

ORDINANCE NO. 27639

**AN ORDINANCE OF THE CITY OF SAN JOSE  
AMENDING SECTION 19.16.170 OF CHAPTER 19.16 OF  
TITLE 19, AND ADDING A NEW CHAPTER 20.175 TO  
TITLE 20, OF THE SAN JOSE MUNICIPAL CODE  
RELATING TO COMMERCIAL AND INDUSTRIAL  
COMMON INTEREST DEVELOPMENTS**

**WHEREAS**, the San José City Council desires to adopt an ordinance providing for the orderly development and continuing maintenance of commercial and industrial common interest development projects for the reasons set forth herein; and

**WHEREAS**, on November 30, 2005, this Ordinance was found to be categorically exempt from environmental review under the California Environmental Quality Act of 1970, as amended, pursuant to the provisions of Section 15305 of Title 14 of the California Code of Regulations under File No. PP05-219.

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

**SECTION 1.** Section 19.16.170 of Chapter 19.16 of Title 19 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**19.16.170 Final Map or Parcel Map – Condominium and Common Interest Development**

- A. Neither the City Engineer nor the City Council on appeal shall approve a final map for a subdivision to be created from the conversion of residential real property into a condominium project, community apartment project, or a stock cooperative project unless the decision-maker finds all of the following:

1. Each of the tenants, and each prospective tenant, of the proposed condominium, community apartment project or stock cooperative project has received, pursuant to Sections 66452.9 and 6652.51 of the Subdivision Map Act, written notification of intention to convert at least sixty (60) days prior to the filing of a tentative map pursuant to Section 19.12.010. There shall be a further finding that each such tenant, and each person applying for the rental of a unit in such residential real property, has, or will have, received all applicable notices and rights now or hereafter required by this title or the Subdivision Map Act. In addition, a finding shall be made that each tenant has received ten (10) days' written notification that an application for a public report will be, or has been, submitted to the Department of Real Estate, and that such report will be available on request. The written notices to tenants required by this paragraph shall be deemed satisfied if such notices comply with the legal requirements for service by mail.
2. Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has been, or will be, given written notification within ten (10) days of approval of a final map for the proposed conversion.
3. Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has been, or will be, given one hundred eighty (180) days' written notice of intention to convert prior to termination of tenancy due to the conversion or proposed conversion. The provisions of this paragraph shall not alter or abridge the rights or obligations of the parties in performance of their covenants, including, but not limited to, the provisions of services, payment of rent or the obligations imposed by Sections 1941, 1941.1, and 1941.2 of the Civil Code.

4. Each of the tenants of the proposed condominium, community apartment project, or stock cooperative project has been, or will be, given notice of an exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant. The right shall run for a period of not less than ninety (90) days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code of the state, unless the tenant gives prior written notice of his or her intention not to exercise the right.
  
- B. Neither the City Engineer nor the City Council on appeal shall approve a final map or a parcel map for a subdivision of commercial or industrial property into a condominium or common interest development unless the decision-maker first finds that the subdivision complies with all of the requirements of Chapter 20.175 of this Code.
  
- C. This Section shall not diminish, limit or expand, other than as provided herein, the authority of City to approve or disapprove condominium projects and common interest developments.

**SECTION 2.** Title 20 of the San José Municipal Code is hereby amended to add a new chapter to be numbered, entitled and to read in its entirety as follows:

**CHAPTER 20.175  
COMMERCIAL AND INDUSTRIAL COMMON INTEREST DEVELOPMENT  
REGULATIONS**

**20.175.010 Purpose**

This Chapter is enacted to establish requirements and procedures for the evaluation of commercial and industrial common interest development projects. Such regulation is necessary to provide for the adequate maintenance of common areas, facilities and

amenities, such as buildings, parking, ingress and egress, subjacent support, utilities and the like, in commercial and industrial common area interest development projects in order to support the continuing viability of such common interest projects and avoid conditions of neglect and blight. Additionally, such regulation is necessary to the support of a healthy local economy by preserving opportunities for large-scale commercial and industrial uses to avoid the conversion, fragmentation and diminution of large commercial and industrial buildings and lands within the City.

**20.175.020 Application**

The provisions of this Chapter apply to all commercial and industrial common interest development projects requiring a parcel map or tentative and final subdivision map pursuant to the Subdivision Map Act, Government Code Sections 66410 et seq., and Title 19 of this Code.

**20.175.030 Definitions**

The definitions set forth in this Section shall govern the application and interpretation of this Chapter:

- A. "Common interest development" has the meaning given to that term in Civil Code Section 1351(c).
- B. "Common area" means the entire area within the common interest development except the separate interests therein, and also includes any mutual or reciprocal easement rights appurtenant to the separate interests.

**20.175.040 Special Use Permit Required**

No parcel map or tentative and final map for a commercial or industrial common interest development shall be approved unless a special use permit has been issued by the City

in accordance with the procedures and provisions of this Chapter and the procedures and provisions of Part 7 of Chapter 20.100 of Title 20 of this Code (commencing with Section 20.100.800).

**20.175.050 Findings**

In addition to the findings required by Section 20.100.820, no special use permit may issue for a commercial or industrial common interest development unless and until all of the following additional findings are first made:

- A. The proposed common interest development will not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity of the development, or in the City as a whole;
- B. The proposed common interest development includes sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to insure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development; and
- C. The proposed common interest development includes sufficient provisions for the retention of such common areas for the use of all owners of separate interests therein.

**20.175.060 Conditions Of Approval**

No special use permit for a commercial or industrial common interest development shall be issued unless all of the following conditions have been met and the applicant has agreed in writing to comply with all of these conditions:

- A. The applicant, at its sole cost, shall prepare, submit for prior review and approval by the City, and record concurrently with the applicable parcel or final map,

governing documents for the common interest development that include sufficient provisions for governance, funding and capitalization, and enforcement mechanisms, including enforcement by the City, to insure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development and that such common area shall be retained for the use of all owners within the development. Prior to approval of the parcel or final map by the City, the applicant shall submit the proposed governing documents to the City for review for compliance with the requirements of this Chapter.

- B. The applicant shall, at its sole cost, prepare grant deeds for all mutual or reciprocal easement rights, which shall be reviewed by the City for compliance with the terms of this Chapter and the requirements of Title 19 of this Code, and shall upon City approval be recorded concurrently with the approved parcel or final map.
- C. Any other condition imposed by the Director, the Planning Commission or City Council to accomplish the purposes of this Chapter or for the preservation of public health, safety or welfare.

PASSED FOR PUBLICATION of title this 13<sup>th</sup> day of December, 2005, by the following vote:

AYES: CAMPOS, CHIRCO, CORTESE, LeZOTTE, NGUYEN,  
PYLE, REED, WILLIAMS, YEAGER; GONZALES

NOES: NONE

ABSENT: CHAVEZ

DISQUALIFIED: NONE

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RON GONZALES  
Mayor

ATTEST:

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LEE PRICE, CMC  
City Clerk