

COUNCIL AGENDA: 3-16-04
ITEM: 11.1

Memorandum

**TO: HONORABLE MAYOR AND
CITY COUNCIL**

**FROM: Del D. Borgsdorf
Harry S. Mavrogenes**

SUBJECT: SEE BELOW

DATE: March 4, 2004

SUPPLEMENTAL

COUNCIL DISTRICT: 3

SNI AREA: None

**SUBJECT: PROPOSED AMENDMENT TO TITLE 20, THE DOWNTOWN ZONING
REGULATIONS**

REASON FOR SUPPLEMENTAL

Three changes have been proposed to the previously proposed amendment to the Downtown zoning regulations as follows:

1. Modifications to provisions dealing with development near historic properties; and,
2. Modifications to the parking provisions to conform to the Council adopted Parking Management Plan; and,
3. Modifications to the parking provisions dealing with retail development.

RECOMMENDATION

It is recommended that the City Council adopt an ordinance amending Title 20, the Zoning Regulations, related to the Downtown area with the following revisions proposed since the Planning Commission review and recommendation:

1. Deletion of the proposed provisions precluding Historic Landmarks Commission review and comment on projects less than 150 feet and a Floor Area Ratio (FAR) of less than 6:1.
2. Miscellaneous modifications to the parking provisions to conform to the City Council's adopted Parking Management Plan, including a provision establishing a Parking In-Lieu Fee.
3. Granting the Director of Planning, Building, and Code Enforcement (PBCE) the authority to require retail developments that have reduced parking requirements to identify where their parking will be located and to require additional parking if no parking can be identified.

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BACKGROUND

On October 8, 2003, the Planning Commission held a public hearing to consider the proposed ordinance to modify the Downtown Zoning regulations. The PBCE Director recommended approval of the proposed ordinance. The Planning Commission voted 5-0-2 (Commissioners James, Dhillon absent) to recommend that the City Council adopt the ordinance as presented by staff. A memo to the City Council detailing the Planning Commission hearing is attached.

ANALYSIS

In the months since the draft ordinance was set for hearing, staff from both the Redevelopment Agency and from Planning, Building, and Code Enforcement have been soliciting additional public input. The recommended modifications to the zoning code reflect that public input.

The first proposed change from what the Planning Commission reviewed relates to a change to the draft ordinance amending Title 20 Section 20.70.110. The proposal is to delete Section 20.70.110(E), which would have precluded the Historic Landmarks Commission (HLC) from reviewing smaller developments (less than 150 feet in height and a FAR of 6) within 100 feet of a Historic District or Historic Landmark, unless required to obtain a Historic Preservation (HP) Permit. By deleting this provision, the PBCE Director would determine when a project would be referred to the HLC for its review. The HLC Development Subcommittee recommended this item.

Additionally, it is proposed to delete Section 20.70.110(B) in the version reviewed by the Planning Commission, which would have required new construction within 100 feet of a Historic District or Historic Landmark to be consistent with applicable guidelines. This provision will now be dealt with as part of an expansion of the Downtown Historic Design Guidelines, which are to be presented to the Council later this year and which will include additional provisions on development near landmark buildings and districts.

The second proposed change to the draft ordinance amending Title 20 includes technical changes to the parking provisions to more accurately reflect the recommendations in the Parking Management Plan that was recently adopted by the City Council. In addition, the Parking In-Lieu fee is included in the zoning ordinance for the Downtown Parking Management District. While the In-Lieu fee was already established in the City's codes, including it in the Downtown District's section will help clarify the use of the In-Lieu Fee in the downtown. This change will also ensure that the provisions of the In-Lieu requirement, which require developers to pay a fee into the parking fund if they cannot meet all of their parking requirements, are dealt with during the permit stage of a project.

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The third, and final, modification to the draft ordinance amending Title 20 includes provisions that would require proposed retail development that does not provide all of the parking necessary for the project to identify alternative parking or, absent the ability to provide alternative parking, grant the PBCE Director the authority to impose additional parking requirements for the project.

PUBLIC OUTREACH

In addition to the original public noticing done on September 21, 2003, including public hearing notices for the larger rezoning published in the San Jose Mercury News and mailed to owners and occupants within 1,000 feet of the 389 gross-acre area, a new public hearing notice was published in the San Jose Mercury News on March 7, 2004, and mailed to owners and occupants within 1,000 feet of the current area proposed to be rezoned. Included in the mailed notice was a question and answer sheet to help individuals understand how the proposal may or may not affect them. On February 18, 2004, Joseph Horwedel, Deputy Director of PBCE, met with the Downtown Association and the Historic Landmarks Commission Development Subcommittee to discuss the proposed rezoning.

Additionally, PBCE has the staff reports and draft ordinance posted on it's website for public review.

COORDINATION

Preparation of this report was coordinated with the Redevelopment Agency's General Counsel.

CEQA

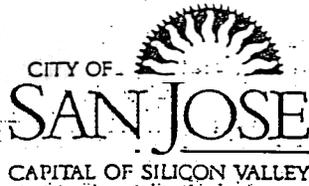
The environmental impacts of this project were addressed by a "Final EIR" entitled, "San Jose 2020 General Plan EIR," which was certified on August 16, 1994, by the City of San Jose, City Council Resolution No. 65459.


DEL D. BORGSDORF
City Manager


HARRY S. MAVROGENES
Interim Executive Director

Attachment

C. Meeting: 10/8/03
Item: 4.a.



Memorandum

TO: PLANNING COMMISSION

FROM: Stephen M. Haase
Director of Planning
Building and Code
Enforcement

Harry Mavrogenes
Deputy Executive Director
of Redevelopment

**SUBJECT: Proposed Zoning Code Amendment -
Downtown Zoning Regulations**

DATE: October 2, 2003

Approved

Date

COUNCIL DISTRICT: 3
**SNI AREAS: Market-Almaden
University**

RECOMMENDATION

Staff from the Department of Planning, Building and Code Enforcement and the Redevelopment Agency recommend to the Planning Commission to forward to the City Council a recommendation approving the proposed ordinance amending Chapter 20.70 of Title 20, the Downtown Zoning Regulations, as presented by staff.

BACKGROUND

The current Zoning Code, Title 20 of the San Jose Municipal Code, includes Chapter 20.70, Downtown Zoning Regulations. These regulations were adopted by the City Council in 1997, and carried through the Zoning Code Update adopted in February 2001.

Although regulations were established for Downtown zoning districts, no properties in the Downtown Core had ever been rezoned utilizing these districts. When the Downtown Zoning Districts were adopted into the Code, Council had directed the Redevelopment Agency to develop historic preservation guidelines to be used for projects in close proximity to and in the historic districts. Once the guidelines were developed, the Downtown Zoning Districts could be

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utilized. In the interim, the CG Commercial General zoning districts were retained for the majority of the Downtown Core, even though they were tailored more for the suburban form of commercial development from both a use and development regulations standpoint. Because the development regulations of the CG zoning district do not reflect an urban form, in May of 2001, the City Council adopted an ordinance reinstating the previous development standards of the C-3 zoning district for the Downtown Core. What this means is that the current zoning regulations covering the majority of the Downtown Core are the current CG Commercial General district use regulations with the C-3 development regulations, including setback, height, etc. that were in place on February 18, 2001.

Additionally, the Historic Guidelines have been presented to the City Council and may soon be adopted with some changes previously directed by City Council. The Downtown Zoning Regulations, however, reflect a time past and need to be amended to reflect current policy direction on development in the Downtown. The Redevelopment Agency and Department of Planning, Building and Code Enforcement staff have worked closely together to propose modifications to the Downtown Zoning Regulations that would effectively promote the City's goal of an urban high-density downtown, uses that are a critical and necessary part of an active and successful downtown, as well as the smart growth policies of transit oriented, mixed-use development including housing, retail and office.

The proposed regulations are designed to meet the goal of the Mayor and City Council to improve and streamline the development process. They are also designed to make the development process more understandable to the general public by establishing a certainty for uses that are consistent with the General Plan and the plans and development objectives including the Strategy 2000 Plan that have been developed for the downtown.

ANALYSIS

The current Downtown zoning regulations include three zoning designations, DC Downtown Primary Commercial, DR Downtown Primary Residential, and DRC Downtown Residential Conservation. These districts are limited to the Downtown Core area as well as the area bounded by Julian Street, Route 87, the Union Pacific Railway, and Market Street. The proposed amendment would be applicable to the same area as the existing Downtown districts; however, the number and structure of the proposed districts includes substantive changes. The proposed districts and regulations are designed to promote the City's Smart Growth policies by facilitating high-density, mixed-use developments that support a vibrant 24-hour community. Additionally, the regulations have been structured to encourage a pedestrian friendly environment and the use of mass transit.

Proposed Zoning Districts

In order to focus on the most immediate needs of development for the Downtown area, staff proposes to replace the three existing Downtown zoning districts with the new DC Downtown Commercial district, and the DC-NT1 Downtown Commercial-Neighborhood Transition 1

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district. Both proposed districts have a distinct purpose and set of regulations associated with them. The following paragraphs explain the specific proposal for each district.

DC Downtown Commercial Zoning District

The DC Downtown Commercial zoning district as proposed is intended to implement the goals and policies of the San Jose 2020 General Plan and the accepted Downtown Strategy Plan 2000 by promoting Downtown as the center of the City's economic, governmental and cultural activities. Below is a brief overview of the proposed regulations under the DC Downtown Commercial zoning district.

- The proposed use regulations in the DC Downtown Commercial zoning district reflect uses that are typical of a downtown and many of them are permitted as-of-right.
- The Downtown Ground Floor Use regulations are included in the new DC district with minor modifications.
- Mixed-use are allowed as-of-right and Live Work projects are allowed with a Special Use Permit as opposed to requiring a CUP or PD Zoning
- Live-work developments are guided by specific performance standards to aid in the development process.
- Parking requirements reflect the City Council approved Downtown Parking Management Plan.
- Incentive for the renovation of historic structures included by means of a reduction in parking requirements.
- New construction of tall structures in close proximity to City Historic Landmarks or the historic districts is to be referred to the Historic Landmarks Commission for recommendations as to compatibility with adopted guidelines and such landmark or district.
- New construction over 150 feet in height and with a FAR of 6 or greater would be reviewed by the Planning Director on the basis of the design with an appeal to the City Council rather than the Planning Commission. This would take the place of the current height and bulk waiver process with the Council.

DC-NT1 Downtown Commercial-Neighborhood Transition 1 Zoning District

The intent of the DC-NT1 Downtown Commercial-Neighborhood Transition 1 Zoning District is to implement the goals and policies of the Market-Almaden Neighborhood Improvement Plan, adopted by the City Council in March of 2003. The provisions proposed for this district are designed to assure an appropriate transition between the high-density development of Downtown and the adjoining residential neighborhoods. The proposed use allowances differ from the DC zoning district by prohibiting uses, such as entertainment establishments, theaters, automobile uses, and parking lots that have been deemed incompatible with the low-density residential neighborhood in the Market-Almaden area. The proposed height and setback regulations for the DC-NT1 district have been designed to make a smooth transition from the higher density downtown to the lower-density residential neighborhood. The lower height allowances,

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generally 100 feet or less, and greater setback requirements support the preservation of sun and views for this neighborhood.

Key Elements of Proposed Regulations

Design Review of Projects Over 150 Feet in Height and an FAR of 6:1

The current zoning regulations in effect in the Downtown Core related to height and floor area ratio (FAR) allow for the City Council to consider a height and bulk waiver for any project that exceeded a FAR of 3:1 or a height over 100 feet or eight stories. This regulation has been in place with no modifications since the early 1960's and is more reflective of a time when high-rise development in San Jose was the exception. Today, high-rise development is encouraged in the Downtown, and the majority of the high-rise projects require the additional approval from the City Council for increased height and FAR. The proposed regulations include modification to this approval process by increasing the threshold for projects that the City Council would consider, and integrating this City Council action into the permit process by designating the City Council as the appeal body for the development permit issued by the Planning Director after it has been reviewed for design. In doing this, fewer projects would require City Council consideration and for those that would, the review is limited to that of an appeal hearing rather than an additional process thus streamlining the overall approval time.

