Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: July 28, 2017

SUPPLEMENTAL

SUBJECT: FILE NO. PP17-015: AN ORDINANCE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE (THE ZONING CODE) TO REVISE LAND USE PROVISIONS FOR TEMPORARY AND INCIDENTAL SHELTER OF HOMELESS PEOPLE, INCLUDING:

1) AMENDING SECTIONS 20.80.1600, 20.80.1610 AND 20.80.1620, AND ADDING SECTIONS 20.80.1630, 20.80.1640 AND 20.80.16450 TO PART 17, CHAPTER 20.80, ADDING DEFINITIONS OF “ASSEMBLY USE”, “INCIDENTAL SHELTER”, AND “PLACES OF ASSEMBLY”, CREATING STANDARDS FOR TEMPORARY AND INCIDENTAL SHELTER OF HOMELESS INDIVIDUALS AND FAMILIES, ALLOWING THE 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 JOSÉ MUNICIPAL CODE; AND

2) MAKING OTHER TECHNICAL, FORMATTING OR NON SUBSTANTIVE CHANGES IN THE ZONING CODE

REASON FOR THE SUPPLEMENTAL

At the City Council hearing held on June 27, 2017, Council directed staff to return to Council with a revised draft ordinance that includes provisions for temporary shelter as well as incidental shelter in places of assembly. This supplemental memorandum summarizes the discussion of the proposed ordinance at the June 27, 2017, Council hearing as originally drafted, and then analyzes the provisions of the revised draft ordinance.
BACKGROUND

The revised draft ordinance responds to Council direction to include provisions for temporary shelter of up to 30 homeless individuals up to twice a year and up to 90 days a year, as well as including provisions for shelter for up to 50 homeless individuals year-round as an incidental use to a place of assembly.

Planning Commission Hearing on June 14, 2017

Prior to revisions, the draft ordinance for incidental shelter was discussed at the Planning Commission hearing held on June 14, 2017. Several members of the public spoke in favor of the ordinance, no one spoke against the ordinance, and the Planning Commission recommended Council approval of the ordinance as recommended by staff.

Meeting with Village House Representatives on June 23, 2017

After the Planning Commission hearing, correspondence from the Village House Steering Committee was sent to City staff on June 23, 2017, expressing concerns over the draft ordinance’s performance standard requirement for a 150-foot minimum distance from an incidental shelter use to residential uses, particularly for places of assembly located in residential neighborhoods. Staff met with representatives from the Village House Steering Committee on that date to address their concerns. As these representatives noted, the previously approved interim ordinance provisions for temporary shelter, which were for a maximum of 30 persons, provided only twice annually per site and up to a maximum of 90 days in a year, had no minimum separation distance requirement to residential uses. They expressed concern that the draft ordinance requirement for incidental shelter to be a minimum distance of at least 150 feet from residential uses could not be met by many of the sites that the Village House uses to provide temporary shelter to homeless people. Staff suggested that revising the draft ordinance to make permanent the current interim temporary shelter provisions in addition to creating the proposed provisions for incidental shelter use could address these stakeholders’ concerns.

Council Hearing on June 27, 2017

Public Testimony

At the City Council hearing held on June 27, 2017, fifteen members of the public spoke on the proposed Incidental Shelter ordinance (Council Agenda 6/27/17 Item No. 4.4). Several speakers said they fully supported the new ordinance to address homelessness in San José. They expressed appreciation for the opportunity to provide year-round shelter, safety, and protection to an increased number of homeless individuals, particularly to women and children.

Staff noted that, in response to testimony received in 2015 and 2016 from homeless advocates and stakeholders related to the lack of affordable housing and insufficient number of shelter beds, the City Council had adopted an interim ordinance to temporarily address these concerns. The interim ordinance, which expired on June 30, 2017, allowed temporary overnight shelter in
religious facilities for a maximum of 30 persons in any 24-hour period, twice in any calendar year, and up to a total of 90 days.

The proposed non-interim ordinance would allow greater shelter opportunities with year-round permitted incidental shelter use to any legally established assembly use, provided that the uses comply with performance standards and other applicable provisions in the Zoning Code.

A representative from the Village House mentioned that the 150-feet buffer threshold from residential parcels was not conducive to providing incidental shelter in religious assembly uses located on, or which immediately adjoin, residually-zoned parcels.

One of the founders of the Winter Faith Collaborative expressed appreciation of a partnership among City staff, Councilmembers and neighbors, and community involvement in a solution to shelter homeless individuals. He stated that he felt a responsibility to help fellow residents of San José who were unhoused.

City Council Discussion

Councilmember Jimenez thanked members of the public for opening up churches and their homes; he said that innovation could be applied to the community and not just the high-tech industry. Councilmember Davis thanked the faith community for their due diligence, planning for contingencies, and for opening their hearts to help the homeless population to build a better community. She appreciated that churches could continue their work in a manner that is successful for all their guests. Council member Khamis noted that despite initial negative objections from the neighborhood, including parishioners, the pilot program from 2016-2017 for expanding temporary shelter in places of assembly was successful in providing shelter to the homeless population, largely because of community efforts. Councilmember Nguyen said he was encouraged by developments that would allow sheltering of the homeless population.

