# Title 17  BUILDINGS AND CONSTRUCTION

## Chapter 17.02 GENERAL PROVISIONS - ABATEMENT OF NUISANCE ON PRIVATE PROPERTY

### Part 1 GENERAL ABATEMENT PROVISIONS

17.02.010 General provision.

Any thing or condition, including but not limited to violations of this Code or state law, which threatens injury or damage to the health, safety, welfare or property of members of the public, which obstructs the free use of property of others or interferes with the comfortable enjoyment of life or property is a nuisance. Any thing or condition, including but not limited to violations of this Code or state law, which fails to provide minimum standards of safety and habitability in housing for any citizen of the city is a nuisance. Such nuisances are prohibited within the City of San José and no person shall create or participate in the creation or maintenance of such a nuisance.

(Ord. 21971.)

17.02.020 Applicability.

Whenever the city, pursuant to this title, takes any action to abate a nuisance or requires any person to abate any nuisance existing on private property, the procedures set forth in this chapter may be utilized, unless such use is specifically prohibited.

For the purpose of this chapter, property shall include parcels of land, and/or any building, structure or portion thereof.

(Ord. 21971.)

17.02.030 Property subject to inspection.

Property is subject to inspection under this chapter whenever:

A. There is reason to believe that a condition exists on such property which violates a provision of this Code, or which makes a property unsafe, dangerous, hazardous or a nuisance; or

B. Such inspection is deemed necessary by any enforcement officer to carry out the provisions of this Code; or

C. There is any abatement action being performed on any property pursuant to a provision of this Code or any order issued pursuant thereto requiring such action; or

D. Such an inspection is conducted to determine if there has been completion of an abatement action pursuant to any abatement order.

(Ord. 21971.)

17.02.040 Entry for inspection authorized.

A. Whenever it is necessary to make an inspection of property to investigate or enforce any of the provisions of this Code, any official authorized by the city to conduct such inspections may enter such property at all reasonable times to inspect the same provided that:

1. If such property is occupied, the official shall first present proper credentials and request entry;

2. If such property is unoccupied, except in emergency circumstances, the official shall make a reasonable effort to contact the owner or other persons having charge or control of the property and request entry;

3. If such entry is refused or the owner or other persons having charge or control of said building or structure cannot be contacted, the official seeking entry shall have recourse to every remedy provided by law to secure entry.

B. All inspections authorized for the purpose of investigation or enforcing the provisions of this Code shall be at the discretion of the city and nothing in this chapter shall be construed as requiring the city to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection. Furthermore, nothing in this chapter shall be construed to hold the city responsible for any damage to persons or property by reason of making an inadequate or negligent inspection or by reason of any failure to make an inspection or reinspection.

(Ord. 21971.)

17.02.050 Obstruction or interference with work prohibited.

No person shall obstruct, impede or interfere or cause another to obstruct, impede or interfere with any person who is engaged in abatement actions performed pursuant to the provisions of this Code or who is directing or performing any act necessary or incidental to such abatement.

(Ord. 21971.)

17.02.060 Time within which to commence abatement work.

A. Whenever an abatement order is issued, the work shall commence as soon as reasonably possible under the circumstances.

1. When an abatement action is performed due to imminently dangerous conditions, the work shall commence without delay.

2. If no city permits are required for the abatement action and the conditions are not imminently dangerous, unless otherwise specified in the order, the abatement actions shall commence no later than fifteen days from the date of the decision of the commission designated pursuant to Section 17.02.160.

3. If city permits are required for the abatement action, unless the period of time is extended by the city manager, a complete application for each such permit shall be submitted no later than fifteen days from the date of the decision of the designated commission. Work shall begin within thirty days of the issuance of the permit.

B. The abatement actions shall be completed within such time as the city manager shall determine is reasonable under the circumstances.

(Ord. 21971.)

17.02.070 Failure to comply - Abatement action by city authorized.

Whenever there is a failure to comply with an abatement notice or order within the time specified in Section 17.02.060 or within the later time specified by the decision of the commission, the city manager is authorized to:

A. Cause the property to be restricted from use or occupancy; and/or

B. Cause the conditions which require abatement actions to be repaired, demolished or abated to the extent necessary to remedy the conditions causing the nuisance.

(Ord. 21971.)

17.02.080 Extension of time permitted.

Any person, firm or corporation required to take abatement action pursuant to this Code may apply to the city manager for an extension of time in order to comply. The city manager may grant an extension of time, if the city manager, at his discretion, determines that such an extension of time is reasonable under the circumstances. The city manager may require a written agreement by such person, firm or corporation that the order will be complied with, as a condition for such extension. The extension of time to complete an abatement action will not extend the time for any hearing hereunder unless the city manager expressly so states.

(Ord. 21971.)

17.02.090 Injunctive relief and treble costs.

A. Any use of, maintenance of or action taken with regard to any property which is contrary to the provisions of this chapter or any condition of any permit required by this title shall be, and is hereby declared to be unlawful and a public nuisance. As an alternative to any other remedy, the city may apply to any court having jurisdiction for any relief as will abate or remove such nuisance and restrain any person, firm or corporation from using, maintaining or taking any action regarding any property, contrary to the provisions of this title.

B. This title may be enforced by an injunction issued by the superior court upon any suit by the city or by the owner or occupant of any property affected by any such violation or threatened violation.

C. Upon entry of a second or subsequent civil or criminal judgment within a two-year period which finds that the owner of property is responsible for a condition that may be abated in accordance with this chapter, except for conditions abated pursuant to Section 17980 of the California Health and Safety Code, the court may order the owner to pay trebled costs of the abatement.

(Ords. 21971, 23832.)

### Part 2 NOTICE AND HEARING

17.02.100 Notice of summary abatement - Contents.

Whenever it is determined that summary abatement action by the city is necessary due to any condition which is imminently dangerous, the city manager shall issue a notice of summary abatement directed to the record owner(s) of the property, which has been determined to need summary abatement action. The notice shall contain:

A. The street address and a legal description sufficient for identification of the location of the property.

B. A statement that the property was found to be imminently dangerous, with a brief and concise description of the conditions found to render the property imminently dangerous in accordance with the provisions of this title.

C. A description of the summary abatement actions which were required and performed by the city to abate the imminent danger.

D. Statements advising that a charge will be assessed for the work that was performed and a description of the cost recovery procedure of Part 4 of Chapter 17.02.

E. An order specifying what additional actions, if any, are required to be taken by those persons receiving this notice and the time within which the actions must be commenced and completed. Such order shall include the information required in Section 17.02.110.

F. Statements advising:

1. That any person having any record title or legal interest in the property as described in Section 17.02.130 may protest any abatement action taken or ordered by the city manager to the commission designated in Section 17.02.160, at a public hearing on the date certain specified in the notice; and,

2. That failure to file a written protest or to appear at such hearing will constitute a failure to exhaust administrative remedies.

(Ord. 21971.)

17.02.110 Proposed abatement order - Contents.

Upon the determination that any condition exists on the property which requires abatement action, the city manager may issue a proposed abatement order directed to the record owner(s) of the property. The order shall contain:

A. The street address and a legal description sufficient for identification of the location of the property;

B. A statement that the property has been found to require abatement actions, with a brief and concise description of the conditions found to require such abatement actions;

C. A statement that:

1. The property needs abatement actions but does not have to be restricted from use or occupancy; or

2. The property needs abatement actions but does not have to be restricted from use or occupancy if specified temporary or interim corrective measures are completed within a specified time; or

3. The property needs abatement actions and must be restricted from use or occupancy. The order shall specify what, if any, temporary or interim corrective measures are required prior to the commencement of either permanent repairs or demolition.

D. Specification of any abatement actions to be taken and the time within which the actions must be commenced.

E. A statement advising that if any ordered abatement action is not completed within the time specified by this chapter or in the decision of the designated commission, the city manager:

1. May order the property, building or structure restricted from further use or occupancy and posted to prevent such further occupancy until the abatement work is completed; and/or

2. May proceed to cause the abatement work to be done and charge the costs thereof against the property or its owner.

F. A statement advising:

1. That any person having any record title or legal interest in the building as described in Section 17.02.130 may appear and protest the notice or order of any action taken or required to be taken by the city manager to the commission designated in Section 17.02.160, at a public hearing at the time and place specified in the order; and

2. That failure to file a written protest or to appear at such hearing will constitute a failure to exhaust the administrative remedies.

(Ord. 21971.)

17.02.120 Recording of abatement order certificates.

A. When a notice of abatement or proposed abatement order is issued, the city manager may file in the office of the county recorder a certificate describing the property and certifying:

1. That the property, building or structure is a nuisance pursuant to the provisions of this Code;

2. The actions proposed by the city manager to abate the conditions or defects causing the property to be a nuisance;

3. That if the abatement actions required by the designated commission, after hearing, are not performed, the city may do so;

4. That if the city performs the required abatement actions, the costs incurred for such performance may become a lien against the property; and

5. That those persons entitled to service pursuant to Section 17.02.130 have been so notified.

B. Whenever an abatement order certificate has been filed and the corrections ordered by the commission shall thereafter have been completed or the building or structure demolished so that it no longer exists as a nuisance pursuant to the provisions of this Code, the city manager shall file a compliance certificate with the county recorder certifying that all the required corrections have been made or that the building or structure has been demolished so that the property is no longer in violation of the notice or order of abatement, whichever is appropriate.

(Ord. 21971.)

17.02.130 Service to certain persons required.

A. Any notice or order, and any amended or supplemental notice or order, which is required shall be served upon the record owner(s) of the subject property. A copy of each notice or order, and any amended or supplemental notice and order, shall also be served on each of the following as disclosed by official public records in the county recorder's office:

1. The holder of any mortgage or deed of trust or other lien or encumbrance of record;

2. The owner or holder of any lease of record; and

3. The holder of any other estate of legal interest of record in or to the property on which the nuisance is located.

B. The lack of service to any person required to be served shall not invalidate any proceedings as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this chapter.

(Ord. 21971.)

17.02.140 Notice or order - Method of service.

Service of any required notice or order shall be made either personally or by mailing a copy of such notice or order by certified mail, postage prepaid, to each person entitled to service at the address which appears on the last equalized assessment roll of the county or as known to the city manager. If no such address appears or is known to the city manager then a copy of the notice or order shall be mailed, addressed to such person, at the address of the property involved in the proceedings. The failure of any such person to receive such notice or order shall not affect the validity of any proceedings taken pursuant to this chapter. Service by certified mail shall be effective from the date of mailing.

(Ord. 21971.)

17.02.150 Abatement hearing.

A. Every abatement action or order by the city manager is subject to review by the commission designated for that purpose in Section 17.02.160.

B. At the hearing the commission shall consider all evidence and testimony presented. The commission may also conduct an onsite inspection of the property.

(Ord. 21971.)

17.02.160 Designated commissions.

For the purposes of this chapter, all hearings are to be conducted as follows:

A. The code enforcement appeals commission shall conduct all hearings required by this chapter for abatement actions taken pursuant to the following chapters:

1. Chapter 17.40 - Dangerous Building Code; and

2. Chapter 17.44 - Abatement of Abandoned Service Stations.

B. The appeals hearing board shall conduct all hearings required by this chapter for abatement actions taken pursuant to the following chapters of this Code:

1. Chapter 17.20 - Housing Code; and

2. Chapter 17.72 - Community Preservation.

(Ords. 21971, 23287.)

17.02.170 Hearing date.

A. Every notice of summary abatement or proposed abatement order shall contain the date, time and place at which the abatement hearing shall be conducted by the designated commission.

B. Such hearing shall be set for not less than fifteen days nor more than sixty days from the date of service of the notice or order unless the city manager determines that the matter is urgent or a time extension for the hearing is reasonable.

C. The hearing shall be held at the date, time and place specified or, if continued or deferred, at the next regular meeting of the commission.

(Ord. 21971.)

17.02.180 Hearing - Findings and order.

A. Within a reasonable time following the conclusion of the hearing, the designated commission shall make written findings of fact, based on the evidence received at the hearing to support its decision and shall issue an order affirming, modifying or overruling the order of the city manager. The decision of said commission shall be final and conclusive.

B. If the commission finds that a summary abatement action has been taken where no abatement action was warranted pursuant to the provisions of this Code, no invoice shall be served pursuant to Section 17.02.310.

(Ord. 21971.)

### Part 3 ABATEMENT ACTIONS PERFORMED BY CITY

17.02.250 Supervision of work.

Any abatement action performed by the city pursuant to this title shall be accomplished under the supervision of the city manager either:

A. By city personnel; or

B. By contract awarded by the city manager or by the city council.

(Ord. 21971.)

17.02.260 Contract and bid procedures.

Any contract for work pursuant to this chapter shall be contracted for and awarded pursuant to the applicable procedures of Title 4 of this Code.

(Ord. 21971.)

17.02.270 Work standard.

Whenever the city performs any abatement action pursuant to this chapter, the city shall not be required to perform such abatement actions to the standard that the property, building or structure complies with all applicable provisions of this Code. The city shall perform such actions as are determined by the city manager or the designated commission to be necessary to abate or remedy the nuisance caused by such property, building or structure. Such limited abatement action by the city does not relieve the property owner from any requirement to bring the property into compliance with any applicable provisions of this Code.

(Ord. 21971.)

### Part 4 COST RECOVERY

17.02.300 Procedures to recover costs or expenses.

Whenever costs or expenses are incurred by the city in doing or causing to be done the necessary work of repair, demolition or other abatement work performed pursuant to this title, the city may recover its costs or expenses through the procedures set forth in this part. The procedures in this part are in addition to all other remedies available to the city for collection of such costs or expenses.

(Ords. 21971, 29259.)

17.02.310 Expenses - Accounting and report required.

The city manager shall keep an itemized account of the expense incurred by the city for abatement actions performed pursuant to the provisions of this Code. Upon the completion of any abatement action, the city manager shall prepare an invoice specifying the actions taken, the itemized and total cost of the actions and any allowable inspection fees, a description of the property where the abatement action was performed, and the names and addresses of the persons entitled to notice pursuant to Section 17.02.130. This invoice will be served on such persons in accordance with the provisions of Section 17.02.140. Such invoices may be served upon the completion of each abatement action or may be served upon the completion of all necessary abatement actions.

(Ord. 21971.)

17.02.320 Payment required.

This invoice shall be paid within thirty days of the date it is served or within the time and in the manner specified by the director of finance. Such payment shall be made to the director of finance.

(Ord. 21971.)

17.02.330 Failure to pay.

The director of finance shall notify the city manager of the failure of payment of an invoice after the time specified for such payment has expired. Upon such notification, the city manager shall prepare and file with the city clerk a report containing the information required in Section 17.02.310.

The city manager shall place such report on the city council agenda for consideration by the city council. The city council shall fix a time, date and place for hearing said report, and any protests or objections thereto. The city manager shall cause notice of said hearing to be posted upon the property involved and served by certified mail, postage prepaid, addressed to the owner(s) of the property as the name and address appears on the last equalized assessment roll of the county, if such so appears, or as known to the city manager. A copy of such notice shall also be served on those persons specified in Section 17.02.130. The city clerk shall cause said notice to be published once in a newspaper of general circulation in the city. Such notice shall be given at least ten days prior to the date set for hearing, and shall specify the day, hour and place when the council will hear and pass upon the city manager's report, together with any objections or protests which may be filed, as hereinafter provided, by any person interested in or affected by the proposed charge.

(Ord. 21971.)

17.02.340 Filing of protests to proposed charges.

Any person interested in or affected by the proposed charges may file written protests or objections with the city clerk. Such written protests must be filed no later than twenty-four hours before the time set for the hearing on the report of the city manager. Each such protest or objection must contain a description of the property in which the protesting party is interested and the grounds of such protest or objection. The city clerk shall endorse on every such protest or objection the date it was received by the city clerk. Protests or objections shall be presented to the city council by the city clerk at the time set for the hearing, and no other protests or objections shall be considered.

(Ord. 21971.)

17.02.350 Assessment and lien.

A. The city council may, after the hearing, modify the amount of the charges, discharge the amount of the charges or order that said charge shall he an assessed charge against the property involved.

B. When the city council orders that the charge shall be assessed against the property it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter said assessment shall constitute a special assessment against and a lien upon the property.

(Ord. 21971.)

17.02.360 Notice of lien - Form and contents.

Immediately upon the confirmation of the assessment by the city council, the city clerk shall file in the office of the county recorder of Santa Clara county, California, a certificate in substantially the following form:

"NOTICE OF LIEN

Pursuant to the authority vested in the Council of the City of San José by the provisions of Chapter 17.02 of Title 17 of the San José Municipal Code, said council did on or about \_\_\_\_\_\_\_\_\_, 19\_\_\_\_\_\_\_\_\_, cause the building (or structure) on the real property hereinafter described to be repaired (or demolished), (if other work is done, state nature of such other work) in order to abate a nuisance on said property. Also, the council of the City of San José, pursuant to the provisions of said Chapter 17.02, did on \_\_\_\_\_\_\_\_\_, 19\_\_\_\_\_\_\_\_\_, assess the cost of such repair (or demolition or other work, as the case may be) upon the real property hereinafter described. Said assessment has not been paid, and the City of San José does hereby claim a lien on said real property for its net expense of the doing of said repair (or demolition or other work, as the case may be) said net expense being the amount of said assessment to wit: the sum of $\_\_\_\_\_\_\_\_\_. The same is and shall be a lien upon said real property until said sum has been paid in full and discharged.

The real property hereinbefore mentioned, and upon which a lien is claimed, is that certain real property situate in the City of San José, County of Santa Clara, state of California, particularly described as follows:

(DESCRIPTIONS)

Dated: This \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 19\_\_\_\_\_\_\_\_\_

City Clerk

City of San José

(ACKNOWLEDGMENT)"

(Ord. 21971.)

17.02.365 Designated body.

As an alternative to the procedures set forth in Sections 17.02.330 through 17.02.360, the public hearing before the city council and the imposition of a special assessment lien by the city council referenced in those sections may be conducted and imposed by a designated body pursuant to Chapter 1.18 of this Code.

(Ord. 25264.)

17.02.370 Assessments - Priority.

Immediately upon the recording of the notice of lien, the assessment shall be deemed to be complete. Any amounts assessed shall be payable, and the assessments shall be liens against the parcels of land assessed, respectively. The lien shall be subordinate to all existing assessment liens previously imposed upon the same property. The lien shall be paramount to all other liens except for state, county and municipal taxes with which taxes it shall be on a parity.

(Ord. 21971.)

17.02.380 Notice of lien - Delivery to county assessor.

After recording, the notice of lien, required by this chapter, shall be forthwith delivered by the city clerk to the county assessor of the County of Santa Clara, state of California.

(Ord. 21971.)

17.02.390 Lien entered on assessment roll.

The county assessor shall enter the amount set forth in said lien on the assessment roll opposite the description of the particular property affected as described on the county assessor's map books for the current year.

(Ord. 21971.)

17.02.400 Assessments - Collection procedures.

A. The amount set forth in the notice of lien shall be collected at the same time and in the same manner as city taxes are collected. The assessment shall be subject to the same penalties and interest, and to the same procedure for foreclosure and sale in case of delinquency, as provided for city taxes. All laws applicable to the levy, collection and enforcement of city taxes are hereby made applicable to such assessment.

B. If the city council has determined that the assessment shall be paid in installments, each installment and any interest thereon shall be collected in the same manner as provided for city taxes in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for foreclosure and sale as provided for city taxes.

(Ord. 21971.)

17.02.410 Penalty on delinquent assessments.

All such assessments remaining unpaid after thirty days from the date of recording on the assessment roll shall become delinquent. A delinquency penalty of ten percent shall attach to such assessments upon such delinquency.

(Ord. 21971.)

### Part 5 RESTRICTION FROM USE OR OCCUPANCY

17.02.450 Restriction from use or occupancy - Defined.

For the purpose of this Code, an order to "restrict from use or occupancy" includes either total or partial restriction from use or occupancy of either all or some specified portion of a building, structure or property. The methods which may be used for such restriction from use or occupancy include, but are not limited to the construction, erection, installation and maintenance of such fencing, enclosures, barricades and/or other protective devices, used for the purpose of closing, barring, boarding, locking and or otherwise securing all means of access to a property, building or structure as will effectively prevent entry into the building or structure or onto the property by unauthorized persons and effectively prevent any use or occupancy thereof.

(Ord. 21971.)

17.02.460 Restriction from use or occupancy notice - Posted.

Whenever any property, building, or structure is ordered restricted from use or occupancy, the following notice shall be posted. Said notice may be posted at or upon each entrance or exit of the property, building, or structure in substantially the following form:

**RESTRICTED**  
**DO NOT ENTER**  
**UNSAFE TO ENTER,**  
**USE OR OCCUPY**

It is a misdemeanor to enter, use or occupy this building or premises, or to remove or deface this notice. City Manager City of San José

(Ord. 21971.)

17.02.470 Compliance with notice required.

Whenever the notice described in Section 17.02.460 is posted, no person shall remain in or on or enter the property, building, or structure which has been so posted, except that entry may be made to perform abatement actions under permit. Whenever such abatement actions require any permits, such required permits shall be obtained prior to the commencement of any such abatement actions. No person shall remove or deface any such notice after it is posted until the required abatement actions have been completed and inspected and approved by the city.

(Ord. 21971.)

### Part 6 JOINT OR COMMON OWNERSHIP

17.02.500 Joint or common ownership.

Whenever property, which is the subject of nuisance abatement pursuant to Chapter 17.02, is jointly owned, owned as common property or is otherwise subject to multiple ownership whether in fee or as an easement, the owners of the property shall be jointly and severally liable for the nuisance. The city may apportion each owner's liability in reasonable proportion to each individual's ownership interest in the subject property.

(Ord. 23832.)

## Chapter 17.04 BUILDING CODE

### Part 6 EXCAVATION AND GRADING

17.04.280 Uniform Building Code - Appendix Chapter 70 - Excavation and grading amended.

Chapter 70 of the Appendix of the Uniform Building Code is hereby adopted as amended by this part.

(Prior code § 8127; Ords. 20536, 20586, 21031, 21047, 21295, 21719.)

17.04.290 Purpose and intent.

The purpose of this chapter is to safeguard life, limb, property, water quality and natural resources, and to promote the public welfare by regulating grading. It is the intent of this chapter to establish uniform engineering standards and procedures for grading, and to allow reasonable deviations from these standards.

(Prior code §§ 8217, 17.04.280; Ord. 21719.)

17.04.300 Scope.

This chapter sets forth rules and regulations to control excavation, grading, and earthwork construction, including fills and embankments; establishes the administrative procedure for issuance of permits; and provides for approval of plans, specifications, and inspection of grading construction.

Nothing in this chapter shall restrict the City of San José from imposing more stringent grading requirements through other ordinances, permit conditions, and conditions imposed on the approval of tentative subdivision maps. The director shall adopt procedures for implementation of this part. Said procedures shall be on file in the office of the director.

(Prior code §§ 8127, 17.04.280; Ord. 21719.)

17.04.310 Permits required - Notice of exemption.

No person shall do any grading without first having obtained a grading permit pursuant to Section 17.04.340 or notice of exemption from the director from the director.

A. Unless prohibited by Subsection B., a notice of exemption may be granted for projects meeting any of the following conditions:

1. An excavation below finished grade for basement or footings of a building, retaining wall, or other structures authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation, nor exempt any excavation having an unsupported height greater than five feet after completion of such structure;

2. Excavations for cemetery graves, swimming pools, wells, tunnels, utilities, storm drains and sanitary sewers;

3. Refuse disposal sites controlled by other regulations;

4. Mining, quarrying, excavating, processing or stockpiling of rock, sand, gravel, aggregate or clay where established and provided by law, provided such operations do not affect the lateral support or increase the stresses in or the pressure upon any adjacent or contiguous property;

5. Exploratory excavations under the direction of soil engineers or engineering geologists;

6. Grading or temporary stockpiling in an isolated, self-contained area if there is no danger apparent to private or public property;

7. Any project meeting all of the following conditions:

a. No excavation greater than two feet and no embankment greater than three feet;

b. No engineered slope steeper than two to one or having a slope distance of greater than five feet;

c. Earthwork which will not penetrate or disturb any permanent or seasonal spring, or any permanent or seasonal aquifer and will not obstruct any surface drainage course;

d. All embankments for the support of structures are less than one foot in depth and placed on terrain having a natural slope of five percent or flatter; and

e. The total quantity of either cut or fill does not exceed one hundred fifty cubic yards.

8. Earthwork entirely within public rights-of-way or easements and/or which is authorized and administered by a public agency.

9. The director expressly finds that the project is of such a nature as to make the procedure under this part unnecessary for the promotion of public welfare and safety.

B. No notice of exemption shall be granted for sites located in:

1. Special geologic hazard areas as defined by Section 17.10.225 of Chapter 17.10 of this title.

2. The local plan area (as defined in Section 18.40.270) and that involve a covered activity (as defined in Section 18.40.220) subject to the Habitat Conservation Plan adopted in Chapter 18.40 of Title 18 of this Code.

(Prior code § § 8127, 17.04.280; Ords. 21719, 29203.)

17.04.320 Hazards.

Whenever the director determines that any existing natural geologic condition or any excavation or fill on private property has become a hazard to life and limb, or endangers any property or natural resources, or adversely affects the safety, use or stability of a public way, drainage channel or swale, the owner of the property upon which the excavation or fill is located, or other person or agent in control of said property, upon receipt of notice in writing from the director, shall, within the period specified therein, repair or eliminate such natural geologic condition, excavation or fill so as to eliminate the hazard and be in conformance with the requirements of this Code.

(Prior code §§ 8127, 17.04.280; Ord. 21719.)

17.04.330 Definitions.

For the purposes of this chapter, the definitions listed hereunder shall be construed as specified in this section.

"As graded" is the surface conditions resulting at completion of grading.

"Bedrock" is in-place rock.

"Bench" is a relatively level step excavated into earth material on which fill is to be placed.

"Borrow" is earth material acquired from an off-site location for use in grading on a site.

"Civil engineer" shall mean an engineer registered as such by the state of California.

"Civil engineering" shall mean the application of the knowledge of the forces of nature, principles of mechanics, and the properties of materials to the evaluation, design and construction of civil works for the beneficial uses of mankind.

"Compaction" is the densification of a fill by mechanical means.

"Critical geologic hazards" are and shall include, but need not be limited to, active faults, extremely weak or expansive soil, creeping soil, and active or incipient landslides.

"Director" shall mean the director of public works of the City of San José. Wherever this chapter or the Uniform Building Code specifies building official, for purposes of Part 6 said designation shall mean director.

"Earth material" is any rock, natural soil or fill and/or any combination thereof.

"Engineering grading" is grading in excess of five thousand cubic yards, and all grading for permanent correction of a landslide, rockslide, mud flow, debris flow, or other failure of earth or rock, and not of an emergency or maintenance nature.

"Engineering geologist" shall mean an engineering geologist registered and certified by the state of California.

"Engineering geology" shall mean the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of work normally performed by a civil engineer.

"Erosion" is the wearing away of the ground surface as a result of the movement of wind, water and/or ice, or the action of gravity on earth material.

"Excavation" is the mechanical removal of earth material.

"Existing grade" is the grade prior to grading.

"Exploratory grading" is grading for the purpose of exploring or determining conditions on a site.

"Export" is the hauling of natural earth materials from the site.

"Fill" is a deposit of earth material placed by artificial means.

"Finish grade" is the final grade of the site which conforms to the approved plan.

"Geologic hazards" shall mean any condition in earth, whether naturally occurring or artificially created, which is dangerous or potentially dangerous to life, property or improvements due to movement, failure or shifting of earth. For the purposes of this chapter, soil conditions which endanger or potentially endanger life, limb or property, or which, in the opinion of the director, may lead to structural defects in existing or future structures which may be located on or adjacent to soils having such conditions, shall be considered geologic hazards. Such geologic hazards include, but need not be limited to, faults, landslides, mudslides, and rockfalls; ground shaking, ground movement, or ground failure due to earthquake shaking; flood, tidal, seiche, or tsunami inundation; erosion and sedimentation; subsidence or settlement; and weak, expansive or creeping soil.

"Grade" shall mean the vertical location of the ground surface.

"Grading" is any excavating or filling or combination thereof.

"Import" is the hauling of natural earth materials to the site.

"Key" is a designed, compacted fill placed in a trench excavated in earth material beneath or at the toe of a fill slope.

"Lot" is a parcel with a separate number assigned by the assessor, or each quarter-acre of a large parcel.

"Natural resources" include water, mineral commodities and ores, and timber of commercially harvestable quality and quantity.

"Regular grading" is grading involving five thousand cubic yards or less or grading of an emergency or maintenance nature and not for permanent correction of a landslide, rockslide, mud flow, debris flow, or other failure of earth or rock.

"Rough grade" is the stage at which the grade approximately conforms to the approved plan, and structure foundation areas are at plan or subbase foundation grade.

"Site" is any lot or parcel of land or contiguous combination thereof, under the same ownership, where grading is performed or permitted.

"Slope" is the ratio of horizontal distance to vertical distance of an inclined ground surface.

"Soil" is naturally occurring surficial deposits overlying bedrock.

"Soil engineer" shall mean a civil engineer experienced and knowledgeable in the practice of soil engineering.

"Soil engineering" shall mean the application of the principles of soil mechanics in the investigation, evaluation, design and construction of civil works involving the use of earth materials and the inspection and testing of the construction thereof.

"Statement" shall mean a written document prepared by the civil engineer attesting to completion of the work as shown on the as-graded plans and described in the final reports.

"Terrace" is a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.

17.04.340 Grading permit requirements.

A. Permits required. No person shall do any grading without first obtaining a grading permit or a notice of exemption pursuant to Section 17.04.310 from the director. A separate permit shall be required for each site and may cover both excavations and fills.

B. Application. To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished for that purpose. Each such application shall conform to procedures established by the director.

 If the site is located in the local plan area (as defined in Section 18.40.270) and involves a covered activity (as defined in section 18.40.220) subject to the Habitat Conservation Plan adopted in Chapter 18.40 of Title 18 of this Code, the application shall also include details of the methods and timing in which the project will comply with the Habitat Conservation Plan in the form and manner required by the director of planning, building and code enforcement. Applicable conditions on covered activities from Chapter 6 of the Habitat Conservation Plan as well as other measures required to implement the conservation strategy of the Habitat Conservation Plan shall be included in each permit approval for a covered activity.

C. Plans and specifications. Each application shall be accompanied by one set of plans and specifications, and supporting data consisting of a soil engineering and engineering geology report unless waived by the director.

D. Information on plans and specifications. Plans and specifications shall conform to the procedures established by the director.

E. Soil engineering report. The soil engineering report required by Subsection C. shall include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading procedures, and design criteria for corrective measures when necessary, and opinions about the adequacy of sites to be developed by the proposed grading.

 Recommendations included in the report and approved by the director shall be incorporated in the grading plans and/or specifications.

 If the site is located in a special geologic hazard area as defined by Section 17.10.220.H of Chapter 17.10 of this title, the soil engineering report shall be part of the geologic review required by Chapter 17.10.

F. Engineering geology report. The engineering geology report required by Subsection C. shall include an adequate description of the geology of the site, including identification of actual and potential geologic hazards, conclusions and recommendations regarding the effect of geologic conditions on the proposed development, recommendations for mitigation of identified hazards wherever appropriate, and opinions and recommendations about the adequacy of sites to be developed by the proposed grading. Recommendations included in the report and approved by the director shall be incorporated in the grading plans and/or specifications.

 If the site is located in a special geologic hazard area as defined by Section 17.10.220H. of Chapter 17.10 of this title, the engineering geology report shall be part of the geologic review required by Chapter 17.10.

G. Issuance. The application, plans, and specifications filed by an applicant for a permit shall be checked by the director. Such plans may be reviewed by other departments of the city to check compliance with the laws and ordinances under their jurisdictions.

 If the director is satisfied that the work described in an application for permit and the plans and specifications filed therewith conforms to the requirements of this Code and other pertinent laws and ordinances, and that the fees specified in Section 17.04.350 have been paid, the director shall issue a permit to the applicant.

 When the director issues the permit, the director shall sign and date the plans and such signature shall constitute approval. Such approved plans shall not be changed, modified or altered without authorization from the director, and all work shall be done in accordance with the approved plans.

 The director may issue a permit allowing part of a grading project to proceed before the entire plans and specifications for the whole grading project have been submitted or approved, provided that adequate general site development information and detailed statements have been filed, complying with all pertinent requirements of this Code. The holder of such permit shall proceed at his or her own risk without assurance that the permit for the entire grading project will be granted.

H. Disapproval. If, after review of the application and plans and specifications by the city, the director finds the project for which the grading is intended, or the application, or the plans or specifications are not in compliance with this or any other ordinance or law, the director shall not issue the grading permit, and shall so inform the applicant in writing, stating the reasons for disapproval, within forty days after the filing of the application.

 The applicant may resubmit the application when the conditions which led to disapproval of the application have been corrected. No additional plan-check fees shall be charged for such subsequent applications unless, in the opinion of the director, the application or plans and specifications have been so changed as to constitute a new application. If, in the opinion of the director, a new permit application has been filed, new plan-check fees as provided in Section 17.04.350 of this chapter shall be charged. No additional fees shall be charged.

I. Planned supplemental reports. Supplemental engineering geology reports or soils reports, or both, may be required at any stage of the grading operation if specified by the director. Upon acceptance of supplemental reports by the director, conclusions, recommendations and design criteria shall be incorporated in revised plans and specifications, and implemented immediately. If the supplemental report indicates a hazardous condition which cannot be mitigated, the grading permit may be revoked.

J. Unanticipated conditions. Supplemental reports shall be required during the grading period whenever soil or geologic conditions are encountered which, in the opinion of the director, deviate significantly from the conditions described in the soils report or the engineering geology report, or when modifications are made to the original grading plans which, in the opinion of the director, require supplemental investigation, analysis, or change in engineering design.

K. Liability. The City of San José shall not be held liable for any damages or costs incurred by the applicant as a result of the requirements of any supplemental report.

L. Distribution of plans. One set of reproducible approved and dated plans and specifications shall be retained by the director for a period of ninety days from the completion of the work covered therein, and one set of reproducible approved and dated plans and specifications shall be returned to the applicant. The applicant shall supply reproductions of approved, dated plans to anyone who works on the project.

M. Validity. The issuance or granting of every grading permit shall be conditioned upon the approval by the city of any other permit, final map or parcel map, improvement plans or improvement contract and, where applicable, upon the approval of any other agency or regulatory body having jurisdiction over the use or development of the land to be graded.

 Nothing in this chapter shall be deemed to prevent the approval of a tentative map under the provisions of Title 19 of the San José Municipal Code or a site development permit, a PD permit or any other permit under the provisions of Title 20 of this Code prior to application for or issuance of a grading permit pursuant to this chapter. In cases where the approval of a tentative map or any permit under the aforementioned provisions of said Title 20 includes a preliminary grading plan, no grading permit shall be issued unless the director determines that the provisions, conditions and specifications in such grading permit are in substantial compliance with the intent of said preliminary plan.

 The issuance or granting of a permit or approval of plans and specifications shall not be construed to be a permit for or an approval of any violation of any of the provisions of this Code. No permit presuming to give authority to violate or cancel the provisions of this Code shall be valid, except insofar as the work or use which it authorizes is lawful.

 The issuance of a permit based upon plans and specifications shall not prevent the director from thereafter requiring the correction of errors in said plans and specifications or from preventing grading operations being carried on thereunder when in violation of this Code, any other ordinance of the city, or any other applicable law.

N. Expiration. The term of every grading permit shall be determined as follows:

1. The term of a grading permit may be the same as the term of an improvement contract if:

a. The applications for the grading permit and any and all applicable and necessary plans for public improvements have been filed by the applicant so as to enable the city to consider both such applications and such plans, before the issuance of the permit; and

b. The proposed grading was shown on a preliminary grading plan approved by the city as a part of an approved tentative map submitted under the provisions of Title 19, Subdivisions, of the San José Municipal Code, a site development permit, a PD permit or other use permit for the land to be graded; provided that the term of such grading permit shall not exceed the "term of applicability" specified in the soil engineering and geology report which is required to be filed pursuant to Section 17.04.340C., or three years, whichever is less.

2. If the grading permit is issued without specification of its term, the grading permit shall expire six months after its issuance, unless the term of such permit has been extended by the director for delays beyond the control of the applicant.

a. Such extension may be given the form of a new permit with a new term, upon approval of the director, without an additional plan-checking fee or grading fee. If substantial work has not been commenced, only one such extension can be granted.

b. If at any time after the grading work has commenced, the grading project authorized by such permit is suspended or abandoned for a period of six months, the permit shall expire. Before such work can be recommenced, a new permit shall be first obtained to do so. No fee shall be charged for such permit, provided that no changes have been made or will be made in the original plans or specifications for such work and provided further that such suspension or abandonment has not exceeded one year.

Upon expiration of the permit without completion of the project, as evidenced by a statement of completion, the permit holder shall leave the site in a safe and nonhazardous condition.

O. Suspension or revocation. If the director determines that the permit is issued in error, on the basis of incorrect information supplied, or in violation of any law, ordinance, or any of the provisions of this Code, or the work being performed does not comply with the permit, or changed conditions or additional information indicates that the grading as permitted could create a hazard, then the director may, in writing, suspend or revoke a permit issued under the provisions of this Code.

P. Appeal.

1. Any permittee or applicant for a permit shall be given notice setting forth the reasons for any determination to deny, suspend or revoke any grading permit under this part. Said permittee or applicant shall be given the opportunity for a hearing before the director within a reasonable time from said notice. No grading work shall be done on the site pending appeal and any affected permit shall be automatically suspended pending final resolution of the appeal to director.

2. Any final determination of the director under this part may be appealed to the San José Code Enforcement Appeals Commission. The prohibition on grading work and the suspension of the permit effectuated under Subsection P.1., above, shall continue pending final determination of such an appeal to said commission.

Q. Plans and specifications. Each application shall be accompanied by one set of plans and specifications, and supporting data consisting of a soil engineering and engineering geology report unless waived by the director.

(Prior code § 8127; 17.04.280; Ords. 21719, 29203.)

17.04.350 Fees.

A. Plan-checking fee. Before accepting a set of plans and specifications for checking, the director shall collect a plan-checking fee. Separate building permits and fees shall apply to retaining walls or major drainage structures. There shall be no separate charge for standard terrace drains and similar facilities. The amount of the plan-checking fee for grading plans shall be as set forth in the schedule of fees established by resolution of council.

B. Grading permit fees. A fee for each grading permit shall be collected by the director. The amount of the fee shall be as set forth in the schedule of fees established by resolution of council.

The fee for grading permit authorizing additional or less work than that under a valid permit under Section 17.04.340I or Section 17.04.340J of this chapter, shall be the difference between the fee paid for the original permit and the fee shown for the entire project, and any excess shall be refunded after acceptance of the project.

(Prior code § 8127; 17.04.280; Ord. 21719.)

17.04.360 Bonds.

The director may require bonds in such forms and amounts as may be deemed necessary to assure that the work, if not completed in accordance with the approved plans and specifications, will be corrected to eliminate hazardous conditions.

Required bonds may be included with any other surety bond otherwise required by the city.

(Prior code § 8127; 17.04.280; Ord. 21719.)

17.04.370 Designated routes.

Each grading permit application where the design volume of either the export or import of earth material exceeds ten thousand cubic yards shall be reviewed by the director of traffic operations. For such permits, the director of traffic operations shall determine and designate those routes which will be allowable for trucks or other equipment of permittee or its contractors or subcontractors, agents, or employees doing work under the grading permit, traveling between the construction site and/or the excavation, landfill or quarry sites. The use of these designated routes shall be a condition of such a grading permit. The use of routes other than the designated routes by permittee or its contractors or subcontractors, agents, or employees doing work under such a grading permit shall be cause for the director to revoke or suspend the grading permit in addition to any other remedy of the city.

(Prior code § 8127; 17.04.280; Ord. 21719.)

17.04.380 Failure to remove material.

In addition to, or in lieu of, any other remedy the city may have, the director shall have the right to revoke or suspend the grading permit if the permittee or its contractors or subcontractors, agents, or employees doing work under the grading permit refuse to remove or fail to remove promptly any dirt, rock, refuse, or garbage that was dropped, deposited, placed, dumped, or spilled, thrown or has fallen off, or was tracked off any vehicle onto any street, highway, or public property of the City of San José by the permittee or its contractors or subcontractors, agents or employees doing work under the grading permit after a notice to permittee from the director to cease and desist from refusing to remove such material or failing to remove such material promptly.

(Prior code § 8127; 17.04.280; Ord. 21719.)

17.04.390 Cuts.

A. General. Unless otherwise recommended in the approved soil engineering and/or engineering geology report, cuts shall conform to the provisions of this section. Exceptions from standards established by this Code may be permitted by the director. Each such exception requested shall be listed by the engineer on the plans and/or in the specifications.

B. Slope. The slope of cut surfaces shall be no steeper than is safe for the intended use, and shall not exceed two horizontal to one vertical, except as permitted by the director.

C. Cut Location. Cut slopes shall not be constructed where the top of the cut intercepts the natural ground surface below a planned or existing fill slope within a horizontal distance equal to one-third of the vertical height of the fill slope above.

D. Drainage and Terracing. Drainage and terracing shall be provided as required by Section 17.04.420.

(Prior code § 8127; 17.04.280; Ord. 21719.)

17.04.400 Fills.

A. General. Unless otherwise recommended in the approved soil engineering report, fills shall conform to the provisions of this section.

Exceptions from standards established by this Code may be permitted by the director. Each such exception requested shall be listed by the engineer on the plans and/or in the specifications. In the absence of an approved soil engineering report these provisions may be waived for minor fills not intended to support structures.

B. Fill Location. Fill slopes shall not be constructed on natural slopes steeper than two to one or where the fill slope terminates above a planned or existing cut slope, within a horizontal distance equal to one-third of the vertical height of the fill.

C. Preparation of Ground. The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, topsoil and other materials as determined unsuitable by the soil engineer. Where the slopes are five to one or steeper, fills shall be benched into sound earth material.

D. Fill Material. Only earth materials which have no more than minor amounts of organic substances and have no rock or similar irreducible material with a maximum dimension greater than eight inches shall be used, except as permitted by the director.

E. Compaction. All fills shall be compacted according to the recommendations of the soils report. If a soils report has not been made, then the compaction test method and the required relative compaction shall be indicated on the plans and/or in the specifications.

F. Slope. The slope of fill surfaces shall be no steeper than is safe for the intended use and, in no event, steeper than two to one, except as permitted by the director.

G. Drainage and terracing. The area above fill slopes and the surfaces of terraces shall be graded and paved as required by Section 17.04.420.

(Prior code § 8127; 17.04.280; Ord. 21719.)

17.04.410 Setbacks.

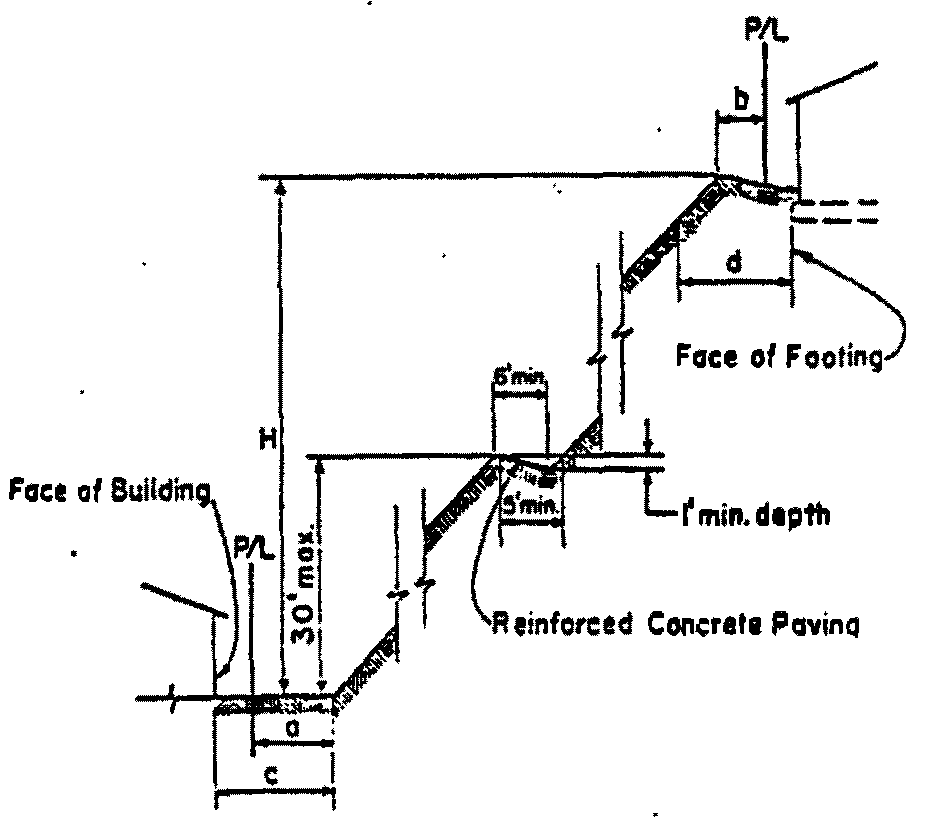
A. Setbacks. The tops and the toes of cut and fill slopes shall be set back from property boundaries as far as necessary for safety of the adjacent properties and to prevent damage from water runoff or erosion of the slopes, and shall be set back from structures as far as necessary for adequacy of foundation support and to prevent damage as a result of water runoff or erosion of the slopes.

Unless otherwise recommended in the approved soil engineering and/or engineering geology report and shown on the approved grading plan, setbacks shall be no less than shown in Table No. 1:

TABLE NO. 1

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| H(ft) | a (private) | a (public) | b | c | d\* |
| 0 - 1 | 0 | 0 | 0 | 5 | 5 |
| 1 - 3 | 2 | 2 | 2 | 5 | 5 |
| 3 - 10 | 3 | 2 | 2 | 5 | 5 |
| 10 - 30 | H/2 | H/5 | 3 | H/2 | H/2 |
| 30 & over | 15 | 6 | 3 | 15 | 15 |

\* Dimension "d" is the horizontal distance from the bottom of a structure footing to the face of an adjacent slope.



B. Exceptions. Foundation setbacks from property lines and slopes of cuts and fills shall not apply with respect to construction of multiple dwelling units with common and integral foundations with suitably joined and reinforced retaining walls, abutments, piers, columns, and other common structural members.

(Prior code § 8127; 17.04.280; Ord. 21719.)

17.04.420 Drainage and terracing.

A. General. Unless otherwise indicated on the approved grading plan, drainage facilities and terracing shall conform to the provisions of this section.

B. Terrace. Terraces at least six feet in width shall be constructed on all slopes having a maximum height of thirty feet or more and shall be established at not more than thirty-foot vertical intervals to control surface drainage and debris. Suitable access shall be provided to permit proper cleaning and maintenance.

Swales or ditches on terraces shall have a minimum gradient of two and one-half percent along the ditch and five percent toward the ditch and must be paved with reinforced concrete not less than three inches in thickness or an approved equal paving.

A single run of swale or ditch shall not collect runoff from a tributary area exceeding forty thousand square feet (projected) without discharging into a downdrain.

C. Subsurface Drainage. Cut and fill slopes shall be provided with subsurface drainage as necessary for stability.

D. Disposal. All drainage facilities shall be designed to carry waters to the nearest practicable drainageway approved by the director and/or other appropriate jurisdiction as a safe place to deposit such waters. If drainage facilities discharge onto natural ground, riprap or other erosion control and energy dissipating devices may be required. At least one percent gradient from building pads toward approved drainage facilities shall be required.

(Prior code § 8127; 17.04.280; Ord. 21719.)

17.04.430 Erosion control.

A. Slopes. The faces of cut and fill slopes which accept overland or sheet flow or any cut or fill slope of erodible material over three feet in height shall be treated with an approved erosion control treatment immediately following completion of construction when rough grade has been attained between November 1st and May 31st, or before November 1st if rough grade is attained between May 31st and November 1st. An approved erosion control plan may include effective planting or other erosion control devices and may require maintenance in a manner satisfactory to city by means of contracts, deed restrictions, or other instruments approved by city.

B. Other Devices. Check dams, sedimentation basins, cribbing, riprap or other devices or methods to control erosion and sediments shall be employed when necessary to provide safety and protect water quality.

C. Exception. Where cut slopes are not subject to erosion due to the erosion-resistant character of the materials, protection specified under subsection A and B, above, may be omitted, as permitted by the director.

D. Bonding. The director may require bonds in such forms and amounts as may be deemed necessary to assure that the work, if not completed in accordance with the approved plans and specifications, will be corrected to eliminate hazardous conditions or protect water quality.

(Prior code § 8127; 17.04.280; Ord. 21719.)

17.04.440 Grading inspection.

A. General. All grading operations for which a permit is required shall be subject to inspection by the director. The director may also require special inspection and testing during the course of the work, as set forth in Section 17.04.440B.

B. Special Inspection and Testing.

1. Engineered grading. When, during the course of the work, the director so requires, the engineering geologist shall inspect the work for geological matters including, but not limited to, the adequacy of the natural ground for receiving fills, the stability of cut slopes, and the need for subdrains or other groundwater drainage devices; the soils engineer shall inspect the work for elements including, but not limited to, the preparation of the ground to receive fills, the adequacy of testing for required compaction, the stability of all finish slopes, and the design of buttress fills, incorporating, where required, criteria supplied by the engineering geologist; and the civil engineer shall inspect the work for elements within his area of technical specialty including, but not limited to, the proper establishment of line, grade and drainage.

The engineering geologist and soil engineer shall report their findings to the civil engineer, who shall ensure that all concerns warranting change in the engineering criteria for the work are acted upon immediately, and he shall so report to the director.

The director or his authorized representative may inspect the work when a statement of completion is required, or at any other time as he deems necessary.

2. Regular grading. When, during the course of the work, the director so requires, a testing agency shall be called upon to test and inspect the work for matters including, but not limited to, the adequacy of cleared areas and benches to receive fill, and the compaction of fills.

If the director has cause to believe that geologic hazards may be involved, the work shall be required to conform to the provisions of section 17.04.440 B.1.

C. Notification of Noncompliance. If, in the course of fulfilling their responsibility under this chapter, the civil engineer, the soil engineer, the engineering geologist, and/or the testing agency find that the work is not being done in conformance with this chapter or the approved grading plans and specifications, the discrepancies shall be reported immediately in writing to the person in charge of the grading work and to the director. Recommendations for corrective measures, if necessary, shall be submitted. Failure to implement corrective measures immediately is grounds for suspension or revocation of the grading permit.

D. Transfer of Responsibility. If during the course of the work either the civil engineer, the soil engineer, the engineering geologist or the testing agency of record is changed, the work shall be stopped until the replacement has agreed to accept the responsibility within the area of his technical competence for a statement of the completion of the work.

(Prior code § 8127; 17.04.280; Ord. 21719.)

17.04.450 Completion of work - Final reports.

Upon completion of the work, the director may require the applicant to submit a final report. This final report shall conform to procedures established by the director.

(Prior code § 8127; 17.04.280; Ord. 21719.)

## Chapter 17.05 ENFORCEMENT IN SAN JOSÉ-CUPERTINO MUNICIPAL REORGANIZED TERRITORY

### Part 1 GENERAL

17.05.010 Definitions.

Unless it clearly appears otherwise from the context, these words and phrases and their derivatives in this Chapter 17.05 shall have the following meanings:

A. "Joint exercise of powers agreement," "joint agreement" or agreement" mean the "Joint Exercise of Powers Agreement San José Cupertino Municipal Reorganization" entered between the City of San José and the city of Cupertino.

B. "Building official" means the person defined as such in the agreement, acting on behalf of the City of San José and city of Cupertino.

C. "Director" means the person defined as such in the agreement and includes, where applicable, the director of public works and the director of planning of the City of San José.

D. "Territory of organization" or "territory" means solely and only that territory within the City of San José which would be detached from San José and annexed to Cupertino as described in the agreement mentioned in Section 17.05.030 of this chapter.

E. "Permit" means those permits and conditions which are defined as such in the agreement.

(Ord. 19615.)

17.05.020 Compensation.

No compensation, reimbursement or other benefit shall be provided, derived or required for the exercise of any authority hereunder, whether to the city of Cupertino or City of San José or any of their respective officers, employees or other authorized representatives, other than such division of building, plumbing, electrical or mechanical code permit fees as the San José city council may prescribe by ordinance.

(Ord. 19615.)

### Part 2 SAN JOSÉ OFFICIALS - ENFORCEMENT IN CUPERTINO REORGANIZED TERRITORY

17.05.030 Authorization.

The City of San José director of public works, director of planning and building official, as each is defined in an "Agreement for San José-Cupertino Municipal Reorganization," on file in the office of the city clerk, are and each of them is authorized to provide and continue inspection, supervision and enforcement of performance of such laws, contracts and permits as are in their respective authority in the City of San José, in relation to any project defined in said agreement, within territory detached from San José and annexed to Cupertino pursuant to a municipal reorganization.

(Ord. 19615.)

17.05.040 Effect.

A. Such authorization shall be exercised in the territory of reorganization by requiring and imposing the same requirements of law, contract and permit as would be applicable in the City of San José as if the project was, remained and continued in the City of San José without annexation to Cupertino. Any such act shall be the act of both the City of San José and Cupertino.

B. Such building official may, but shall not be required to, continue inspection and enforcement after the expiration of ninety days succeeding the effective date of municipal reorganization; in all events, he shall cease after such ninety days, upon receipt of notice of a written resolution of the council of the city of Cupertino specifying the date, after such ninety days, when such authority terminates.

(Ord. 19615.)

17.05.050 Cupertino authorization.

No such authorization shall be effective or exercised unless and until there is effective an ordinance of the city of Cupertino permitting the exercise of such authority, in accordance with the provisions of the agreement mentioned in Section 17.05.020 of this Code and the joint exercise of powers agreement mentioned in Section 17.05.020 of this Code and the joint exercise of powers agreement mentioned in Section 17.05.010.

(Ord. 19615.)

### Part 3 CUPERTINO OFFICIAL IN REORGANIZED TERRITORY

17.05.060 Authorization.

The building official of the city of Cupertino, as defined in an "Agreement for San José-Cupertino Municipal Organization" on file in the office of the city clerk, is authorized for, on behalf of, and as the act both of San José and Cupertino to provide and continue inspection, supervision and enforcement of those requirements of law or permit which pertain to permits issued under the San José building, electrical, plumbing or mechanical code for work in the territory of reorganization for such periods of time while the said work is on property formerly in the territory of reorganization within the City of San José, upon its annexation upon municipal reorganization to Cupertino, and thereafter in the city of Cupertino, all in accordance with the conditions, restrictions, and limitations set forth in the "Agreement for San José-Cupertino Reorganization" mentioned in Section 17.05.020 and joint exercise of powers agreement mentioned in Section 17.05.010.

(Ord. 19615.)

17.05.070 Effect.

Such authorization shall be exercised in the territory of reorganization, both upon and after reorganization, by requiring and imposing the same requirements of law, contract and permit as would be applicable in the City of San José as if the project was, remained and continued in said city without annexation to Cupertino. Any such act, within Cupertino upon and after annexation, shall be the act of the City of San José and Cupertino for the purposes of the codes mentioned in this Part 3, but shall not be exercised while the San José building official is exercising authority under Part 2 until the later of the following: The expiration of ninety days after the effective date of municipal reorganization, or the cessation after such ninety days of inspection and enforcement by the San José building official.

(Ord. 19615.)

17.05.080 Cupertino authorization.

No such authorization shall be effective or exercised unless and until there is effective an ordinance of the city of Cupertino permitting the exercise of such authority in accordance with the provisions of the agreement mentioned in Section 17.05.020 of this Code and the joint exercise of powers agreement 3270 mentioned in Section 17.05.010.

(Ord. 19615.)

## Chapter 17.08 SPECIAL FLOOD HAZARD AREA REGULATIONS[[1]](#footnote-1)

### Part 1 TITLE AND SCOPE

17.08.010 Short title.

This chapter shall be known as the "San José special flood hazard area regulations," may be cited as such, and will be referred to herein as "this chapter."

(Ord. 28512.)

17.08.020 Authority.

The Legislature of the State of California has in Government Code Sections 65302, 65560, and 65800 conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the city council of the City of San José does hereby adopt the following floodplain management regulations.

(Ord. 28512.)

17.08.030 Findings.

A. The flood hazard areas of the City of San José are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

B. Such flood losses are caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities also contribute to flood losses.

(Ord. 28512.)

17.08.040 Purpose.

The purpose of this chapter is to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by legally enforceable regulations applied uniformly throughout the community to all publicly and privately owned land within flood prone areas. This chapter is intended to:

A. Protect human life and health;

B. Minimize expenditure of public money for costly flood control projects;

C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

D. Minimize prolonged business interruptions;

E. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in areas of special flood hazard;

F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;

G. Ensure that potential buyers are notified that property is in an area of special flood hazard; and

H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(Ord. 28512.)

17.08.050 Methods of reducing flood losses.

In order to accomplish its purposes, this chapter includes regulations to:

A. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities;

B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

C. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

D. Control filling, grading, dredging, and other development which may increase flood damage; and

E. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

(Ord. 28512.)

### Part 2 DEFINITIONS

17.08.055 Definitions.

The definitions set forth in this part shall govern the application and interpretation of this chapter.

(Ord. 28512.)

17.08.060 Accessory structure.

"Accessory structure" means a detached structure on the same parcel or site with, and of a nature customarily incidental and subordinate to, the main structure. This structure shall be used solely for parking (residential garages with gross floor area of six hundred fifty square feet or smaller) or limited storage (low-cost sheds with gross floor area of two hundred square feet or smaller).

(Ord. 28512.)

17.08.065 Administrator.

"Administrator" means the federal insurance administrator, to whom the secretary of the interior has delegated the administration of the National Flood Insurance Program.

(Ord. 28512.)

17.08.070 Base flood or one hundred year flood.

"Base flood" or "one-hundred-year flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

(Ord. 28512.)

17.08.075 Base flood elevation.

"Base flood elevation" or "BFE" is the computed elevation to which the flood water is anticipated to rise during the base flood. This elevation is referenced to a vertical datum, such as the National Geodetic Vertical Datum of 1929 (NGVD29) or the North American Vertical Datum of 1988 (NAVD88).

(Ord. 28512.)

17.08.080 Basement.

"Basement" means any enclosed area of a structure having its lowest floor more than two feet below grade level on all sides.

(Ord. 28512.)

17.08.085 Biennial report.

"Biennial report" means the report completed by communities participating in the National Flood Insurance Program that describes the community's progress in the previous two years in implementing floodplain management measures and on its needs for re-mapping and technical assistance. This report is submitted annually or biennially as determined by the administrator.

(Ord. 28512.)

17.08.088 Breakaway walls.

"Breakaway walls" are any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic or any other suitable building material which is not part of the structural support of the building and which is designed to break away under abnormally high tides or wave action without causing any damage to the structural integrity of the building on which they are used or any buildings to which they might be carried by flood waters. A breakaway wall shall have a safe design loading resistance of not less than ten and no more than twenty pounds per square foot. Use of breakaway walls must be certified by a registered engineer or architect and shall meet the following conditions:

A. Breakaway wall collapse shall result from a water load less than which would occur during the base flood; and

B. The elevated portion of the building shall not incur any structural damage due to the effects of wind and water loads acting simultaneously in the event of the base flood.

(Ord. 28512.)

17.08.090 Coastal high hazard area.

"Coastal high hazard area" means the portion of a coastal flood area having special flood hazards that is subject to high velocity waters, including hurricane wave wash and tsunami. The area is designated on the Flood Insurance Rate Map (FIRM) as Zone V1-V30, VE, or V.

(Ord. 28512.)

17.08.095 Conditional letter of map revision (CLOMR).

"Conditional letter of map revision (CLOMR)" means FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations (BFEs), or the special flood hazard area (SFHA). The CLOMR does not revise an effective NFIP map. The CLOMR indicates whether the project, if built as proposed, would be recognized by FEMA.

(Ord. 28512.)

17.08.100 Crawlspace.

"Crawlspace" means the enclosed area contained inside the foundation walls and below the habitable floor of a structure. Crawlspaces having the lowest floor two feet or less below grade level on all sides shall not be considered a basement.

(Ord. 28512.)

17.08.105 Development.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, construction or modification of buildings or other structures, mining, dredging, trenching, filling, grading, paving, excavation, drilling operations or storage of equipment or materials.

(Ord. 28512.)

17.08.110 Elevation certification.

"Elevation certification" means certification of lowest floor elevation as prescribed by the National Flood Insurance Program and this chapter.

(Ord. 28512.)

17.08.115 Flood, flooding or flood water.

"Flood," "flooding," or "flood water" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of streams, rivers, or other inland water, or abnormally high tidal water or rising coastal waters proximately caused by severe storms, hurricanes, or tsunami. It also includes the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents exceeding anticipated cyclical levels.

(Ord. 28512.)

17.08.120 Flood Boundary and Floodway Map (FBFM).

"Flood Boundary and Floodway Map (FBFM)" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the floodway for the City of San José.

(Ord. 28512.)

17.08.125 Flood Hazard Boundary Map (FHBM).

"Flood Hazard Boundary Map" (FHBM) means the most recent official map of the City of San José, issued by the administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zones A, M, and/or E.

(Ord. 28512.)

17.08.130 Flood Insurance Rate Map (FIRM).

"Flood Insurance Rate Map (FIRM)" means the most recent official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the City of San José.

(Ord. 28512.)

17.08.135 Flood Insurance Study (FIS).

"Flood Insurance Study (FIS)" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

(Ord. 28512.)

17.08.140 Floodplain administrator.

"Floodplain administrator" is the community official designated by title to administer and enforce the floodplain management regulations. Unless otherwise specified in this chapter, floodplain administrator shall mean the deputy director of public works or his or her designee.

(Ord. 28512.)

17.08.145 Floodplain management.

"Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

(Ord. 28512.)

17.08.150 Floodplain management regulations.

"Floodplain management regulations" means this chapter, zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as geologic hazard, grading, and erosion control) and any other application of police power which control development in flood prone areas. This term describes federal, state or local regulations any combination thereof, which provide standards for preventing and reducing flood loss and damage.

(Ord. 28512.)

17.08.155 Floodplain or flood-prone area.

"Floodplain" or "flood-prone area" means any land area susceptible to being inundated by water from any source.

(Ord. 28512.)

17.08.160 Floodproofing.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to properties or structures which reduce or eliminate flood damage to lands, water and sanitary facilities, structures, or their contents, including but not limited to dry floodproofing and wet floodproofing as defined herein. For guidelines on dry and wet floodproofing, see FEMA Technical Bulletins TB 1-93, TB 3-93, and TB 7-93.

A. "Dry floodproofing" means floodproofing measures that are designed to prevent flood waters from entering a structure. Dry floodproofing techniques may include, but are not limited to, installation of closure and sealants, watertight walls, small floodwalls or levees, flood shields, and watertight doors.

B. "Wet floodproofing" means floodproofing measures that minimize damage to a structure and its contents from flood water that is allowed into the structure.

(Ord. 28512.)

17.08.165 Highest adjacent grade.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

(Ord. 28512.)

17.08.170 Historic structure.

"Historic structure" means any structure that is:

A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; or

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or

C. Individually listed on the State Inventory of Historic Places with the California Office of Historic Preservation; or

D. Individually listed in a city inventory of historic resources.

(Ord. 28512.)

17.08.175 Letter of map revision (LOMR).

"Letter of map revision (LOMR)" means FEMA's modification to an effective flood insurance rate map (FIRM), or flood boundary and floodway map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations (BFEs), or the special flood hazard area (SFHA). The LOMR officially revises the flood insurance rate map (FIRM) or flood boundary and floodway map (FBFM), and sometimes the flood insurance study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report.

(Ord. 28512.)

17.08.180 Letter of map revision based on fill (LOMR-F).

A Letter of map revision based on fill (LOMR-F) means FEMA's modification of the special flood hazard area (SFHA) shown on the flood insurance rate map (FIRM) based on the placement of fill outside the existing regulatory floodway.

(Ord. 28512.)

17.08.185 Lowest floor.

"Lowest floor" means the lowest floor of the lowest enclosed area of a structure, including basement (see "Basement" definition). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or limited storage in an area other than a basement is not considered a building's lowest floor, provided that such enclosure meets the applicable non-elevation design requirements of Subsections A.2. through A.6., inclusive, and A.10. of Section 17.08.620 of this Chapter.

(Ord. 28512.)

17.08.190 Major repairs.

"Major repairs" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds twenty-five percent of the market value of the structure before any repair takes place.

(Ord. 28512.)

17.08.195 Manufactured home; mobilehome.

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. Manufactured home includes "mobilehome" as defined in Section 788.3 of the California Civil Code, but does not include "recreational vehicle" as defined in Section 799.29 of the California Civil Code and Section 18010 of the California Health and Safety Code or "commercial coach" as defined in Section 18001.8 of the California Health and Safety Code.

(Ord. 28512.)

17.08.200 Manufactured home park or subdivision; mobilehome park.

"Manufactured home park or subdivision" and "mobilehome park" mean a parcel (or contiguous parcels) of land divided into two or more lots or sites for rent or sale, or that are held out for rent or sale, to accommodate manufactured homes or mobilehomes for human habitation.

(Ord. 28512.)

17.08.205 Market value.

"Market value" means the current estimated fair market value of a structure, excluding the current estimated fair market value of the land on which the structure is located and the current estimated fair market value of any landscaping, and any detached accessory structures on such land. The current tax assessed value of the structure as provided by the county tax assessor's office shall be used as the market value of the structure where the cost of the proposed improvement to the structure does not exceed forty percent. In the event the cost of the improvement to the structure exceeds forty percent of the current tax assessed value of the structure, the floodplain administrator shall estimate the market value or, in the alternative, market value shall be determined from an independent appraisal prepared by a qualified professional appraiser using a building cost estimating method recognized by the building construction industry, which shall be reviewed and accepted by the floodplain administrator.

(Ord. 28512.)

17.08.210 Mean sea level.

"Mean sea level" means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum of 1929 (NGVD29), North American Vertical Datum of 1988 (NAVD88), or other datum, to which base flood elevations shown on the city of San José's flood insurance rate maps are referenced.

(Ord. 28512.)

17.08.215 Mixed-use structure.

"Mixed-use structure" means any structure that has only nonresidential uses in areas of the structure at or below the base flood elevation, but has residential uses in areas of the structure above the base flood elevation with access to residential uses dry floodproofed.

(Ord. 28512.)

17.08.220 New construction.

"New construction," for the purposes of this chapter, means structures for which the "start of construction" commenced on or after the effective date of floodplain management regulations adopted by the city of San José, and includes any subsequent improvements to such structures.

(Ord. 28512.)

17.08.225 New manufactured home park or subdivision.

"New manufactured home park or subdivision" means a manufactured home park or subdivision, or a mobilehome park, for which the construction of facilities for servicing the lot on which the manufactured home or mobilehome is to be affixed (including at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed on or after the effective date of floodplain management regulations adopted by the city of San José.

(Ord. 28512.)

17.08.230 Official map or official maps.

"Official map" means either the FBFM, FHBM or the FIRM. "Official maps" means the FBFM, FHBM and the FIRM collectively.

(Ord. 28512.)

17.08.235 Recreational vehicle.

"Recreational vehicle" means a vehicle which is:

A. Built on a single chassis;

B. Four hundred square feet or less when measured at the largest horizontal projection;

C. Designed to be self propelled or permanently towable by a light duty truck; and

D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

(Ord. 28512.)

17.08.240 Regulatory floodway.

"Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

(Ord. 28512.)

17.08.245 Remedy a violation.

"Remedy a violation" means to bring the structure or other development into compliance with state or local floodplain management regulations; or, if this is not possible, the floodplain administrator may determine impossibility by applying the National Flood Insurance Program variance criteria/guidelines and require the applicant to reduce the impacts of noncompliance to the greatest extent possible in accordance with the National Flood Insurance Program and its implementing regulations. If such a variance is denied, the applicant may appeal to the director of public works pursuant to Section 17.08.580. The manner in which impacts may be reduced include: protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this chapter, otherwise deterring future similar violations, or reducing state or federal financial exposure with regard to the structure or other development.

(Ord. 28512.)

17.08.250 Repetitive loss.

"Repetitive loss" means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five percent of the market value of the structure before the damage occurred.

(Ord. 28512.)

17.08.255 Riverine.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

(Ord. 28512.)

17.08.260 Special flood hazard area.

"Special flood hazard area" means an area in the floodplain subject to a one percent or greater chance of flooding in any given year. It is shown on an FHBM or FIRM as Zone A, AO, A1-A30, AE, A99, AH, V1 V30, VE or V.

(Ord. 28512.)

17.08.265 Start of construction.

"Start of construction" refers to the start of a substantial improvement or other proposed new development where the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within one hundred eighty days from the date of issuance of the building permit therefor. For the purposes of this section, the start of "substantial improvement" or "other proposes new development" mean: (a) the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, installation of piles, construction of columns, or any work beyond the stage of excavation; or (b) the placement of a manufacture home on a foundation; or (c) the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building. "Permanent construction," for the purposes of this section, does not include: (a) land preparation, such as clearing, grading, and filling; (b) the installation of streets and/or walkways; (c) excavation for a basement, footings, piers, or foundations or the erection of temporary forms; (d) the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

(Ord. 28512.)

17.08.270 Structure.

"Structure" means:

A. Any walled and roofed building that is principally above ground (including a manufactured home); and

B. A gas or liquid storage tank that is principally above ground.

(Ord. 28512.)

17.08.275 Substantial damage.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent of the market value of the structure before the damage occurred.

(Ord. 28512.)

17.08.280 Substantial improvement.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or other proposed new development of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure before the start of construction of the improvement. If multiple or phased improvements to a structure are involved, total costs shall include all cumulative costs for a consecutive five-year period prior to the start of construction of the most recent improvement. This term includes structures which have incurred "repetitive loss" or "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

A. Any project for improvement of a structure to correct existing violations or state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or;

B. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

(Ord. 28512.)

17.08.285 Variance.

"Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

(Ord. 28512.)

17.08.290 Violation.

"Violation" means the failure of a structure or other development to be fully compliant with this chapter. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

(Ord. 28512.)

17.08.295 Water surface elevation.

"Water surface elevation" means the heights, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, expected to be reached by floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Ord. 28512.)

17.08.300 Watercourse.

"Watercourse" means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. "Watercourse" includes specifically designated areas in which substantial flood damage may occur.

(Ord. 28512.)

### Part 3 DESIGNATION OF FLOOD HAZARD AREAS

17.08.400 Application of chapter.

The provisions of this chapter apply to those areas of the city of San José designated on the official maps.

(Ord. 28512.)

17.08.410 Use of available data.

When base flood elevation data has not been provided, the floodplain administrator shall obtain, review, and reasonably utilize any authoritative base flood elevation data available from a federal, state or other source, in order to administer the provisions of Part 5, below.

(Ord. 28512.)

17.08.420 Public access.

A copy of the official maps and flood insurance study shall be filed with the city clerk and shall be available for use and examination by the public.

(Ord. 28512.)

### Part 4 GENERAL PROVISIONS AND ADMINISTRATION

17.08.500 Applicability of special flood hazard area regulations.

Nothing in this chapter shall be construed to relieve any persons of requirements imposed by other sections of this code, except that the provisions of this chapter relating to measures designed to reduce flood losses shall take precedence over any other provisions of this code which are in conflict.

(Ord. 28512.)

17.08.510 Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the "Flood Insurance Study (FIS) for City of San José" dated August 2, 1982 with accompanying flood insurance rate maps (FIRMs) and flood boundary and floodway maps (FBFMs), dated August 2, 1982, and all subsequent amendments and/or revisions, including any digital forms, are hereby adopted by reference and declared to be a part of this chapter. This FIS and attendant mapping is the minimum area of applicability of this chapter and may be supplemented by studies for other areas which allow implementation of this chapter and which are adopted by the city council for this purpose. The study, FIRMs and FBFMs are on file at the department of public works.

(Ord. 28512.)

17.08.520 Compliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards) shall constitute a misdemeanor. Nothing herein shall prevent the city council from taking such lawful action as is necessary to prevent or remedy any violation.

(Ord. 28512.)

17.08.530 Conflicts.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, in the event that any provision of this chapter conflicts with another provision in this code, any other law, or any easement, covenant, or deed restriction, the more restrictive provision for the purpose of flood protection shall apply.

(Ord. 28512.)

17.08.540 Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city of San José, any officer or employee thereof, the state of California, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(Ord. 28512.)

17.08.550 Designation of the floodplain administrator.

The deputy director of public works (and his or her designee) is hereby appointed to administer, implement and enforce this chapter by granting or denying development permits in accord with its provisions.

(Ord. 28512.)

17.08.560 Duties and responsibilities of the floodplain administrator.

The duties and responsibilities of the floodplain administrator shall include, but not be limited to the following:

A. Permit review. Review all development permits to determine whether:

1. Permit requirements of this chapter have been satisfied, including determination of substantial improvement and substantial damage of existing structures;

2. All other required state and federal permits have been obtained;

3. The site is reasonably safe from flooding; and

4. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. This means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the city of San José.

B. Development of substantial improvement and substantial damage procedures.

1. Using FEMA publication FEMA 213, "Answers to Questions About Substantially Damaged Buildings," develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage, to include defining "market value;" and

2. Assure procedures are coordinated with other departments/divisions and implemented by department of public works staff.

C. Review, use and development of other base flood data. When base flood elevation data has not been provided in accordance with Section 17.08.510, the floodplain administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or other source, in order to administer Part 5. A base flood elevation may be obtained using one of two methods from the FEMA publication, FEMA 265, Managing Floodplain Development in Approximate Zone A Areas - A Guide for Obtaining and Developing Base (100-year) Flood Elevations, latest version.

D. Notification of other agencies.

1. Alteration or relocation of a watercourse:

a. Notify adjacent communities and the California department of water resources prior to alteration or relocation;

b. Submit evidence of such notification to the Federal Emergency Management Agency; and

c. Assure that the flood-carrying capacity within the altered or relocated portion of said watercourse is maintained.

2. Base flood elevation changes due to physical alterations:

a. Within six months of information becoming available or project completion, whichever comes first, the floodplain administrator shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a LOMR.

b. All LOMRs for flood control projects are approved prior to the issuance of building permits. Approved CLOMRs allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition.

Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.

3. Changes in corporate boundaries. Notify FEMA in writing whenever the corporate boundaries have been modified by annexation or other means and include a copy of a map of the community clearly delineating the new corporate limits.

E. Documentation of floodplain development. Obtain and maintain for public inspection and make available as needed the following:

1. Certification required by Section 17.08.620 A.7. and Section 17.08.620 A.13. (lowest floor elevations);

2. Certification required by Section 17.08.620 A.8. (elevation or floodproofing of nonresidential structures);

3. Certification required by Section 17.08.620 A.10. (wet floodproofing standard);

4. Certification of elevation required by Section 17.08.660 (subdivisions and other proposed development standards);

5. Certification required by Section 17.08.640 D. (floodway encroachments); and

6. Maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.

F. Map determination. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard, where there appears to be a conflict between a mapped boundary and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 17.08.580.

G. Remedial action. Take action to remedy violations of this chapter as specified in Section 17.08.520.

H. Biennial report. Complete and submit biennial report to FEMA.

I. Planning. Assure community's general plan is consistent with floodplain management objectives herein.

(Ord. 28512.)

17.08.570 Development permit (flood clearance).

A development permit shall be obtained before any construction or other development, including manufactured homes, within any area of special flood hazard established in Section 17.08.510. Application for a development permit shall be made on forms furnished by the city of San José. The applicant shall provide the following minimum information:

A. Plans drawn to scale showing:

1. Location, dimensions, and elevation of the area in question, existing or proposed structures, storage of materials and equipment and their location;

2. Proposed locations of water supply, sanitary sewer, and other utilities;

3. Grading information showing existing and proposed contours, any proposed fill, and drainage facilities;

4. Location of the regulatory floodway when applicable;

5. Base flood elevation information as specified in Section 17.08.510 or Section 17.08.560.C.;

6. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures; and

7. Proposed elevation in relation to mean sea level to which any nonresidential structure will be floodproofed, as required in Section 17.08.620A.8. of this chapter and detailed in FEMA Technical Bulletin TB 3-93.

B. Certification from a registered civil engineer or architect that the nonresidential floodproofed building meets the floodproofing criteria in Section 17.08.620A.8.

C. For a crawlspace foundation, location and total net area of foundation openings as required in Section 17.08.620A.11. of this chapter and detailed in FEMA Technical Bulletins 1-93 and 7-93.

D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

E. All appropriate certifications listed in Section 17.08.560.E. of this chapter.

(Ord. 28512.)

17.08.580 Appeals.

The director of public works shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the enforcement or administration of this chapter. Appeals shall be filed by the applicant through a written notice of appeal with the director of public works within ten calendar days of the determination which is the cause for the appeal. The applicant's notice of appeal shall contain all grounds for the appeal and shall include a statement of the specific facts and all documentation regarding the appeal. Unless the applicant agrees to an extension of time, the director of public works shall act on the appeal within forty days after the appeal is filed. Before the director of public works may take action on the appeal, the director of public works may meet with the applicant regarding the appeal. The director of public works' determination on the appeal shall be in writing and shall be filed with the floodplain administrator in the floodplain administrator's office. At the time the director of public works files the determination on the appeal, the director of public works shall mail notice thereof to the applicant, and to all other persons who have requested in writing such notice for the particular appeal. The determination of the director of public works shall be the final determination of the city with regard to the appeal.

(Ord. 28512.)

### Part 5 REQUIREMENTS FOR SPECIAL FLOOD HAZARD AREA

17.08.600 Special flood hazard area.

The special flood hazard area shall consist of any land within the city identified on an official map of the city or the county of Santa Clara (prior to annexation) as a special flood hazard area, for which water elevation data for the one hundred-year flood is sufficient to identify the floodway or coastal high hazard area.

(Ord. 28512.)

17.08.610 Major repairs.

The floodplain administrator shall review building permit applications for major repairs within the special flood hazard area. No flood clearance for a building permit shall be issued unless the floodplain administrator determines that the proposed repair (a) uses construction materials and utility equipment that are resistant to flood damage, and (b) uses construction methods and practices that will minimize flood damage. The applicant for a permit hereunder shall present drawings, plans, specifications and any other data or information which the floodplain administrator may require.

(Ord. 28512.)

17.08.620 New construction or substantial improvements.

A. The floodplain administrator shall review all building permit applications for new construction or substantial improvements of structures within the special flood hazard area. No flood clearance for a building permit shall be issued unless the floodplain administrator determines that the proposed construction, repair, reconstruction or improvement, including manufactured homes, if any are permitted, pursuant to Titles 19 and 20 of this Code meets all of the following requirements:

1. Is protected against flood damage;

2. Is adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic or hydrostatic loads, including the effect of buoyancy;

3. Uses construction materials and utility equipment that are resistant to flood damage;

4. Uses construction methods and practices that will minimize flood damage;

5. Uses electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

6. If within Zones AH or AO as shown on the FIRM, has adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures;

7. Residential construction. Excepting residential construction in Zone A99, all new construction of any residential structure or substantial improvements of such a residential structure shall have the lowest floor, including basement, comply with all the requirements of Subsections A.1. through A.6. of this section and the requirements of the applicable flood hazard zone in Subsections A.7.a. and A.7.b. below. For residential structures, attached garages may be built at grade provided that such garages also meet the design requirements of Subsection A.10. of this section. All subgrade enclosed areas (except crawlspaces) are considered to be basements and are prohibited in residential structures. This prohibition includes below-grade parking garages and below-grade storage areas.

a. Zone AO. Elevated to or above the depth number specified on the FIRM. If there is no depth number on the FIRM, the lowest floor, including basement, shall be elevated two feet above the highest adjacent grade. Upon completion of the structure, the floodplain administrator or a registered professional engineer or surveyor shall certify that the structure is elevated as set forth in this subsection and, if certified by a professional engineer or surveyor, shall provide such certification to the floodplain administrator as set forth in Section 17.08.560.

b. Zones A, A1-A30, AE or AH. Elevated to or above the base flood elevation specified on the FIRM or the best available data as defined in Section 17.08.210 when base flood elevation has not been provided. Upon completion of the structure, the elevation on the required vertical datum showing the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator as set forth in Section 17.08.560.

