

ORDINANCE NO. 28284

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 20.30.100 OF, AND ADDING A NEW SECTION 20.30.150 TO, CHAPTER 20.30 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, AND ADDING A NEW SECTION TO CHAPTER 20.200 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, ALL TO ESTABLISH A SECONDARY DWELLINGS PROGRAM TO BE EFFECTIVE AS OF JUNE 15, 2008

WHEREAS, pursuant to the provisions of the California Environmental Quality Act of 1970, guidelines implement pursuant thereto and the provision of Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has found that the adoption of the provisions of this ordinance is exempt under CEQA pursuant to the California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15282(h), under File No. PP07-184 issued on September 5, 2007, which determination has not be protested or appealed;

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

SECTION 1. Section 20.30.100 of Chapter 20.30 of Title 20 of the San José Municipal Code is amended to read as follows:

20.30.100 Allowed Uses and Permit Requirements

- A. "Permitted" land uses are indicated by a "P" on Table 20-50.
- B. "Conditional" uses are indicated by a "C" on Table 20-50. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Conditional Use Permit as set forth in Chapter 20.100.

- C. “Special” uses are indicated by a “S” on Table 20-50. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Special Use Permit as set forth in Chapter 20.100.
- D. Land uses not Permitted are indicated by a “-” on Table 20-50. Land uses not listed on Table 20-50 are not Permitted.
- E. When the right column of Table 20-50 includes a reference to a Section number or a footnote, the regulations cited in the Section number or footnote apply to the use. In addition, all uses are subject to any other applicable provision of this Title 20 and any other Title of the San Jose Municipal Code.

Table 20-50 Residential Districts Land Use Regulations					
Use	Zoning District				Applicable Sections & Notes
	R-1	R-2	R-M	R-MH	
Residential Uses					
One-family dwelling	P	P	P	C	Note 1, Section 20.30.110
Secondary dwelling	P	-	-	-	Section 20.30.150
Two-family dwelling	-	P	P	-	Note 2, Section 20.30.110
Multiple dwelling	-	-	P	-	
Guesthouse	-	-	C	-	Section 20.30.120
Mobilehome Parks	-	-	-	P	
Travel Trailer Parks	-	-	-	C	
Residential Care Facility, six or fewer persons	P	P	P	P	
Residential Care Facility, seven or more persons	-	-	C	C	
Residential Service Facility, six or fewer persons	P	P	P	P	
Residential Service Facility, seven or more persons	-	-	C	C	
Servants quarters attached to a one-family dwelling or attached to a garage structure	P	-	-	-	Note 3
Sororities, fraternities and dormitories occupied exclusively (except for administrators thereof) by students attending college or other educational institutions	-	-	C	-	
Single Room Occupancy Living Unit	-	-	C	-	Part 15, Chapter 20.80

Table 20-50 Residential Districts Land Use Regulations					
Use	Zoning District				Applicable Sections & Notes
	R-1	R-2	R-M	R-MH	
Residential Accessory Uses and Improvements					
Accessory buildings and structures	P	P	P	P	Note 4, Section 20.80.200
Home Occupations	P	P	P	P	Part 9, Chapter 20.80
Entertainment and Recreation Related					
Equestrian and riding club	C	-	-	-	
Golf course	C	C	C	-	Note 5
Private club or lodge	-	-	C	-	
Swim and tennis club	C	C	C	C	
Education and Training					
Child daycare center located on an existing school site or as an incident to an on-site Church/Religious Assembly use involving no building additions or changes to the site	P	P	P	P	
Day care center	C	C	C	C	
School- elementary and secondary (Public)	P	P	P	-	
School- elementary and secondary (Private)	C	C	C	-	
Public, Quasi-Public and Assembly Uses					
Cemetery	C	C	C	C	
Church/Religious Assembly	C	C	C	C	
Museums, libraries, parks, playgrounds, or community centers (Privately operated)	C	C	C	C	
Museums, libraries, parks, playgrounds, or community centers (Publicly operated)	P	P	P	P	
Health and Veterinary Services					
Emergency ambulance service	C	C	C	C	
General Services					
Bed & Breakfast	C	C	C	-	
Transportation and Utilities					
Community television antenna systems	C	C	C	C	
Off-site, alternating use and alternative use parking arrangements	S	S	S	S	Section 20.90.200
Parking establishment, off-street	C	C	C	C	Section 20.90.150
Utility facilities, excluding corporation yards, storage or repair yards and warehouses	C	C	C	C	
Wireless communication antenna	C	C	C	C	Sections 20.30.130, 20.30.140 and 20.100.1300
Wireless communication antenna, slimline pole	S	S	S	S	Sections 20.30.130, 20.30.140, and 20.80.1900
Wireless communication antenna, building mounted	P	P	P	P	Sections 20.30.130, 20.30.140, 20.80.1910
Electrical Power Generation					

