



COUNCIL AGENDA: 12-13-05
ITEM: 11.8

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

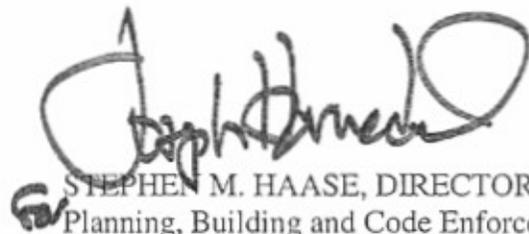
DATE: December 1, 2005

COUNCIL DISTRICT: Citywide

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING CHAPTER 19.16 OF TITLE 19 OF THE SAN JOSÉ MUNICIPAL CODE, THE SUBDIVISION CODE, AND ADDING CHAPTER 20.175 TO TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE, THE ZONING CODE, TO CREATE A PERMIT PROCESS FOR THE REVIEW OF COMMERCIAL AND INDUSTRIAL CONDOMINIUM PROJECTS. CEQA: EXEMPT, PP05-219.

TRANSMITTAL MEMO

The Planning Commission will hear this project on December 7, 2005. The memorandum with Planning Commission recommendations will be submitted under different cover. We hope the submittal of this staff report is of assistance in your review of this project.



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



Memorandum

TO: PLANNING COMMISSION

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: November 30, 2005

COUNCIL DISTRICT: Citywide
SNI AREAS: All

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING CHAPTER 19.16 OF TITLE 19 OF THE SAN JOSE MUNICIPAL CODE, THE SUBDIVISION CODE, AND ADDING CHAPTER 20.175 TO TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, THE ZONING CODE, TO CREATE A PERMIT PROCESS FOR THE REVIEW OF COMMERCIAL AND INDUSTRIAL CONDOMINIUM PROJECTS.

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend that the City Council approve the proposed ordinance amending Title 19, the Subdivision Code, and Title 20, the Zoning Code, of the San Jose Municipal Code to create a process for the review of industrial and commercial condominium projects.

BACKGROUND

During the past year, there have been an increasing number of condominium conversions of industrial and commercial buildings. The current trend is to subdivide buildings into units as small as 500 square feet, and to sell those units to owner-occupants instead of buildings being held under one ownership and leased to individual tenants. While encouraging ownership opportunity is an important goal, this trend has created a number of issues that could impact the City. These impacts include the possibility that buildings held under multiple condominium owners will not be adequately maintained, and that poorly conceived building subdivisions, without appropriate mechanisms to insure continuing maintenance of common areas and other shared amenities, such as the building itself, shared parking, ingress and egress, adjacent support, utilities and the like could create issues of continuing viability of the subdivision and eventually conditions of blight.

In some areas of the City where redevelopment is being encouraged, the subdivision of new and existing buildings creates a situation where underutilized buildings in prime industrial areas that

are ripe for intensification will never be removed. Once subdivided, it is extremely unlikely that such multiple ownership of small units would ever be re-consolidated or sold for redevelopment. This permanent under-use of prime industrial land could present a long-term obstacle to the economic health and viability of the City as a whole, especially given that it is the policy of the City of San Jose to provide appropriate opportunities for large-scale industrial and commercial users to locate within the City.

The proposed ordinance changes would create a process for the review of industrial and commercial condominium projects, and would allow the Director of Planning to attach appropriate conditions to ensure that adequate maintenance of common or otherwise shared areas and amenities occur, and to deny condominium conversions in inappropriate locations of the City.

ANALYSIS

In addition to creating an industrial and commercial condominium permit approval process, the proposed ordinance includes submittal requirements for condominium conversions. The permit process also requires the Director of Planning, or the Planning Commission on appeal, to take the proposed project's relationship to the long-term economic viability of the immediate vicinity and the City as a whole into account.

Purpose of the proposed new Chapter 20.175

The purpose of the chapter is to maintain the viability of existing industrial and commercial land for all economic components of community; to facilitate owner-occupancy of commercial and industrial buildings, while recognizing the need for the preservation of large buildings and sites for industrial users that form the basis of a healthy economy; and to create requirements for maintenance and access that will ensure the orderly use and upkeep of condominium properties.

Given the market pressure for relatively small industrial and commercial condominiums (on the order of 1,500 to 5,000 square foot unit sizes), there is a need for the City to provide direction as to the appropriate location for industrial and commercial condominiums. The City's existing land use plans and policies, including the General Plan and the employment lands conversion framework, provide that direction. That direction can be most effectively implemented through a discretionary permit, such as a Special Use Permit.

Requirement for Special Use Permit

One way to provide oversight to condominium subdivisions is to require a discretionary permit as a part of the process. Residential condominium conversions are required to go through the Conditional Use Permit process, as detailed in Chapter 20.170 of the Zoning Code. The proposed ordinance amendment would create a parallel process for commercial and industrial condominiums.

There are three major differences between the existing residential condominium process and the proposed commercial and industrial condominium process. The most basic difference is that the proposed ordinance would require a Special Use Permit (approved by the Director of Planning) for all commercial and industrial condominium projects, including new construction, while the residential condominium conversion process requires a Conditional Use Permit (approved by the Planning Commission) for the conversion of existing apartment complexes with four or more units to condominiums. A discretionary permit, like the Special Use Permit, allows decision-makers to attach appropriate conditions to mitigate potential impacts of a project. In the case of condominium projects, such conditions could ensure adequate maintenance of the common or shared areas of the project, a framework for capitalization of an owners' association for project maintenance, and long-term viability of the project.

The second major difference is that the residential condominium process has a large regulatory and procedural component, where the proposed commercial and industrial condominium process would not. The residential condominium process includes an early notification requirement for current tenants of the building; additional submittal requirements to ensure that both existing tenants and prospective owners are fully informed about both the conversion process and the condition of the building; and specific development standards that need to be met. Additionally, state law requires residential common interest subdivision to obtain Department of Real Estate approval prior to sale to insure maintenance of common area. There is no such requirement for commercial and industrial common interest subdivisions. The proposed Special Use Permit process for commercial and industrial condominiums would only include the additional requirement that the applicant provide copies of the proposed Covenants, Conditions, and Restrictions (CC&Rs) and to delineate all property that will have shared use as common easements, to ensure that the proposed condominium plan provides for adequate maintenance and access.

The third major difference is that the proposed commercial and industrial Special Use Permit process requires the Director of Planning, or Planning Commission on appeal, to make an additional finding that the proposed condominium project will not adversely impact the long-term economic viability of the immediate vicinity or the City as a whole. This additional finding provides a link to the City's adopted plans and policies regarding land use and economic development, including the General Plan and the employment lands conversion framework. The residential condominium process has no mandatory additional findings; instead the process only has findings that need to be made if the residential condominium project does not meet the required development standards of that Chapter. The fact that those findings provide relief from development standards makes them more similar to Variance findings, which provide relief from quantitative standards, than Conditional Use Permit findings that help to ensure that a project will not adversely affect the health, safety, and welfare of the immediate area and City as a whole.

PLANNING COMMISSION

November 30, 2005

SUBJECT: Amendments to Titles 19 and 20 to create a permit process for Industrial and Commercial condominium projects.

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The proposed change to Title 19 is to include language that indicates that prior to approval of any final or parcel map, the City Engineer, or City Council on appeal, must find that the proposed industrial or commercial condominium project complies with the requirements of the proposed Chapter 20.175.

PUBLIC OUTREACH

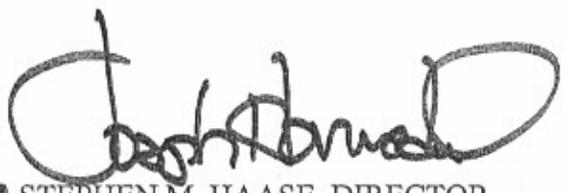
A public hearing notice for the proposed ordinance was published in the San Jose Post Record. This notice included the Planning Commission and City Council hearing dates for the proposed ordinance revision. As standard practice, staff posted the staff report and draft ordinance as well as the hearing dates on the Department's website.

COORDINATION

Preparation of the proposed ordinance and this memorandum have been coordinated with the City Attorney's Office, the Office of Economic Development, and the Redevelopment Agency. The Draft Ordinance will be sent under separate cover.

CEQA

The proposed ordinance, PP05-219, was found to be exempt from CEQA per Section 15305, minor changes to land use limitations. The proposed ordinance amendment provides additional regulation and oversight to the development process, and does not in itself create any additional environmental impacts.


STEPHEN M. HAASE, DIRECTOR
Sov Planning, Building, and Code Enforcement

**CITY OF SAN JOSÉ, CALIFORNIA
DEPARTMENT OF CITY PLANNING
STATEMENT OF EXEMPTION**

FILE NO.	PP05-219
LOCATION OF PROPERTY	Citywide
PROJECT DESCRIPTION	An ordinance of the City Of San José amending Chapter 19.16 Of Title 19 of the San Jose Municipal Code, the Subdivision Code, and adding Chapter 20.175 to Title 20 of the San Jose Municipal Code, the Zoning Code, to create a permit process for the review of commercial and industrial condominium projects.

CERTIFICATION

Under the provisions of Section 15305 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

15305. Minor Alterations in Land Use Limitations.

Class 5 consists of minor alterations in land use limitations in areas with an average slope of less than 20%, which do not result in any changes in land use or density. The proposed ordinance is a minor change to land use limitations in that it creates an additional regulatory process for industrial and commercial condominium projects, and does not in and of itself have any environmental impacts.

Stephen M. Haase, Director
Planning, Building and Code Enforcement



Deputy

Date: 11/30/05

Project Manager: John Davidson
207-09/JED/