8. Nonresidential and mixed-use construction. Excepting nonresidential and mixed-use construction in Zone A99, all new construction of any nonresidential or mixed-use structure or substantial improvements of such structures shall comply with all the requirements of Subsections A.1. through A.6. above and be in conformance with the elevation requirements of the applicable flood hazard zone or the alternative flood hazard requirement as specified below:

a. Zone AO. Elevated to or above the depth number specified on the FIRM. If there is no depth number on the FIRM, the lowest floor, including basement, shall be elevated two feet above the highest adjacent grade. Access to residential uses of mixed use structures shall be dry floodproofed. Upon completion of the structure, the floodplain administrator or a registered professional engineer or surveyor shall certify that the structure is elevated as set forth in this subsection and, if certified by a professional engineer or surveyor, shall provide such certification to the floodplain administrator as set forth in Section 17.08.560.

b. Zones A, A1-A30, AE or AH. Elevated to or above the base flood elevation specified on the FIRM or the best available data as defined in Section 17.08.410 when base flood elevation has not been provided. Access to residential uses of mixed use structures shall be dry floodproofed. Upon completion of the structure, the elevation on the required vertical datum showing the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor and provided to the Floodplain administrator as set forth in Section 17.08.560.

c. Alternative flood hazard requirement. With attendant utility and sanitary facilities:

i. Be dry floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

iii. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in Section 17.08.560;

9. Zone A99 construction. The Zone A99 flood hazard areas are designated by a Federal Emergency Management Agency (FEMA) letter of map revision. These areas have received additional flood protection due to the construction of improvements such as dikes, dams or levees. No base flood elevation has been designated for Zone A99. The requirements of Subsections A.1. through A.5. of this section and Section 17.08.640 do not apply to the Zone A99 flood hazard area. For new construction and substantial improvements in Zone A99, the permit applicant shall be provided a written notice of the flood risk in a form acceptable to the city attorney. All property owners shall acknowledge the receipt of the written notice and acknowledge in writing that they do not elect to voluntarily comply with the requirements of Subsections A.1. through A.5. of this section and Section 17.08.640.

10. Enclosed areas below the lowest floor. All new construction and substantial improvement with fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or limited storage, and which are subject to flooding, shall be designed to provide wet floodproofing and shall automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must meet or exceed the following minimum criteria:

a. Be certified by a registered professional engineer or architect; or

b. Have a minimum of two openings having a total net area of not less than one square inch for every one square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of flood water.

11. Crawlspace construction. All crawlspaces shall comply with all the requirements of Subsections A.2. through A.5. of this section and the design requirements of Subsection A.10. of this section. Below-grade crawlspaces for new construction and substantial improvements shall be designed and certified by a registered professional engineer to meet the following additional requirements:

a. The interior grade of the crawlspace below the base flood elevation must not be more than two feet below the lowest adjacent exterior grade;

b. The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, must not exceed four feet at any point;

c. The velocity of flood waters at the parcel or site should not exceed five feet per second;

d. There must be an adequate drainage system that removes flood waters from the enclosed interior area of the crawlspace within a reasonable amount of time, not to exceed seventy-two hours after the end of a flood event. The drainage system may include natural drainage through porous, well-drained soils, or drainage systems such as perforated pipes, drainage tiles, or gravel or crushed stone drainage by gravity or mechanical means.

e. Below-grade crawlspace construction in accordance with the requirements listed above will not be considered basements. However, applicants who construct structures that have below- grade crawlspaces are hereby advised that such structures will have higher flood insurance premiums than structures that have crawlspaces with interior elevations at or above the lowest adjacent exterior grade.

12. Accessory structures. An exemption to the elevation or dry floodproofing standards may be granted for accessory structures used solely for parking (residential garages with gross floor area of six hundred fifty square feet or smaller) or limited storage (low-cost sheds with gross floor area of two hundred square feet or smaller). Such structures shall not be used for human habitation and must meet the requirements of Subsections A.2. through A.6., inclusive, the design requirements of Subsection A.10. of this section, and the encroachment provisions of Section 17.08.640D. Portions of the structure with uses other than parking and limited storage must meet the elevation requirements of the applicable special flood hazard zone in Subsection A.7. of this section.

13. Manufactured homes. Manufactured homes shall meet the above standards and also the standards in Sections 17.08.640 and 17.08.650.

14. Coastal high hazard areas. Within coastal high hazard areas, Zone V, V1-V30, and VE, as established under Section 17.08.510, the following standards shall apply:

a. All new residential and nonresidential construction, including substantial improvement/damage, shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state or local building standards.

b. All new construction and other development shall be located on the landward side of the reach of mean high tide.

c. All new construction and substantial improvement shall have the space below the lowest floor free of obstructions or constructed with breakaway walls as defined in Part 2 of this ordinance. Such enclosed space shall not be used for human habitation and will be usable solely for parking of vehicles, building access or storage.

d. Fill shall not be used for structural support for buildings.

e. Man-made alteration of sand dunes which would increase potential flood damage is prohibited.

f. The Floodplain Administrator shall obtain and maintain the following records:

i. Certification by a registered engineer or architect that a proposed structure complies with Section 17.08.620A.14.a.; and

ii. The elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) of all new and substantially improved structures, and whether structures contain a basement.

B. In making said determination, the floodplain administrator shall review and reasonably utilize any base flood elevation data available, principally the FIRM, which has been provided by the administrator. The applicant for a permit hereunder shall present drawings, plans, specifications, a certificate of elevation, and any other data or information which the floodplain administrator may require.

(Ord. 28512.)

17.08.630 Standards for utilities.

All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(Ord. 28512.)

17.08.640 New developments.

A. The Floodplain Administrator shall review subdivision applications and other proposed new development applications in the special flood hazard area to assure that:

1. All such applications are consistent with the need to minimize flood damage;

2. All public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage; and

3. Adequate drainage is provided so as to reduce exposure to flood hazards. Such subdivision applications and other proposed new development applications shall include base flood elevation data available from federal, state and local sources.

B. The Floodplain Administrator shall require that all manufactured homes to be placed within such special flood hazard areas be anchored to resist flotation, collapse or lateral movement by providing over-the-top or frame ties to ground anchors. Specific requirements shall be determined by the floodplain administrator, and shall include an elevation certificate, but in no way are to be of lesser magnitude than those specified in the federal insurance administration's National Flood Insurance Program revised regulations (44 C.F.R. Part 60). Pursuant to state law, certification meeting the standards above is required of the local enforcement agency responsible for regulating the placement, installation and anchoring of individual manufactured home units.

C. The Floodplain Administrator shall require that until a floodway is designated by the administrator, no new construction, subdivision, improvement or other development, including fill, shall be permitted within a special flood hazard area on the community FIRM unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

D. The floodplain administrator shall prohibit encroachments, including fill, new construction, substantial improvement, and other development within designated floodways unless certification by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(Ord. 28512.)

17.08.650 Mobilehome parks and mobilehome subdivisions.

The floodplain administrator shall review building permit applications for manufactured home parks and subdivisions. The following standards, in addition to those set forth in Title 25, Chapter 2 of the California Code of Regulations, are required for: (a) manufactured homes not placed in manufactured home parks or subdivisions; (b) new manufactured home parks or subdivisions; (c) expansions to existing manufactured home parks or subdivisions and; (d) repair, reconstruction, or improvements to existing manufactured home parks or subdivisions that equals or exceeds fifty percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced. No flood clearance for a building permit shall be issued unless the floodplain administrator determines all of the following:

A. Adequate surface drainage and access for a refuse hauler shall be provided;

B. All manufactured homes shall be placed on pads or lots elevated on compacted fill or on pilings so that the lowest floor of the manufactured home is at or above the base flood level. If elevated on pilings:

1. The lots shall be large enough to permit steps;

2. The pilings shall be placed in stable soil no more than ten feet apart; and

3. Reinforcement shall be provided for pilings more than six feet above the ground level;

C. No manufactured homes shall be placed within a regulatory floodway except in existing manufactured home parks and subdivisions pursuant to regulations promulgated by the Federal Emergency Management Agency (Title 44, Emergency Management and Assistance Section 60.3, subsection (d)(4).

(Ord. 28512.)

17.08.660 Standards for subdivisions.

All subdivision applications shall identify the flood hazard area and the elevation of the base flood. All new subdivision applications (including applications for manufactured home parks and subdivisions) within Zone A which create more than fifty parcels or sites, or involve more than five acres of land, whichever is less, shall provide base flood elevation data to the floodplain administrator. All final subdivision plans shall identify the location and provide the elevation of proposed structure(s) and pad(s). If the parcel or site is filled above the base flood elevation, the lowest floor, pad elevation, and lowest adjacent grade shall be certified by a registered professional engineer or surveyor and provided as part of an application for a letter of map revision based on fill (LOMR-F) to the floodplain administrator. All subdivision applications shall be consistent with the need to minimize flood damage. All subdivision applications shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage. All subdivision applications shall have adequate drainage provided to reduce exposure to flood damage as set forth in Section 17.08.640.

(Ord. 28512.)

17.08.665 Standards for recreational vehicles.

A. All recreational vehicles placed in Zones A1-30, AH, AE, V1-30 and VE will either:

1. Be on the site for fewer than one hundred eighty consecutive days; or

2. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

3. Meet the permit requirements of Section 17.08.570 and the elevations and anchoring requirements for manufactured homes in Section 17.08.640.

B. Recreational vehicles placed on sites within Zones V1-30, V, and VE on the community's flood insurance rate map will meet the requirements of Section 17.08.665A. and Section 17.08.620A.14.

(Ord. 28512.)

17.08.670 Compliance with federal or state law.

All ministerial and discretionary permits issued by the city of San José for major repairs, new construction, substantial improvements, and new development shall be reviewed by the appropriate departmental official to assure that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including Section 404 (as amended) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(Ord. 28512.)

### Part 6 VARIANCES

17.08.680 Variances.

Pursuant to and in accordance with the provisions of this part, the floodplain administrator may, but shall not under any circumstances be required to, grant a variance from the regulations and provisions of this chapter.

(Ord. 28512.)

17.08.690 Variances, petitions for - Form of such petition - Where filed, and requisites before floodplain administrator may accept for filing.

Petitions for variances shall be filed in writing with the floodplain administrator on a form furnished by the floodplain administrator. The form of the petition and the information and data required to be set forth therein shall be as prescribed by the floodplain administrator. The floodplain administrator shall not accept any such petition for filing unless:

A. All information and data are set forth and shown as required by the form, to include elevation certification on N.G.V.D. datum;

B. The petition is verified;

C. The petition shall be signed by all of the owners (or the agents of the owners) of the parcel or site; and

D. The filing fee required by Section 17.08.790 has been paid;

E. Applicant shall supply all documents and data necessary, including but not limited to any applicable subdivision or development application and supporting documents, for floodplain administrator to evaluate variance application at no cost to city.

(Ord. 28512.)

17.08.700 Investigation and hearing by floodplain administrator.

The floodplain administrator shall conduct an investigation on each petition accepted for filing. Each such investigation shall include an opportunity for the petitioner to appear before and be heard by the floodplain administrator. The floodplain administrator shall not act on any petition unless the floodplain administrator has given the petitioner an opportunity to be heard thereon. Notice of the time and place at which the petitioner may appear before the floodplain administrator and be heard shall be given by mailing to him, postage prepaid, at the address shown on his petition, at least seven days before the date on which he will be heard. The form of such notice shall be as prescribed by the floodplain administrator.

(Ord. 28512.)

17.08.710 By whom issued - No right to issuance.

Pursuant to and in accordance with the provisions of this part, the floodplain administrator may issue variance permits. Under no circumstances shall any petitioner have the right to have a variance permit issued for the parcel or site included in the petition; and nothing contained in this part shall, in any event or under any circumstances, be deemed or construed to confer on any petitioner the right to have a variance permit issued for such parcel or site.

(Ord. 28512.)

17.08.720 Action by floodplain administrator.

In taking action, the floodplain administrator may deny the petition or issue a variance permit for the parcel or site covered by the petition. The floodplain administrator may make any variance permit which the floodplain administrator may issue subject to such terms, provisions and conditions as the floodplain administrator may deem reasonably necessary to secure the general purposes of this chapter.

(Ord. 28512.)

17.08.730 Findings required for issuance of variance permit.

A. The floodplain administrator shall not issue a variance permit for such parcel or site unless the floodplain administrator makes all of the following findings upon the issuance of the variance permit including all conditions thereto:

1. Will not result in any increase in flood levels during the base flood discharge within any designated regulatory floodway;

2. That the failure to grant the variance will result in exceptional hardship to the petitioner. "Exceptional hardship" includes those matters that are exceptional, unusual or peculiar to the site or parcel that is the subject of the application for variance to the extent that the site or parcel cannot be developed for any viable use without a variance. "Exceptional hardship" does not include any of the following:

a. Economic or financial hardship to the applicant in complying with the regulations and provisions of this chapter;

b. Requiring the property owner to build elsewhere;

c. Requiring a different use of the parcel than intended in the application by the property owner;

d. Inconvenience to the property owner;

e. Aesthetic considerations;

f. Personal preferences or disapproval of the property owner or neighboring property owners.

3. Will not result in increased flood heights, additional threats to public health or safety, damage to the property of another, additional public expense; create a nuisance; cause fraud on or victimization of the public; or conflict with existing city ordinances; and

4. Is the minimum variance from the regulations and provision of this chapter necessary to afford relief.

B. Under no circumstances shall any petitioner have the right to have a variance permit issued for any such parcel or site, and nothing contained in the preceding paragraph of this section shall in any event or under any circumstances be deemed or construed to confer upon any petitioner the right to have a variance permit issued for such parcel or site.

(Ord. 28512.)

17.08.740 Petition - Time for floodplain administrator's action - Hearing required.

Unless the petitioner agrees to an extension of time, the floodplain administrator shall act on his petition within forty days after the petition was filed. Before the floodplain administrator may take action on the petition, the floodplain administrator must conduct at least one hearing on the matter. The floodplain administrator may, before taking action, conduct more than one hearing. Any action taken by the floodplain administrator shall be in writing and shall be filed in the floodplain administrator's office. At the time the floodplain administrator files the same, the floodplain administrator shall mail notice thereof to the petitioner, and to all other persons who have requested in writing such notice. A separate written request for notice must be filed for each proceeding. Once the floodplain administrator has taken action, the floodplain administrator shall not (in the same proceeding) reconsider his or her action.

If the floodplain administrator fails to take action within the forty period above provided, or within such extension of time as may have been agreed to by the petitioner, the floodplain administrator shall not thereafter take action, and the petition shall be deemed denied.

(Ord. 28512.)

17.08.750 Hearings.

The floodplain administrator shall set the date for all hearings conducted under this part.

(Ord. 28512.)

17.08.760 Notification to petitioner.

Any variance permit issued pursuant to the provisions of this part, which authorizes the construction of a structure below the base flood level, shall notify the permittee of the following:

A. The issuance of the variance permit to construct a structure below the base flood level will likely result in increased premium rates for flood insurance; and

B. Such construction below the base flood level increases health and safety risks to life and property upon the parcel or site that is the subject of the variance.

(Ord. 28512.)

17.08.770 Variance permit, recordkeeping and report required.

The floodplain administrator shall forward a copy of each variance permit issued, pursuant to the provisions of this part, to the city clerk and shall cause a certified copy of such permit to be recorded in the office of the county recorder of the county of Santa Clara. Each such variance permit shall be reported to the federal insurance administrator by the floodplain administrator as a part of the annual report submitted to such administrator by the city.

(Ord. 28512.)

17.08.780 Filing fees for petitions.

The petition for a variance permit shall be as set forth in the schedule of fees established by resolution of council. Said fees are required to defray city's cost and expense in conducting the proceedings following such filing.

(Ord. 28512.)

17.08.790 Effective date of variance permit.

No variance permit shall become effective unless and until the permittee, in writing, on a form which shall have been provided by the city and which shall have been signed and acknowledged by such permittee:

A. Has accepted the variance permit with required notarized signatures from all property owners or their legal representatives; and

B. Has agreed to be bound, and to do all the things required of him or her, as required by the terms, provisions and conditions of such permit, and the provisions of this chapter applicable to such permit.

C. Has paid in advance the city's recordation costs that are in addition to the filing fees required in this Section 17.08.790.

D. Shall defend, indemnify, and hold harmless the city and its agents, officers, and employees from any claim, action, or proceeding against the city or its agents, officers, or employees to attack, set aside, void, or annul, an approval of the city, advisory agency, appeal board, or legislative body concerning the variance. The city shall promptly notify the permittee of any claim, action, or proceeding and cooperate fully in the defense of any such claim, action, or proceeding. In the event the city fails to promptly notify the permittee of any claim, action, or proceeding, or if the city fails to cooperate in the defense, the permittee shall not thereafter be responsible to defend, indemnify, or hold harmless the city. Nothing in this section prohibits the city from participating in the defense of any claim, action, or proceeding if city bears its own attorney's fees and costs and defends the action in good faith. Permittee shall not be required to pay or perform any settlement unless the settlement is approved by the permittee.

(Ord. 28512.)

17.08.800 Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city of San José, any officer or employee thereof, or the federal insurance administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(Ord. 28512.)

## Chapter 17.10 GEOLOGIC HAZARD REGULATIONS

### Part 1 GENERAL PROVISIONS

17.10.100 Purpose.

Geologic hazards, whether natural or artificial, pose a serious threat to public safety. Geologic conditions are subject to change over time and knowledge about geologic hazards and technology is evolving. The intent of this council to ensure an appropriate level of review to projects which are located in geologically sensitive areas in order to identify any geologic hazard and impose necessary mitigations before development may be permitted.

(Ords. 24680, 25710.)

17.10.105 Requirements.

A. No person shall construct or grade, or permit any construction or grading of any property in a geologic hazard zone except in full compliance with this chapter.

B. Any certificate holder, contractor, certified engineering geologist or consulting geotechnical and/or civil engineer who identifies or becomes aware of any geologic hazard not fully assessed in the certificate of geologic hazard clearance shall immediately cease construction and report the information to the director of public works. Based on the new information, the director may revoke or suspend the certificate, as appropriate, pursuant to Section 17.10.330.

(Ords. 24680, 25710.)

### Part 2 DEFINITIONS

17.10.200 Definitions.

The definitions set forth in this part shall govern the application and interpretation of this chapter. Where terms are not specifically defined in this chapter, the definitions contained in Chapter 17.04 shall control.

(Ords. 24680, 25710.)

17.10.205 Alteration of existing structures.

"Alteration" is any change, addition or modification in construction or occupancy of an existing structure including, but not limited to, any addition to the square footage, footprint or building envelope of the structure, including both habitable and nonhabitable areas including decks and swimming pools.

(Ords. 24680, 25710.)

17.10.210 Director.

"Director" shall mean the director of public works.

(Ords. 24680, 25710.)

17.10.215 Discretionary approval for development.

"Discretionary approval for development" shall mean any approval granted pursuant to Title 19 or Title 20 of this Code.

(Ords. 24680, 25710.)

17.10.220 Geologic hazard.

"Geologic hazard" shall mean any condition in earth, whether naturally occurring or artificially created, which is dangerous or potentially dangerous to life, limb, property, or improvements due to movement, failure or shifting of earth, or which, in the opinion of the director; may lead to damage to structures located on or adjacent to soils or rocks having such conditions. For purposes of this chapter, geologic hazard includes, but is not limited to, fault ruptures, landslides, mudslides and rock falls, ground failure due to earthquake shaking, erosion and sedimentation, and creeping soil.

(Ords. 24680, 25710.)

17.10.225 Geologic hazard zone.

A. "Geologic hazard zone" shall mean any land:

1. In the area identified as very high landslide susceptibility, high or moderate/high landslide susceptibility zones on Plates 1C, 1D, (landslide susceptibility) of the "Technical Report, Geological Investigation, City of San José's Sphere of Influence," prepared by Cooper, Clark and Associates, dated July 19, 1974 on file in the department of public works; or

2. On the state of California earthquake fault zone maps on file in the department of public works; or

3. Within the boundary of the City of San José geologic hazard zone map dated November, 1985 on file in the department of public works; or

4. Within the boundary of the City of San José fault hazard zone maps dated 1983 on file in the department of public works.

B. "Geologic hazard zone" also shall mean any land added by way of an amendment pursuant to Section 17.10.805.

(Ord. 25710.)

17.10.230 Off-site evaluation.

"Off-site evaluation" shall mean an analysis of any site not included in the application for a certificate of geologic hazard clearance which is identified in the geologic assessment or geologic investigation as potentially affecting the site or affected by the site.

(Ords. 24680, 25710.)

17.10.235 Repair of existing structures.

"Repair" is the reconstruction or renewal of any part of an existing building or structure for the purpose of its maintenance. Any enlargement of or addition to such structure shall not be considered a repair, for the purposes of this chapter.

(Ords. 24680, 25710.)

17.10.240 Special geologic hazard study area.

A. "Special geologic hazard study area" shall mean any land which is located within the boundary of the City of San José Special geologic hazard study area map, on file in the department of public works.

B. "Special geologic hazard study area" also shall mean any land added by way of an amendment pursuant to Section 17.10.805.

(Ords. 24680, 25710.)

17.10.245 Standard geologic hazard study area.

"Standard geologic hazard study area" shall mean any land located in a geologic hazard zone which is not located in a special geologic hazard study area.

(Ords. 24680, 25710.)

17.10.250 Subregional study area.

"Subregional study area" shall mean that land located in a subregion or subregions of the special geologic hazard study area as shown on the City of San José special geologic hazard study area map, dated December 12, 1995, on file in the department of public works.

(Ords. 24680, 25710.)

### Part 3 GEOLOGIC HAZARD CLEARANCE PROCESS

17.10.300 Certificate of geologic hazard clearance.

A. No discretionary approval for development, grading permit or building permit shall be issued for any property located in the geologic hazard zone unless the director has first issued a certificate of geologic hazard clearance.

B. No geologic evaluation, as required by Part 5 for a geologic hazard clearance, shall be accepted for any site in the special geologic hazard study area except as provided in Section 17.10.610.

C. The applicant may simultaneously file an application for a certificate and for any discretionary approval for development, grading permit or building permit.

(Ords. 24680, 25015, 25710.)

17.10.305 Application for certificate of geologic hazard clearance.

A. An application for a certificate pursuant to this chapter shall be submitted to the director on the form provided by the city.

B. All application fees shall be paid at the time an application is filed, in the amount set forth in the schedule of fees adopted by resolution of the city council.

(Ords. 24680, 25710.)

17.10.310 Geologic evaluation and regional study.

A. The geologic evaluation shall be conducted by the applicant as set forth in Part 5 of this chapter.

B. If required, a regional study shall be conducted by the applicant as set forth in Part 6 of this chapter.

C. All geologic and geotechnical reports submitted as part of the geologic evaluation and regional studies will be maintained on file by the city and made available for public review in the office of the city's engineering geologist.

(Ords. 24680, 25710.)

17.10.315 Denial.

A. A certificate shall be denied if the director, or the city council on appeal, do not make the findings for issuance set forth in Section 17.10.400.

B. Prior to denying an application for a certificate, the director shall afford the applicant an opportunity for an informal hearing at which the applicant can provide testimony and additional evidence.

C. If the director, after considering the testimony and evidence presented as well as considering the opinion of the city's consulting geologist or geotechnical engineer, if any, denies the issuance of the certificate, the applicant may appeal the denial to the city council in accordance with Section 17.10.340.

(Ords. 24680, 25710.)

17.10.320 Certificate expiration.

A. The certificate will be in effect for a period of up to three years from the date of issue, unless revoked or suspended.

B. No discretionary approval for development, grading permit or building permit shall be granted after the expiration date, unless the certificate has been renewed pursuant to Section 17.10.325.

C. A building permit issued in accordance with this chapter may be renewed after the expiration of the certificate, if work was commenced within one hundred eighty days from the date the building permit was issued and if substantial progress has been made which is verified by an inspection every one hundred eighty days.

(Ords. 24680, 25710.)

17.10.325 Renewal.

A. The director shall not renew a certificate unless additional geologic evaluation demonstrates that the prior geologic evaluation is still adequate and that:

1. Any facts previously unknown to the director, scientific advancement, or change in conditions are considered;

2. That any on or off-site geologic hazard identified at any time prior to renewal of the certificate can be mitigated to an acceptable degree so that the public health and safety are protected; and

3. The certificate was not issued in reliance on incorrect or misinterpreted information.

B. The applicant may appeal the denial of a renewal request to the city council pursuant to Section 17.10.340.

(Ords. 24680, 25159, 25710.)

17.10.330 Revocation and suspension.

A certificate may be revoked or suspended whenever the director, or city council on appeal, determines that any of the following circumstances has occurred:

1. The certificate was granted in error, was granted on the basis of incorrect or misinterpreted information, or was granted in violation of any law, ordinance or regulatory provision.

2. The review upon which the certificate was granted was incomplete and further geologic information or analysis is necessary.

3. The findings made pursuant to Section 17.10.400 are incorrect.

4. There is sufficient uncertainty about any geologic hazard, either on or off-site, which makes it reasonable to require further geologic evaluation.

5. Scientific or technological advancement, a change in geologic conditions, or previously unknown facts or geologic analysis make it reasonable to require further geologic evaluation.

6. The development proposal upon which the certificate is based is modified and the geologic evaluation does not address the project as modified.

(Ords. 24680, 25710.)

17.10.335 Notice.

Notification of the denial of the certificate, the denial of the renewal of such certificate, the issuance of such certificate with conditions or, the revocation or suspension of such certificate shall be mailed to applicant, postage prepaid, at the address given for purposes of such notice on the application.

(Ords. 24680, 25710.)

17.10.340 Appeal to city council.

A. The applicant may appeal the denial, revocation or suspension of the certificate or any condition imposed on the certificate to the city council by filing a written notice of appeal with the director within ten days after the notification was mailed.

B. The hearing before the city council shall be de novo.

C. The city council shall uphold the decision of the director unless it makes the findings for issuance pursuant to Section 17.10.400.

(Ords. 24680, 25710.)

### Part 4 CERTIFICATE OF GEOLOGIC HAZARD CLEARANCE

17.10.400 Issuance of certificate.

A. No certificate shall be issued unless a geologic evaluation demonstrates, to the satisfaction of the director, or the city council on appeal, that the proposed development or alteration:

1. Is not endangered or potentially endangered by any geologic hazard on the site or in any area which may potentially affect the site; and

2. Will not create or have the potential to create any new geologic hazard, including those associated with reactivation of landslide deposits, which potentially affects either the site proposed for development or off-site areas; and

3. That the proposed improvements, including earthwork, will adequately mitigate all identified on and off-site geologic hazards.