Table 20-50 Residential Districts Land Use Regulations					
Use	Zoning District				Applicable Sections & Notes
	R-1	R-2	R-M	R-MH	
Stand-by/Backup					
Facilities that do not exceed noise or air standards	S	S	S	S	Note 7
Facilities that do exceed noise or air standards	-	-	-	-	
Photovoltaic	P	P	P	P	Note 6

Notes:

1. Only one one-family dwelling unit per lot in the R-1, R-2, R-M and R-MH Districts.
2. Only one dwelling structure per lot in the R-2 District.
3. Only permitted in the R-1-1 Estate Residential District.
4. No lot may be used solely for an accessory structure or building.
5. No driving ranges or miniature golf facilities.
6. Photovoltaic (PV) systems in the R-M zoning district may be processed through Permit Adjustment. PV systems for single-family or duplex lots do not require a Planning approval.
7. Stand-by or backup generators that would not otherwise require some permit from the City (including but not limited to building, electrical, or mechanical), and do meet the applicable noise and air standards are not subject to the Special Use Permit requirement.

SECTION 2. Part 2 of Chapter 20.30 of Title 20 of the San José Municipal Code is amended to add a new section, to be numbered, entitled and to read as follows:

20.30.150 Secondary Units

Notwithstanding any other provision of this Title to the contrary, secondary dwellings that meet all of the following criteria shall be allowed pursuant to the provisions of this Chapter:

- A. **Zoning District.** A secondary dwelling shall be permitted only in the R-1 Zoning Districts or in Planned Development Zoning Districts that are authorized in accordance with Chapter 20.60 of this Title and that are subject to the standards and allowed uses of an R-1 Zoning District.

- B. **Minimum Lot Size.** The minimum lot size on which a secondary dwelling that is attached to a one-family dwelling shall be allowed is 6,000 square feet. The minimum lot size on which a secondary dwelling that is detached from a one-family dwelling shall be allowed is 8,000 square feet.
- C. **Density.** A secondary dwelling shall not be included in calculation of residential density for the purpose of determining General Plan conformance.
- D. **Maximum Secondary Dwelling Floor Area.** A secondary dwelling shall not exceed the following maximum gross floor area:
1. Six hundred (600) square feet for a secondary dwelling on a lot with an area of 9,000 square feet or less;
 2. Six hundred-fifty (650) square feet for a secondary dwelling on a lot with an area of between 9,001 and 10,000 square feet; and
 3. Seven hundred (700) square feet for a secondary dwelling unit on a lot with an area of 10,001 square feet or greater.
- E. **Required Facilities.** A secondary dwelling shall include all of the following facilities:
1. A full kitchen (including a sink, food storage, and permanent cooking facilities such as a oven and range or cooktop); and
 2. A full bathroom.
- F. **Bedroom Requirement and Maximum Bedroom Area.** A secondary dwelling is required to contain one bedroom and shall include no more than one bedroom. The floor area of the bedroom shall not exceed 400 square feet.

- G. **Bathroom Limit.** A secondary dwelling shall contain no more than one bathroom.
- H. **Maximum Accessory Storage Area.** The total size of any closet or other enclosed storage area within the secondary dwelling shall not exceed 60 square feet of floor area.
- I. **Required Parking.** One additional on-site parking space, in addition to the two required on-site parking spaces for the single-family dwelling, is required for a secondary dwelling. Tandem parking that otherwise complies with setback and paving requirements set forth in Section 20.90.120 of the Municipal Code, shall be allowed.
- J. **Development Standards.** Secondary dwellings shall comply with all of the following development standards:
1. The secondary dwelling shall be subject to the setback requirements of the Zoning District in which the one-family dwelling is located, as set forth in this Chapter except that a secondary dwelling which does not exceed one story above grade shall have a minimum rear setback of fifteen (15) feet, provided that such secondary dwelling shall not occupy more than fifty percent (50%) of the area between the rear setback otherwise required and said fifteen foot (15') rear setback.
 2. An attached secondary dwelling shall share a common wall with the one-family dwelling, or shall share an integral roof structure having the same framing system and roof covering as the one-family dwelling and shall be separated from the one-family dwelling by no more than ten (10) feet at any given point.

3. A detached secondary dwelling shall be located behind the one-family dwelling.
4. A detached secondary dwelling shall be located at least six (6) feet away from the one-family dwelling.
5. A detached secondary dwelling shall be limited to a maximum of one story and 18 feet in height, with an average roof height of no greater than 14 feet. Average roof height is measured halfway up the slope of the roof, and in no case shall any portion of the roof height of a detached secondary dwelling exceed 18 feet. Roof height shall be determined in accordance with San Jose Municipal Code Section 20.200.510.
6. A detached secondary dwelling may not be attached to an accessory building, except that a detached secondary dwelling may be attached to a detached garage provided the detached garage conforms to the setbacks required for the secondary dwelling.
7. The cumulative total of the rear yard covered by the secondary dwelling, accessory buildings, and accessory structures, except pools, cannot exceed forty percent (40%) of the rear yard.

J. **Design Standards.** Secondary dwellings shall comply with the following design standards:

1. The secondary dwelling shall be constructed with façade materials identical in color, and similar in texture and appearance to the one-family dwelling, including but not limited to roofing, siding, and windows and doors.

2. The secondary dwelling shall match the roof pitch and roof form of the one-family dwelling in order to blend with the architecture of the one-family dwelling.
 3. The front door of any attached secondary dwelling shall not be located on the same facade as the front door of the one-family dwelling if that facade fronts onto a street.
 4. The windows of any secondary dwelling shall be placed on the secondary dwelling in locations that do not allow a direct view into the interiors of adjacent residential structures, or into the back yards of adjacent residences.
- K. **Application – Owner Residence.** As part of the building permit application process for a secondary dwelling, the owner of record shall submit a declaration, under penalty of perjury, stating that the one-family dwelling existing on the property is the owner's primary residence and that the owner occupies that primary residence. Sufficient documentation of such ownership and occupancy during the building permit application process and at the time of building permit issuance and finalization shall be provided to the satisfaction of the Director. Nothing in this Section 4(A) shall be deemed to affect the legal status of a secondary dwelling built with a lawfully issued permit if the property is subsequently transferred or sold, or if the one-family dwelling or secondary dwelling is subsequently rented or leased.
- L. **Code Compliance – One-family Dwelling.** An application for a secondary dwelling building permit shall not be deemed complete, and a building permit shall not be issued, if the City determines that the one-family dwelling will continue to have uncorrected violations involving applicable Zoning and Building Code requirements, or fire or safety hazards.

- M. **Other Permits Required.** Nothing in this Section supersedes requirements for obtaining development permits pursuant to this Title, or for properties subject to the Historic Preservation Permit requirements set forth in Chapter 13.48 of Title 13 of the San Jose Municipal Code.

- N. **Compliance with Building and Zoning Codes.** A secondary dwelling shall be built in accordance with the Building Code set forth in Title 24 of the San Jose Municipal Code (“Municipal Code”) and in conformance with Title 20 of the San Jose Municipal Code.

- O. **Located on One Lot.** A secondary dwelling shall be located within the same subdivision unit and on the same legal parcel as the one-family dwelling to which it is ancillary.

SECTION 3. Chapter 20.200 of Title 20 of the San José Municipal Code is amended to add a new section, to be numbered, entitled and to read as follows:

20.200.325 Dwelling, Secondary

A “secondary dwelling” means an attached or detached residential dwelling which is ancillary to a one-family dwelling and provides complete independent living facilities for one or more persons that include permanent provision for living, sleeping, eating, cooking, and sanitation on the same parcel as the one-family dwelling unit is situated.

///

///

SECTION 4. The Effective Date of the provisions of this Ordinance shall be June 15, 2008.

PASSED FOR PUBLICATION of title this **8th** day of **April** 2008, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, LICCARDO, NGUYEN,
OLIVERIO, PYLE, WILLIAMS; REED.

NOES: CONSTANT.

ABSENT: CORTESE.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk