



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** May 15, 2008

**COUNCIL DISTRICT:** City-Wide  
**SNI AREA:** All

**SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, THE ZONING CODE, TO ADD SECTION 20.30.530 TO PROVIDE A HEIGHT EXCEPTION FOR SOLAR PHOTOVOLTAIC SYSTEMS MOUNTED ON THE SURFACE OF AN ACCESSORY BUILDING, AND TO AMEND SECTIONS 20.20.100, 20.30.100, 20.30.500, 20.40.010, 20.50.010, 20.70.100, 20.100.500, 20.100.610, AND 20.100.1030, AND AMEND SECTION 13.48.510 OF CHAPTER 13.48, OF THE SAN JOSE MUNICIPAL CODE, HISTORIC PRESERVATION, ALL TO CLARIFY THAT A BUILDING PERMIT MAY BE ISSUED FOR INSTALLATION OF SOLAR PHOTOVOLTAIC SYSTEMS THAT CONFORM TO ALL OF THE DEVELOPMENT STANDARDS OF THE ZONING DISTRICT IN WHICH THEY ARE LOCATED.**

## RECOMMENDATION

The Planning Commission voted 6-0-1, Commissioner Kinman absent, to recommend that the City Council approve the staff recommendation for a proposed ordinance amending Title 20 of the San Jose Municipal Code, the Zoning Code, to add Section 20.30.530 to provide a height exception for solar photovoltaic systems mounted on the surface of an accessory building, and to amend Sections 20.20.100, 20.30.100, 20.30.500, 20.40.010, 20.50.010, 20.70.100, 20.100.500, 20.100.610, and 20.100.1030, and amend Section 13.48.510 of Chapter 13.48, of the San Jose Municipal Code, Historic Preservation, all to clarify that a building permit may be issued for installation of solar photovoltaic systems that conform to all of the development standards of the zoning district in which they are located.

## BACKGROUND

Staff gave a brief presentation regarding the proposed ordinance. Staff made a correction to the memorandum from the Director of Planning to the Planning Commission, dated May 7, 2008, to clarify that the proposed ordinance is exempt pursuant to CEQA Guidelines Section 15303(e), rather than pursuant to Section 15061(b)(3) as indicated in the prior staff report.

Commissioner Kamkar asked whether the proposed ordinance would allow flexibility for the angle of installation for a solar photovoltaic system on top of an accessory structure, so that the system could be optimized. Staff responded that the proposed ordinance would allow greater flexibility for installing solar photovoltaic systems by allowing an increase in maximum height.

Commissioner Kamkar asked whether the proposed ordinance applied only to accessory buildings and not the primary residence on a property. Staff responded that the proposed ordinance only applied to accessory buildings. Although primary residential buildings may extend up to 35 feet in height, most primary residential buildings are well below that height and have sufficient additional height allowance to install solar photovoltaic systems.

Commissioner Zito asked whether the proposed ordinance addressed secondary units. Staff responded that solar photovoltaic systems could be mounted on secondary units. Attached secondary units have the same height limitations as primary residential buildings. Detached secondary units differ from accessory buildings in that they may extend up to 18 feet in height in order to achieve compatibility with an existing primary residential building. The proposed ordinance would not change the height limit of secondary units since most detached secondary units are below the maximum allowed height and thus have sufficient additional height allowance in which to install solar photovoltaic systems.

### ANALYSIS

The memorandum from the Director of Planning to the Planning Commission, dated May 7, 2008, includes a complete analysis of the proposed ordinance.

### EVALUATION AND FOLLOW-UP

Not applicable.

### POLICY ALTERNATIVES

The memorandum from the Director of Planning to the Planning Commission, dated April 30, 2008, includes an analysis of the alternatives available to the City Council in regard to the proposed ordinance.

### PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- ✓ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

A white paper on the proposed ordinance and public hearing dates were e-mailed to a citywide e-mail list consisting of neighborhood associations and development industry representatives, and a list of solar installation companies. A notice of the public hearing and the staff report was posted in the Department's website and published in the Mercury News. Staff has been available to discuss the proposed ordinance with interested members of the community.

### COORDINATION

This project was coordinated with the City Attorney and the Department of Environmental Services.

### FISCAL/POLICY ALIGNMENT

The proposed ordinance would help implement the San Jose 2020 General Plan and its Sustainable City Major Strategy and the City Council's recently adopted San Jose's Green Vision.