B. The issuance of a certificate is not a determination that the site is free from any geologic hazard. Such clearance shall mean only that based on the information provided, it is the judgment of the director or the city council that any geologic hazard has been mitigated to an acceptable degree.

(Ords. 24680, 25710.)

17.10.405 Conditions of clearance.

A. The director, or council on appeal, may impose conditions on the certificate.

B. Such conditions may include, but are not limited to:

1. Mitigation measures identified in the geologic evaluation;

2. Slope stabilization;

3. Surface and subsurface drainage control;

4. Off-site improvements to mitigate a geologic hazard which potentially affects either the site proposed for development or applicable off-site areas;

5. Use restrictions to avoid or mitigate hazardous geologic conditions;

6. Implementation of an approved erosion control plan;

7. Adequate guarantees that all private improvements, located within a geologic hazard zone will be properly maintained.

(Ords. 24680, 25710.)

17.10.410 Repair of existing structures.

Notwithstanding Section 17.10.400, a certificate shall be issued for repair of existing structures, in either the standard geologic hazard study area or the special geologic hazard study area, if it is demonstrated, to the satisfaction of the director, that the repair will be conducted in a manner which does not create an additional or increased geologic hazard.

(Ords. 24680, 25710.)

17.10.415 Alteration of existing structures - Special geologic hazard study area.

Alteration of existing structures in the special geologic hazard study area shall be allowed, without the requirement for a regional study pursuant to Part 6, if a geologic hazard clearance for the alteration has been issued by the director pursuant to Part 5.

(Ords. 24680, 25015, 25710.)

17.10.420 Single family residences - Special geologic hazard study area.

The construction of one single family residence per lot in the special geologic hazard study area shall be allowed, without the requirement for a regional study pursuant to Part 6 of this chapter, if a geologic hazard clearance for the construction has been issued by the director pursuant to Part 5 or renewed pursuant to Section 17.10.325 and all of the following criteria are met:

A. No zoning change or further subdivision or lot line adjustment is required to accommodate the construction of the single family residence.

B. All public or private infrastructure needed to support the residence has already been constructed, excluding storm and sanitary sewer laterals and utility service connections. Except for the construction of storm and sanitary sewer laterals and utility service connections, no construction of any additional infrastructure shall be allowed.

C. The existing public storm drainage system has sufficient capacity, as determined by the director, to convey present and future storm water runoff.

D. The construction has been designed in a manner which, at a minimum:

1. Prevents any additional storm water runoff or drainage on site; and

2. Provides for the drainage of any storm water runoff or drainage from the structure, driveway or other paved surfaces directly into the public storm drainage system.

E. A grading plan in accordance with the grading ordinance has been approved by the director, which provides, at a minimum, for:

1. Balanced grading, unless the applicant has demonstrated, to the satisfaction of the director, that an imbalance would promote increased soil or slope stability; and

2. Retaining walls which are not a part of the structure and which do not exceed five feet in height; and

3. Soil cuts and fills, other than necessary for the foundation of the structure, which do not exceed five feet in depth, measured from the existing ground surface to the proposed ground surface; and

4. A subdrainage system satisfactory to the director; and

5. Erosion control measures deemed by the director to be appropriate for all graded areas and the time of year in which the grading is anticipated to occur; and

6. The minimum amount of grading necessary, as determined by the director, to:

a. Construct the residence and attendant hard surfaces, and

b. Provide for proper drainage, and

c. Provide for the remediation of identified on-site and off-site geologic hazards.

(Ords. 25015, 25159, 25710.)

### Part 5 GEOLOGIC EVALUATION

17.10.500 Approval required.

No geologic evaluation which requires or contemplates any invasive testing or soil disturbance shall be conducted by an applicant unless and until the director approves a plan for the geologic evaluation which includes but is not limited to the following requirements and mitigation measures:

1. All geotechnical testing shall be designed and completed under supervision of a certified engineering geologist or geotechnical engineer; and

2. The incorporation of specific dust control measures to avoid air quality impacts from fugitive dust; and

3. The preparation of habitat assessment and the incorporation of specific measures to avoid habitat and biological impacts; and

4. The incorporation of specific measures to avoid impacts from erosion and sedimentation of surface waters; and

5. The preparation of a cultural resources assessment and the incorporation of specific measures to avoid impacts to cultural resources; and

6. A requirement that a qualified archaeologist examine any materials exposed during testing and make specific recommendations regarding appropriate mitigation that the director shall direct the applicant to perform.

(Ord. 25710.)

17.10.510 Content of geologic evaluation.

A. Each applicant for a certificate shall conduct a geologic assessment and, if required, a geologic investigation.

B. All reports required by this part shall be submitted in writing, in a form satisfactory to the director, shall contain a full analysis and all supporting data and be dated and signed by a certified engineering geologist or registered geotechnical or civil engineer, as appropriate.

(Ords. 24680, 25710.)

17.10.520 Geologic assessment.

A. The geologic assessment shall include both a site specific evaluation and an off-site evaluation, which shall assess the potential of the development creating, adding to, affecting or being affected by any on or off-site geologic hazard. The off-site evaluation shall be limited to areas potentially affecting or affected by the site for which a certificate is sought.

B. The assessment shall identify any existing geologic hazard, the potential for erosion and sedimentation and recommended mitigation of any geologic hazard.

(Ords. 24680, 25710.)

17.10.530 Geologic investigation.

A. A geologic investigation shall be conducted, unless the geologic assessment demonstrates, to the satisfaction of the director:

1. That there is no on or off-site geologic hazard; or

2. That implementation of recommendations in the geologic assessment will fully mitigate any geologic hazard.

B. The geologic investigation shall include, but is not limited to, a subsurface examination including boring and trenching and shall include recommendations for feasible mitigation of any identified geologic hazard.

(Ords. 24680, 25710.)

17.10.540 Erosion control plan.

A. If existing or potential erosion problems are identified in the geologic evaluation an erosion control plan shall be prepared and submitted for the director's approval.

B. An erosion control plan may, as required by the director, include plans and specifications for plantings, checkdams, sedimentation basins, cribbing, riprap, or other devices or methods for controlling erosion and sedimentation. Scheduling of installation, maintenance and any other special considerations must also be addressed.

C. An erosion control plan, which utilizes vegetation, must take into account any special soils or climate conditions and should be compatible with vegetation in surrounding areas.

(Ords. 24680, 25710.)

### Part 6 REGIONAL STUDIES

17.10.600 Approval required.

No regional study which requires or contemplates any invasive testing or soil disturbance shall be conducted by an applicant unless and until the director approves a plan for the regional study which includes but is not limited to the following requirements and mitigation measures:

1. All geotechnical testing shall be designed and completed under supervision of a certified engineering geologist or geotechnical engineer; and

2. The incorporation of specific dust control measures to avoid air quality impacts from fugitive dust; and

3. The preparation of habitat assessment and the incorporation of specific measures to avoid habitat and biological impacts; and

4. The incorporation of specific measures to avoid impacts from erosion and sedimentation of surface waters; and

5. The preparation of a cultural resources assessment and the incorporation of specific measures to avoid impacts to cultural resources; and

6. A requirement that a qualified archaeologist examine any materials exposed during testing and make specific recommendations regarding appropriate mitigation that the director shall direct the applicant to perform.

(Ord. 25710.)

17.10.610 Content of regional study.

A. No geologic evaluation pursuant to Part 5 of this chapter shall be accepted for any site in the special geologic hazard study area, except as provided in subsection C. below, until the director has made a final determination that the required regional studies required by this part have been completed and the studies demonstrate to the satisfaction of the director that either:

1. No large, deep-seated, active or potentially unstable landslides exist within the applicable subregional study area(s) which could affect or be affected by the proposed development; or

2. Adequate mitigations have been identified for each large, deep-seated, active or potentially unstable landslide which could affect or be affected by the proposed development within the applicable subregional study area(s) to ensure that the landslide is sufficiently stable under both static and dynamic conditions to allow the proposed development.

B. A regional study shall consist of an investigative study and, if required by Section 17.10.630, below, a long term study for the subregional study area(s) of the special geologic hazard study area in which the property is located and for any additional subregional study area(s) in which any new, enlarged or upgraded infrastructure needed to serve the property will be located.

C. No investigative or long term study is required for the alteration of an existing structure in accordance with Section 17.10.415 or construction of a single family residence in accordance with Section 17.10.420.

(Ord. 25710.)

17.10.620 Format and cost of regional studies.

A. All investigative and long term studies required by this part shall be submitted in writing, in a form satisfactory to the director. Such studies shall contain a full analysis and all supporting data and shall be dated and signed by the certified engineering geologist and/or registered geotechnical engineer, as appropriate.

B. The full cost and expense of any consulting geologic or geotechnical engineer retained by either the applicant or the city, with the applicant's agreement, to perform the investigative and long term studies required by this part shall be borne by the applicant.

C. Fees for the city's review and processing of all investigative and long term studies shall be paid at the time of the applicant's submission of each study and shall be in the amount set forth in the schedule of fees adopted by resolution of the city council. The city shall not accept any investigative or long term study for which the applicable fees have not been paid.

D. Nothing herein shall preclude an applicant from performing a combined Investigative and long term study in lieu of separate studies.

(Ord. 25710.)

17.10.630 Investigative study.

A. The applicant shall submit an investigative study plan for approval by the director.

B. The investigative study shall include, at a minimum, subsurface exploration including deep borings and trenching and a subregional slope stability analysis to:

1. Establish the boundaries, depth and characteristics of each landslide within the subregional study area(s) which could affect or be potentially affected by the development; and

2. Assess the static and seismic stability of landslides identified in the subarea which could affect or be potentially affected by the development including, but not limited to landslides identified in subsection B.1., above;

3. Identify current geologic conditions and potential future groundwater conditions which could affect or be potentially affected by the development; and

4. Evaluate the potential for future earth movement which could affect or be potentially affected by the development and its possible effect on public and private property; and

5. Identify and recommend adequate mitigation of any geologic hazard within the subregional study area(s) which could affect or be potentially affected by the development.

C. The subsurface exploration and slope stability analysis shall include, at a minimum, all of the following items, if applicable:

1. Deep, continuously sampled or cored borings drilled to a depth sufficient to penetrate all potential critical landslide rupture surfaces; and

2. Large diameter borings; and

3. Installation and monitoring of piezometers or groundwater monitoring wells to evaluate groundwater conditions; and

4. Exploratory trenching to evaluate the surface, geologic structure, fault/shear zones, and toe(s) of identified landslide(s); and

5. Geophysical logging of boreholes; and

6. Laboratory shear strength testing.

D. A long term study shall be conducted, unless the investigative study demonstrates, to the satisfaction of the director, that:

1. No deep-seated active or potentially unstable landslide exists which could affect or potentially be affected by the proposed development; or

2. The proposed development site and any new, expanded or upgraded infrastructure serving the development will not be endangered by deepseated active or potentially unstable landsliding; and

3. The proposed development and any new, expanded or upgraded infrastructure serving the development will not increase the danger that any other property or public improvements will be impacted by potentially unstable landsliding; or

4. Implementation of recommendations in the investigative study will fully mitigate any identified deep-seated active or potentially unstable landslide which could affect or be potentially affected by the development or any new, expanded or upgraded infrastructure.

(Ord. 25710.)

17.10.640 Long term study.

A. If required by the director pursuant to Section 17.10.630 above, the applicant shall submit a long term study plan for approval by the director.

B. The purpose of the long term study is to better characterize deep-seated active or potentially unstable landslides, which could affect or potentially be affected by the proposed development, determine the depths, direction and area of movement, define the limits of sliding, determine the rate of movement over time, help determine the mechanism of movement, and verify that implemented mitigation measures have been effective.

C. The long term study shall include, at a minimum, continuous monitoring and analysis to address slope stability under both static and seismic conditions including, if applicable, and, without limitation:

1. Installation and monitoring of slope inclinometers; and

2. Installation and monitoring of surface monuments to evaluate landslide movement; and

3. Installation and/or monitoring of piezometers and groundwater monitoring wells; and

4. Slope stability analysis; and

5. Large diameter borings; and

6. Trenching and test pits; and

7. Deep, continuously sampled or cored borings drilled to a depth sufficient to penetrate all potential critical landslide rupture surfaces; and

8. Monitoring of surface and subsurface land movement with the applicable study area over time. All subsurface monitoring activities shall take place at such depth as is adequate to determine movement of all landslide slip surfaces beneath the applicable study area; and

9. Evaluation of landslide movement and the potential for future displacement under static and seismic conditions; and

10. Verification that previously implemented landslide stabilization measures, if any, have stopped movement of active landslides.

D. The director shall review the completed long term study in order to determine whether or not the study has identified adequate mitigations for large, deepseated, active or potentially unstable landslides within the subregional study area(s) which could affect or potentially be affected by the proposed development.

(Ord. 25710.)

17.10.650 Determination.

A. The director shall provide the applicant with a notice of determination following any determination regarding the requirement of a long term study or the adequacy of the mitigations identified in the long term study.

1. The notice of determination shall be provided as set forth in Section 17.10.335.

2. The director's determination shall become final at the close of business on the tenth business day after the notice of determination was mailed.

B. Before a determination becomes final as provided in subsection A. above, the applicant may request an informal hearing before the director to dispute the director's determination:

1. Requiring a long term study; or

2. That the long term study has not identified adequate mitigations for all large, deep-seated, active or potentially unstable landslides.

C. The applicant may provide testimony and evidence at the informal hearing.

D. The applicant may appeal the director's final determination to the city council in accordance with Section 17.10.340.

(Ord. 25710.)

17.10.660 Notice of final determination.

Notification of the director's final determination shall be provided as set forth in Section 17.10.335, above.

(Ord. 25710.)

17.10.670 Reevaluation.

A. Applicant may request a reevaluation of any final determination by the director. However, no application for reevaluation under this chapter may be requested sooner than:

1. Twenty-four months after the final determination has been upheld by the city council on appeal; or

2. Twenty-six months after the date of the notice of final determination where the final determination has not been appealed to the city council.

B. The application for reevaluation shall be submitted to the director in writing and:

1. Set forth the specific grounds upon which the application for reevaluation is based, including new or additional information not available to the applicant at the time of the original determination; and

2. Include the certification of a certified engineering geologist and/or registered geotechnical engineer, as appropriate, verifying that the geologic studies, including any regional studies previously submitted for the proposed development, remain valid as of the date of the application for reevaluation, or

3. Include such further analysis and supporting documentation as is necessary to update the geological studies, including any regional studies previously submitted for the proposed development.

C. The application for reevaluation shall be accompanied by fees in the amount set forth in the schedule of fees adopted by resolution of the city council and shall conform to all application requirements in effect at the time it is filed.

(Ord. 25710.)

17.10.680 Appeal to city council.

A. The applicant may appeal the director's final determination pursuant to this part to the city council by filing a written notice of appeal with the director within sixty days after the date of the notification of final determination.

B. At the hearing on appeal, the city council may consider the entirety of the record to date as well as any additional documents and testimony presented by either the applicant or the city.

C. The city council shall uphold the decision of the director, unless it finds the determination of the director to be in error on specific facts or conclusions.

(Ord. 25710.)

### Part 7 OWNER OBLIGATIONS

17.10.700 Completion of construction.

A. Within 30 days of completion of the project, the owner shall provide the director a certification, signed by a certified engineering geologist or geotechnical engineer attesting that:

1. All work has been completed in conformance with the geologic evaluation and the certificate of geologic hazard clearance.

2. Any additional geologic hazard not previously identified, which was encountered during construction, was immediately reported by the applicant or their agent to the director.

(Ords. 24680, 25710.)

17.10.705 Obligation to prevent hazard.

A. The owner of any real property shall take reasonable actions as are necessary to prevent any natural or artificial geologic condition on such real property from threatening the safety of persons or other property.

B. Whenever the director determines that any natural or artificial condition on a property may potentially endanger the safety of persons or other properties the director may issue a notice of hazardous condition and require that reasonable actions be taken to eliminate the geologic hazard within the time specified in the notice.

(Ords. 24680, 25710.)

17.10.710 Violations.

Failure to fully comply with any condition of the certificate of geologic hazard clearance, violation of any provision of this chapter or maintenance of any property within any geologic hazard zone in such a manner that a natural or artificial geologic condition on such real property which could be reasonably corrected or made less dangerous, is allowed to threaten the public health, safety or welfare, shall be deemed a violation of this chapter.

(Ords. 24680, 25710.)

### Part 8 MISCELLANEOUS PROVISIONS

17.10.800 Consulting geologist.

A. If an applicant has agreed in writing to bear the full cost of the consultant services, the director, or city council on appeal, may select and retain an independent certified engineering geologist and/or geotechnical engineer as consultant to the city to provide additional information and analysis to be considered by the director or city council in the application review or appeal process.

B. The applicant shall, pursuant to a written agreement, deposit with city a sum of money, adequate to fully cover the cost of the consultant's services prior to the consultant's review of the application or record on appeal.

C. Nothing prepared or recommended by the consultant shall limit the discretion of the director, or city council on appeal, in considering all information available to it in making the findings set forth in this chapter.

(Ords. 24680, 25710.)

17.10.805 Amendment of geologic hazard zone.

A. The city council, at a duly noticed public hearing, may amend the boundaries of the geologic hazard zone or the special geologic hazard study area by adopting a resolution approving revised maps.

B. At least ten days prior to the hearing, written notice of the hearing shall be placed in the mail to owners, as shown on the latest equalized assessment roll adopted by the County of Santa Clara, of property proposed to be included in, or deleted from, a geologic hazard zone or special geologic hazard study area.

C. The director shall provide a written report and recommendations to the city council.

(Ords. 24680, 25710.)

17.10.810 Right of entry.

Whenever it is necessary to enter the private property of another in order to comply with the provisions of this chapter, the city may assist the applicant in acquiring the right of entry. The city may use its power of eminent domain if necessary. Prior to any action being taken by the city, the applicant shall secure the payment of all costs to the city for any such assistance requested.

(Ords. 24680, 25710.)

17.10.815 Improvements and facilities.

A. No improvement including, but not limited to, street, sewer, and flood control, in a geologic hazard zone, shall be dedicated to or accepted by the city, unless the director makes an express finding that the improvements will not require an excessive degree of maintenance and repair.

B. Nothing in this provision shall preclude the city from accepting improvements constructed pursuant to an improvement agreement where such finding was made at the time of execution of that agreement.

C. No dedication of improvements or facilities shall be accepted by the city until the signed certificate required by Section 17.10.700 is received by the director.

(Ords. 24680, 25710.)

17.10.820 Consistency with other regulations.

Nothing in this chapter shall be construed to relieve any person of requirements imposed by other sections of this Code, except that the provisions of this chapter shall take precedence over any less stringent provision of this Code with which it is in conflict.

(Ords. 24680, 25710.)

### Part 9 DISCLOSURE TO PROSPECTIVE PURCHASERS

17.10.900 Disclosure to prospective purchasers.

A Person who is acting as an agent for a seller or the seller, if acting without an agent, of real property which is located:

1. In the area identified as very high landslide susceptibility, high or moderate/high landslide susceptibility zones on Plates 1C, 1D, (landslide susceptibility) of the "Technical Report, Geological Investigation, City of San José's Sphere of Influence," prepared by Cooper, Clark and Associates, dated July 19, 1974 on file in the department of public works; or

2. On the state of California earthquake fault zone maps on file in the department of public works; or

3. Within the special geologic hazard study area;

shall provide written notice to any prospective purchaser pursuant to Section 17.10.905.

(Ords. 24680, 25710.)

17.10.905 Content of notice.

Written notice, pursuant to Section 17.10.900, shall inform a prospective purchaser that:

1. The property is located within a geologic hazard zone as defined by Section 17.10.225 of the San José Municipal Code.

2. A certificate of geologic hazard clearance must be obtained from the director before any discretionary approval for development, or any grading permit or any building permit may be issued for improvements on the property.

3. An on or off-site geologic evaluation may have been prepared for the property. Reports submitted as part of the geologic evaluation are maintained on file by the city and are available for review in the office of the city's engineering geologist.

4. In order to obtain a certificate of geologic hazard clearance for any discretionary approval for development or any grading permit or any building permit for proposed development within the special geologic study area, the property owner is required to perform a geologic evaluation pursuant to Part 6 of this chapter.

(Ords. 24680, 25710.)

17.10.910 Civil action.

A. A civil action against the seller of real property or the agent of the seller of real property may be instituted by any person who purchases real property in a geologic hazard zone, for failure to disclose information as required by this part.

B. Damages shall include actual damages, costs, attorneys' fees, and civil penalty of five hundred dollars in addition thereto. The court may award punitive damages in a proper case.

C. Nothing in this provision shall be construed to limit any other right or remedy otherwise available in law to any party.

(Ords. 24680, 25710.)

## Chapter 17.12 CITY OF SAN JOSÉ FIRE CODE[[2]](#footnote-2)

### Part 1 GENERAL

17.12.010 San José Fire Code.

The San José Fire Code shall consist of the 2022 California Fire Code (CFC) as copyrighted and published by the California Building Standards Commission which is hereby adopted and incorporated by reference into this Chapter, subject to the deletions, amendments, exceptions, and additions which are specified in this Chapter.

(Ords. 25005, 26735, 28167, 28839, 29349, 29807, 30327, 30836.)

17.12.020 Compliance required.

It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use, occupy or maintain any building, structure or equipment, or maintain any use, or cause or permit or suffer the same to be done, in a manner which does not conform to the requirements of this Chapter, any provision of the 2022 California Fire Code as adopted under this Chapter, or any permit issued under this Chapter.

(Ords. 25005, 26735, 28167, 28839, 29349, 29807, 30327, 30836.)

17.12.030 Bureau of fire prevention.

A. A bureau of fire prevention in the fire department of the city, heretofore established by Ordinance 3082, adopted June 11, 1945, shall continue and shall be operated under the supervision of the chief of the fire department.

B. The chief of the fire department shall assign an officer of the fire department as chief of the bureau of fire prevention, who shall hold office at the pleasure of the chief of the fire department. The chief of the bureau of fire prevention shall be known as the "fire marshal," and such title shall be synonymous with the term "chief of the bureau of fire prevention."

C. The chief of the fire department shall assign other members of the fire department as inspectors as shall be necessary.

D. The chief of the bureau of fire prevention and other members of such bureau shall enforce the provisions of this chapter and shall have and perform such other powers, duties and responsibilities as are given by law or as assigned by the chief of the fire department.

(Ord. 25005.)

17.12.040 Appeals.

Whenever the chief suspends or revokes a permit or denies the granting of a permit, or conditionally grants a permit, the applicant may appeal the decision to the appeals hearing board, in accordance with the provisions for appeal set forth in Section 6.02.230 of this Code.

(Ord. 25005.)

17.12.050 Review of plans submitted for building permit.

The bureau of fire prevention shall review all building plans for conformity with state and local statutes, ordinances, and regulations relating to the prevention of fire, the storage of hazardous materials, and the protection of life and property against fire, explosion, exposure to hazardous materials and panic. One- and two-family dwelling units and townhouses will be reviewed for fire access, fire flow, fire hydrants and all fire protection systems.

(Ords. 25005, 28839.)

17.12.060 Alternate means or methods.

A. The chief of the bureau of fire prevention shall have the authority to allow alternate materials or methods of construction to those specified in this chapter.

B. Any such alternate means or methods shall only be allowed if the chief finds that the proposed design is satisfactory and complies with the intent of the provisions of this Code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this Code in quality, strength, effectiveness, fire resistance, durability and safety.

C. The chief is authorized to require tests to establish that issuance of any such variance is appropriate. Such tests shall be made by person or testing organization approved by the chief, at the expense of the applicant for the alternate means or methods.

D. Applications for such alternate means or methods shall be filed in the office of the bureau of fire prevention, and the filing fee provided in the schedule of fees established by resolution of the city council shall be paid to the bureau at the time of filing the application.

E. Any such alternate means or method that involves matters regulated by the San José Building Code shall also be subject to the approval of the building official.

(Ords. 25005, 28167.)

17.12.070 Owner responsibility.

A. Both the owner and the user of any property shall be responsible for ensuring that such property is in compliance with all statutes, ordinances and regulations relating to fire safety and hazardous materials, except for those laws which relate directly and expressly to a use, in which case compliance shall only be the responsibility of the user.

B. Nothing in this section shall preclude a rental, lease or management agreement from providing that a tenant has responsibility for such compliance unless such delegation is expressly prohibited by the regulating law; however, notwithstanding any such agreement the owner shall remain ultimately responsible and subject to any enforcement action by the city.

(Ord. 25005.)

17.12.080 Revocation of permits.

Any permit or certificate issued under this chapter may be modified, suspended or revoked by the chief of the bureau of fire prevention when it is determined by the chief that:

A. It is used by a person other than the person to whom the permit or certificate was issued.

B. It is used for a location other than that location for which it was issued.

C. Any of the conditions or limitations set forth in the permit or certificate have been violated.

D. The permittee fails, refuses or neglects to comply with any order or notice duly served under the provisions of this chapter within the time provided therein.

E. There has been false statement or misrepresentation as to a material fact in the application or plans on which the permit or application was based.

F. The permittee fails, refuses or neglects to obtain approvals as required by this chapter.

G. The permittee fails to pay fees established for approvals required under this chapter.

(Ord. 25005.)

17.12.090 Exemption for pending applications.

A. The provisions of the 2022 California Fire Code related to construction, as adopted and amended herein, shall not apply to any building or structure for which application for a building permit was made prior to January 1, 2023, except as may be found by the Chief to constitute a distinct hazard to life or property. Such buildings or structure shall be erected, constructed, enlarged, altered or repaired in accordance with the provisions of this Chapter in effect at the date of the application.

B. All other applications shall be processed in accordance with the provisions of the 2022 California Fire Code, as adopted and amended herein.

(Ords. 25005, 25838, 26735, 28167, 28839, 29349, 29807, 30327, 30836.)

17.12.100 Fees.

A. Fees for plan checking, permit applications, and inspections shall be paid in accordance with the schedule of fees established by resolution of the city council. Such fees shall not be refunded upon failure of applicant to receive the permit.

B. Failure to pay any fee imposed in connection with this chapter within the time period specified in the schedule of fees shall render such permit null and void.

(Ord. 25005.)

17.12.110 Cross-references to the 2022 California Fire Code.

The provisions of this Chapter contain cross-references to the provisions of the 2022 California Fire Code in order to facilitate reference and comparison to those provisions.

(Ords. 25005, 25838, 26735, 28167, 28839, 29349, 29807, 30327, 30836.)

17.12.120 Local amendments to the 2022 California Fire Code.

The provisions of this Chapter shall constitute local amendments to the cross-referenced provisions of the 2022 California Fire Code and shall be deemed to replace the cross-referenced sections of the 2022 California Fire Code with the respective provisions set forth in this Chapter.

