



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: October 12, 2012

Approved

Date

10/17/12

SUBJECT: AN ORDINANCE TO AMEND SECTION 17.72.530 OF CHAPTER 17.72 OF TITLE 17 OF THE SAN JOSE MUNICIPAL CODE TO REQUIRE CERTAIN DRAINAGE INTO LANDSCAPED AREAS; TO AMEND SECTION 20.95.20 OF CHAPTER 20.95 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO EXTEND STORMWATER REQUIRMENTS TO CERTAIN SMALL PROJECTS AND DETACHED SINGLE-FAMILY HOME PROJECTS; AND TO MAKE OTHER CLARIFYING OR MINOR TECHNICAL AMENDMENTS TO THOSE SECTIONS.

RECOMMENDATION

The Planning Commission voted 5-0-2 (Commissioners Cahan and Kamkar absent) to recommend to the City Council approval of an Ordinance of the City of San José to amend Section 17.72.530 of Chapter 17.72 of Title 17 of the San José Municipal Code to require certain drainage into landscaped areas; to amend Section 20.95.020 of Chapter 20.95 of Title 20 of the San José Municipal Code to extend stormwater requirements to certain small projects and detached single-family home projects, and to make other clarifying or minor technical amendments to those sections.

OUTCOME

Approval of these ordinance amendments is intended to ensure that the City of San José is consistent in its review of new development proposals covered under the requirements of the San Francisco Regional Water Quality Control Board's (RWQCB) Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit for the San Francisco Bay Region.

BACKGROUND

On October 10, 2012 the Planning Commission conducted a public hearing on the proposed ordinance amendments. See the attached staff report to the Planning Commission for additional background information and analysis of the proposed amendments to Title 17 (Buildings and Construction Ordinance) and Title 20 (the Zoning Ordinance).

ANALYSIS

Staff made a brief presentation summarizing the proposed ordinance amendments. No one spoke from the public. The Commission had questions and expressed some concern about the technical feasibility of using splash blocks to adequately direct roof stormwater runoff away from subfloors and foundations to adjacent landscaped areas. In response to questions from the Commission, staff elaborated on the fact that most small projects and detached single-family home projects are typically built using the site design measure of disconnecting roof rain leaders and downspouts from the storm drain system to direct stormwater runoff to splash blocks that flow to onsite landscaped areas and that the City's preferred site design measure closely aligns with most construction practices of today for the subject project types. Staff noted, however, that the City will allow the use of alternative site design measures when the Building Official determines that directing roof runoff to landscaping is technically infeasible. From an inspection and verification approach, staff also noted that the site design measure of disconnecting roof rain leaders and downspouts from the storm drain system to direct stormwater runoff to splash blocks that flow to landscaped areas is the most simple and cost effective method to evaluate and inspect as part of the Building Permit process. Staff noted that these proposed ordinance amendments will put an effective legal mechanism in place to ensure the City is in compliance with the Stormwater Permit requirements for small projects and single-family detached home projects that are evaluated under a Development Permit or Building Permit process. Staff added that these ordinance changes will also put in place an inspection and verification process that will serve to assist and ensure that project proponents are appropriately directing roof runoff to landscaping. The Commission concluded their discussion by expressing their concern with the RWQCB's practical experience with drainage and litigation related to foundation damage from water intrusion, but they also understood the need to comply with the Stormwater Permit, and they approved the staff recommendation.

POLICY ALTERNATIVES

Additional alternatives for amending these ordinances were not considered because the Stormwater Permit's Provision C.3.i requirements go into effect on December 1, 2012 for all 76 municipalities in the Bay Area.

October 12, 2012

Subject: Title 17 and Title 20 Ordinance Amendments

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FISCAL /POLICY ALIGNMENT

The proposed Title 17 and Title 20 Ordinance amendments are consistent with the requirements of the Regional Stormwater Permit. In addition, these amendments are supportive of the Sustainable Growth and Development Goals described within the Environmental Leadership Chapter of the Envision San José 2040 General Plan.

COST SUMMARY/IMPLICATIONS

Verification of project conformance with the Title 17 and Title 20 Ordinance regulations will occur during plan check and inspection activities by City staff, and is not expected to require significant additional staff resources.

CEQA

Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the Envision San José 2040 General Plan Program approved previously. The Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan entitled, "Envision San José 2040 General Plan," for which findings were adopted by City Council Resolution No. 76041 on November 1, 2011, adequately describes the activity for the purposes of CEQA. The project does not involve new significant effects beyond those analyzed in this Final EIR. Therefore, the City of San José may take action on the project as being within the scope of the Final EIR, File No. PP12-078.

