

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO REVISE LAND USE PROVISIONS FOR TEMPORARY AND INCIDENTAL SHELTER OF HOMELESS PEOPLE, INCLUDING AMENDING SECTIONS 20.80.1600, 20.80.1610 AND 20.80.1620, AND ADDING SECTIONS 20.80.1630, 20.80.1640 AND 20.80.1650 TO PART 17, CHAPTER 20.80; ADDING DEFINITIONS OF “ASSEMBLY USE”, “INCIDENTAL SHELTER”, AND “PLACES OF ASSEMBLY”; CREATING STANDARDS FOR INCIDENTAL SHELTER OF HOMELESS INDIVIDUALS AND FAMILIES; ALLOWING INCIDENTAL SHELTER AS AN INCIDENTAL PERMITTED USE TO AN EXISTING LEGAL ASSEMBLY USE WHERE THE SHELTER IS PROVIDED INSIDE EXISTING BUILDINGS THAT ARE CONSTRUCTED AND OPERATING IN COMPLIANCE WITH THE SAN JOSE MUNICIPAL CODE

WHEREAS, lack of shelter presents a significant immediate threat to the health, safety and well-being of the approximately 4,063 homeless residents of the City of San José (“City”), and over 30% of the City’s homeless population are individuals that have medical conditions or disabilities that put their health and safety at far greater risk if they are unsheltered; and

WHEREAS, the City’s homeless population includes approximately 2,810 unsheltered homeless San José residents and the City’s housing options have previously proved insufficient to provide adequate overnight shelter for the unsheltered homeless population in San José, with only 1,566 homeless beds available in the community; and

WHEREAS, churches and other religious assemblies wish to continue to provide temporary shelter to homeless persons in religious assembly facilities; and

WHEREAS, the majority of the individuals served through the temporary shelters were frail and vulnerable women, men, and families who remain at great immediate risk of injury and harm due to exposure to the weather, victimization, and illness; and

WHEREAS, the City has an ordinance allowing churches and other religious assembly uses to provide temporary shelter to the homeless for one 35-day period each year, but the permitting requirements in Sections 20.80.1600 and 20.80.1610 of the San José Municipal Code have been too time-consuming to allow these interested parties to provide additional temporary shelter; and

WHEREAS, on June 28, 2016, the City Council adopted an interim ordinance on an urgency basis, Ordinance No. 29663, amending Section 20.80.1620 of Part 17 of Chapter 20.80 of Title 20 of the San José Municipal Code and suspending Sections 20.80.1600 and 20.80.1610 to allow churches and other religious assembly uses to provide temporary shelter to the homeless for up to 90 days each year until June 30, 2017; and

WHEREAS, intent of this ordinance is to help address the homelessness crisis by amending Sections 20.80.1600, 20.80.1610 and 20.80.1620 of Part 17 of Chapter 20.80 of Title 20 of the San José Municipal Code and adding Sections 20.80.1630, 20.80.1640, and 20.80.1650 to allow year-round incidental shelter as a permitted incidental use to legally established religious or non-religious assembly use, if the use complies with applicable provisions in Title 20 including standards for performance and a registration process and to allow an assembly use that is a legal use to provide temporary shelter to homeless persons subject to certain limitations; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), a Negative Declaration

for this Ordinance was adopted by the City Council under Resolution No. _____
on August 8, 2017 under Planning File No. PP17-015; and

WHEREAS, pursuant to Section 15070 of the CEQA Guidelines, the City of San José has determined adoption of the Ordinance would not have a significant effect on the environment; and

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

WHEREAS, this Council of the City of San José has considered, approved and adopted said Negative Declaration under separate Council resolution, prior to taking any approval actions on this Ordinance;

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

1. Part 17 of Chapter 20.80 of Title 20 shall be amended to read as follows:

Part 17--TEMPORARY AND INCIDENTAL SHELTER USE IN A PLACE OF ASSEMBLY

20.80.1600 – Definitions

The following definitions are for purposes of this Part:

1. “Assembly Building” means a Building that is primarily used for Assembly Use.

2. "Assembly Use" means a use involving the gathering of persons to participate in a group or common activity or to observe a presentation, performance, or exhibition.
3. "Incidental Shelter" means the providing of shelter of homeless people as an incidental use to an existing primary Assembly Use provided that the incidental use occupies less than fifty (50%) percent of the usable square footage of the Assembly Building(s), and the shelter is provided inside existing Building(s) that are constructed and operating in compliance with the San José Municipal Code. Incidental Shelter is not an Emergency Residential Shelter.
4. "Place of Assembly" means a Site that contains Assembly Uses including but not limited to religious assemblies, gymnasiums, libraries, theaters, schools, and community centers.

20.80.1610 - Permit required.

- A. An Assembly Use that is a legal use may provide Incidental Shelter to homeless persons:
 1. If specifically allowed by a conditional use permit or Planned Development permit issued for the Assembly Use; or
 2. With an amendment to an existing conditional use permit or Planned Development permit for Assembly Use; or
 3. With a special use permit if no conditional use permit or Planned Development permit is required for the Assembly Use.

- B. A management plan shall be submitted as part of any permit application for Incidental Shelter in Assembly Building(s).

20.80.1620 - Findings.

- A. The Director or Planning Commission may issue a special use permit only after finding that:
 - 1. The Incidental Shelter use at the location requested will not adversely affect the health, safety, or welfare of persons residing or working in the surrounding area.
 - 2. The proposed site is adequate in size and shape to accommodate the Incidental Shelter use.

- B. The application shall be denied where the information which is either submitted by the applicant or presented at the public hearing fails to satisfactorily substantiate such findings.