### COST SUMMARY/IMPLICATIONS

Not applicable.

### BUDGET REFERENCE

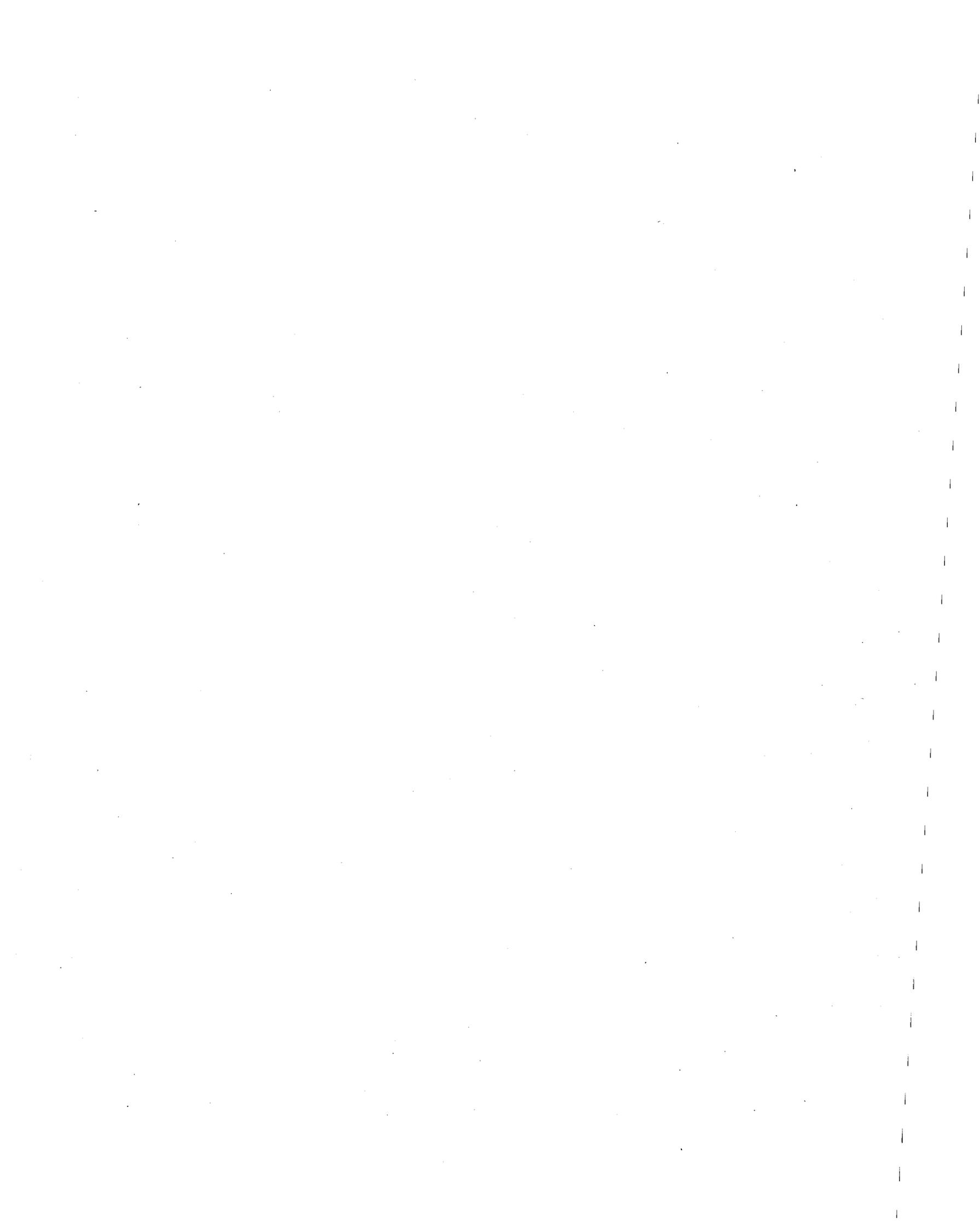
Not applicable.

### CEQA

The proposed ordinance is exempt pursuant to CEQA Guidelines Section 15303(e) of the California Public Resources Code, File No. PP08-053.

  
For JOSEPH HORWEDEL, SECRETARY  
Planning Commission

For questions please contact Sylvia Do at 408-535-7906.





# Memorandum

**TO: PLANNING COMMISSION**

**FROM: Joseph Horwedel**

**SUBJECT: SEE BELOW**

**DATE: May 7, 2008**

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**COUNCIL DISTRICT: City-Wide**  
**SNI AREA: All**

**SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE, THE ZONING CODE, TO ADD SECTION 20.30.530 TO PROVIDE A HEIGHT EXCEPTION FOR SOLAR PHOTOVOLTAIC SYSTEMS MOUNTED ON THE SURFACE OF AN ACCESSORY BUILDING, AND TO AMEND SECTIONS 20.20.100, 20.30.100, 20.30.500, 20.40.010, 20.50.010, 20.70.100, 20.100.500, 20.100.610, AND 20.100.1030, AND AMEND SECTION 13.48.510 OF CHAPTER 13.48, OF THE SAN JOSÉ MUNICIPAL CODE, HISTORIC PRESERVATION, ALL TO CLARIFY THAT A BUILDING PERMIT MAY BE ISSUED FOR INSTALLATION OF SOLAR PHOTOVOLTAIC SYSTEMS THAT CONFORM TO ALL OF THE DEVELOPMENT STANDARDS OF THE ZONING DISTRICT IN WHICH THEY ARE LOCATED.**

## **RECOMMENDATION**

It is recommended that the Planning Commission recommend that the City Council approve the proposed ordinance to amend the existing development standards for accessory buildings in residential zoning districts to allow a height exception for solar photovoltaic systems mounted on the surface of an accessory building, and to amend Title 20 and Title 13 of the San José Municipal Code to clarify that a building permit may be issued for installation of solar photovoltaic systems that conform to all the development standards of the zoning district in which they are located.

## **OUTCOME**

The proposed ordinance would facilitate mounting of solar photovoltaic systems on the roofs of accessory buildings by providing increased flexibility regarding maximum height and would bring permit requirements for photovoltaic systems into conformance with State law and current City practice by allowing their approval without a discretionary permit if they conform to the development standards of the Zoning Code.

## **BACKGROUND**

California Government Code Section 65850.5 requires local jurisdictions to administratively approve applications for installation of solar photovoltaic systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application is limited to standards and regulations necessary to ensure that the solar photovoltaic system will not have an adverse impact upon the public health and safety.

Section 20.30.500 of Title 20 of the San José Municipal Code, the Zoning Code, contains provisions for the maximum height allowed for accessory buildings in Residential Zoning Districts. Current development standards limit the height of accessory buildings to 12 feet in height for a flat-roofed building. A height exception currently incorporated into the Zoning Code allows a sloped roof on an accessory building to extend to a height of 16 feet so long as the height at the point half way up the roof slope does not exceed 12 feet. Currently, solar photovoltaic systems mounted on the surface of accessory buildings must conform to these height limitations. As result, it may not be possible to a mount a solar photovoltaic system on an existing accessory building that is already at or near the maximum height limit.

## **ANALYSIS**

### **Height Exception**

The San José 2020 General Plan incorporates the Sustainable City Major Strategy to promote the conservation and efficient use of natural resources. On October 30, 2007, the City Council adopted San José's Green Vision establishing a comprehensive 15-year strategy to address environmental problems by reducing the city's carbon footprint. Green Vision Goal #3 aims to have the city achieve 100 percent of its electrical power from clean renewable sources. The proposed height exception for solar photovoltaic systems is intended to further this goal by allowing greater flexibility for mounting solar photovoltaic systems to accessory buildings in Residential Zoning Districts while maintaining the overall intent of the requirements for residential rear yard open space.

General Plan Community Development Policy No. 11 specifies that private yards or common open space should be included in residential developments to provide for residents' open space needs. This policy is supported by a significant body of research indicating that access to open space provides a variety of health benefits, including stress reduction. In support of this policy, the development standards of the Residential Zoning Districts include setbacks that create rear yards and additional requirements that govern the use of rear yard open space. These requirements include maximum rear yard coverage criteria, building separation requirements and regulations that limit the size and height of buildings. Height regulations for accessory buildings in the rear yard differ from those applicable to other areas of a residential site. For example, the primary residential building in an R-1 District, which cannot encroach into the required rear yard setback area, may extend to a height of 30 feet (or 35 feet subject to approval of a Single-Family House Permit) while accessory buildings which can be located within the rear yard setback area are subject to much lower height limits, in part because of their location within the rear yard. These limits, together with other applicable restrictions, are intended to preserve the open space character of the rear yard. The height limits specifically ensure that building massing does not

significantly limit sunlight and air and thereby obviate the open space benefits of the required rear yard.

The proposed ordinance change would allow greater flexibility for solar photovoltaic systems in regard to height while maintaining standards that ensure the provision of rear yards with adequate open space, ventilation and sunlight. Currently, solar photovoltaic systems mounted on an accessory building must conform to a 12-foot maximum height unless they are integral to a sloped roof that conforms to the existing height requirements. This height limitation discourages the installation of new solar photovoltaic systems on existing accessory buildings. The proposed ordinance would allow a solar photovoltaic system to exceed the currently allowed height for an accessory building in one of two ways: 1) A solar photovoltaic system may occupy the same height envelope applicable to a sloped roof; and 2) A solar installation may extend two feet above the height of an existing roof, up to a maximum height of 16 feet.

The first provision would allow flexibility for the height of a solar installation on a flat roof (currently limited to 12 feet in height) or a sloped roof that is significantly under the current height requirement, by allowing the solar panels to extend to the maximum height that could be allowed for a sloped roof on that building. The second provision is intended to allow a solar installation on a roof that is already at or near the maximum height by allowing the solar installation to extend above the existing roof surface by up to two feet, subject to a maximum height of 16 feet. These exceptions ensure that solar photovoltaic systems mounted on accessory buildings do not deviate significantly from the basic massing parameters applicable to these buildings, while providing enough flexibility to ensure that the design of an existing accessory building does not preclude a solar installation.

Attachment A provides examples of solar photovoltaic systems mounted on accessory buildings that would conform to the proposed requirements. Attachment B includes an example of a solar installation that does not conform to the proposed height exception in that the solar panels extend above 16 feet and exceed 12 feet in height halfway up the slope. If additional height is needed for a solar installation like this one, it is also possible under current Zoning Code provisions to locate such a facility on the primary residential building on the site, where much greater height is allowed.

### **Elimination of Discretionary Permit Requirements**

Title 20 currently allows solar photovoltaic systems by right in all zoning districts with a Permit Adjustment. Chapter 13.48 of the Municipal Code specifies that minor modifications performed on a city landmark or in a city landmark district, including the installation of solar photovoltaic systems, requires a Historic Preservation Permit Adjustment. The proposed ordinance would clarify in Titles 20 and 13 that installation of solar photovoltaic systems does not require a discretionary permit and those facilities can be authorized with a building permit if the facility conforms to the development standards of the Zoning Code. This revision would bring Municipal Code requirements for the permitting of solar photovoltaic systems into conformance with State law and make them consistent with the City's current approval process for these facilities.

## Conclusion

Based on the above analysis, staff concludes that the proposed ordinance will further the City's Green Vision goals by facilitating the installation of solar photovoltaic equipment while maintaining the open space character of residential rear yards by appropriately limiting the height of accessory buildings allowed in these areas.

## POLICY ALTERNATIVES

The policy alternatives available to the Planning Commission in regard to the regulation of solar photovoltaic systems are as follows:

**Alternative #1:** Approve an ordinance providing a height exception for solar photovoltaic systems mounted on the surface of accessory buildings that allows a greater or lesser height than that included in the proposed ordinance.

**Pros:** A greater height allowance would provide greater opportunity for installation of solar photovoltaic systems on accessory buildings. A lesser height allowance would provide slightly greater access to sunlight and air in open space areas by more strictly limiting the height and bulk of buildings that can be placed in the rear yard of a residential property.

**Cons:** A greater height allowance would provide less protection of rear yard open space by allowing taller buildings that would decrease access to sunlight and air in these open space areas. A lesser height allowance would provide lesser opportunity for installation of solar photovoltaic systems on accessory buildings.

**Reason for not recommending:** The proposed ordinance strikes an effective balance between the City's goals of encouraging installation of solar photovoltaic systems and providing appropriate open space with adequate sunlight and air for the health and recreation of San José residents.

**Alternative #2:** Retain the current Title 20 and Title 13 permit requirements for solar photovoltaic systems.

**Pros:** None.

**Cons:** Retention of the current Title 20 and Title 13 permit requirements for solar photovoltaic systems would mean that the Municipal Code would continue to be inconsistent with State requirements for the review and approval of solar photovoltaic systems.

**Reason for not recommending:** The current requirements do not conform to State law, and retention of these requirements would be confusing to applicants in that they do not reflect current City practice.

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**PUBLIC OUTREACH**

Staff has done outreach by e-mailing a white paper on the proposed ordinance and the public hearing notice to a citywide e-mail list consisting of neighborhood associations and development industry representatives. The white paper and public hearing notice was also e-mailed to local solar installation companies. The proposed ordinance and staff report has been posted on the Department's website and the public hearing notice, which included the Planning Commission and City Council hearing dates, has been published in the Mercury News and posted on the Department's website.

**COORDINATION**

This project was coordinated with the City Attorney and the Department of Environmental Services.

**CEQA**

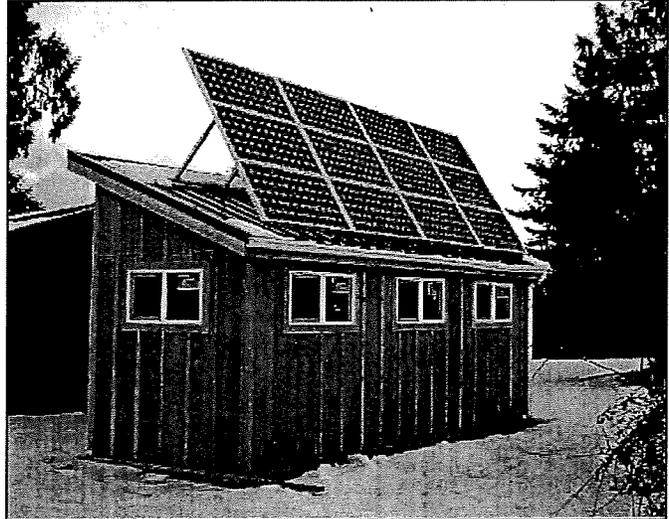
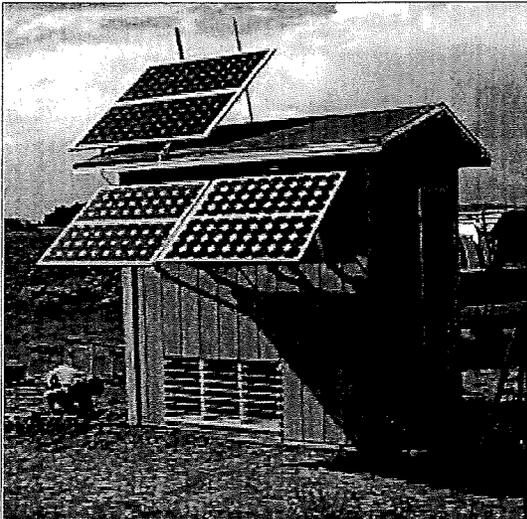
The proposed ordinance is exempt pursuant to CEQA Guidelines Section 15061(b)(3), which states that if it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, then the activity is not subject to CEQA (File No. PP08-053).

  
For JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions please contact Sylvia Do at 408-535-7800.

Attachments

Attachment A



Solar photovoltaic systems mounted on accessory buildings that conform to the proposed height exceptions.

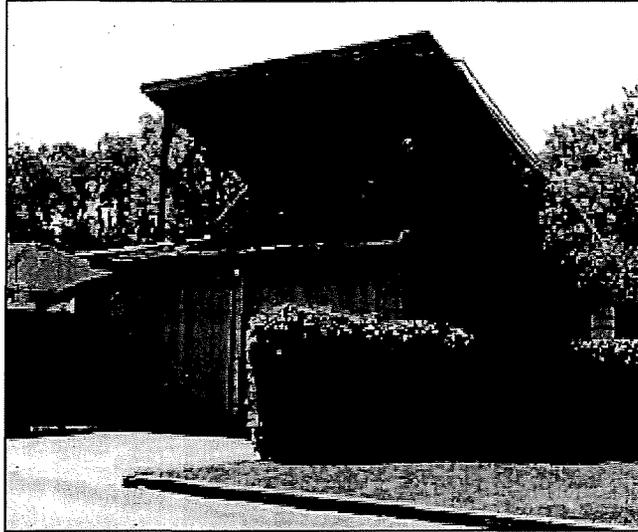
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**Attachment B**



Solar photovoltaic system mounted on an accessory building that extends above 16 feet and does not conform to proposed height exceptions.