/s/

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions, please contact Laurel Prevetti at 408-535-7901.

Attachments:

Planning Commission Staff Report.



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: September 28, 2012

Approved

Date

COUNCIL DISTRICT: City-Wide

SUBJECT: AN ORDINANCE TO AMEND SECTION 17.72.530 OF CHAPTER 17.72 OF TITLE 17 OF THE SAN JOSE MUNICIPAL CODE TO REQUIRE CERTAIN DRAINAGE INTO LANDSCAPED AREAS; TO AMEND SECTION 20.95.20 OF CHAPTER 20.95 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO EXTEND STORMWATER REQUIRMENTS TO CERTAIN SMALL PROJECTS AND DETACHED SINGLE-FAMILY HOME PROJECTS; AND TO MAKE OTHER CLARIFYING OR MINOR TECHNICAL AMENDMENTS TO THOSE SECTIONS.

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend to the City Council to approve an Ordinance of the City of San José to amend Section 17.72.530 of Chapter 17.72 of Title 17 of the San José Municipal Code to require certain drainage into landscaped areas; to amend Section 20.95.020 of Chapter 20.95 of Title 20 of the San José Municipal Code to extend stormwater requirements to certain small projects and detached single-family home projects; and to make other clarifying or minor technical amendments to those sections.

OUTCOME

Approval of these ordinance amendments will ensure that the City of San José is consistent in its review of new development proposals covered under the requirements of the San Francisco Regional Water Quality Control Board's (RWQCB) Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit for the San Francisco Bay Region.

BACKGROUND

The Federal Clean Water Act requires the City of San José to operate under a Stormwater Permit for the discharge of stormwater via the City's stormwater collection system. In California, the Regional Water Quality Control Board has authority to issue these Permits. On October 14, 2009, the San Francisco RWQCB adopted the Municipal Regional Stormwater NPDES Permit (Stormwater Permit) for the San Francisco Bay Region. In an effort to standardize stormwater management requirements throughout the region, this Stormwater Permit replaces the formerly separate watershed-based municipal stormwater permits with a regional permit for 76 Bay Area municipalities, including the City of San José.

The Stormwater Permit's Provision C.3 is focused on reducing stormwater runoff pollutants and preventing increased stormwater runoff flows from all new development and redevelopment projects. Provision C.3.i, which has an implementation requirement date of December 1, 2012, requires all development projects that create or replace 2,500 square feet or more, but less than 10,000 square feet, of impervious surface (small projects), and detached single-family home projects that create or replace 2,500 square feet or more of impervious surfaces, to install one or more of the following site design measures:

- Direct roof runoff onto vegetated areas;
- Direct roof runoff into cisterns or rain barrels for reuse;
- Direct runoff from sidewalks, walkways, patios, driveways, and/or uncovered parking lots onto vegetated areas; or
- Construct sidewalks, walkways, patios, driveways, uncovered parking lots, and/or bike lanes with permeable surfaces.

To ensure alignment between the City's Municipal Code and the Stormwater Permit, staff is proposing the following ordinance amendments to Title 17 and Title 20, which are summarized below:

- 1) *Title 17, Chapter 17.72, Section 17.72.530: Single-Family Dwelling Landscape Requirements* is proposed to be amended to include the requirement that all detached single-family home projects (that are not part of a larger Development Permit or Tract Map) shall disconnect from the storm drain system its roof rain leaders and downspouts, which shall drain to splash blocks that flow to onsite landscaped areas.

If the Building Official determines that it is technically infeasible for a detached single-family residence to have its roof rain leaders and downspouts direct roof runoff to drain to splash blocks that flow to onsite landscaped areas, then one or more equivalent alternatives to those set forth above to prevent flows of storm water to the storm drain system may be allowed, including the following site design measures:

- Direct roof runoff to a rainwater harvesting system (rain barrels or cisterns) for onsite non-potable use;
- Direct runoff from sidewalks, walkways, patios, driveways, and/or uncovered parking areas onto vegetated areas; or

- Construct sidewalks, walkways, patios, driveways, and/or uncovered parking areas with permeable surfaces.
- 2) *Title 20, Chapter 20.95, Section 20.95.20: Applicability* is proposed to be amended to include the impervious surface threshold requirements for small projects (those projects that create or replace 2,500 square feet or more, but less than 10,000 square feet, of impervious surface area) and detached single-family home projects not part of a larger plan of development (that create or replace 2,500 square feet or more of impervious surface area).

Specific language changes to these ordinances are included as an attachment to this memorandum.

For the purposes of the Title 20 Ordinance amendment, small projects specifically exclude "Special Land Use Category" projects. The requirements for Special Land Use Category projects (uncovered parking lots, restaurants, auto service facilities, and retail gasoline outlets that create or replace 5,000 square feet or more of impervious surface areas) are already defined in City Council Policy 6-29 and these requirements shall remain unchanged. Per the City Council Policy 6-29, Special Land Use Category projects are required to incorporate Low Impact Development (LID) site design, source control, and numerically-sized stormwater treatment.

ANALYSIS

The Stormwater Permit requires the City to have an effective legal mechanism for enforcing the installation of one (or more) site design measures for certain small projects and detached single-family home projects. Accordingly, the proposed ordinance amendments update the City's Municipal Code to require the installation of at least one site design measure for certain small projects and detached single-family home projects not part of a larger plan of development. The City will prioritize the site design measure of disconnecting roof rain leaders and downspouts from the storm drain system to drain roof runoff to splash blocks that flow to onsite landscaped areas because this measure closely aligns with typical construction practices. The City will allow the use of alternative site design measures when the Building Official determines that directing roof runoff to landscaping as described above is technically infeasible. After meeting the minimum measure of directing roof runoff to landscaped areas, project proponents may use any or all of the other site design measures voluntarily.

The Stormwater Permit's Provision C.3.i also requires the City to develop standard specifications or guidance materials for the site design measures for small projects and detached single-family home projects. To satisfy this requirement, staff has assisted the Bay Area Stormwater Management Agency Association (BASMAA) with the development of four informational factsheets focused on:

- Landscape Designs for Stormwater Management
- Rain Barrels and Cisterns
- Pervious Pavement
- Rain Gardens

The factsheets include design guidance, photos, typical installation details, recommended operation and maintenance guidance, and information on the importance of incorporating watershed-friendly site design measures. The factsheets will be posted on the Planning Division's Stormwater Management webpage, and will be available as handouts to customers at the City's Development Services Counter.

Staff does not anticipate that the adoption of the proposed Title 17 and Title 20 Ordinance amendments will result in additional development costs to applicable projects. This is due to the fact that, as noted above, most small projects and detached single-family home projects typically direct roof runoff to onsite landscaped areas.

EVALUATION AND FOLLOW-UP

For inspection and verification, the site design measure of disconnecting roof rain leaders and downspouts from the storm drain system to direct runoff to landscaped areas is simple and cost-effective to evaluate and inspect as part of the Building Permit process. Site design measure requirements for small projects and detached single-family homes projects were included in the last update of City Council Policy 6-29, which was approved on October 4, 2011 (this policy can be viewed at http://www.sanjoseca.gov/clerk/cp_manual/CPM_6_29.pdf). At that time, project proponents were made aware of the Stormwater Permit's Provision C.3.i site design measure implementation requirement date of December 1, 2012 for small projects and detached single-family home projects. Amending Title 17 and Title 20 allows the City to legally enforce the Stormwater Permit's Provision C.3.i by the implementation date required by the San Francisco RWQCB.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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. **(Required: E-mail and Website Posting)**
- Criterion 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. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff presented the proposed ordinance changes and received input at the Planning, Building and Code Enforcement (PBCE) Developers' and Construction Roundtable Meeting on September 14, 2012. Development industry representatives in attendance at the Meeting agreed that the proposed ordinance amendment was a reasonable and feasible approach to compliance with the Stormwater Permit requirements.

COORDINATION

The development of these ordinance amendments was created in coordination with the Department of Public Works, Environmental Services Department, and the City Attorney's Office.

CEQA

Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the Envision San José 2040 General Plan Program approved previously. The Final Program Environmental Impact Report (EIR) for the Envision San José 2040 General Plan entitled, "Envision San José 2040 General Plan," for which findings were adopted by City Council Resolution No. 76041 on November 1, 2011, adequately describes the activity for the purposes of CEQA. The project does not involve new significant effects beyond those analyzed in this Final EIR. Therefore, the City of San José may take action on the project as being within the scope of the Final EIR, File No. PP12-078.


for JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions, please contact Jenny Nusbaum, Senior Planner at 408-535-7872, or Juan Borrelli, Environmental Services Specialist at 408-793-4384.

Attachment: Draft Ordinance Amendments.

DRAFT

ORDINANCE NO:

AN ORDINANCE OF THE CITY OF SAN JOSE TO AMEND SECTION 17.72.530 OF CHAPTER 17.72 OF TITLE 17 OF THE SAN JOSE MUNICIPAL CODE TO REQUIRE CERTAIN DRAINAGE INTO LANDSCAPED AREAS AND TO AMEND SECTION 20.95.020 OF CHAPTER 20.95 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO EXTEND STORMWATER REQUIREMENTS TO CERTAIN SMALL PROJECTS AND DETACHED SINGLE-FAMILY RESIDENCES, AND MAKING OTHER CLARIFYING OR MINOR TECHNICAL AMENDMENTS TO THOSE SECTIONS

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with the State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the provisions of this Ordinance were found to be within the scope of the Final Program Environmental Impact Report prepared for the Envision San José 2040 General Plan and for which certain related findings were made by the City Council through its Resolution No. 76041, adopted on November 1, 2011, under File No. PP12-078; and

WHEREAS, the City Council of the City of San Jose is the decision-making body for this Ordinance; and

WHEREAS, this City Council has considered the Envision 2040 San José General Plan Final Program Environmental Impact Report, together with its related Resolution No. 76041, as the CEQA clearance for this project prior to taking any approval actions on this Ordinance.

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

SECTION 1. Section 17.72.530 of Chapter 17.72 of Title 17 of the San Jose Municipal Code is hereby amended to read in its entirety as follows:

17.72.530 Single-family dwelling landscaping requirements.

A. A single-family dwelling subject to a Development Permit under Title 20 of this Code or Tract Map pursuant to Title 19 of this Code shall be landscaped in accordance with the requirements of the Development Permit or Tract Map.

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B. Subject to the paved surface limitations set forth in Section 20.30.440 of this Code and Subsection C below, all single-family dwellings, not subject to a Development Permit under Title 20 of this Code or a Tract Map under Title 19 of this Code shall meet all of the following requirements:

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1. The site of the single-family dwelling shall have landscaping installed in the non-paved portions of the front and side yards that are visible from any street; and
2. All roof rain leaders and down spouts shall be disconnected from the storm drain system and shall drain to splash blocks that flow to onsite landscaped areas.

For the purposes of this Subsection B only, "landscaping" means live trees, shrubs, lawns, other live plant materials or decorative landscaping.

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C. Notwithstanding the provisions of Subsection B.2 above, where the Building Official makes a determination that it is technically infeasible for a particular single-family dwelling to meet the requirements set forth in Subsection B.2 above, the Building Official may consider equivalent alternatives to those set forth in Subsection B.2 above to prevent flows of stormwater to the storm drain system, so long as those equivalent alternatives are consistent with the California Regional Water Quality Control Board San Francisco Bay Region Municipal Regional Stormwater NPDES Permit, as amended. Such equivalent alternatives can include:

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1. Direct roof runoff to a rainwater harvesting system (rain barrels or cisterns) for onsite non-potable use; or
2. Direct stormwater runoff from driveways, walkways, patios, and/or uncovered parking areas to onsite landscaped areas; or
3. Construct driveways, walkways, patios, and/or uncovered parking areas with permeable surfaces.

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D. If only decorative landscaping is used to meet the requirements of this section, weed block shall also be used.

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E. Failure to meet the requirements of this section⁴ constitutes property blight.

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SECTION 2. Section 20.95.020 of Chapter 20.95 of Title 20 of the San Jose Municipal Code is hereby amended to read in its entirety as follows:

20.95.020 Applicability.

The provisions of this Chapter shall apply:

- A. Whenever the creation, on or above ground through installation, construction, or replacement, five thousand square feet of impervious surface will occur through a proposed development of real property for uncovered parking (stand-alone or part of another use), restaurant, auto service facility or retail gasoline outlet use; or
- B. Whenever the creation, on or above ground through installation, construction, or replacement, of ten thousand square feet or more of impervious surface will occur through a proposed development of real property, for any use except for development of detached single family home projects, which are not part of a larger plan of development; or
- C. Whenever the creation, on or above ground through installation, construction, or replacement, of two thousand five hundred (2,500) or more, but less than ten thousand (10,000) square feet, of impervious surface will occur for any use through a proposed development of real property (a small project); or

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