director shall have the authority to require the applicant to first pay additional fees to continue processing the application in order to account for work that was not paid for under the original application fee or in cases where the application fees paid by the applicant were at a different rate than those fees in effect at the time of reactivation of the application after a period of inactivity by the applicant.
- C. For purposes of this Section "inactivity" on an application means that the Director has requested from the applicant or has provided the applicant with notice of additional information or materials needed by the Director from the applicant to continue to process the application and the applicant has failed to adequately respond to that request or notice.

SECTION 8. Section 20.100.830 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.830 Term

- A. A Special Use Permit may be time-conditioned, as appropriate, by the Director of Planning or the Planning Commission.
- B. If the use authorized by the Special Use Permit is discontinued for a period of twelve (12) months, the Special Use Permit will expire and the Special Use Permit will no longer be in effect.

PASSED FOR PUBLICATION of title this 15th day of June, 2004, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, DANDO,
GREGORY, LeZOTTE, REED, WILLIAMS, YEAGER;
GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE



RON GONZALES
Mayor

ATTEST:



LEE PRICE, CMC
City Clerk

SAN JOSE POST-RECORD

~ SINCE 1910 ~

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SAN JOSE, CA 95110

PROOF OF PUBLICATION

(2015.5 C.C.P.)

State of California)
County of Santa Clara) ss

Notice Type: GORSJ SAN JOSE ORDINANCE (1 PUB)

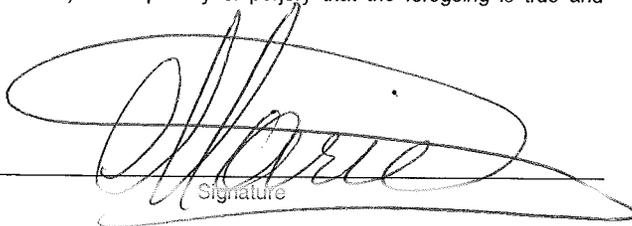
Ad Description: ORDINANCE #27185

I am a citizen of the United States; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer and publisher of the SAN JOSE POST-RECORD, a newspaper published in the English language in the City of San Jose, and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of Santa Clara, State of California, under date of February 3, 1922, Case No. 27,844. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

06/22/04

Executed on: 06/22/2004
At Los Angeles, California

I certify (or declare) under penalty of perjury that the foregoing is true and correct.


Signature

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RECEIVED
San Jose City Clerk

2004 JUN 25 A 10: 06

SJ#: 690873

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AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 20.100 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTIONS 20.100.190, 20.100.210, 20.100.280, 20.100.290, and 20.100.300 TO MODIFY THE PROCESS FOR DEVELOPMENT PERMIT ACCEPTANCE AND RECORDATION, TO ADD SECTIONS 20.100.380 AND 20.100.390 RELATED TO ABANDONMENT OF PERMIT APPLICATIONS OR INACTIVE APPLICATIONS AND TO MAKE OTHER CLARIFYING CHANGES PASSED FOR PUBLICATION of title this 15th day of June 2004, by the following vote:
AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, DANDO, GREGORY, LeZOTTE, REED, WILLIAMS, YEAGER; GONZALES
NOES: NONE
ABSENT: NONE
DISQUALIFIED: NONE
RON GONZALES
Mayor
ATTEST:
LEE PRICE, CMC City Clerk
06/22/04

SJ- 690873#