Councilmember Rocha asked for clarification on the differences between temporary shelter and incidental shelter. Staff explained that: temporary shelter allowed up to 30 persons for a maximum of 90 days, and incidental shelter would allow a maximum of 50 persons year-round, provided that a minimum 150-foot distance could be maintained between the incidental shelter use and residential uses; the proposed non-interim ordinance would apply to all places of assembly, not just places of religious assembly; and that the shelter must occur within an existing assembly building, and not within landscaped areas or parks.

Staff stated that the interim ordinance for the temporary shelter provisions expired at the end of June 2017, and this interim ordinance could not be extended. Based on extensive stakeholder feedback, the proposed ordinance was drafted to allow year-round incidental shelter use that occupies less than 50% of the usable space in places of assembly. However, stakeholder feedback received on June 23, 2017, which occurred after the Planning Commission hearing held on June 14, 2017, regarding smaller religious assemblies located in residential neighborhoods, was that these smaller places of assembly were generally unable to meet staff’s and the Planning
Commission’s recommendation for performance standards that require a 150-foot minimum distance of incidental shelter use from residential uses.

In response to this stakeholder feedback, staff suggested to Council that two distinct types of shelter uses, incidental and temporary, could be included in the Zoning Code changes to offer greater flexibility to places of assembly that want to provide such shelter to homeless people.

Staff explained that the 150-foot separation distance was included to provide adequate buffer between shelter activities, ingress and egress, location of outdoor smoking areas, and to facilitate quiet hours and conformance with noise standards at residential parcel lines. Staff also clarified that a place of assembly could apply for a use permit to provide year-round incidental shelter with a less than 150-foot minimum distance requirement from residential uses.

ANALYSIS

The revised proposed ordinance responds to Council direction to include provisions for temporary shelter of up to 30 homeless individuals up to twice a year and up to 90 days a year, as well as including provisions for incidental shelter for up to 50 homeless individuals year-round as incidental shelter to a place of assembly as recommended by staff.

The following table compares the provisions of temporary shelter to incidental shelter:

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


/s/
ROSALYNN HUGHEY, INTERIM DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Jenny Nusbaum, Principal Planner, at (408) 535-7872.

Attachments: Public Correspondence
Fwd: Church/150 foot setback--catching up on memos

Nusbaum, Jenny

Tue 7/4/2017 10:04 AM

To: Ankola, Aparna <aparna.ankola@sanjoseca.gov>; Hughey, Rosalyn <Rosalynn.Hughey@sanjoseca.gov>

-- Jenny

Begin forwarded message:

From: jean.nusbaum@sanjoseca.gov
Date: July 4, 2017 at 9:57:00 AM PDT
To: sergio.jimenez@sanjoseca.gov, donald.rocha@sanjoseca.gov
Cc: peter.hamilton@sanjoseca.gov, helen.chapman@sanjoseca.gov, jenny.nusbaum@sanjoseca.gov
Subject Church/150 foot setback--catching up on memos

Hi Sergio and Don,

Happy July 4th!

I just read your memos about setbacks for incidental housing program and wanted to offer a couple of thoughts that may forestall future problems. I understand why you want to lower barriers, but I worry that resistance will develop in the neighborhoods as different populations become part of the rotating program. Currently, the population is medically fragile women. Far different from other potential populations.

As staff explained, 150 feet is the distance required to drop loud voices, amplified sound, and power tools to the required level at residential property lines. It makes the noise perceptible, but not discernible.

In the past, the city has had significant conflicts between residents and group homes, sober houses, and social clubs (i.e. "Alano Clubs"). These groups of folks overlap some of the homeless population. In the prior conflicts, issues raised included behavioral concerns. Frequently, a major annoyance revolved around noise after the city initiated a smoking ban. As an example, at the Alano Club West on Minnesota Avenue loud voices, laughter, and strings of epithets were often heard by the adjoining residents. This triggered a mind-numbing vendetta by adjacent residents who used many tools that ultimately resulted in the loss of this resource. Similarly, sober living homes attracted attention from neighbors from the noise after the smoking ban drove residents outdoors and ultimately both facilities were driven from Bird Avenue and Rio Avenue.

In each case, the noise from smoking and socializing outdoors triggered the residents' complaints.

If the "socializing" location is 150 feet away from residents, the noise (and smoke) does not attract attention and does not exceed the noise ordinance.
If the "socializing/smoking" location is closer, it holds the potential to create problems. The permit process allows staff to suggest an outdoor "smoking/socializing" location that meets city smoking standards and protects the quiet of the neighborhood. For example, in Saratoga, a Sober Living House permit had restricted hours and numbers for outdoor patio and basketball use. (i.e. No basketball after 8 pm and no more than 2 persons outside at one time after 9 pm).

While I understand the desire to make more facilities available, shortened distances increase the likelihood of conflict. With no permit requirements, how will the churches know the "best" practices to minimize the conflicts with nearby residents? I note in the council hearing transcript, that Jenny (Nusbaum?) would be working to specify some limits/guidelines.

Just using history to look ahead...and hoping to forestall problems.

—Jean Dresden