20.80.1630 - Conduct of use.

An Assembly Use that is a legal use may provide Incidental Shelter to homeless persons subject to each of the following limitations:

- 1. Assembly Buildings may be used as Incidental Shelter on a legal Parcel that is at least three thousand (3,000) square feet in size.

- 2. Assembly Buildings may provide Incidental Shelter to no more than fifty (50) persons in one twenty-four (24) hour period.

- 3. At no time shall the number of persons sheltered in any Assembly Buildings exceed the maximum square footage and occupancy standards set forth in Title 17 of this Code.

4. No Assembly Building or other Structure shall be erected, enlarged or modified without an approved Development Permit as required by Chapter 20.100 of this Title.
5. All persons receiving Incidental Shelter shall sleep and eat within Assembly Buildings. No person shall eat or be housed in tents, lean-tos or other temporary facilities.
6. The proposed Incidental Shelter shall be operated in a manner that is fully in conformance with all State and local laws including regulations and permit requirements which are not otherwise in conflict with the provisions of this Part.
7. The Incidental Shelter use shall comply with the requirements of Section 20.80.1610 or Section 20.80.1640.

20.80.1640 – Incidental Shelter Exception to Conditional Use Permit or Special Use Permit.

Notwithstanding Sections 20.80.1610 and 20.80.1620 of this Part, no conditional use permit or special use permit shall be required for any Incidental Shelter use that meets and remains in full compliance with all of the following requirements:

1. The maximum occupancy for any Incidental Shelter use shall be fifty (50) persons or as set forth by the City's Fire Code, whichever is more restrictive.
2. The Incidental Shelter use shall be allowed on a legal Parcel that is at least three thousand (3,000) square feet in size.

3. The Incidental Shelter use shall be located on a Site that has a Frontage and legal access to the Parcel where Incidental Shelter is provided.
4. The Parcel containing the Incidental Shelter use shall be located within the City's Urban Service Area.
5. The Incidental Shelter use shall not be located closer than a minimum distance of five hundred (500) feet from any Parcel on which another Incidental Shelter use exists, where the distance between the Parcels is measured from the nearest Parcel line to the nearest Parcel line.
6. The portion of a Building containing the Incidental Shelter use shall not be located at a distance closer than a minimum of one hundred and fifty (150) feet from any residential use that is located on another Parcel, measured from the nearest Building wall containing the Incidental Shelter use to the nearest Parcel line of a Parcel containing a residential use.
7. The Parcel containing the Incidental Shelter use shall comply with City Council Policy Number 4-3 on Outdoor Lighting for Private Developments, as may be amended from time to time.
8. Any Development Permit requirement associated with interior or exterior modifications for the Building containing the Incidental Shelter shall not be waived by this Section.
9. Incidental Shelter uses shall be registered with the Housing Department, on such forms as may be approved by the Director of Housing.

10. Facilities containing Incidental Shelter uses shall be inspected for occupancy compliance with the Fire Code.
11. Quiet hours on any Parcel containing an Incidental Shelter use shall be maintained between 10:00 p.m. and 7:00 a.m., seven (7) days a week, 365 days a year. Quiet hours do not preclude outdoor activities, such as smoking in designated outdoor areas or exiting the Site.
12. Any Site containing an Incidental Shelter use including public access and parking shall be maintained in a clean and safe condition, and in compliance with a management plan that is completed as part of registration with the Housing Department.
13. The Incidental Shelter Use shall comply with the requirements of Section 20.80.1630.

20.80.1650 – Temporary Shelter Exception to Permit Requirement.

- A. Notwithstanding Sections 20.80.1610 and 20.80.1620 of this Part, any Assembly Use that is a legal use may provide temporary shelter to homeless persons subject to each of the following limitations:
 1. An Assembly Use may provide temporary shelter to no more than thirty (30) persons in one twenty-four (24) hour period.
 2. An Assembly Use may provide temporary shelter up to two (2) times in a calendar year. The total amount of days for such shelter may not exceed ninety (90) days in any calendar year.

3. At no time shall the number of persons sheltered in any Assembly Buildings exceed the maximum square footage and occupancy standards set forth in Title 17 of this Code.
 4. No Assembly Building or other Structure shall be erected, enlarged or modified without an approved Development Permit as required by Chapter 20.100 of this Title.
 5. All persons receiving temporary shelter shall sleep and eat within Assembly Buildings. No person shall eat or be housed in tents, lean-tos or other temporary facilities.
 6. The temporary shelter shall be operated in a manner that is fully in conformance with all State and local laws including regulations and permit requirements which are not otherwise in conflict with the provisions of this Part.
 7. An Assembly Use providing temporary shelter shall be registered with the Housing Department, on such forms as may be approved by the Director of Housing.
- B. Notwithstanding Sections 20.80.1610 and 20.80.1620 of this Part, any Assembly Use that provided temporary shelter to the homeless consistent with the terms of Ordinance No. 29663 during the period between June 30, 2017 and the effective date of this Ordinance shall be deemed to have been in compliance with this Part during that period.
- C. For illustrative purposes only, below is a table comparing the significant features of temporary shelter to incidental shelter:

	Temporary Shelter	Incidental Shelter
Maximum duration	90 days in one calendar year, up to twice a year	Year- round
Maximum number of persons	30 persons in any 24-hour period	50 persons or as restricted by the Fire Code.
Required conformance to ALL performance standards (e.g., 150-foot minimum distance from shelter use to parcel with residential use)	No	Yes (If unable to meet any standard, approval of use permit is required)
Required Housing Department Registration	Yes	Yes

PASSED FOR PUBLICATION of title this _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk