



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: November 21, 2008

COUNCIL DISTRICT: City-Wide
SNI AREA: N/A

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, THE ZONING CODE, TO STREAMLINE REQUIREMENTS FOR SPECIFIC INDUSTRIAL USES AND TO MAKE OTHER CLARIFYING CHANGES.

RECOMMENDATION

The Planning Commission voted 6-0-0 to recommend that the City Council approve the staff recommendation for a proposed ordinance amending Title 20 of the San Jose Municipal Code to:

- Establish the CIC Combined Industrial/Commercial Zoning District;
- Change the "CM" denotation to "C^{GP}" and redefine this designation to include properties designated Mixed Industrial Overlay and Combined Industrial/Commercial by the General Plan;
- Allow laboratory, medium manufacturing and assembly, and warehouse uses as a permitted use in the IP Industrial Park Zoning District;
- Add research and development office, mortuary without funeral services, and warehouse retail as enumerated uses;
- Allow crematory uses with a Conditional Use Permit in LI Light Industrial Zoning Districts;
- Eliminate day care center as a Conditional Use in the HI Heavy Industrial Zoning District with a Mixed Industrial Overlay;
- Allow above-ground storage tanks 2,000 gallons or less with a Permit Adjustment; and
- Make other related clarifying changes and amendments to commercial uses and regulations.

BACKGROUND

Public Hearing of November 5, 2008

On November 5, 2008, the Planning Commission opened the public hearing for this item, and staff gave a brief presentation regarding the proposed ordinance, calling the Commission's attention to public comments received regarding the proposed ordinance from the Sobrato Organization and Glenn Bothwell (see attached).

Glenn Bothwell, an industrial property owner, expressed concern regarding the proposed mortuary provision. Mr. Bothwell requested that mortuaries in the HI Heavy Industrial and LI Light Industrial Zoning Districts be allowed to provide funeral services, indicating that the full mortuary use is compatible with industrial uses.

Commissioner Zito asked why mortuaries with funeral services are not proposed in the LI Light Industrial Zoning District or HI Heavy Industrial Zoning Districts. Staff explained that the uses permitted in the LI and HI Districts are exclusively industrial and that preparation of human remains for burial is similar to other industrial activities allowed in the LI and HI Zoning Districts in that it involves the use of hazardous chemicals and does not include assembly of people. On the other hand, mortuaries with funeral services involve assembly uses that are more appropriate in the Commercial Zoning Districts.

Commissioner Kamkar asked why public assembly uses are not appropriate in the LI and HI Districts. Staff explained that funeral service activities include public assemblies, viewings, and religious ceremonies that would bring sensitive receptors into the industrial areas thereby inhibiting the operation of industrial businesses in areas specifically targeted for these uses, contrary to the City's economic development goals for industrial development.

Commissioner Kamkar asked whether a mortuary with funeral services is appropriate on Mr. Bothwell's property, particularly since it is located near Oak Hill Cemetery. Staff indicated that it is important to continue to protect LI and HI Districts throughout the city for exclusive industrial uses. Staff pointed out that there are ample locations in Commercial Zoning Districts throughout the city where mortuaries which funeral services are permitted.

Commissioner Jensen requested that the ordinance be continued for two weeks to allow the Commission the opportunity to review a copy of the proposed ordinance with the recommended changes highlighted through "track changes". The Planning Commission voted 4-0-2 to continue the ordinance amendment and requested that the item be placed on the consent calendar for the November 19, 2008 meeting.

Public Hearing Continued on November 19, 2008

At the Planning Commission meeting of November 19, 2008, Laurel Prevetti, Asst. Director of Planning, Building and Code Enforcement, requested that the item be removed from the consent calendar to allow staff to provide clarification regarding crematory uses. Staff made a brief staff report, calling the Commission's attention to additional correspondence received from Mission West Properties subsequent to the November 5, 2008 Planning Commission meeting and to staff's response which was transmitted to the Planning Commission in a supplemental memorandum from the Director of Planning, dated November 14, 2008 (see attached). In response to a question by Ms. Prevetti, staff indicated that staff would consider a minimum 500 to 1,000 foot separation between a proposed crematory use and any existing residences or schools through the Conditional Use Permit process.

ANALYSIS

The memorandum from the Director of Planning to the Planning Commission, dated October 29, 2008 (attached), and a supplemental memorandum from the Director of Planning to the Planning Commission, dated November 14, 2008 (attached), includes a complete analysis of the proposed ordinance.

EVALUATION AND FOLLOW-UP

Staff will continue to review requirements of the Zoning Ordinance for industrial development to determine if additional modifications are needed to further the City's land use and economic development goals.

POLICY ALTERNATIVES

The memorandum from the Director of Planning to the Planning Commission, dated October 29, 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.

Staff has followed the City's Public Outreach Policy in regard to this proposal. 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. The white paper, Negative Declaration, notice of the public hearing and staff report were posted on the Department's website. A notice of the Negative Declaration and the public hearing notice were published in the Mercury News. Staff has been available to discuss the proposed ordinance with interested members of the community. Comments on the proposed ordinance submitted by the Sobrato Organization and Glenn Bothwell are addressed in the attached memorandum to the Planning Commission, dated October 29, 2008. A comment on the proposed ordinance submitted by Mission West Properties is addressed in the attached supplemental memorandum to the Planning Commission, dated November 14, 2008.

COORDINATION

The proposed ordinance was coordinated with the San Jose Redevelopment Agency, the Office of Economic Development, and the City Attorney.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan policy that promotes economic development through a streamlined development review process.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

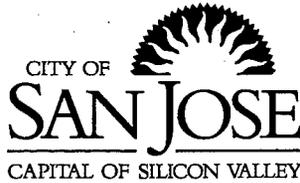
Draft Mitigated Negative Declaration, File No. PP08-124

For Andrew Crabtree
JOSEPH HORWEDEL, SECRETARY
Planning Commission

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

Attachments

- Memorandum to the Planning Commission, dated October 29, 2008
- Supplemental Memorandum to the Planning Commission, dated November 14, 2008



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: November 14, 2008

COUNCIL DISTRICT: City-wide
SNI AREA: All

SUPPLEMENTAL MEMO

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, THE ZONING CODE, TO STREAMLINE REQUIREMENTS FOR SPECIFIC INDUSTRIAL USES AND TO MAKE OTHER CLARIFYING CHANGES.

BACKGROUND

This ordinance was originally scheduled to be considered by the Planning Commission on November 5, 2008, but was continued to November 19, 2008 to allow the Commission additional time to review the draft ordinance. Subsequent to the November 5 meeting, staff received an electronic communication regarding the proposed ordinance from Myron Crawford, representing Mission West Properties (see attached). Mr. Crawford's email poses questions regarding the permit requirements for above-ground storage tanks and recommends that the ordinance allow storage tanks with a holding capacity of 10,000 to 12,000 gallons with a Permit Adjustment. Mr. Crawford also provided information regarding the City of Santa Clara's requirements for chemical storage tanks (see attached memorandum from Martin Von Raesfeld). Following is a brief response to Mr. Crawford's questions and comments.

ANALYSIS

The proposed ordinance increases the maximum size of an above-ground storage tank that can be approved with a Permit Adjustment from 1,000 gallons to 2,000 gallons. The proposed size limit would apply to each individual tank; the Director would continue to exercise discretion regarding the number of tanks approved through an individual permit. A Permit Adjustment is a minor "over-the-counter" permit that does not require a public hearing. Currently, tanks over 1,000 gallons require a Site Development Permit, which includes a more extensive review process and a public hearing.

Staff's recommendation to streamline the process for tanks of 2,000 gallons or less is based on considerable experience in processing Site Development Permits for above-ground storage tanks. The primary focus of Planning's review of such permits is to ensure that a tank is appropriately located so that it does not interfere with parking or circulation and that it includes adequate visual screening. The Fire Department deals with the safe storage of hazardous chemicals through a separate Hazardous Materials Permit process. For tanks that include the storage of hazardous chemicals, staff coordinates closely with the Fire Department to ensure that the tank is designed and located in a manner that conforms to all applicable requirements for the storage of hazardous materials.

A 2,000 gallon tank (approximately 6 by 15 feet) can be readily accommodated on most industrial sites and is relatively easy to screen from view. The Site Development Permit process for tanks of this size generally results in very little public comment and involves significant time and cost for little or no added value. On the other hand, a 12,000 gallon tank (typically 10 by 35 feet) is more difficult to screen from view and results in a level of change to a site that staff believes warrants a more extensive permit process. Staff will continue to monitor this process for potential future streamlining, but at this time staff believes that the recommended 2,000 gallon maximum size for a Permit Adjustment provides the optimal level of review for above-ground storage tanks.

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council approve the proposed ordinance, as proposed by staff.

for Andrew Crabtree
JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

Attachments

PLANNING COMMISSION
Industrial Ordinance Amendment
November 14, 2008
Page 3

From: Myron Crawford [mailto:Mcrawford@MISSIONWEST.com]
Sent: Monday, November 10, 2008 10:48 PM
To: Hamilton, Carol
Subject: Special Use Permits - Zoning changes - Nitrogen Storage Tanks

Carol,

I see that you have increased the tank gallons that will be permitted. I assume that the 2000 gallon limit means if you had one chemical tank of 2000 gallons or two chemical tanks of 1000 gallon each that is allowed but if you have a 1000 gallon tank and a 2000 gallon tank you would have to process a special use permit is that correct.

We think these quantities are significantly less than what other industrial cities allow namely the City of Santa Clara. We encourage you to increase the quantities significantly. You still have to go to the fire department for permits so it is not like you are losing control of the process.

Additionally many industrial users require liquid nitrogen in their process and usually prefer 10,000 to 12,000 gallon tanks. Since nitrogen is inert and is a well understood commodity, what are the chances of getting nitrogen storage tanks with 12,000 gallon capacity included as a permitted use with a plan permit adjustment. Again the fire department will still have to permit the storage so you get all of the safety issues considered and controlled.

Please advise

Thank you

INTEROFFICE MEMORANDUM
CITY OF SANTA CLARA

DATE: October 5, 2006

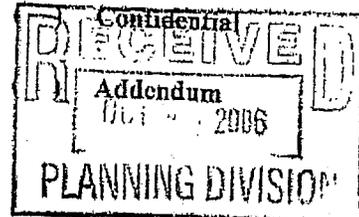
(X) Info Only

TO: Kevin Riley, Director of Planning and Inspection

() Please Reply

FROM: Fire Marshal

SUBJECT: Use Permits for Outside Storage of Liquefied Petroleum Gas (LPG), Compressed Flammable, Cryogenic Hydrogen and Oxygen and Above Ground Storage of Flammable and Combustible Liquids

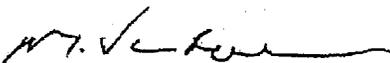


In an effort to improve coordination between the Fire Department and the Planning, the following guidelines are recommended in order to better understand when Use permits will be required for the listed materials in industrial zones.

Require Use Permits For Installation of:

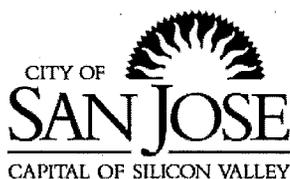
1. Liquefied petroleum gas (LPG) more than 2,000 water gallons.
2. Compressed flammable gas in excess of 5,000 cubic feet.
3. Cryogenic hydrogen in excess of 10,000 gallons.
4. Cryogenic oxygen over 10,000 gallons.
5. Flammable liquids stored in above-ground storage tanks over 6,000 gallons individual capacity or 24,000 gallons aggregate capacity.
6. Combustible liquids stored in above-ground storage tanks over 12,000 gallons individual capacity or 48,000 gallons aggregate capacity.

It is the intent of these guidelines to afford neighboring property owners the right to a public hearing to assure them that installations exceeding these guidelines will be installed in accordance with all applicable local, state and federal regulations.


Martin Von Raesfeld
Fire Marshal

MVR:jf

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Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: October 29, 2008

COUNCIL DISTRICT: Citywide
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 STREAMLINE REQUIREMENTS FOR SPECIFIC INDUSTRIAL USES AND TO MAKE OTHER CLARIFYING CHANGES.

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council approve the proposed ordinance to:

- Establish the CIC Combined Industrial/Commercial Zoning District;
- Change the "CM" denotation to "C^{GP}" and redefine this designation to include properties designated Mixed Industrial Overlay and Combined Industrial/Commercial by the General Plan;
- Allow laboratory, medium manufacturing and assembly, and warehouse uses as a permitted use in the IP Industrial Park Zoning District;
- Add research and development office, mortuary without funeral services, and warehouse retail as enumerated uses;
- Allow crematory uses with a Conditional Use Permit in LI Light Industrial Zoning Districts;
- Eliminate day care center as a Conditional Use in the HI Heavy Industrial Zoning District with a Mixed Industrial Overlay;
- Allow above-ground storage tanks 2,000 gallons or less with a Permit Adjustment; and
- Make other related clarifying changes and amendments to commercial uses and regulations.