As proposed, the threshold review and approval would be raised from a minimum of 100 feet or a FAR of 3:1 to a minimum of 150 feet and a FAR of 6:1. Under the proposed threshold, high-rise projects comparable to the Adobe Towers and the Marriott Hotel would require a Site Development Permit granted by the Director of Planning or Executive Director of Redevelopment as appropriate. An appeal of this permit would go to the City Council where the decision of the Council would be final. The table below presents a survey of buildings Downtown, existing and proposed, and their respective height and F.A.R.

Building Name	Height (Feet)	Floor Area Ratio
CIM Fountain Alley (proposed)	68	2.1
4 th Street Parking Garage	92	7.2
Joint Library	136	8.2
City Heights at Pellier Park (proposed)	175	6.7
CIM Block 3 (proposed)	230	3.3
Fairmont Hotel	245	9.8
Marriott City Center	266	10.3
Adobe Towers	267	7.0
San Antonio Block 2 (proposed)	273	11.2
Boston Properties Bldg.3	280	11.7
Sobrato Tower	280	6.9

Historic Resources

First, the construction of new buildings greater than 150 feet and a FAR of 6 within 100 feet of a City Landmark or contributing structure in a historic district would be referred to the Historic Landmarks Commission (HLC) for a to advise the Director of Planning or Planning Commission as appropriate. The Downtown Zoning Regulations originally provided that any new construction within 100 feet of a City Landmark or contributing structure of a City Landmark District would obtain a Conditional Use Permit (CUP). The proposed regulations now codify a requirement for referral to the Historic Landmarks Commission and drop the more cumbersome permit process of a CUP.

In addition, staff proposes to include a provision that requires new construction to conform to guidelines or policies approved by the City Council, if any. This would aid in the review of new development within one hundred feet of historic structures or within 100 feet of or in the historic district. The net effect of the proposed change is to ensure that that new construction would have a set of standards to evaluate a project adjacent to landmark structure or district while promoting a more streamlined permitting process. This also responds to comments from Getting Families Back to Work by defining a more certain process for development and focusing the formal referral process on those projects with the greatest likelihood of concern on compatibility. In an effort to encourage the preservation of the City's historic resources, staff is proposing to exempt additions to landmark structures where the addition does not exceed 50% of existing square footage provided that the addition conforms to the relevant design guidelines, or in the case where guidelines do not apply, the Secretary of Interior's Standards for the Treatment of Historic Properties. Staff is also proposing to exempt any change of use in a landmark structure from the parking requirements. (Landmark structures for purposes of the proposed zoning amendment are those buildings that have received city, state or federal landmark status.)

Mixed Use and Live/Work Projects

Under the existing code, some types of mixed-use developments are allowed only with a Conditional Use Permit or through a Planned Development Zoning. The proposed code revisions now allows all major types of mixed-uses with a Site Development Permit. Additionally, Live/Work developments previously subject to a PD zoning are allowed with a Special Use Permit granted by the Planning Director.

Parking Requirements

Proposed changes to the parking requirements are reflective of the adopted Downtown Parking Management Plan adopted by the City Council in November 2001. As part of the proposal, staff proposes to increase the minimum parking requirement for office from 1.5 to 2.8 spaces per 1000 square feet of development. This ratio is still below the current citywide requirement of 4 spaces per 1000. The proposed ratio reflects the presence of light rail and other mass transit options serving the Downtown, thus reducing the demand for parking. As new mass transit projects are completed including the Downtown East Valley or BART, this ratio will go down to require less

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parking. Finally consistent with the Parking Management Plan, 15% of office parking requirements must be provided off-site.

Staff is proposing to exempt all retail from parking requirements. Parking studies indicate that in the downtown parking demand is much lower than the rest of the City and is expected to continue declining as new mass transit is developed and more residential units are built. Many customers of downtown retail business may already be in the area through work or residence, through the use of mass transit, or during off-peak hours (evening/weekend) when there is a surplus of parking. In the case of businesses that do generate a higher parking demand, existing public parking facilities can support their customer needs.

Up to a 15% reduction in parking requirements will be allowed for Travel Demand Management (TDM) programs outlined in the Parking Management Plan. This would include measures such as Ecopass, parking cash-out, carpool alternate work schedules, ridesharing and telecommuting. This reduction is consistent with the TDM programs recommended in the Council approved Parking Management Plan. Additionally parking could be provided either at the project, off-site within walking distance or as part of a joint development with the City.

Additional reductions of up to 35% of the total parking required would be allowed for mixed-use projects where it could be shown that the reduction in parking would not adversely impact the surrounding area. Examples of mixed-use project that might be eligible for this reduction would include residential/office projects where office workers generally use the majority of parking during the day and residents use the majority of parking on nights and weekends. This reduction is greater than the 15% reduction recommended in the Parking Management Plan, and is designed to encourage major mixed-use projects that might otherwise be built in San Jose. To support construction on small lots given the difficulty accommodating both building and parking, staff proposes to exempt new structures with small floor plates (i.e. less than 10,000 square feet) and less than 30,000 square feet in total building square footage from the parking requirement. If a building over 30,000 square feet were to be proposed on a small lot, only the additional square footage beyond 30,000 square feet would be subject to parking requirements.

Ground Floor Retail

The Ground Floor Retail provisions remain essentially unchanged, with minor technical corrections made to integrate these provisions into the Downtown Zoning Code.

Other Issues

The Redevelopment Agency will continue to require developers to meet design requirements established in the development review process set forth in Agency Disposition and Development and Owner Participation Agreements. This will assure that when public funds are used, special design standards can be established for a project.

The Downtown Façade Improvement Program utilizes architects hired by the Redevelopment Agency to provide the final design drawings for downtown facades. These projects require a

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Site Development Permit Adjustment, which is approved at the staff level. That process will continue. Projects in this category will be reviewed for code compliance and would be subject to additional design review if they are not compatible with other City Council approved guidelines or policies.

CONCLUSION

The existing Downtown zoning district regulations are reflective of a time past and need to be updated. The proposed ordinance makes modifications that reflect the accepted Downtown Strategy Plan, the Downtown Parking Management Plan, and the City's current policies related to economic development and smart growth. The proposed regulations serve to streamline the development process in the Downtown, reduce development costs by eliminating unnecessary processing, and encourage the type of development envisioned by the City leaders in the many plans and policies in place today.

PUBLIC OUTREACH

Presentations have been made to the Downtown Association Operations Committee, Executive staff of the Downtown Association, the Market-Almaden Neighborhood Advisory Committee (NAC), the Planning Department's Developers Roundtable, the Historic Landmarks Commission, Spartan Keyes NAC, as well as discussions with members of the Preservation Action Council of San Jose and staff from the Chamber of Commerce. Additionally, information on the proposed ordinance has been posted to the Department of Planning, Building and Code Enforcement's webpage, and the public hearing notice was published in the Post Record on May 14, 2003. Notices were mailed to affected property owners as well in September.

COORDINATION

This memo has been coordinated with the City Attorneys Office and the Redevelopment Agency's General Counsel.

CEQA

San Jose 2020 General Plan EIR, Resolution #65459.

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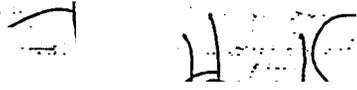
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HARRY MAVROGENES, DEPUTY EXEC. DIRECTOR
San Jose Redevelopment Agency



STEPHEN M. HAASE, DIRECTOR
San Jose Planning, Building and Code Enforcement

SMH/SFS:jmh
PCMemo/Downtown Zoning
PBCE003/Zoning/New Code Ordinance