OUTCOME

Approval of the proposed ordinance would facilitate industrial development and decrease the time and cost associated with the implementation of certain industrial uses while retaining safeguards necessary to achieve the City's land use goals.

BACKGROUND

The General Plan specifies that the City should actively promote economic development through a simplified development review process. Consistent with this direction, staff has reviewed the Zoning Ordinance to identify outdated measures and to determine where process and other requirements can be streamlined without diminishing the City's ability to achieve its land use goals.

On June 3, 2008, the City Council approved phase one of a two-phased series of streamlining ordinances. The second phase consists of three separate ordinance amendments focused on the Downtown, Commercial, and Industrial Zoning Districts. On October 8, 2008, the Planning Commission considered the downtown streamlining ordinance and recommended that the City Council approve the ordinance. The City Council is scheduled to consider the downtown ordinance on November 18, 2008. The proposed commercial streamlining ordinance was considered by the Planning Commission on October 22, 2008 and is scheduled to be considered by the City Council on November 18, 2008.

The industrial streamlining ordinance is the subject of this memorandum, proposing a number of changes to the Zoning Ordinance as summarized in Table 1.

Table 1. Proposed Changes

| Industrial Streamlining | | |
|--|--|--|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| CIC Combined Industrial/Commercial Zoning District | <ul style="list-style-type: none"> ▪ Not an enumerated zoning district. | <ul style="list-style-type: none"> ▪ Create a CIC Combined Industrial/Commercial Zoning District with use regulations that align with the General Plan text description of Combined Industrial/Commercial and establish the CIC district as a conforming district with the Combined Industrial/Commercial General Plan designation. ▪ Establish use regulations that include a compatible mixture of commercial, office, and industrial uses of the CG Commercial General, IP Industrial Park, and LI Light Industrial Districts. ▪ Establish development regulations similar to that of the IP Industrial Park District. |

PLANNING COMMISSION

October 29, 2008

Subject: Industrial Streamlining Ordinance, Phase II

Page 3

| Industrial Streamlining (continued) | | |
|--|---|--|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| "CM" permit requirement | <ul style="list-style-type: none"> CM denotes uses allowed with a Conditional Use Permit on properties with <u>Mixed Industrial Overlay</u>, as designated by the General Plan. | <ul style="list-style-type: none"> Change from "CM" to "C^{GP}." C^{GP} denotes uses allowed with a Conditional Use Permit on properties designated <u>Mixed Industrial Overlay or Combined Industrial/Commercial</u>, as designated by the General Plan. |
| Laboratory, medium manufacturing and assembly, and warehouse | <ul style="list-style-type: none"> Allowed with a Special Use Permit in IP Industrial Park District. | <ul style="list-style-type: none"> Allow as a permitted use in IP Industrial Park District. |
| Offices, research and development | <ul style="list-style-type: none"> Not an enumerated use. | <ul style="list-style-type: none"> Enumerate as a permitted use in the CIC Combined Industrial/Commercial and IP Industrial Park Districts. Parking: 1 space per 300 square feet (s.f.) |
| Warehouse retail | <ul style="list-style-type: none"> Not an enumerated use. | <ul style="list-style-type: none"> Enumerate and allow with a Conditional Use Permit in IP Industrial Park, LI Light Industrial, and HI Heavy Industrial Districts, subject to specific requirements: <ul style="list-style-type: none"> Minimum 10,000 s.f. of floor area, with minimum 90% floor area devoted to retail display of large items (e.g., furniture, appliances and machinery). Parking: Minimum 1 space per 2,000 s.f. of floor area, plus 1 per company vehicle; Maximum 1 space per 250 sf. |
| Mortuary without funeral services | <ul style="list-style-type: none"> Not an enumerated use in Industrial Districts. | <ul style="list-style-type: none"> Enumerate as a permitted use in LI Light Industrial and HI Heavy Industrial Districts. |
| Crematory | <ul style="list-style-type: none"> Allowed with a Conditional Use Permit in LI Light Industrial District with <u>Mixed Industrial Overlay</u>, as designated by the General Plan, and in HI Heavy Industrial District. | <ul style="list-style-type: none"> Allow with a Conditional Use Permit in LI Light Industrial District and in the HI Heavy Industrial District. |

| Industrial Streamlining (continued) | | |
|--|--|---|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| Day care center | <ul style="list-style-type: none"> ▪ Allowed with a Conditional Use Permit in IP Industrial Park, LI Light Industrial and HI Heavy Industrial Districts with Mixed Industrial Overlay, as designated by the General Plan. | <ul style="list-style-type: none"> ▪ Eliminate day care center as a Conditional Use in the HI Heavy Industrial District with the Mixed Industrial Overlay. |
| Above-ground storage tanks | <ul style="list-style-type: none"> ▪ Allowed with a Site Development Permit. | <ul style="list-style-type: none"> ▪ Allow storage tanks 2,000 gallons or less with a Permit Adjustment. |

ANALYSIS

CIC Combined Industrial/Commercial Zoning District

Chapter 20.50 of Title 20 establishes the land use and development regulations for the three existing Industrial Zoning Districts – IP Industrial Park, LI Light Industrial, and HI Heavy Industrial. These zoning districts correspond with the Industrial Park, Light Industrial and Heavy Industrial General Plan designations and focus almost entirely on industrial uses in conformance with the City’s economic development and land use goals for these industrial areas. There is currently no zoning district that corresponds with the Combined Industrial/Commercial General Plan designation. Development under this designation is implemented through one of the existing Commercial or Industrial Zoning Districts. Where a mix of commercial and industrial development is desired, a Planned Development Zoning is generally necessary.

The proposed establishment of a new CIC Combined Industrial/Commercial Zoning District consistent with the Combined Industrial/Commercial (CIC) General Plan land use designation will allow either commercial or industrial developments or a compatible mixture, thereby eliminating the need for Planned Development Zonings. The proposed ordinance does not apply the new CIC District to specific parcels of land; rezoning of land to the CIC Zoning District will require a separate action by the City Council as property owners choose to apply for such a zoning change. Section 20.120.110 of Title 20 is proposed to be revised to identify the CIC Combined Industrial/Commercial District as a conforming district with the Combined Industrial/Commercial General Plan designation. This means that rezoning of land to CIC Combined Industrial/Commercial would not require review by the Planning Commission if the property has a General Plan designation of Combined Industrial/Commercial, but would be considered directly by the City Council. It will still be possible to rezone land with a General Plan designation of Combined Industrial/Commercial to the IP Industrial Park or CG Commercial General Zoning Districts, but these actions would not be conforming zonings and would continue to require the standard process, including a recommendation by the Planning Commission and final action by the City Council.

PLANNING COMMISSION

October 29, 2008

Subject: Industrial Streamlining Ordinance, Phase II

Page 5

Table 20-110 of the attached draft ordinance provides the specific uses proposed for the new district; they consist of a combination of the uses of the IP Industrial Park and CG Commercial General Districts with the addition of a limited number of uses of the LI Light Industrial District. In addition to certain industrial and commercial uses, the list of uses permitted by right (without a use permit) includes homeless shelters. This provision is proposed as a first step in complying with California Senate Bill 2 (Cedillo), which requires that cities and counties in California zone land to allow a homeless shelter by right. The actual application of the proposed CIC District to a specific property and implementation of a homeless shelter would remain subject to initiation by a property owner. The City has a "housing first policy" that seeks to provide permanent housing rather than temporary shelters, which guides the City's investments in the provision of housing for very low income residents. In practical terms, the City may not receive applications for the proposed CIC Zoning District to facilitate new homeless shelters; however, the proposed zoning seeks to fulfill the requirements of State law by providing a zoning district that allows homeless shelters without a use permit. New construction of buildings or other improvements for a homeless shelter would continue to be subject to site and design review through the Site Development Permit process.

The development standards proposed for the CIC District are similar to that of the IP Industrial Park District with some exceptions. The proposed minimum parcel size is 6,000 square feet instead of 10,000, to accommodate the smaller parcels currently designated Combined Industrial/Commercial by the General Plan. Setbacks are proposed to be similar to that of other Industrial Zoning Districts with the exception of rear and side setbacks for passenger vehicle parking, which are reduced to reflect a commercial development pattern.

The proposed ordinance also establishes a minimum 4,000 square-foot commercial or industrial condominium size for non-residential condominium subdivisions. This minimum applies only to condominium ownership spaces; the size of individual tenant spaces within an ownership space is not limited by this provision. The intent of the minimum condominium size is to preserve flexibility over time for interior partitions to be moved, allowing business spaces to be increased or decreased in size as the market demands. For commercial development with small tenant spaces, it allows for a broader management and leasing strategy that can benefit individual businesses and increase the likelihood of strong commercial development. The proposed new CIC Combined Industrial/Commercial Zoning District implements the Combined Industrial/Commercial General Plan designation, provides opportunity for a mix of commercial and industrial uses without the need for a Planned Development Zoning, and provides a streamlined conforming zoning process for properties with the Combined Industrial/Commercial General Plan designation.

"C^{GP}" Conditional Use Permit Requirement

Section 20.50.100 of Title 20 lists permitted and conditional uses in Industrial Zoning Districts. Currently, "CM" denotes uses allowed with a Conditional Use Permit (CUP) in Industrial Zoning Districts with a Mixed Industrial Overlay as designated by the General Plan. The Mixed Industrial Overlay is applied to industrial areas that already include a mix of industrial and non-industrial uses, where additional non-industrial uses may be appropriate. The Zoning Ordinance uses the CM designation to identify uses that are allowed with a CUP in the Industrial Districts only on properties designated with the Mixed Industrial General Plan Overlay. These uses include but are not limited to large format retail, banks, indoor recreation, and religious assembly. Currently, the "CM" notation does not apply to properties designated CIC, even though this designation also provides for a fairly broad range of compatible industrial and commercial uses.

This ordinance amendment proposes to apply the CM notation not only to properties designed Mixed Industrial Overlay (MIO) by the General Plan, but also to those designated Combined Industrial/Commercial (CIC). Industrial areas designated with the Combined Industrial/Commercial General Plan land use designation are intended for commercial, office, or industrial development or a compatible mixture of these uses. The proposed ordinance amendment recognizes the common mixed-use character of the CIC and MIO land use designations by combining them in the CM notation. Under the proposed ordinance, a large format commercial establishment would be allowed with a CUP in the IP Industrial Park Zoning District if the property were designated either Mixed Industrial Overlay or Combined Industrial Commercial. The proposed ordinance also changes the "CM" notation, which currently references the Mixed Industrial Overlay, to the "C^{GP}" notation to reflect its proposed broader reference to two General Plan designations, Mixed Industrial Overlay and Combined Industrial/Commercial.

Laboratory, Medium Manufacturing and Assembly, and Warehouse

Section 20.500.100 of Title 20 provides regulations for uses in the Industrial Zoning Districts. Currently, laboratory, medium manufacturing and warehouse/distribution are permitted in the LI Light Industrial and HI Heavy Industrial Districts, whereas the same uses require a Special Use Permit (SUP) in the IP Industrial Park District. A number of Special Use Permits have been filed over the past several years to allow these uses in existing buildings in the IP District. In processing these permits, staff has observed that these uses have not raised significant issues of concern to staff or the community and that the SUP process has added time and cost for the City's industrial customers without measurable benefit.

This ordinance amendment is intended to streamline the process by allowing laboratories, medium manufacturing and warehouse/distribution as permitted uses in the IP Industrial Park Zoning District. This change will mean that such uses may locate in an existing building within the IP Industrial Park District with no discretionary permits. New building construction or site improvements would continue to require a Site Development Permit, providing appropriate design review to ensure that building and site design is consistent with the character of the Industrial Park Zoning District and that new loading facilities are appropriately located and screened. No change is proposed regarding outdoor uses; such uses will continue to be prohibited in the IP Industrial Park District. The proposed change will facilitate the implementation of new industrial businesses and the expansion of existing uses in the IP District without compromising the City's land use objectives.

Research and Development Office

Section 20.50.100 of Title 20 establishes a list of permitted and conditional uses in Industrial Zoning Districts. Currently, research and development and office uses are permitted by right in the IP Industrial Park District. Section 20.90.60 of Title 20 establishes off-street parking requirements for these uses, specifying one parking space per 350 net square feet of floor area for research and development, and one space per 250 net square feet of floor area for office.

Research and development office consists of research and development that is conducted in an office setting with computers and other typical office equipment. The proposed ordinance enumerates research and development office (R&D Office) as a separate permitted use and establishes a parking requirement for this use. The proposed requirement of one space per 300 square feet of net floor area corresponds to the trip generation rates currently used by the Public Works Department. As

indicated in Table 2, the trip generation rate for research and development office is higher than traditional research and development (which typically includes laboratories and/or manufacturing), but lower than office (which typically includes a greater number of customer trips). The proposed parking requirement splits the difference between the research and development and commercial office parking ratios, consistent with the anticipated trip generation for these uses.

Table 2. Trip Generation and Parking

| Use | Trips / 1000 s.f. | Parking Requirement |
|-------------------|-------------------|-------------------------------------|
| R&D | 8 | 1 space per 350 net s.f. |
| Office R&D | 11.1 | 1 space per 300 net s.f. (proposed) |
| Commercial Office | 20 | 1 space per 250 net s.f. |

Warehouse Retail

Section 20.50.100 of Title 20 lists regulations for uses in the Industrial Zoning Districts. Currently, warehouse uses are permitted in the LI Light Industrial and HI Heavy Industrial Zoning Districts. Retail uses are currently limited in Industrial Zoning Districts to seasonal sales, large format commercial establishments (allowed with a CUP in the Mixed Industrial Overlay), and commercial support uses, subject to certain restrictions. Although warehouse retail uses are currently not permitted in any Industrial Zoning District, businesses that sell large items such as furniture and appliances exist in Industrial Zoning Districts throughout San Jose. Such uses are currently occupying industrial buildings that might otherwise be vacant.

The proposed ordinance would provide an opportunity for existing and new warehouse retail businesses to be approved through a Conditional Use Permit, if the use conforms to the following parameters:

1. The use occupies a minimum floor area of 10,000 square feet, with a minimum 90 percent of floor area devoted to the retail display of large items (e.g., furniture, appliances, and machinery).
2. Parking is provided at a minimum of one space per 2,000 square feet and a maximum of one parking space per 250 net square feet of floor area.
3. The Planning Commission, or City Council on Appeal, finds that the proposed warehouse retail use is compatible with the industrial character of the surrounding neighborhood and will not constrain the use of adjacent properties for industrial purposes or constrain future use of the site for industrial purposes.

The intent of this provision is to allow the retail sale of large items in existing industrial buildings designed for warehouse uses based on the rationale that the size of the items for sale and the scale of the facilities are consistent with the industrial character of the area and with the industrial buildings they occupy. The minimum parking requirement reflects the warehouse nature of the proposed retail operation; the maximum parking requirement is intended to prevent the addition of parking beyond what would be appropriate for future industrial use of the building. The proposed warehouse retail in Industrial Zoning Districts would facilitate the utilization of vacant industrial warehouses until such time as market demand spurs their reversion to industrial use. The CUP requirement would allow for discretionary review and public input regarding specific proposals for such warehouse

retail uses to ensure that they are not overly concentrated in one area and do not eliminate viable industrial businesses.

Day Care Centers

Sections 20.30.100, 20.40.100, 20.50.100, and 20.70.100 of Title 20 list regulations for day care centers in Residential, Commercial, Industrial, and Downtown Zoning Districts. Day care center is defined as a facility that provides non-medical care to children or adults in need of personal services, supervision, or assistance on less than a 24-hour basis. Currently, day care centers are allowed by right in Downtown Zoning Districts; are allowed upon issuance of a Conditional Use Permit (CUP) in Residential and Commercial Zoning Districts; and are allowed upon issuance of a CUP in Industrial Zoning Districts on properties with the Mixed Industrial Overlay General Plan designation. Day care centers are not permitted in the Industrial Zoning Districts except in areas designated by the General Plan with the Mixed Industrial Overlay.

Industrial uses allowed in the HI Heavy Industrial District may include hazardous waste facilities and significant on-site hazardous chemical storage of special concern for "sensitive receptors" including the child and elderly populations which day care centers serve. The HI District also accommodates heavy manufacturing, vehicle dismantling, truck repair and other uses that generate noise and raise other "nuisance" concerns that could be problematic for a nearby day care center. As result, the presence of a day care center in the HI District has the potential to constrain the operation of existing heavy industrial businesses and discourage new heavy industrial uses from locating nearby. In order to protect heavy industrial areas from these constraints, staff is proposing to eliminate day care center as a Conditional Use in the HI Heavy Industrial District with the Mixed Industrial Overlay, so that day care uses can no longer locate anywhere in the HI District.

Under the proposed ordinance, day care centers would continue to be allowed broadly within a variety of Zoning Districts. Social service agencies, such as those providing personal services or vocational training to developmentally disabled adults, would continue to be allowed upon issuance of a Conditional Use Permit in the HI Heavy Industrial Zoning District. The proposed elimination of day care center as an allowed use in the HI District removes the potential for land use incompatibility that is a concern for both child care centers and proximate industrial businesses, while continuing to maintain appropriate opportunity for the implementation of day care facilities elsewhere in San Jose.

Mortuary Services

Section 20.40.100 of Title 20, which provides regulations for uses in the Commercial Zoning Districts, specifies that mortuary with funeral services is permitted in all of the Commercial Districts. Section 20.50.100, which provides regulations for uses in Industrial Zoning Districts, indicates that mortuary is not a permitted use in the Industrial Zoning Districts.

This use was recently brought to staff's attention by a Code Enforcement case involving a mortuary operating in the LI Light Industrial Zoning District, contrary to the use regulations of the LI District. In discussing the use with the business owner, staff determined that the storage and preparation of human remains for burial involved embalming, the storage of chemicals and other activities that are industrial in character and suitable in an industrial area. On the other hand, staff determined that funeral services (viewings, wakes, and other funeral-related ceremonies) which were occurring to a limited degree at the site, were not appropriate as industrial uses. Mortuaries with funeral services

constitute an assembly use that can attract significant numbers of people, including sensitive receptors, raising serious concerns regarding land use compatibility and parking and other impacts on the industrial businesses in the surrounding area.

Based on this analysis, staff proposes to enumerate a new use, mortuary without funeral services, and to allow it as a permitted use in the LI Light Industrial and HI Heavy Industrial Zoning Districts. Staff is proposing no change regarding mortuary with funeral services, which would continue to be allowed in the Commercial Zoning Districts. This solution would allow mortuary uses that are industrial in character to be implemented in the LI and HI Districts, but ensure that the funeral assembly uses associated with a full-service mortuary continue to be allowed only in the Commercial Districts.

Cremation

Currently, crematories are allowed in the Heavy Industrial Zoning District with a Conditional Use Permit (CUP) and in the LI Light Industrial Zoning District with a CUP only if the property is designated with the Mixed Industrial General Plan Overlay. This ordinance proposes to treat LI and HI Districts the same by allowing a crematory upon issuance of a CUP in both Districts regardless of whether there is a Mixed Industrial Overlay. This change reflects the fact that a crematory is an industrial use that is more appropriate in a purely industrial setting than in an area of mixed commercial and industrial development.

Miniwarehouse/Ministorage

Section 20.50.100 lists miniwarehouse/ministorage as a permitted use in the LI Light Industrial and HI Heavy Industrial Zoning Districts. Currently, miniwarehouse/ministorage is defined as a warehouse divided into individual spaces offered to the general public for use as storage. Miniwarehouse facilities generally include a living unit for an on-site resident manager; the existing parking requirement acknowledges this component by requiring one parking space per resident manager. Staff is proposing to revise the definition of miniwarehouse/ministorage to clarify that the use may include incidental resident caretaker units to facilitate on-site management and security.

Above-ground Storage Tanks

A Permit Adjustment is an "over-the-counter" administrative permit that allows minor changes to a site or building. Section 20.100.500 of Title 20 lists minor changes currently approvable via a Permit Adjustment, including minor modifications to architectural building elements or landscaping details, sign installation, and building additions less than 5,000 square feet in area, subject to certain restrictions. Storage tanks, 1,000 gallons or less in size, are currently allowed with a Permit Adjustment. Storage tanks exceeding 1,000 gallons require a Site Development Permit process, which includes a public hearing.

This ordinance proposes to allow storage tanks 2,000 gallons or less in size with a Permit Adjustment. The intent of this ordinance is to decrease the time and cost associated with processing Site Development Permits for storage tanks that are still relatively small in size and do not create significant site design or aesthetic issues. The Permit Adjustment requirement would provide for discretionary review to ensure adequate site circulation, screening, landscaping, and parking. Tanks storing hazardous materials would continue to require permits from the City's Bureau of Fire Prevention to address fire safety issues regarding setbacks, separation, storage, and installation.

POLICY ALTERNATIVES

Alternative #1: Retain existing Zoning Ordinance provisions and do not streamline, modify, or clarify regulations for land use regulations and development standards in Industrial Zoning Districts.

Pros: This alternative would maintain the same Zoning Ordinance requirements for specific uses over time.

Cons: Retaining current requirements would not achieve the economic development benefits of the proposed streamlining measures.

Reason for not recommending: The proposed streamlining measures offer tangible benefits in reduced time and costs for applicants without compromising the objectives of the City's land use approval processes.

Alternative #2: Modify the list of permitted and conditional uses allowed in the CIC Combined Industrial/Commercial Zoning District to allow a broader range of uses of the LI and HI Zoning Districts.

Pros: This alternative would facilitate implementation of industrial businesses in support of the City's economic development goals.

Cons: Allowing a broader range of light and heavy industrial uses could result in land use compatibility conflicts with commercial uses allowed in the CIC Zoning District, thereby compromising the balance of industrial and commercial uses envisioned by the General Plan for the Combined Industrial/Commercial designation.

Reason for not recommending: The proposed permitted and conditional uses allowed in the CIC Combined Industrial/Commercial Zoning District provide an appropriate and compatible mixture of industrial and commercial uses consistent with the Combined Industrial/Commercial General Plan designation.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)
- 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 notice of the public hearing was posted on the City website, published in the Mercury News and emailed to a citywide list of development interests, neighborhood associations and interested

PLANNING COMMISSION

October 29, 2008

Subject: Industrial Streamlining Ordinance, Phase II

Page 11

individuals. Staff has been available to discuss the proposal with interested members of the community.

An electronic communication received from Glenn Bothwell, an industrial property owner with concerns regarding the proposed mortuary provision, is attached. Mr. Bothwell requests that mortuaries in the HI and LI Zoning Districts be allowed to provide funeral services. See the Analysis section for a discussion of staff's concerns regarding mortuaries with funeral services in the HI and LI Zoning Districts.

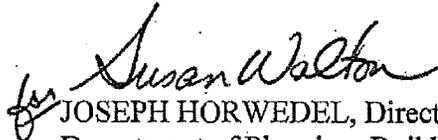
An electronic communication received from Rich Truempler, on behalf of the Sobrato Organization, is attached. Mr. Truempler opposes warehouse retail uses in Industrial Zoning Districts and indicates that if it is allowed, it should require a Conditional Use Permit (CUP). Staff agrees that a Conditional Use Permit is appropriate for this use and has included the CUP requirement in the draft ordinance. See the Analysis section for a discussion of warehouse retail in Industrial Zoning Districts.

COORDINATION

This project was coordinated with the San Jose Redevelopment Agency, the Office of Economic Development, the Housing Department and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan policy that promotes economic development through a streamlined development review process.


for JOSEPH HORWEDEL, Director

Department of Planning, Building and Code Enforcement

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

Attachments

- 1) Public comment from Glenn A. Bothwell
- 2) Public comment from Rich Truempler, on behalf of the Sobrato Organization
- 3) Draft Mitigated Negative Declaration, File No. PP08-124

PLANNING COMMISSION

October 29, 2008

Subject: Industrial Streamlining Ordinance, Phase II

Page 12

From: Glenn Bothwell [mailto:glenn@bothwellcorp.com]

Sent: Wednesday, October 08, 2008 9:58 AM

To: carol.hamilton@sanjoseca.gov

Subject: Zoning changes to my property.

Hello Carol, thanks for taking the time to explain what is happening with the pending zoning code change. My family owns two contiguous parcels at 2175 Stone Ave (APN 455-07-039) owned by my brother and sister, and 2179 Stone Ave (APN 455-07-040) owned by me. Both parcels are currently zoned IP. When I constructed these buildings in the late 80s we annexed to the city under the designation of LI. Our zoning was changed without our knowledge. We would like our property to be re-classified as Light Industrial. This designation would allow us to have the mix of tenants we originally were permitted to have. Please let me know if the director of planning can streamline this process. I have been told that this is a possibility. The tenant with the mortuary is in 2175 stone Ave. While we appreciate the efforts that have been made to accommodate Mr. Spar in his mortuary services business by planning staff, we will loose him as a tenant if he is not allowed to have funeral services at this location. I feel there is no conflict with existing tenants as the funerals are held after hours when the other tenants are not present. Neighboring tenants are tolerant and supportive of these services. Funerals held at this location are much less expensive than those held at traditional facilities. As you may know the cost of funeral services is expensive. This facility provides an opportunity for those less fortunate to have an affordable funeral. Parking is not an issue since parking in the entire complex is vacant after hours. It would be appreciated if you could guide me toward what other issues make this use incompatible in LI. As the landlord we would like it to be allowed to have funeral services at this location as well as mortuary services. We would like the opportunity to be heard at the Planning meeting on 10-22-08. I have asked our tenant to prepare his case for presentation at that meeting. Again, thanks for your help. I look forward to hearing from you.

Glenn A. Bothwell

President

Bothwell Construction Corp.

1590 Industrial Ave.

San Jose, CA 95112

E-mail glenn@bothwellcorp.com

Cell 408-499-0415

Off. 408-298-8049

Fax 408-298-7441

PLANNING COMMISSION

October 29, 2008

Subject: Industrial Streamlining Ordinance, Phase II

Page 13

October 29, 2008

City of San Jose

Attn: Sylvia Do

San Jose City Hall

200 East Santa Clara Street

San Jose, CA 95113

Re: Proposed Industrial Streamlining Ordinance

Sylvia:

Pursuant to our conversation, The Sobrato Organization opposes proposed requirements that would enumerate and allow with a Special Use Permit in an IP Industrial Park, LI Light Industrial, and HI Heavy Industrial Districts, Warehouse Retail.

The Industrial and related Office uses have been, and will be the basis for the economies of the Silicon Valley and the City of San Jose. The industrial services rendered in the industrial districts support and strengthen our local economy through increased job stabilization and reinvestment by our local businesses.

Warehouse Retail is not compatible with industrial zoning districts, which are intended to provide an optimum industrial environment for businesses to operate. The industrial districts contain technology businesses whose operations may include activities and contain materials that are hazardous to sensitive receptors. In addition, the inadequate parking that is proposed to be required and traffic patterns generated by retail uses could negatively impact businesses whom compete in the global economy, and may operate seven days a week, twenty four hours a day.

In instances where the City may consider a Warehouse Retail use in an industrial district, The Sobrato Organization strongly advocates that at a minimum a CUP Conditional Use Permit is required, rather than an SUP Special Use Permit as proposed. The requirement for a CUP in these instances will help ensure that the above concerns expressed can be weighed by the planning commission through more rigorous review of what is effectively a change in land use.

Sincerely

The Sobrato Organization

Richard Truempler

Director of Development



Department of Planning, Building and Code Enforcement
 JOSEPH HORWEDEL, DIRECTOR

NEGATIVE DECLARATION

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Commercial and Industrial Streamlining Ordinances, Phase II

PROJECT FILE NUMBER: PP08-124

PROJECT DESCRIPTION: The project consists of amendments to Chapters 20.40, 20.50, 20.70, 20.80, 20.90, 20.100, and 20.200 of the Zoning Code, Title 20 of the San Jose Municipal Code, as follows:

| Commercial Streamlining | | |
|--|---|---|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| Sale of passenger vehicles, pick-up trucks not exceeding 25 feet in length, and motorcycles. | <ul style="list-style-type: none"> Allowed with a Conditional Use Permit in CN Commercial Neighborhood and CP Commercial Pedestrian District; incidental vehicle repair allowed with a Conditional Use Permit in CG Commercial General District. | <ul style="list-style-type: none"> Allow with a Special Use Permit in CN Commercial Neighborhood District and allow incidental vehicle repair with a Special Use Permit in CG Commercial General District. |
| Retail art studio, in which artistic items are created and sold on the premises | <ul style="list-style-type: none"> Not an enumerated use. Manufacturing not allowed in Commercial Districts. | <ul style="list-style-type: none"> Allow as a permitted use in CP Commercial Pedestrian, CN Commercial Neighborhood, CG Commercial General, CIC Combined Industrial/Commercial, DC Downtown Core, and DC-NT1 Downtown Core - Neighborhood Transition 1 Districts. Maximum 1,500 square feet of total floor area devoted to handcrafting, assembling or fabricating crafts. Minimum of 25% of total floor area devoted to retail sales. Parking: 1 per 200 square feet of retail floor area; 1 per 400 square feet if on ground floor in Neighborhood Business District. |

| Commercial Streamlining (continued) | | |
|---|--|---|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| Outdoor dining incidental to a retail establishment or a public eating establishment | <ul style="list-style-type: none"> ▪ Outdoor dining is not an enumerated use. ▪ Parking requirement for outdoor dining is the same as for a public eating establishment -- 1 space per 2.5 seats or 40 square feet of dining area, whichever require the greater number of spaces. | <ul style="list-style-type: none"> ▪ Enumerate outdoor dining as a permitted use incidental to a retail establishment or a public eating establishment in Commercial and Industrial Districts. Special Use Permit may be required if within 150 feet of residentially zoned property. ▪ No parking requirement for the first 25 outdoor dining seats; additional parking beyond the first 25 seats require 1 space per 2.5 seats. |
| Outdoor uses in Commercial Districts within 150 feet of residentially zoned property. | <ul style="list-style-type: none"> ▪ Special Use Permit required for outdoor uses except: seasonal sales, service windows associated with financial institutions for pedestrians, automatic vending machines, and plant nursery sales. | <ul style="list-style-type: none"> ▪ Exempt outdoor dining incidental to a retail establishment or a public eating establishment from Special Use Permit requirement if the use is separated from residentially zoned property by a non-residential building or a minimum of 100 feet, including a public right-of-way. |
| Outdoor private property special events (e.g., farmer's markets) | <ul style="list-style-type: none"> ▪ Requires a Special Use Permit if the event will not exceed 30 days or does not meet requirements for an Event Permit. ▪ Requires a Conditional Use Permit if event exceeds 30 days or does not meet requirements for an Event Permit. | <ul style="list-style-type: none"> ▪ Allow with a Special Use Permit if the event will not exceed 30 consecutive days and 45 days total, or does not meet requirements for an Event Permit. ▪ Allow with a Conditional Use Permit if the event exceeds 30 consecutive days and 45 days total, or does not meet requirements for an Event Permit. |
| Front setback exception | <ul style="list-style-type: none"> ▪ Requires, in certain circumstances, that a commercial property conform to the front setback of the adjacent Residential Zoning District. | <ul style="list-style-type: none"> ▪ Specifies that the residential front setback applies only to that portion of the commercial property located within 20 feet of the Residential Zoning District. |
| Parking requirement for public uses | <ul style="list-style-type: none"> ▪ Parking requirements are prescribed for public uses such as elementary schools, secondary schools, museums, and libraries. | <ul style="list-style-type: none"> ▪ Clarify that Title 20 does not regulate parking requirements for public uses by deleting all references to "public" and "private." |

| Industrial Streamlining | | |
|--------------------------------------|---|---|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| "CM" permit requirement | <ul style="list-style-type: none"> ▪ CM denotes uses allowed with a Conditional Use Permit on properties with Mixed Industrial Overlay, as designated by the General Plan. | <ul style="list-style-type: none"> ▪ Change from "CM" to "C^{GP}." ▪ C^{GP} denotes uses allowed with a Conditional Use Permit on properties with Mixed Industrial Overlay or Combined Industrial/Commercial properties, as designated by the General Plan. |

| Industrial Streamlining (continued) | | |
|--|--|---|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| CIC Combined Industrial/Commercial Zoning District | <ul style="list-style-type: none"> Not an enumerated zoning district. | <ul style="list-style-type: none"> Create a CIC Combined Industrial/Commercial District with use regulations that align with the General Plan's description of Combined Industrial/Commercial. Permitted and conditional uses include a compatible mixture of commercial, office, and industrial uses of the CG Commercial General, IP Industrial Park, and LI Light Industrial Districts. Establishment development regulations similar to that of the IP Industrial Park District. |
| Laboratory, medium manufacturing and assembly, and warehouse | <ul style="list-style-type: none"> Allowed with a Special Use Permit in IP Industrial Park District. | <ul style="list-style-type: none"> Allow as a permitted use in IP Industrial Park District. |
| Offices, research and development | <ul style="list-style-type: none"> Not an enumerated use. | <ul style="list-style-type: none"> Enumerate as a permitted use in the CIC Combined Industrial/Commercial and IP Industrial Park Districts. Parking: 1 space per 300 square feet. |
| Crematory | <ul style="list-style-type: none"> Allowed with a Conditional Use Permit in LI Light Industrial District with Mixed Industrial Overlay, as designated by the General Plan, and in HI Heavy Industrial District. | <ul style="list-style-type: none"> Allow with a Conditional Use Permit in LI Light Industrial District in addition to HI Heavy Industrial District. |
| Mortuary without funeral services | <ul style="list-style-type: none"> Not an enumerated use. | <ul style="list-style-type: none"> Allow as a permitted use in LI Light Industrial and HI Heavy Industrial Districts. |
| Warehouse retail | <ul style="list-style-type: none"> Not an enumerated use. | <ul style="list-style-type: none"> Enumerate and allow with a Special Use Permit in IP Industrial Park, LI Light Industrial, and HI Heavy Industrial Districts. Minimum 10,000 square feet of floor area, with minimum 90% of retail display of large items (e.g., furniture, appliances and machinery). Parking: Minimum 1 space per 2,000 square feet of floor area; maximum 1 space per 250 square feet. |
| Day care center | <ul style="list-style-type: none"> Allowed with a Conditional Use Permit in IP Industrial Park, LI Light Industrial and HI Heavy Industrial Districts with Mixed Industrial Overlay, as designated by the General Plan. | <ul style="list-style-type: none"> Eliminate day care center as a Conditional Use in the HI Heavy Industrial District with the Mixed Industrial Overlay, as designated by the General Plan. |

| Industrial Streamlining (continued) | | |
|--|---|---|
| Use or Development Regulation | Existing Requirements | Proposed Requirements |
| Miniwarehouse/mini storage | ▪ Permitted in LI Light Industrial and HI Heavy Industrial Districts. | * Clarify that miniwarehouse/ministorage uses may include an incidental caretaker unit. |
| Above-ground storage tanks | ▪ Allowed with a Site Development Permit. | * Allow above-ground storage tanks 2,000 gallons or less with a Permit Adjustment. |

PROJECT LOCATION: Citywide

COUNCIL DISTRICT: Citywide

CONTACT INFORMATION: Sylvia Do, Department of Planning, Building and Code Enforcement, City of San Jose, Third Floor Tower, 200 East Santa Clara Street, San Jose, CA 95113. Email: sylvia.do@sanjoseca.gov

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies no potentially significant effects on the environment would be likely to result from implementation of the project.

- I. **AESTHETICS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- II. **AGRICULTURE RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- III. **AIR QUALITY** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- IV. **BIOLOGICAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- V. **CULTURAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- VI. **GEOLOGY AND SOILS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- VII. **HAZARDS AND HAZARDOUS MATERIALS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- VIII. **HYDROLOGY AND WATER QUALITY** – The project will not have a significant impact

on this resource, therefore no mitigation is required.

- IX. LAND USE AND PLANNING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- X. MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XI. NOISE** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XII. POPULATION AND HOUSING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XIII. PUBLIC SERVICES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XIV. RECREATION** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XV. TRANSPORTATION / TRAFFIC** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XVI. UTILITIES AND SERVICE SYSTEMS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XVII. MANDATORY FINDINGS OF SIGNIFICANCE** – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no additional mitigation is required.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on October 15, 2008, any person may:

- (1) Review the Draft Negative Declaration (ND) as an informational document only; or
- (2) Submit written comments regarding the information, analysis, and mitigation measures in the Draft ND. Before the ND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft ND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final ND; or
- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, San José CA 95113-1905 and include a \$100 filing fee. The written protest should make a "fair argument" based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed

public review period, the Director may (1) adopt the Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft ND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

Joseph Horwedel, Acting Director
Planning, Building and Code Enforcement

Circulated on: September 24, 2008

Akemi Samidson
Deputy

Adopted on: 10/17/08

J. B. Walish
Deputy

ND/SD 9-16-08