Findings

The amendments set forth in 17.12 are reasonably necessary because of the following local geological, topographical and climatic conditions:

I. The City of San José is located within a very active seismic area. Severe seismic action could disrupt communications, damage gas mains, cause extensive electrical hazards, and place extreme demands on both private fire protection systems and equipment. The limited and widely dispersed resources of the Fire Department could result in failure to meet and provide the fire protection and life safety needs of the community.

II. The local geographic, topographic and climatic conditions pose an increased hazard in the acceleration, spread, magnitude, and severity of potential fires in the City of San José, and may cause disruptions in operation of private fire protection systems and equipment and delayed fire response time, allowing for further fire growth and spread.

III. This section adopts the latest standards currently listed by the State of California Fire Marshal's Office for automatic fire protection systems and includes references to the amendments to the standards made in the California Fire Code.

(Ords. 25005, 25838, 26735, 28167, 28839, 29349, 29807, 30327, 30836.)

### Part 2 ADOPTION OF ADMINISTRATIVE PROVISIONS OF THE 2022 CALIFORNIA FIRE CODE[[3]](#footnote-3)

17.12.200 Adoption of Chapter 1 of the 2022 California Fire Code.

Except as otherwise provided for in this Chapter, Chapter 1 of the 2022 California Fire Code, including the Tables therein, are adopted and incorporated in this Chapter by reference and made a part hereof as if fully set forth herein.

(Ord. 30836.)

17.12.210 Provisions of Chapter 1 of the 2022 California Fire Code which are not adopted or incorporated by reference.

The following provisions, including all subparts thereof, of Chapter 1 of the 2022 California Fire Code, are not adopted or incorporated in this Chapter by reference, and shall not be deemed to be a part of this Chapter nor a part of the Fire Code of the City of San José: Sections 1.1.1, 1.1.8, 1.1.9, 1.1.10, 1.1.11, 101.1, 103.1, 103.2, 103.3, 104, 109 and 110.

(Ord. 30836.)

17.12.220 Change of use or occupancy (2022 CFC Chapter 1 Section 102.3).

Chapter 1 Section 102.3 of the 2022 California Fire Code is amended to read as follows:

*102.3.1* An approved automatic sprinkler system shall be provided throughout buildings or structures when an automatic sprinkler system is required per the California Fire Code due to a change of use or occupancy.

(Ord. 30836.)

17.12.230 Authority to inspect (2022 CFC Chapter 1 Section 107.1).

Chapter 1 Section 107.1 of the California Fire Code is amended to read as follows:

*107.1 Inspection Authority.* The fire prevention bureau shall have authority to inspect buildings and premises as often as necessary, for the purpose of ascertaining and causing to be corrected, any conditions which could tend to cause fire or contribute to its spread, result in an unauthorized discharge of hazardous materials, or any violation of this Code or any other law or standard affecting fire safety, life safety, or environmental safety.

(Ord. 30836.)

17.12.240 Types of permits (2022 CFC Chapter 1 Section 105.1.2).

Chapter 1 Section 105.1.2 of the 2022 California Fire Code is amended to read as follows:

*105.1.2 Types of permits.* There shall be two types of permits as follows:

1. Operational permit. An operational permit allows the applicant to conduct an operation or a business for which a permit is required by Chapter 1, Section 105.5 for either:

1.1. A prescribed period. If no period is prescribed, the permit shall be for one year.

1.2. Until renewed or revoked.

2. Construction permit. A construction permit allows the applicant to install or modify systems and equipment for which a permit is required by Chapter 1, Section 105.6.

(Ord. 30836.)

17.12.250 Amended operational permit requirements (2022 CFC, Chapter 1 Section 105.5).

The following subparts of Chapter 1 Section 105.5 of the 2022 California Fire Code are amended to read as follows:

*105.5.10 Covered and open mall buildings:* An operational permit is required for:

1. The placement of kiosks, retail fixtures and displays, concession equipment, displays of highly combustible goods and similar items in the mall.

2. The display of liquid-or gas-fired equipment in the mall.

3. The use of open-flame or flame-producing equipment in the mall.

4. The use of a covered mall as a place of assembly.

*105.5.27 Lumberyards, woodworking and firewood storage:* An operational permit is required to store lumber in excess of 100,000 board feet (8,333 ft3 /236 m3 ); or to store fire wood in excess of ten (10) cords; or to conduct woodworking operations involving mass production or involving more than one of each type of machine, or where machines are used continuously (as opposed to intermittently) or substantial products of sawdust may be a problem. See Chapter 28.

*105.5.45 Repair garages and motor fuel-dispensing facilities:* An operational permit is required for operation of repair garages and automotive, marine and fleet motor fuel-dispensing facilities, including fueling with flammable or combustible liquids, liquefied petroleum gases, compressed natural gas, liquefied natural gas, or hydrogen.

*105.5.48 Storage of tires, scrap tires and tire byproducts:* An operational permit is required to establish, conduct or maintain outdoor storage of tires, scrap tires and tire byproducts that exceeds 1,000 cubic feet (92 m3 ) of total volume of scrap tires and for indoor storage of tires and tire byproducts.

(Ord. 30836.)

17.12.260 Additional operational permit requirements (2022 CFC Chapter 1 Section 105.5.54).

Chapter 1 Section 105.5.54 of the 2022 California Fire Code is amended to read as follows:

*105.5.54.4 Battery Storage System:* An operational permit is required to operate Stationary Storage Systems having capacities exceeding the values shown in 2022 California Fire Code Table in Section 1206.2.

*105.5.54.5 Day Care Facility:* An operational permit is required to operate any day care home or facility which provides day care for adults or children.

*105.5.54.6 Lithium Battery Storage System:* An operational permit is required to collect or store more than 1,000 pounds (454 kg) of lithium batteries.

*105.5.54.7 High-Rise Buildings:* An operational permit is required to operate any high-rise building.

*105.5.54.8 Institutions:* An operational permit is required to operate any health facility as defined in Section 1250 of the California Health and Safety Code, with an occupant load of more than six (6) persons, or to operate any jail or facility where personal liberties of the occupants are restrained. See California Code of Regulations Title 24 Part 2.

*105.5.54.9 Multi-story building:* An operational permit is required to operate any building which is not a high-rise building, but has four or more floors. See Section 3.09 of Title 19 of the California Code of Regulations.

*105.5.54.10 Residential care facility:* An operational permit is required to operate any residential care or service facility, as described in the California Building Code, accommodating more than six (6) persons.

*105.5.54.11 Emergency Responder Radio Coverage (ERRC):* An operational permit is required to operate ERRC systems and related equipment.

*105.5.54.12 Firefighter Air Replenishment System (FARS):* An operational permit is required to operate FARS systems and related equipment.

*105.5.54.13 Multifamily Residential Building:* An operational permit is required to operate any Residential Group R-2 or R-2.1 as defined in CBC 310.3

*105.5.54.14 On-Demand Mobile Fueling Operations:* An operational permit is required to operate on-demand mobile fueling operations as defined in the 2022 California Fire Code, Section 5707.

(Ord. 30836.)

17.12.270 Failure to comply with stop work order (2022 CFC, Chapter 1 Section 112.4).

Section 112.4 of the 2022 California Fire Code is amended to read as follows:

*112.4 Failure to comply.* No person shall fail to comply after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition.

(Ord. 30836.)

### Part 3 Definitions[[4]](#footnote-4)

17.12.300 Adoption of Chapter 2 of the 2022 California Fire Code.

Except as otherwise provided for in this Chapter, Chapter 2 of the 2022 California Fire Code, including the Tables therein, are adopted and incorporated in this Chapter by reference and made a part hereof as if fully set forth herein.

(Ord. 30836.)

17.12.310 Amendments to Section 202 of the 2022 California Fire Code.

Section 202 of the 2022 California Fire Code is amended to read as follows:

*CORROSIVE LIQUID.* Corrosive liquid is:

1. Any liquid which, when in contact with living tissue, will cause destruction or irreversible alteration of such tissue by chemical action; or

2. Any liquid having a pH of 2 or less or 12.5 or more; or

3. Any liquid classified as corrosive by the U.S. Department of Transportation; or

4. Any material exhibiting the characteristics of corrosivity in accordance with Title 22, California Code of Regulations Section 66261.

*DESOLVENTIZING.* The process of removing solvent from solute of an extract.

*DISTILLATION.* The process of separating the components or substances from a liquid mixture by using selective boiling and condensation.

*EXTRACTION.* A process that uses Type 6 Solvents with pressure or temperature to pull the desired phytochemicals from plant material.

*MINIMUM THRESHOLD QUANTITY.* Minimum threshold quantity is the aggregate of highly toxic, toxic or moderately toxic gases in a control area which, due to the minimum aggregate quantities, need only comply with the requirements set forth in Section 6004.1

*MODERATELY TOXIC GAS.* A chemical or substance that has a median lethal concentration (LC50) in air more than 2000 parts per million but not more than 7500 parts per million by volume of gas or vapor, when administered by continuous inhalation for an hour, or less if death occurs within one hour, to albino rats weighing between 200 and 300 grams each.

*PLANT EXTRACTION PROCESS SYSTEM.* Any system that removes and refines from plans of the oils and fats by producing a solvent from raw plant material, desolventizing of the raw material and production of the miscella, distillation of the solvent from the miscella and solvent recovery.

*PLANT EXTRACTION PROCESS SYSTEM WASTE.* Is the waste products from the plan extraction process.

*PLANT POST OIL PROCESSING.* Includes distillation, winterization, and solvent recovery.

*SECONDARY CONTAINMENT.* Secondary containment is that level of containment that is external to and separate from primary containment and is capable of safely and securely containing the material, without discharge, for a period of time reasonably necessary to ensure detection and remedy of the primary containment failure.

*SOLVENT.* A substance capable of dissolving or dispersing one or more other substances.

*SOLVENT RECOVERY.* Is a process system that takes effluent and extracts useful solvents and raw materials back out of the plant extract processing systems waste stream.

*SPILL CONTROL.* That level of containment that is external to and separate from the primary containment and is capable of safely and securely containing the contents of the largest container and preventing the materials from spreading to other parts of the room.

*TYPE 6 SOLVENTS.* Are the "non-volatile solvents" as defined and listed as part of the cannabis manufacturing Department of Public Health Manufacturing Cannabis Licensing System Type 6 per California Code of Regulations Title 17 Chapter 13, Article 2. General Provisions §40118. For the purposes of this Code, these solvents include carbon dioxide and ethanol.

*WINTERIZATION PROCESS.* Involves putting the raw cannabis extract through an ethanol wash that filters some of the undesirable plant materials. The raw extract is immersed in the ethanol, where it is then frozen, hence its name. This process separates the refined plant product from other compounds like terpenes and wastes such as waxes, lipids, and plant chlorophyll.

*WORKSTATION.* A defined space or an independent piece of equipment using hazardous materials with a hazard rating of 3 or 4 in flammability and reactivity hazard in accordance with NFPA 704 where a specific function, laboratory procedure or research activity occurs. Approved or listed hazardous materials storage cabinets, flammable liquid storage cabinets or gas cabinets serving a workstation are included as part of the workstation. A workstation is allowed to contain ventilation equipment, fire protection devices, detection devices, electrical devices and other processing and scientific equipment.

(Ord. 30836.)

### Part 4 GENERAL PRECAUTIONS AGAINST FIRE, EMERGENCY PLANNING AND FIRE SERVICE FEATURES[[5]](#footnote-5)

17.12.400 Adoption of Chapters 3, 4 and 5 and Appendix Chapter 4 of the 2022 California Fire Code.

Except as otherwise provided for in this Chapter, Chapters 3, 4 and 5 and Appendix Chapter 4 of the 2022 California Fire Code, including the Tables therein, are adopted and incorporated in this Chapter by reference and made a part hereof as if fully set forth herein.

(Ord. 30836.)

17.12.410 Amendment to Section 315.3 of the 2022 California Fire Code.

Section 315.3.1 of the 2022 California Fire Code is amended to read as follows:

*315.3.1 Ceiling Clearance:*

Ceiling clearance shall be maintained 2 feet (610 mm) or more below the ceiling in non-sprinklered building and not less than 18 inches (457 mm) below the sprinkler head deflectors in sprinklered areas of the building.

Exceptions:

1. Deleted

2. Deleted

(Ord. 30836.)

17.12.420 Amendment to Table 315.7 of the 2022 California Fire Code.

Table 315.7.6(1) of the 2022 California Fire Code is amended to read as follows:

Table 315.7.6(1)   
SEPARATION DISTANCES BETWEEN WOOD PALLET STACKS AND BUILDINGS

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| WALL CONSTRUCTION | OPENING TYPE | WOOD PALLET SEPARATION  DISTANCE (feet) | | |
| ≤ 50  Pallets | 51 to 200  Pallets | **>200** **Pallets** |
| Masonry | None | 2 | 2 | 2 |
| Masonry | Fire-rated glazing with open sprinklers | 2 | 5 | 20 |
| Masonry | Fire-rated glazing | 10 | 15 | 20 |
| Masonry | Plain glass with open sprinklers | 10 | 15 | 20 |
| Noncombustible | None | 10 | 15 | 20 |
| Wood with open sprinklers | - | 10 | 15 | 20 |
| Wood | None | 15 | 30 | 90 |
| Any | Plain glass | 15 | 30 | 90 |

(Ord. 30836.)

17.12.430 Amendment to Section 315 of the 2022 California Fire Code.

Section 315 of the 2022 California Fire Code is amended to read as follows:

*315.8 Lithium Battery Storage and Handling.* The storage and handling of lithium ion and lithium metal batteries or cells in quantities exceeding 1,000 pounds (454 kg) shall comply with Section 315.8.1 through 315.8.10, and Chapter 32 where applicable.

*315.8.1 Permits.* Permits shall be required as set forth in Section 105.6.51.

*315.8.2 Maximum quantity in a fire area.* The aggregate amount of lithium batteries stored and handled in a single fire area shall not exceed 9,000 pounds (4086 kg).

*315.8.3 Construction requirements.* Fire areas shall be separated from each other by fire barriers having not less than 2-hour fire resistance rating constructed in accordance with Section 707 of the Building Code and horizontal assemblies constructed in accordance with Section 711 of the Building Code.

*315.8.4 Number of fire areas.* The maximum number of fire areas within a building shall be four.

*315.8.5 Group H, Division 2 occupancy.* Storage and handling of more than 9,000 pounds of lithium batteries per fire area shall be in an approved Group H, Division 2 occupancy constructed in accordance with the Building Code and provided throughout with approved automatic smoke detection and radiant-energy detection systems.

*315.8.6 Automatic sprinkler system.* Buildings containing fire areas used for lithium battery storage or handling shall be equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1. The design of the sprinkler system within each fire area shall not be less than that required for Extra Hazard Group 2 with a minimum design area of 2,500 square feet. Where the storage arrangement is required by other provisions of this code to be provided with a higher level of sprinkler system protection, the higher level of sprinkler system protection shall be provided.

*315.8.7 Automatic smoke detection system.* An approved automatic smoke detection system that activates an approved occupant notification system shall be provided throughout each fire area in accordance with Section 907.

*315.8.8 Radiant energy detection.* An approved radiant-energy detection system that activates an approved occupant notification system shall be installed throughout each fire area in accordance with Section 907.

*315.8.9 Collection containers.* Containers used to collect or store lithium batteries shall be noncombustible and shall not have an individual capacity exceeding 30 gallons (113.6 L), or be approved for transportation in accordance with the Department of Transportation (DOT).

*315.8.10 Storage configuration.* Lithium batteries shall be considered a high-hazard commodity in accordance with Chapter 32 and where applicable, lithium battery storage shall comply with Chapter 32 in addition to Section 315.8.

(Ord. 30836.)

17.12.440 Amendment to Section 404 of the 2022 California Fire Code.

Section 404 of the 2022 California Fire Code is amended to read as follows:

*404.7 Emergency Plan and Hazardous Materials Management Plan Cabinets.* In large commercial, industrial or residential complexes, the Chief may require the fire safety and evacuation plans and/or the Hazardous Materials Management Plan to be locked in approved cabinets in approved locations that are accessible to the Fire Department in the event of an emergency.

(Ord. 30836.)

17.12.450 Amendment of Section 505.1 of the 2022 California Fire Code.

Section 505.1 of the 2022 California Fire Code is amended to read as follows:

*505.1 Address Identification:* New and existing buildings shall be provided with approved address identification. One street address shall be assigned to a building. Multi-tenant buildings shall be assigned associated suite numbers. The address identification shall be legible and placed in a position that is visible from the street or road fronting the property. Address identification characters shall contrast with their background. Address numbers shall be Arabic numbers or alphabetical letters. Numbers shall not be spelled out. Each character shall be not less than 4 inches (102 mm) high with a minimum stroke width of ½ inch (12.7 mm). Where required by the fire code official, address identification shall be provided in additional approved locations to facilitate emergency response. Where access is by means of a private road and the building cannot be viewed from the public way, a monument, pole or other sign or means shall be used to identify the structure. Address identification shall be maintained.

The following are guidelines for adequate address number dimensions:

• The number posted up to 49 feet from the public street shall be of one solid color which is contrasting to the background and be at least four (4) inches high with a half (½) inch stroke.

• The number posted from 50 to 100 feet from the public street shall be of one solid color which is contrasting to the background and be at least six (6) inches high with a one (1) inch stroke.

• The number posted over 100 to 199 feet from the public street shall be of one solid color which is contrasting to the background and be at least ten (10) inches high with a one and a half (1½) inch stroke.

• The number posted over 200 to 299 feet from the public street shall be of one solid color which is contrasting to the background and be at least eighteen (18) inches high with a two (2) inch stroke.

• The number posted over 300 to 400 feet from the public street shall be of one solid color which is contrasting to the background and be at least twenty-four (24) inches high with a two and a half (2½) inch stroke.

(Ord. 30836.)

17.12.460 Amendment of Section 508.1 of the 2022 California Fire Code.

Section 508.1.8 of the 2022 California Fire Code Section is amended to read as follows:

*508.1.8 Ventilation.* The fire command center shall be provided with an independent ventilation or air-conditioning system with 100% outdoor air supply and connected to emergency power.

(Ord. 30836.)

17.12.470 Amendment of Section 510.6 of the 2022 California Fire Code.

Section 510.6.1 of the California Fire Code Section is amended to read as follows:

*510.6.1 Testing and proof of compliance.* The owner of the building or owner's authorized agent shall have the inbuilding, two-way emergency responder communication coverage system inspected and tested annually or where structural changes occur, including additions or remodels that could materially change the original field performance test. Testing shall consist of the following:

1. In-building coverage test as described in Section 510.5.4.

2. Signal boosters shall be tested to verify that the gain is the same as it was upon initial installation and acceptance or set to optimize the performance of the system.

3. Backup batteries and power supplies shall be tested under load of a period of 1 hour to verify that they will properly operate during an actual power outage. If within the 1-hour test period the battery exhibits symptoms of failure, the test shall be extended for additional 1-hour periods until the integrity of the battery can be determined.

4. All active components shall be checked to verify operation within the manufacturer's specifications.

At the conclusion of the testing, a report, which shall verify compliance with Section 510.5.4, shall be submitted to the fire code official. In addition, compliance with 901.6.3.2 shall be mandatory.

(Ord. 30836.)

### Part 5 BUILDING SERVICES AND SYSTEMS, FIRE RESISTANCE RATED CONSTRUCTION AND INTERIOR FINISH, DECORATIVE MATERIALS AND FURNISHINGS[[6]](#footnote-6)

17.12.500 Adoption of Chapters 6, 7 and 8 of the 2022 California Fire Code.

Except as otherwise provided for in this Chapter, Chapters 6, 7 and 8 of the 2022 California Fire Code, including the Tables therein, are adopted and incorporated in this Chapter by reference and made a part hereof as if fully set forth herein.

(Ord. 30836.)

### Part 6 FIRE PROTECTION, SUPPRESSION, AND ALARM DETECTION[[7]](#footnote-7)

17.12.610 Adoption of Chapter 9 of the 2022 California Fire Code.

Except as otherwise provided for in this Chapter, Chapter 9 of the 2022 California Fire Code, including the Tables therein, is adopted and incorporated in this Chapter by reference and made a part hereof as if fully set forth herein.

(Ord. 30836.)

17.12.620 Amendment of Chapter 9 of the 2022 California Fire Code.

*Findings.* The amendments set forth in this Part are reasonably necessary because of the findings set forth above in 17.12.120 and the following additional local geological, topographical and climatic conditions:

I. The type of automatic fire sprinkler systems set forth in the amendment is a more restrictive standard which will better prevent fire damage which can result from local conditions.

II. If not amended, Section 914.2, 914.3, 914.4, 914.6 of the 2022 California Fire Code would allow omission of fire sprinkler coverage in certain areas of covered malls, high-rise buildings, buildings with atriums, stages, and platforms.

III. The requirement for total fire sprinkler coverage set forth in the amendment is a more restrictive standard which will better prevent fire damage, which can result from local conditions.

(Ord. 30836.)

17.12.630 Amendment of Section 901 of the 2022 California Fire Code.

Subsection 901.6 of the 2022 California Fire Code is amended to read as follows:

*901.6.3.2 Inspection, testing and maintenance requirements.* It is the responsibility of the contractor company or Licensee to provide a written or electronic report of the inspection, test, and maintenance results to the building owner and the 3rd Party Inspection Compliance Service contracted with the City of San José at the completion of the inspection, testing, and maintenance. Submittal of electronic reports to the 3rd Party Inspection Compliance Service shall be in accordance with 3rd Party Inspection Compliance submittal procedures.

(Ord. 30836.)

17.12.640 Amendment of Section 903 of the 2022 California Fire Code.

A. Subsection 903.2 of the 2022 California Fire Code is amended to read as follows:

903.2 Where required. Approved automatic sprinkler systems shall be provided in the locations described in the following:

1. Throughout existing buildings and structures where an increase is made to the floor area that results in the building exceeding 10,000 square feet or the proposed change in use or contents of the building creates a higher risk as indicated in Section 102.3 of the California Fire Code.

2. Throughout existing one- and two-family dwellings where an increase of over 500 square feet is made to the floor area that results in the building exceeding 3,600 square feet.

3. Throughout buildings and structures that are four or more stories in height, regardless of the floor area.

4. Throughout new buildings and structures that exceed 6,200 square feet.

5. Throughout new buildings and structures described in Sections 903.2.1 through 903.2.20 as modified herein.

B. Subsection 903.2.2 of the 2022 California Fire Code is amended to read as follows:

*903.2.2 Ambulatory care facilities.* An automatic sprinkler system shall be installed throughout the entire floor containing an ambulatory care facility where either of the following conditions exits at any time:

1. Four or more care recipients are incapable of self-preservation.

2. One or more care recipients that are incapable of self-preservation are located at other than the level of exit discharge serving such a facility.

In buildings where ambulatory care is provided on levels other than the level of exit discharge, an automatic sprinkler system shall be installed throughout the entire floor as well as the floors below where such care is provided, and all floors between the level of exit discharge, and all floors below the level of exit discharge.

Exception: Deleted

C. Subsection 903.2.8 of the 2022 California Fire Code is amended to read as follows:

*903.2.8.5 Balconies and decks.* Sprinkler protection shall be provided for exterior balconies, decks and ground floor patios of dwelling units and sleeping units, provided there is a roof or deck above. Sidewall sprinklers that are used to protect such areas shall be permitted to be located such that their deflectors are within 1 inch (25 mm) to 6 inches (152 mm) below the structural members and a maximum distance of 14 inches (356 mm) below the deck of the exterior balconies and decks that are constructed of open wood joist construction. Balconies and decks located more than 2 stories above other balconies or decks, shall not be required to have sprinkler protection.

D. Subsection 903.2.18 of the 2022 California Fire Code is amended to read as follows:

*903.2.18 Group U private garages and carports accessory to R-3 occupancies.* Carports with habitable space above and attached garages, accessory to Group R-3 occupancies, shall be protected by residential fire sprinklers in accordance with this section. Residential fire sprinklers shall be connected to and installed in accordance with an automatic residential fire sprinkler system that complies with Section R313 of the California Residential Code or with NFPA 13D. Fire sprinklers shall be residential sprinklers or quick-response sprinklers, designed to provide a minimum density of 0.05 gpm/ft2 (2.04 mm/min.) over the area to the garage and/or carport, but not to exceed two sprinklers for hydraulic calculation purposes. Garage doors shall not be considered obstructions with respect to sprinkler placement.

Exception: Deleted.

E. Subsection 903.3.1.2.1 of the 2022 California Fire Code is amended to read as follows:

*903.3.1.2.1 Balconies and decks.* Sprinkler protection shall be provided for exterior balconies, decks and ground floor patios of dwelling units and sleeping units, provided there is a roof or deck above. Sidewall sprinklers that are used to protect such areas shall be permitted to be located such that their deflectors are within 1 inch (25 mm) to 6 inches (152 mm) below the structural members and a maximum distance of 14 inches (356 mm) below the deck of the exterior balconies and decks that are constructed of open wood joist construction. Balconies and decks located more than 2 stories above other balconies or decks, shall not be required to have sprinkler protection.

F. Section 903.3.1.2.3 of the 2022 California Fire Code is amended to read as follows:

*4.Attic Protection.* Where sprinkler protection is not required by CFC 903.3.1.2.3.1 through 903.3.1.2.3.4, then pilot sprinklers shall be provided in the attics and between floors where floor/ceiling assemblies consist of open web wood joists or trusses. Pilot sprinklers shall be intermediate temperature rated, K=4.2, quick response. Pilot sprinklers shall be located within 12 inches (30.48 cm) of the structure and/or at the apex of each ridgeline when applicable. A sprinkler is required where the ridgeline and hips converge. Sprinklers shall be spaced a maximum 30 feet (9.144 m) centers (maximum 15 feet (4.572 m) from outside walls) and shall be located at all heat and fire sources including furnaces, hot water heaters, above kitchen ranges, etc.

G. Subsection 903.4 of the 2022 California Fire Code Section 903 is amended to read as follows:

*903.4 Sprinkler system supervision and alarms.* Valves controlling the water supply for automatic sprinkler systems, pumps, tanks, water levels and temperatures, critical air pressures, waterflow switches on all sprinkler systems and commercial kitchen hood & duct fixed extinguishing systems shall be electrically supervised by a listed fire alarm control unit.

*Exceptions:*

1. Automatic sprinkler systems protecting one- and two-family dwellings.

2. Limited area sprinkler systems in accordance with Section 903.3.8.

3. Automatic sprinkler systems installed in accordance with NFPA 13R where a common supply main is used to supply both domestic water and the automatic sprinkler system, and a separate shutoff valve for the automatic sprinkler system is not provided.

4. Jockey pumps control valves that are sealed or locked in the open position.

5. Control valves to paint spray booths or dip tanks that are sealed or locked in the open position.

6. Valves controlling the fuel supply to fire pump engines that are sealed or locked in the open position.

7. Trim valves to pressure switches in dry, preaction and deluge sprinkler systems that are sealed or locked in the open position.

8. Underground key or hub gate valves in roadway boxes.

9. Commercial kitchen hood & duct fixed extinguishing systems located in buildings where a sprinkler monitoring system is or was not required.

(Ord. 30836.)

17.12.650 Amendment of Section 907 of the 2022 California Fire Code.

Subsection 907.5.2.3.3 of the 2022 California Fire Code is amended to read as follows:

*907.5.2.3.3 Group R-2.* In Group R-2 occupancies required by section 907 to have a fire alarm system, each story that contains dwelling units and sleeping units shall be provided with the capability to support future visible alarm notifications appliances in accordance with NFPA 72. Such capability shall accommodate wired equipment.

Subsection 907.5.2.3.3.1 of the 2022 California Fire Code is amended to read as follows:

*907.5.2.3.3.1 Wired equipment.* Where wired equipment is used to comply with the future capability required by Section 907.5.2.3.3, the system shall include all of the following capabilities:

1. The replacement of audible appliances with combination audible/visible appliances or additional visible notification appliances.

2. The future extension for the existing wiring from the unit smoke alarm locations to required locations for visible appliances.

3. For wired equipment, the fire alarm power supply and circuits shall have not less than 5-percent excess capacity to accommodate the future addition of visible alarm notification appliances, and a single access point to such circuits shall be available on every story. Such circuits shall not be required to be extended beyond a single access point on a story. The fire alarm system shop drawings required by Section 907.1.2 shall include the power supply and circuit documentation to accommodate the future addition of visible notification appliances.

Subsection 907.6.1.1 of the 2022 California Fire Code is amended to read as follows:

*907.6.1.1 High-rise buildings.* Wiring for fire alarm system shall be installed in electrical metallic tubing (EMT) in accordance with the California Electrical Code. Flexible metallic conduit (FMC) is permitted when connections are made to initiating devices or notification appliances not to exceed 6 feet in length.

Wiring for fire alarm network communication circuits between multiple controls units shall be in accordance with the following:

1. Class A or Class X redundant pathway separated by rated construction and meeting the requirements of pathway survivability level 3 of NFPA 72.

2. Fire alarm network communication control units shall be evenly distributed and located on every 3 to 5 floors throughout the building and function independently in case of failure of one or more control units.

Subsection 907.6.6 of the 2022 California Fire Code is amended by adding the following new subsection:

*907.6.6.5 Fire Alarm Signal Transmission.* All new or replacement of fire alarm panels shall transmit alarm, trouble and supervisory signals descriptively with the correct device identification point and location to UL approved central station. Alarms shall not be permitted to be transmitted as a general alarm or zone condition. Installing contractor shall be responsible to obtain UL certification for the fire alarm system.

(Ord. 30836.)

17.12.660 Amendment of Section 913.4 of the 2022 California Fire Code.

Subsection 913.4 of the 2022 California Fire Code is amended to read as follows:

*913.4 Valve Supervision.* Where provided, the fire and jockey pump suction, discharge and bypass valves, and the isolation valves on the backflow prevention device or assembly shall be supervised open by one of the following methods.

1. Central station or proprietary station signaling service through the FACU.

(Ord. 30836.)

17.12.670 Amendment of Section 914 of the 2022 California Fire Code.

A. Subsection 914.2.1 of the 2022 California Fire Code is amended to read as follows:

*914.2.1 Automatic sprinkler system.* Covered and open mall buildings and buildings connected shall be equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1, which shall comply with all of the following:

1. The automatic sprinkler system shall be complete and operative throughout occupied space in the mall building prior to occupancy of any of the tenant spaces. Unoccupied tenant spaces shall be similarly protected unless provided with approved alternative protection.

2. Sprinkler protection for the mall shall be independent from that provided for tenant spaces or anchor buildings.

3. Sprinkler protection for tenant spaces of an open mall building shall be independent from that provided for anchor buildings.

4. Sprinkler protection shall be provided beneath exterior circulation balconies located adjacent to an open mall.

5. Where tenant spaces are supplied by the same system, they shall be independently controlled.

*Exception:* Deleted.

B. Subsection 914.3.1 of the 2022 California Fire Code is amended to read as follows:

*914.3.1 Automatic sprinkler system.* Buildings and structures shall be equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 and a secondary water supply where required by Section 914.3.2. A sprinkler water-flow alarm-initiating device and a control valve with a supervisory signal-initiating device shall be provided at the lateral connection to the riser on each floor.

*Exception:* Deleted.

C. Subsection 914.4.1 of the 2022 California Fire Code is amended to read as follows:

*914.4.1 Automatic sprinkler system.* An approved automatic sprinkler system shall be installed throughout the entire building.

*Exceptions:* Deleted.

D. Subsection 914.6.1 of the 2022 California Fire Code is amended to read as follows:

*914.6.1 Automatic sprinkler system.* Stages shall be equipped with an automatic fire-sprinkler system in accordance with Section 903.3.1.1. Sprinklers shall be installed under the roof and gridiron and under all catwalks and galleries over the stage. Sprinklers shall be installed in dressing rooms, performer lounges, shops and storerooms accessory to such stages.

*Exceptions:* Deleted.

(Ord. 30836.)

### Part 7 MEANS OF EGRESS, CONSTRUCTION REQUIREMENTS FOR EXISTING BUILDINGS, AND ENERGY REQUIREMENTS[[8]](#footnote-8)

17.12.700 Adoption of Chapters 10, 11, and 12 of the 2022 California Fire Code.

Except as otherwise provided for in this Chapter, Chapters 10, 11, and 12 of the 2022 California Fire Code, including the Tables therein, are adopted and incorporated in this Chapter by reference and made a part hereof as if fully set forth herein.

(Ord. 30836.)

### Part 8 SPECIAL OCCUPANCY AND OPERATION PROVISIONS[[9]](#footnote-9)

17.12.800 Adoption of Chapters 20 through 38 of the 2022 California Fire Code.

Except as otherwise provided for in this Chapter, Chapters 20 through 38 of the 2022 California Fire Code, including the Tables therein, are adopted and incorporated in this Chapter by reference and made a part hereof as if fully set forth herein.

(Ord. 30836.)

### Part 8.25 PROCESSING AND EXTRACTION FACILITIES[[10]](#footnote-10)

17.12.825 Adoption of Chapter 39 of the 2022 California Fire Code.

Except as otherwise provided for in this Chapter, Chapter 39 of the 2022 California Fire Code, including the Tables therein, are adopted and incorporated in this Chapter by reference and made a part hereof as if fully set forth herein.

(Ord. 30836.)

17.12.830 Amendment of Section 3901 of the 2022 California Fire Code.

Section 3901.1 of the 2022 California Fire Code is amended to read as follows:

*3901.1 Scope.* Plant processing or extraction facilities shall comply with this chapter and the California Building Code. The extraction process includes the act of extraction of the oils and fats by use of a Type 6 solvent, desolventizing of the raw material and production of the miscella, distillation of the Type 6 solvent from the miscella and Type 6 solvent recovery. The use, storage, transfilling, and handling of hazardous materials in these facilities shall comply with this chapter and other applicable provisions of this code provisions including Chapter 53, Chapter 57, Chapter 58, and Chapter 61, the California Mechanical Code and the California Building Code.

Section 3901 of the 2022 California Fire Code is amended is amended to read as follows:

*3901.4 Approved Uses.* All uses and activities related to Processing and Extraction Facilities shall be in accordance with Chapter 6.88 of Title 6 of the San José Municipal Code.

(Ord. 30836.)

17.12.835 Amendment of Section 3902 of the 2022 California Fire Code.

Section 3902.1 of the 2022 California Fire Code is amended to read as follows:

*3902.1 Definitions.* The following Terms are defined in Chapter 2:

CHEMICAL FUME HOOD   
DESOLVENTIZING   
DISTALLATION   
EXTRACTION   
MISCELLA   
PLANT EXTRACTION PROCESSING SYSTEM   
POST OIL PROCESSING   
SOLUTE   
SOLVENT   
SOLVENT RECOVERY   
TYPE 6 SOLVENT   
WINTERIZATION

(Ord. 30836.)

17.12.840 Amendment of Section 3903 of the 2022 California Fire Code.

Section 3903.2 of the 2022 California Fire Code is amended to read as follows:

*3903.2 Prohibited Occupancies.* Extraction processes shall not be located in any building containing a Group A, E, I, or R occupancy. Extraction processes shall only be located in Group F or H Occupancy rooms.

Section 3903.6 of the 2022 California Fire Code is amended to read as follows:

(Ord. 30836.)

17.12.845 Amendment of Section 3904 of the 2022 California Fire Code.

Subsection 3904.1 of the 2022 California Fire Code is amended to read as follows:

*3904.1 General requirements.* Systems and equipment used with the processing and extraction of oils and products from plants shall comply with Sections 3904.2 through 3904.7, 5003.2, other applicable provisions of this code, the California Building Code, and the California Mechanical Code.

Section 3904 of the 2022 California Fire Code is amended by adding the following new subsections:

*3904.5 Egress.* Exit doors from extraction rooms utilizing hazardous materials shall swing in the direction of egress and be self-closing. Where latching door hardware is provided on extraction rooms utilizing hazardous materials, panic hardware shall be provided.

*3904.6 Extraction Rooms.* Extraction room shall be fully enclosed. The floor, ceiling, and walls of extraction rooms shall be constructed in accordance with the California Building Code and be continuous, non-combustible, and smooth. Rooms designed in accordance with Section 3903.4.1.1 shall be constructed to permit the free passage of exhaust air from all parts of the room.

*Exception:* CO2 extraction rooms and extraction rooms containing processes not utilizing hazardous materials.

*3904.7 Extraction room illumination.* Luminaires inside the extraction rooms having flammable vapors shall comply with National Electrical Code and current California Electrical Code Article 500 and 501.

(Ord. 30836.)

17.12.850 Amendment of Section 3905 of the 2022 California Fire Code.

Subsection 3905.1 of the 2022 California Fire Code is amended to read as follows:

*3905.1 Gas Detection.* A continuous gas detection system shall be provided within rooms, booths or hoods, containing flammable gas or flammable liquids, or CO2 extraction processes. Actuation of the gas detection system shall initiate a local alarm within the room. The gas detection threshold for flammable and combustible liquids shall be no greater than 25 percent of the lower flammable limit (LFL) of the materials. CO2 gas detection systems shall alarm at 5000 ppm.

Subsection 3905.1.5 of the 2022 California Fire Code is amended to read as follows:

*3905.1.5 Interlocks.* All electrical components within extraction or post processing rooms utilizing flammable gas or flammable liquids shall be interlocked with the gas detection system. Activation of the gas detection system shall disable all light switches and electrical outlets.

*Exception:* CO2 gas detection.

Subsection 3905.2 of the 2022 California Fire Code is amended to read as follows:

*3905.2* is deleted.

Section 3905 of the 2022 California Fire Code is amended by adding the following new subsections:

*3905.3 Sources of ignition.* Extraction or post oil processing operations which use flammable gas or flammable liquids shall comply with Sections 3905.3.1 through 3905.3.2.

*3905.3.1 Open flame and sparks.* Smoking, open flames, direct fired heating devices, etc. shall be prohibited in areas where flammable vapors exist.

*3905.3.2 Electrical equipment.* Electrical equipment installed in areas of flammable liquid extractions or post oil processing shall be in accordance with CFC Chapter 50, as amended, and NFPA 70 (NEC).

(Ord. 30836.)

17.12.855 Amendment of Chapter 39 of the 2022 California Fire Code.

Chapter 39 of the 2022 California Fire Code is amended to read as follows:

*3906 VENTILATION*

*3906.1 Exhaust required.* Plant extraction processing systems utilizing carbon dioxide or flammable gas or flammable liquids, shall be provided with an exhaust system in accordance with Section 3906.1 or 3906.1.4. The exhaust system shall be in operation at all times when extractions or post oil processing is being performed and until flammable gas or flammable liquids is off gassed from oil and/or plant material removed from flammable gas or flammable liquids extraction equipment. Fans shall be of the type approved for use when flammable or explosive vapors are present in accordance with the California Mechanical Code. Capture and containment air velocity shall be provided across booths, hoods, or exhausted enclosures to capture and convey emissions to the exhaust system and shall be no less than 75 fpm.

*3906.1.1 Exhaust for flammable gas or flammable liquids processes.* A hazardous exhaust system in accordance with the California Building and Fire Code shall be provided for flammable liquid extraction processes.

1. Distillation process with less than 5 gallons of flammable liquid performed under a chemical fume hood installed in accordance with the California Building and Fire Code.

2. Solvent distillation units in compliance with CFC Section 5705.4.

*3906.1.3 Exhausted enclosure.* Where the extraction room is used as the exhausted enclosure, the exhaust system shall be designed to provide capture and containment air velocity across all areas of the enclosure.

*3906.1.4 Electrical Interlocks.* All electrical components within extraction or post processing rooms utilizing flammable gas or flammable liquids shall be interlocked with the ventilation system, such that non-operation of the ventilation system will disable all light switches and electrical outlets.

(Ord. 30836.)

### Part 8.5 MOTION PICTURE, TELEVISION SOUNDSTAGE, WILDLAND URBAN INTERFACE AREAS, AND DEFENSIBLE SPACE PROVISIONS[[11]](#footnote-11)

17.12.870 Adoption of Chapters 48 and 49 of the 2022 California Fire Code.

Except as otherwise provided for in this Chapter, Chapters 48 and 49 of the 2022 California Fire Code, including the Tables therein, are adopted.

(Ord. 30836.)

17.12.875 Amendment of Section 4902 of the 2022 California Fire Code.

Subsection 4902 is amended to read as follows:

*WILDLAND-URBAN INTERFACE FIRE AREA.* A geographical area identified by the state as a "Fire Hazard Severity Zone" in accordance with the Public Resources Code, Sections 4201 through 4204, and Government Code, Sections 51175 through 51189, or other areas designated by the enforcing agency to be at a significant risk from wildfires.

The Wildland-Urban Interface Fire Area also includes all areas within the City of San José as set forth and delineated on the map entitled "San José Fire Department Wildland Urban Interface," which map and all notations, references, data, and other information shown is hereby adopted and made a part of this chapter. The map shall be on file with the San José Fire Department.

(Ord. 30836.)

17.12.880 Amendment of Section 4906.2 of the 2022 California Fire Code.

Section 4906.2 is amended to read as follows:

*4906.2 Application.* Buildings and structures located in the following areas shall maintain the required hazardous vegetation and fuel management:

1. All unincorporated lands designated by the State Board of Forestry and Fire Protection as State Responsibility Area (SRA) including:

a. Moderate Fire Hazard Severity Zones.

b. High Fire Hazard Severity Zones.

c. Very-high Fire Hazard Severity Zones.

2. Land designated as Very-high Fire Hazard Severity Zone or Wildland-Urban Interface Areas by the City San José.

(Ord. 30836.)

### Part 9 PROVISIONS RELATED TO STORAGE, HANDLING AND USE OF REGULATED MATERIALS[[12]](#footnote-12)

17.12.900 Adoption of Chapter 50 of the 2022 California Fire Code.

Except as otherwise provided for in this Chapter, Chapter 50 of the 2022 California Fire Code, including the Tables therein, are adopted and incorporated in this Chapter by reference and made a part hereof as if fully set forth herein.

(Ord. 30836.)

17.12.905 Amendment of Section 5001.2.2.2 of the 2022 California Fire Code.

Subsection 5001.2.2.2 is amended to read as follows:

*5001.2.2.2 Health hazards.* The material categories listed in this section are classified as health hazards. A material with a primary classification as a health hazard can also pose a physical hazard.

1. Highly toxic and toxic materials.

2. Corrosive materials.

3. Moderately toxic gas.

(Ord. 30836.)

17.12.910 Amendment of Section 5003.1 of the 2022 California Fire Code

Subsection 5003.1.4 is amended to read as follows:

*5003.1.4.1 Highly toxic, toxic, moderately toxic gases and similarly used or handled materials.* The storage, use and handling of toxic, highly toxic and moderately toxic gases in quantities exceeding Tables 5003.1.1(1-4) shall be in accordance with this chapter and Chapter 60. Any toxic, highly toxic or moderately toxic material that is used or handled as a gas or vapor shall be in accordance with the requirements for toxic, highly toxic or moderately toxic gases.

(Ord. 30836.)

17.12.915 Amendment of section 5003.1 of the 2022 California Fire Code.

Section 5003.1 of the 2022 California Fire Code is amended to read as follows:

*5003.1.5 Additional Spill Control and Secondary Containment Requirements.* In addition to the requirements set forth in Section 5004.2, approved containment is required for any quantity of hazardous materials that are liquids or solids at normal temperature and pressure (NTP) where a spill is determined to be a plausible event and where such an event would endanger people, property or the environment. Such containment may be required to include a combination of spill control and secondary containment meeting the design and construction requirements set forth in Section 5004.2 of the 2022 California Fire Code.

(Ord. 30836.)

17.12.920 Amendment of Section 5003.2.2.1 of the 2022 California Fire Code.

Section 5003.2.2.1 of the 2022 California Fire Code is amended to read as follows:

*5003.2.2.1 Design and Construction.* Piping, tubing, valves, fittings and related components used for hazardous materials shall be in accordance with the following:

1. Piping, tubing, valves, fittings and related components shall be designed and fabricated from materials that are compatible with the material to be contained and shall be of adequate strength and durability to withstand the pressure, structure and seismic stress, and exposure to which they are subject.

2 Piping and tubing shall be identified in accordance with ASME A 13.1 and the Santa Clara County Fire Chiefs Marking Requirements and Guidelines for Hazardous Materials and Hazardous Waste to indicate the material conveyed.

3. Readily accessible manual valves or automatic remotely activated fail-safe emergency shutoff valves shall be installed on supply piping and tubing at the following locations:

1. The point of use;

2. The tank, cylinder or bulk source.

4. Manual emergency shutoff valves and controls for remotely activated emergency shutoff valves shall be identified and the location shall be clearly visible accessible and indicated by means of a sign.

5. Backflow prevention or check valves shall be provided where the backflow of hazardous materials could create a hazardous condition or cause the unauthorized discharge of hazardous materials.

6. When gases or liquids having a hazard ranking of:

1. Health Class 3 or 4;

2. Flammability Class 4; or

3. Instability Class 3 or 4

in accordance with NFPA 704 are carried in pressurized piping above 15 pounds per square inch gauge (psig) 1(103 Kpa), then an approved means of leak detection, emergency shutoff, or excess flow control shall be provided. Where the piping originates from within a hazardous material storage room or area, the excess flow control shall be located within the storage room or area. Where the piping originates from a bulk source, the excess flow control shall be located as close to the bulk source as practical:

*Exceptions:*

1. Piping for inlet connections designed to prevent backflow.

2. Piping for pressure relief devices.

7. Secondary containment or equivalent protection from spills or leaks shall be provided for piping for liquid hazardous materials and for highly toxic and toxic corrosive gases above threshold quantities listed in table 5003.1.1(1-4). Secondary containment includes, but is not limited to, double-walled piping.

*Exceptions:*

1. Secondary containment is not required for toxic corrosive gases if the piping is constructed of inert materials.

2. Piping under sub-atmospheric conditions, if the piping is equipped with an alarm and fail-safe-to-close valve activated by a loss of vacuum.

8. Expansion chambers shall be provided between valves whenever the regulated gas may be subjected to thermal expansion. Chambers shall be sized to provide protection for piping and instrumentation and to accommodate the expansion of regulated materials.

(Ord. 30836.)

17.12.925 Amendment of Section 5003.2.2.2 of the 2022 California Fire Code.

Section 5003.2.2.2 of the 2022 California Fire Code is amended to read as follows:

*5003.2.2.2 Additional Regulation for Supply Piping for Health Hazard Materials.* Supply piping and tubing for gases and liquids having a health hazard ranking of 3 or 4 in accordance with NFPA 704 shall be in accordance with ASME B 31.3 and the following:

1. Piping and tubing utilized for the transmission of highly toxic and toxic gases or highly volatile corrosive liquids and gases shall have welded or brazed connections throughout except for connections within an exhausted enclosure if the material is a gas, or an approved method of drainage or containment is provided for connections if the material is a liquid.

2. Piping and tubing shall not be located within corridors, within any portion of a means of egress required to be enclosed in fire-resistance-rated construction or in concealed spaces in areas not classified as Group H Occupancies.

*Exception:* Piping and tubing within the space defined by the walls of corridors and the floor or roof above or in concealed space above other occupancies where installed in accordance with Section 415.11.6.4 of the California Building Code as required for Group H Division 5 Occupancies.

3. All primary piping for highly toxic, toxic and moderately toxic gases shall pass a helium leak test of 1×10-9 cubic centimeters/second where practical, or shall pass testing in accordance with an approved nationally recognized standard. Test shall be conducted by a qualified "third party" not involved with the construction of the piping and control systems.

(Ord. 30836.)

17.12.930 Amendment of Subsection 5003.3.1 of the 2022 California Fire Code.

Subsection 5003.3.1 of the 2022 California Fire Code is amended to read as follows:

*5003.3.1 Unauthorized discharges.* Where hazardous materials are released in quantities reportable under state, federal or local regulations or when there is release or a threatened release that presents a threat to health, property or the environment, the fire code official shall be notified immediately in an approved manner and the following procedures required in accordance with Sections 5003.3.1.1 through 5003.3.1.4.

(Ord. 30836.)

17.12.935 Amendment of Section 5003.5 of the 2022 California Fire Code.

Subsection 5003.5 of the 2022 California Fire Code is amended to read as follows:

*5003.5.2 Ventilation Ducting.* Ducts for venting hazardous materials operations shall be labeled with the hazard class of the material being vented and the direction of flow.

*5003.5.3 "H" Occupancies.* In "H" Occupancies, all piping and tubing may be required to be identified when there is any possibility of confusion with hazardous materials transport tubing or piping. Flow direction indicators are required.

(Ord. 30836.)

17.12.940 Amendment of Section 5003.9.8 of the 2022 California Fire Code.

Section 5003.9.8 of the 2022 California Fire Code is amended to read as follows:

*5003.9.8 Separation of Incompatible Materials.* Incompatible materials in storage and storage of materials that are incompatible with materials in use shall be separated where the stored materials are in containers having a capacity of more than 5 pounds (2 kg) or 0.5 gallons (2 L) or any amount of compressed gas. Separation shall be accomplished by at least one of the following:

1. Segregating incompatible materials in storage by a distance of not less than 20 feet (6096 mm) and in an independent containment system.

2. Isolating incompatible materials in storage by a noncombustible partition extending not less than 18 inches (457 mm) above and to the sides of the stored material in an independent containment system.

3. Storing liquid and solid materials in hazardous materials storage cabinets.

4. Storing compressed gases in cabinets or exhausted enclosures in accordance with Sections 5003.8.5 and 5003.8.6. Materials that are incompatible shall not be stored within the same cabinet or exhausted enclosure.

(Ord. 30836.)

17.12.945 Amendment of Section 5003.9 of the 2022 California Fire Code.

Section 5003.9 of the 2022 California Fire Code is amended to read as follows:

*5003.9.11 Fire Extinguishing Systems for Workstations Dispensing, Handling or Using Hazardous Materials.* Workstations which can be used for materials with a hazard rating of 3 or 4 in flammable and reactive category in accordance with NFPA 704 shall be protected by an approved automatic fire extinguishing system in accordance with Section 2703.10.

*Exception:* Internal fire protection is not required for Biological Safety Cabinets that carry NSF/ANSI certification where quantities of flammable liquids in use or storage within the cabinet do not exceed 500 ml.

(Ord. 30836.)

17.12.950 Amendment of Section 5003.10.4 of the 2022 California Fire Code.

Subsection 5003.10.4 of the 2022 California Fire Code is amended to read as follows:

*5003.10.4* Elevators utilized to transport hazardous materials.

*5003.10.4.1* When transporting hazardous materials, elevators shall have no other passengers other than in the individual(s) handling the chemical transport cart.

*5003.10.4.1.1* When transporting cryogenic or liquified compressed gasses, there shall be no occupant in the elevator.

*5003.10.4.2* Hazardous materials liquid containers shall have a maximum capacity of 20 liters (5.28 gal).

*5003.10.4.3* Highly toxic, toxic and moderately toxic gases shall be limited to a container of a maximum water capacity of 1 lb.

*5003.10.4.4* When transporting cryogenic or liquified compressed gasses, means shall be provided to prevent the elevator from being summoned to other floors.

(Ord. 30836.)

17.12.955 Amendment of Section 5004.2.1 of the 2022 California Fire Code.

Section 5004.2.1 of the 2022 California Fire Code is amended to read as follows:

*5004.2.1 Spill Control for Hazardous Material Liquids.* Rooms, buildings or areas used for storage of hazardous material liquids in individual vessels having a capacity of more than 55 gallons (208 L) or in which aggregate capacity of multiple vessels exceeds 1,000 gallons (3785 L), shall be provided with spill control to prevent the flow of liquids to adjoining areas. Floors in indoor locations and similar surfaces in outdoor locations shall be constructed to contain a spill from the largest single vessel by one of the following methods:

1. Liquid-tight sloped or recessed floors in indoor locations or similar areas in outdoor locations.

2. Liquid-tight floors in indoor locations and outdoor or similar areas provided with liquid-tight raised or recessed sills or dikes.

3. Sumps and collection systems.

4. Other approved engineered systems.

Except for surfacing, the floors, sills, dikes, sumps and collection systems shall be constructed of noncombustible material, and the liquid-tight seal shall be compatible with the material stored. When liquid-tight sills or dikes are provided, they are not required at perimeter openings having an open-grate trench across the opening that connects to an approved collection system.

(Ord. 30836.)

17.12.960 Amendment of Section 5004.2.2 of the 2022 California Fire Code.

Section 5004.2.2 of the 2022 California Fire Code is amended to read as follows:

*5004.2.2 Secondary containment for hazardous materials liquids and solids.* Where required by Table 5004.2.2 buildings, rooms or areas used for the storage of hazardous materials liquids or solids shall be provided with secondary containment in accordance with this section where exceeding 1.3 gallons.

Section 5004.2.2.2 of the 2022 California Fire Code is amended to read as follows:

*5004.2.2.2 Incompatible materials.* Incompatible materials shall be separated from each other in independent secondary containment systems

(Ord. 30836.)

17.12.965 Amendment of Section 5004.2.3 of the 2022 California Fire Code

Section 5004.2.3 of the 2022 California Fire Code is amended to read as follows:

*5004.2.3 Containment Pallets.* Combustible containment pallets shall not be used inside buildings to comply with Section 5004.2 where the individual container capacity exceeds 55 gallons (208 L) or an aggregate capacity of multiple containers exceeds 1,000 gallons (3785 L) for liquids or where the individual container capacity exceeds 500 pounds (250 kg) or an aggregate of multiple containers exceeds 10,000 pounds (4540 kg) for solids.

Where used as an alternative to spill control and secondary containment for outdoor storage in accordance with the exception in Section 5004.2 containment pallets shall comply with all of the following:

1. A liquid-tight sump accessible for visual inspection shall be provided.

2. The sump shall be designed to contain not less than 66 gallons (250 L).

3. Exposed surfaces shall be compatible with material stored.

4. Containment pallets shall be protected to prevent collection of rainwater within the sump of the containment pallet.

(Ord. 30836.)

### Part 9.25 HAZARDOUS MATERIALS PROVISIONS[[13]](#footnote-13)

17.12.970 Adoption of Chapters 51 through 59 of the 2022 California Fire Code.

Except as otherwise provided for in this Chapter, Chapters 51 through 59 of the 2022 California Fire Code, including the Tables therein, are adopted and incorporated in this Chapter by reference and made a part hereof as if fully set forth herein.

(Ord. 30836.)

17.12.972 Amendment of Section 5601 of the 2022 California Fire Code.

Section 5601.1.3 of the 2022 California Fire Code is amended to read as follows:

*5601.1.3 Fireworks.* The possession, manufacture, storage, sale, handling, and use of fireworks, including those fireworks classified as Safe and Sane by the California State Fire Marshal, are prohibited.

*Exceptions:* The use of fireworks for firework displays as allowed in Section 5608.

Section 5601.2 of the 2022 California Fire Code is amended to read as follows:

*5601.2.5 Bond for permit to use explosive materials.* In addition to all other requirements, the applicant for a permit to use explosive material shall furnish a bond or certificate of insurance in the amount deemed adequate by the Chief and the City Risk Manager for payment of damages which could be caused either to a person or persons or to property by reason of the permitted activity and arising from acts of the permittee, agents, employees, or subcontractors.

(Ord. 30836.)

17.12.974 Amendment of Section 5608 of the 2022 California Fire Code.

Section 5608 of the 2022 California Fire Code is amended to read as follows:

*5608.2 Bond for public display of fireworks.* In addition to all other requirements, the applicant for a permit to use fireworks, including proximate audience displays and pyrotechnic special effects, shall furnish a bond or certification of insurance in the amount deemed adequate by the Chief and the City Risk Manager for payment of damages which could be caused either to a person or persons or to property by reason of the permitted activity and arising from acts of the permittee, agents, employees, or subcontractors.

(Ord. 30836.)

17.12.976 Amendment of Section 5704.2.7.5.8 of the 2022 California Fire Code.

Section 5704.2.7.5.8 of the 2022 California Fire Code is amended to read as follows:

*5704.2.7.5.8 Overfill prevention.* An approved means or method in accordance with Section 5704.2.9.7.5 shall be provided to prevent the overfill of all Class I, II and IIIA liquid storage tanks. Storage tanks in refineries, bulk plants or terminals regulated by Sections 5706.4 or 5706.7 shall have overfill protection in accordance with API 2350.

An approved means or method in accordance with Section 5704.2.9.7.5 shall be provided to prevent the overfilling of Class IIIB liquid storage tanks connected to fuel-burning equipment inside buildings.

*Exception:* Outside above-ground tanks with a capacity of 500 gallons or less.

(Ord. 30836.)

17.12.978 Amendment of Section 5704.2.7.5.9 of the 2022 California Fire Code.

Section 5704.2.7.5.9 is amended to read as follows:

*5704.2.7.5.9 Automatic filling of tanks.* Systems that automatically fill flammable or combustible liquid tanks shall be equipped with overfill protection, approved by the fire code official, that sends an alarm signal to a constantly attended location and immediately stops the filling of the tank. The alarm signal and automatic shutoff shall be tested on an annual basis and records of such testing shall be maintained on-site for a period of five (5) years.

(Ord. 30836.)

17.12.980 Amendment of Sections 5707.3.2 of the 2022 California Fire Code.

Section 5707.3.2 of the 2022 California Fire Code is amended to read as follows:

*5707.3.2 Training.* Mobile fueling vehicles shall be operated only by designated personnel who are trained on proper fueling procedures and the safety and emergency response plan. Persons responsible for dispensing operations shall be trained in the appropriate mitigating actions in the event of a fire, leak or spill. Training records of operators shall be maintained by the dispensing company. The training of employees who use and maintain the dispensing system shall be in accordance with CFC Section 406, and provisions for hazard communication in accordance with CFC Section 407 as can be applied to this operation.

(Ord. 30836.)

17.12.982 Amendment of Section 5707.3 of the 2022 California Fire Code.

Section 5707.3 of the 2022 California Fire Code is amended to read as follows:

*5707.3.4 Property Owner Acceptance of Liability.* The Owner of the site is responsible is for all activities on their property. Hence the Property Owner at which mobile fueling is being proposed shall sign in concurrence with the Site; Safety and emergency plans acknowledging their acceptance of liability for the mobile fueling operations on their property.

(Ord. 30836.)

17.12.984 Amendment of Sections 5707.4.2 of the 2022 California Fire Code.

Section 5707.4.2 of the 2022 California Fire Code is amended to read as follows:

1. Smoking, open flames, and other sources of ignition shall be prohibited within 25 feet (7620 mm) of fuel dispensing activities.

2. Areas within 25 feet (7620 mm) surrounding fuel dispensing activities shall be free from vegetation, debris and other combustible material.

3. Signs prohibiting smoking or open flames within 25 feet (7620 mm) of the vehicle and the point of fueling shall be prominently posted on the mobile fueling vehicle.

4. The engines of vehicles being fueled shall be shut off during fueling.

5. Electrical wiring and equipment shall be suitable for the locations in which they are installed and shall comply with CFC Section 605, NFPA 30A and the California Electrical Code.

(Ord. 30836.)

### Part 9.5 HIGHLY TOXIC AND TOXIC MATERIALS[[14]](#footnote-14)

17.12.986 Adoption of Chapter 60 of the 2022 California Fire Code.

Except as otherwise provided for in this Chapter, Chapter 60 to 67 of the 2022 California Fire Code, including the Tables therein, are adopted and incorporated in this Chapter by reference and made a part hereof as if fully set forth herein.

(Ord. 30836.)

17.12.988 Amendment of Sections 6001 of the 2022 California Fire Code.

Subsection 6001.1 of the 2022 California Fire Code is amended to read as follows:

*6001.1 Scope.* The storage and use of highly toxic, toxic and moderately toxic materials shall comply with this chapter. Compressed gases shall also comply with Chapter 53.

*Exceptions:*

1. Display and storage in Group M and storage in Group S occupancies complying with Section 5003.1 1.

2. Conditions involving pesticides or agricultural products as follows:

2.1. Application and release of pesticide, agricultural products and materials intended for use in weed abatement, erosion control, soil amendment or similar applications when applied in accordance with the manufacturer' s instruction and label directions.

2.2. Transportation of pesticides in compliance with the Federal Hazardous Materials Transportation Act and regulations thereunder.

2.3. Storage in dwellings or private garages of pesticides registered by the U.S. Environmental Protection Agency to be utilized in and around the home, garden, pool, spa and patio.

(Ord. 30836.)

17.12.990 Amendment of Sections 6004 of the 2022 California Fire Code.

Section 6004 of the 2022 California Fire Code is amended to read as follows:

*SECTION 6004 HIGHLY TOXIC, TOXIC AND MODERATELY TOXIC COMPRESSED GASES*

Section 6004.1 of the 2022 California Fire Code is amended to read as follows:

*6004.1 General.* The storage and use of highly toxic, toxic and moderately toxic compressed gases shall comply with this section.

(Ord. 30836.)

17.12.992 Amendment of Section 6004.1.1 of the 2022 California Fire Code.

*6004.1.1 Special limitations for indoor storage and use by occupancy.* The indoor storage and use of highly toxic, toxic and moderately toxic compressed gases in certain occupancies shall be subject to the limitations contained in Sections 6004.1.1.1 through 6004.1.1.3.

*6004.1.1.1 Group A, E, I or U occupancies.* Highly toxic, toxic and moderately toxic compressed gasses shall not be stored or used within Group A, E, I or U occupancies.

*Exception:* Cylinders not exceeding 20 cubic feet (0.556m3 ) at normal temperature and pressure (NTP) are allowed within gas cabinets or fume hoods.

*6004.1.1.2 Group R occupancies.* Highly toxic, toxic and moderately toxic compressed gases shall not be stored or used in Group R occupancies.

*6004.1.1.3 Offices, retail sales and classrooms.* Highly toxic, toxic and moderately toxic compressed gases shall not be stored or used in offices, retail sales or classroom portions of Group B, F, M or S occupancies.

*Exception:* In classrooms of Group B occupancies, cylinders with a capacity not exceeding 20 cubic feet (0.566 m) at NTP are allowed in gas cabinets or fume hoods.

(Ord. 30836.)

17.12.994 Amendment of Section 6004.2 of the 2022 California Fire Code.

Section 6004.2 of the 2022 California Fire Code is amended to read as follows:

*6004.2 Indoor storage and use.* The indoor storage or use highly toxic, toxic and moderately toxic compressed gases shall be in accordance with Sections 6004.2.1 through 6004.2.2.10.3.

Section 6004.2.1 of the 2022 California Fire Code is amended to read as follows:

*6004.2.1 Applicability.* The applicability of regulations governing the indoor storage and use of highly toxic, toxic and moderately compressed gases shall be as set forth in Sections 6004.2.1.1 through 6004.2.1.4.

Section 6004.2.1.4 of the 2022 California Fire Code is amended to add the following subsection:

*6004.2.1.4 Quantities exceeding the minimum threshold quantities, but not exceeding the maximum allowable per control area*. The indoor storage or use of highly toxic, toxic and moderately gases in amounts not exceeding the minimum threshold quantities per control area set forth in Table 6004.2.1.4 but not exceeding maximum allowable quantity per control area set forth in Table 5003.1.1(2) shall be in accordance with Sections 5001, 5003, 6001, and 6004.4.

The maximum allowable quantity per control area of moderately toxic gas will be according to the lowest quantity of the maximum allowable quantity physical or health hazards, as set forth in Tables 5003.1.1(1) and 5003.1(2) and Table 5003.11.1 for Group M and S occupancies, as applicable.

**Table 6004.2.1.4**

|  |  |
| --- | --- |
| **Minimum Threshold Quantities for Highly Toxic, Toxic and Moderately Toxic Gases for Indoor Storage and Use** | |
| Highly Toxic | 20 cubic feet |
| Toxic | 405 cubic feet |
| Moderately Toxic | 405 cubic feet |

(Ord. 30836.)

17.12.996 Amendment of Section 6004 of the 2022 California Fire Code.

Section 6004 of the 2022 California Fire Code is amended to read as follows:

*6004.4 General indoor requirements.* The general requirements applicable to the indoor storage and use of highly toxic, toxic and moderately toxic above the minimum thresholds and not exceeding maximum allowable per control area set forth in Table 5003.1.1(2) compressed gas above minimum thresholds but not exceeding the maximum allowable per control area shall be in accordance with Sections 6004.4 through 6004.4.10.2.

*6004.4.1 Cylinder and tank location.* Cylinders shall be located within gas cabinets, exhausted enclosures or gas rooms. Portable and stationary tanks shall be located within gas rooms or exhausted enclosures.

*Exceptions:*

1. Where a gas detection system is provided in accordance with 6004.4.8.

*6004.4.2. Ventilated areas.* The room or area in which gas cabinets or exhausted enclosures are located shall be provided with exhaust ventilation. Gas cabinets or exhausted enclosures shall not be used as the sole means of exhaust for any room or area.

*6004.4.3 Piping and controls.* In addition to the requirements of Section 5003.2.2, piping and controls on stationary tanks, portable tanks, and cylinders shall comply with the following requirements:

1. Stationary tanks, portable tanks, and cylinders in use shall be provided with a means of excess flow control on all tank and cylinder inlet or outlet connections.

*Exceptions:*

1. Inlet connections designed to prevent backflow.

2. Pressure relief devices.

*6004.4.4 Gas rooms.* Gas rooms shall comply with Section 5003.8.4 and both of the following requirements:

1. The exhaust ventilation from gas rooms shall be directed to an exhaust system.

2. Gas rooms shall be equipped with an approved automatic sprinkler system. Alternative fire-extinguishing systems shall not be used.

*6004.4.5 Treatment systems.* The exhaust ventilation from gas cabinets, exhausted enclosures and gas rooms, required in Section 6004.4.1 shall be directed to a treatment system. The treatment system shall be utilized to handle the accidental release of gas and to process exhaust ventilation. The treatment system shall be designed in accordance with Sections 6004.2.2.7.1 through 6004.2.2.7.5 and Chapter 5 of the California Mechanical Code.

*Exceptions:*

1. Highly toxic, toxic, and moderately toxic gases - storage. A treatment system is not required for cylinders, containers and tanks in storage where all of the following controls are provided:

1.1 Valve outlets are equipped with gas-tight outlet plugs or caps.

1.2 Hand wheel-operated valves have handles secured to prevent movement.

1.3 Approved containment vessels or containment systems are provided in accordance with Section 6004.2.2.3.

2. Highly toxic, toxic, and moderately toxic gases - Use. Treatment systems are not required for highly toxic, toxic, and moderately toxic gases supplied by stationary tanks, portable tanks, or cylinders where a gas detection system complying with Section 6004.4.8 and listed or approved automatic-closing fail-safe valves are provided. The gas detection system shall have a sensing interval not exceeding 5 minutes. Automatic-closing fail-safe valves shall be located immediately adjacent to cylinder valves and shall close when gas is detected at the permissible exposure limit (PEL) by a gas sensor monitoring the exhaust system at the point of discharge from the gas cabinet, exhausted enclosure, ventilated enclosure or gas room.

*6004.4.5.1 Design.* Treatment systems shall be capable of diluting, adsorbing, absorbing, containing, neutralizing, burning or otherwise processing the contents of the largest single vessel of compressed gas. Where a total containment system is used, the system shall be designed to handle the maximum anticipated pressure of release to the system when it reaches equilibrium.

*6004.4.5.2 Performance.* Treatment systems shall be designed to reduce the maximum allowable discharge concentrations of the gas to one-half immediate by dangerous to life and health (IDLH) at the point of discharge to the atmosphere. Where more than one gases are emitted to the treatment system, the treatment system shall be designed to handle the worst-case release based on the release rate, the quantity and the IDLH for all compressed gases stored or used.

*6004.4.5.3 Sizing.* Treatment systems shall be sized to process the maximum worst-case release of gas based on the maximum flow rate of release from the largest vessel utilized. The entire contents of the largest compressed gas vessel shall be considered.

*6004.4.6 Stationary tanks.* Stationary tanks shall be labeled with the maximum rate of release for the compressed gas contained based on valves or fittings that are inserted directly into the tank. Where multiple valves or fittings are provided, the maximum flow rate of release for valves or fittings with the highest flow rate shall be indicated. Where liquefied compressed gases are in contact with valves or fittings, the liquid flow rate shall be utilized for computation purposes. Flow rates indicated on the label shall be converted to cubic feet per minute (cfm/min) (m3/s) of gas at normal temperature and pressure (NTP).

*6004.4.7 Portable tanks and cylinders.* The maximum flow rate of release for portable tanks and cylinders shall be calculated based on the total release from the cylinder or tank within the time specified in Table 6004.2.2.7.5. Where portable tanks or cylinders are equipped with approved excess flow or reduced flow valves, the worst-case release shall be determined by the maximum achievable flow from the valve as determined by the valve manufacturer or compressed gas supplier. Reduced flow and excess flow valves shall be permanently marked by the valve manufacturer to indicate the maximum design flow rate. Such markings shall indicate the flow rate for air under normal temperature and pressure.

*6004.4.8 Emergency power.* Emergency power shall be provided for the following systems in accordance with Section 1203: Emergency Power

1. Exhaust ventilation system.

2. Treatment system.

3. Gas detection system.

4. Smoke detection system.

*6004.4.8.1 Fail-safe systems.* Emergency power shall not be required for mechanical exhaust ventilation and treatment systems where approved fail-safe systems are installed and designed to stop gas flow.

*6004.4.9. Automatic fire detection system.* An approved automatic fire detection system shall be installed in rooms or areas where highly toxic, toxic, and moderately toxic compressed gases are stored or used. Activation of the detection system shall sound a local alarm. The fire detection system shall comply with Section 907.K.

*6004.4.10 Gas detection system.* A gas detection system complying with Section 916 shall be provided to detect the presence of gas at or below the PEL or ceiling limit of the gas for which detection is provided.

*Exceptions:*

1. A gas detection system is not required for toxic and moderately toxic gases when the physiological warning threshold level for the gas is at a level below the accepted PEL for the gas.

2. A gas detection system is not required for highly toxic, toxic, and moderately toxic gases where cylinders, portable tanks, and all non-continuously welded connects are within a gas cabinet or exhausted enclosures.

*6004.4.10.1 Alarms.* The gas detection system shall initiate a local alarm and transmit a signal to an approved location.

*6004.4.10.2 Shut-off of gas supply.* The gas detection system shall automatically close the shut off valve at the source on gas supply piping and tubing related to the system being monitored for whichever gas is detected.

*Exception:* Automatic shutdown is not required for highly toxic, toxic, and moderately toxic compressed gas systems where all of the following controls are provided:

1. Constantly attended/supervised.

2. Provided with emergency shutoff valves that have ready access.

(Ord. 30836.)

### Part 10 REFERENCED STANDARDS[[15]](#footnote-15)

17.12.1000 Adoption of Chapter 80 of the 2022 California Fire Code.

Except as otherwise provided for in this Chapter, Chapter 80 of the 2022 California Fire Code, including the Tables therein, are adopted and incorporated in this Chapter by reference and made a part hereof as if fully set forth herein.

(Ord. 30836.)

17.12.1005 Amendment of Chapter 80 - NFPA 13D - 22 - Standard for the Installation of Sprinkler Systems in One- and Two-family Dwellings and Manufactured Homes.

The following sections of NFPA 13D - 22 edition, Standard for the Installation of Sprinkler Systems in One- and Two-family dwellings and Manufactured Homes, are amended to read as follows: *7.5.6.3(5)* Sprinklers in closets containing clothes dryers shall be of the intermediate temperature classification or higher.

*7.5.10* Spare sprinklers shall be provided as required by NFPA 13-19 Section 16.2.7.

*7.6* Local waterflow alarms shall be provided on all sprinkler systems in homes.

*8.3.4* Sprinklers shall be required to be installed under exterior roofs, canopies, balconies, decks, or similar projections exceeding 4 feet in width and in garages, open attached porches, balconies, carports, and similar structures.

*8.3.5.1* is deleted.

*8.3.5.1.1* is deleted.

*8.3.5.1.2* is deleted.

*8.3.6* is deleted.

*8.3.8* is deleted.

*8.3.11* Where sprinklers may be subject to higher temperature such as closets containing heat producing equipment, unconditioned garages, exterior spaces, etc., intermediate temperature sprinklers shall be required.

*8.3.12* Pilot sprinklers shall be provided in attics spaces and between floors where floor/ceiling assemblies consist of open web wood joists or trusses. Pilot sprinklers shall be intermediate temperature rated, K=4.2, quick response. Pilot sprinklers shall be located within twelve inches of the structure and/or at the apex of each ridgeline where applicable. A sprinkler is required where the ridgeline and hips converge. Sprinklers shall be spaced at maximum thirty feet centers (maximum fifteen feet from outside walls) and shall be located at all fuel-fired equipment including furnaces, hot water heaters, etc.

*10.4.9* is deleted.

*11.2.1.1* All piping and attached appurtenances subjected to system working pressure shall be hydrostatically tested at 200 psi and shall maintain that pressure without loss for 2 hours.

(Ord. 30836.)

17.12.1010 Amendment of Chapter 80 - NFPA 13R - 22 - Standard for the Installation of Sprinkler Systems in Low-rise Residential Occupancies.

The following sections of NFPA 13R - 22 edition, Standard for the Installation of Sprinkler Systems in Low-rise Residential Occupancies, are amended to read as follows:

*6.6.6.3* is deleted.

*6.6.7* is deleted.

*6.8.8* Sprinkler systems are required to be zoned by floor per local code

*6.11.2* Fire department connections shall be 2½ in. inlets with female National Standard Hose threads; all inlets shall be equipped with individual check valves (e.g. clappers). The FDC inlets shall be located at a height of 30 to 36" aboveground.

*6.16.4* Sprinkler systems are required to be zoned by floor per local code.

*10.2.2.1* The system shall be hydrostatically tested for leakage at 200 psi for a duration of 2 hours.

*10.2.2.2* is deleted.

(Ord. 30836.)

17.12.1015 Amendment of Chapter 80 - NFPA 13-22 - Standard for the Installation of Sprinkler Systems.

The following sections of NFPA 13 - 22 edition, Standard for the Installation of Sprinkler Systems, are amended to read as follows:

Section 9.2.1 is amended to delete the following sections:

9.2.1.1, 9.2.1.2, 9.2.1.10, 9.2.1.12, 9.2.1.13. 9.2.1.14, 9.2.1.18, and 9.2.1.19.

Section 11.1 is amended to read as follows:

*11.1.1* The use of extended coverage sprinklers shall require prior approval from the San José Fire Department.

Section 16.9.10 is amended to read as follows:

*16.9.11* Multistory buildings (exceeding one story in height) shall be provided with a floor control valve, check valve, main drain valve, and flow switch for isolation, control, and annunciation of water flow for each individual floor level.

*16.9.10.2* is deleted.

*16.9.10.3* is deleted.

*16.9.10.4* is deleted.

Section 16.9.3 of is amended to read as follows:

*16.9.3.6* Fire sprinkler system risers or other controls shall not be located in electrical rooms.

Section 19.2.3.2 of is amended to read as follows:

*19.3.2.2.3* is deleted.

*19.3.3.2.9* For light hazard areas designated for office use, one-inch plugged, threaded outlets shall be provided at each sprinkler. The minimum flow at each sprinkler shall be 22.5 gpm. The equivalent K-factor for each sprinkler shall be 5.08 (5.6 K-factor sprinkler with 20' of 1" Schedule 40 pipe and fittings). The corresponding equivalent K-factor for a K=8.0 sprinkler is 6.73. Note that this equivalent K-factor involves the shell system sprinkler location and the future finished ceiling sprinkler location.

Only standard spray sprinklers shall be used. Extended coverage sprinkler heads shall not be used.

*19.2.3.2.10* When a fire sprinkler system is required in a building of undetermined use with floor to structure height of fourteen feet (14') or less, it shall be installed for an ordinary hazard occupancy with a minimum design density of not less than 0.20 gpm/square feet, with a minimum design area of three thousand (3,000) square feet. The system demand, including 250 gpm hose stream allowance, shall be designed at a minimum of ten percent below the available water supply. One-inch plugged, threaded outlets shall be provided at each sprinkler. Where a subsequent occupancy requires a system with greater capability, it shall be the responsibility of the owner and/or occupant to upgrade the system.

*19.3.3.2.11* When a fire sprinkler system is required in a building of undetermined use with floor to structure height greater than fourteen feet (14'), a fire sprinkler system shall be installed for an extra hazard occupancy with a minimum design density of 0.33 gpm/square feet with a minimum design area of three thousand (3,000) square feet. The system demand including 500 gpm hose stream allowance shall be designed at a minimum of ten percent below the available water supply. One-inch plugged, threaded outlets shall be provided at each sprinkler. Where a subsequent occupancy requires a system with greater capability, it shall be the responsibility of the owner and/or occupant to upgrade the system.

Section 28.2 of is amended to read as follows:

*28.2.1.7* The safety margin for hydraulic calculations shall be a minimum 10% of the water supply data.

*28.2.4.13* The maximum water velocity in the hydraulic calculations shall be twenty feet per second (20 ft/sec) when designing to the criteria as set forth herein as Sections 19.2.3.2.9, 19.2.3.2.10, and 19.2.3.2.11.

(Ord. 30836.)

17.12.1020 Amendment of Chapter 80 - NFPA 14 - 19 - Standard for the Installation of Standpipe and Hose Systems.

The following sections of NFPA 14 - 19 edition, Standard for the Installation of Standpipe and Hose Systems, are amended to read as follows:

**6.3.9 Non-Combined Standpipe Systems.** The water supply shall be made prior to the sprinkler system water flow indicator. The standpipe priming connection shall be equipped with a monitored control valve, check valves, flow switch, and include a pipe restriction of three-eighth inch (3/8") orifice or less.

(Ord. 30836.)

17.12.1025 Amendment of Chapter 80 - NFPA 20 - 19 - Standard for the Installation of Stationary Pumps for Fire Protection.

The following sections of NFPA 20 - 19 edition, Standard for the Installation of Stationary Pumps for Fire Protection, are amended to read as follows:

*4.14.1* All outdoor fire pumps shall be installed in a dedicated building (pump house).

*4.17.10.6* Positive supply pressure shall be maintained through alarms that shall be arranged for audio and visual annunciation at the FACU and in the fire pump room if the water supply drops below 5 psi.

*4.22.1* To facilitate flow testing, all fire pumps shall be equipped with both of the following:

i. Test Header. This device has number and size of hose outlets per Table 4.28. When testing the pump, hose(s) are connected to the outlets with water discharged to a safe location. Flow readings are usually taken from the end of the hose(s) with a Pitot gauge.

ii. Flow Meter. A special pipe is run from the discharge side of the pump back to the water supply (or to some other acceptable discharge point) with a flowmeter and control valve in the line. When testing the pump, the control valve is opened partially (with the pump already running) to achieve the 100 percent flow condition. The valve is opened more to achieve the 150 percent flow condition.

(Ord. 30836.)

17.12.1030 Amendment of Chapter 80 - NFPA 24 - 19 - Standard for the Installation of Private Fire Service Mains and Their Appurtenances.

The following sections of NFPA 24 - 19 edition, Standard for the Installation of Private Fire Service Mains and Their Appurtenances, are amended to read as follows:

*7.3.7* Fire hydrants shall not be subject to pressure supplied by way of a FDC.

(Ord. 30836.)

17.12.1035 Amendment of Chapter 80 - NFPA 72 - 22 - National Fire Alarm and Signaling Code.

The following sections of NFPA 72 - 22 edition, National Fire Alarm and Signaling Code, are amended to read as follows:

*10.6.3.5* Where the engine-driven generator is not constantly attended, audible and visible alarms powered by a source other than the engine starting batteries and not exceeding 125 volts shall be provided at a point of constant attendance or to a listed central station. These alarms shall indicate the following:

1. Engine running (separate signal).

2. The controller main switch has been turned to "off" or "manual" position (separate signal).

3. Low fuel and trouble on the controller or engine (separate or common signals).

(Ord. 30836.)

17.12.1040 Amendment of Chapter 80 of the 2022 California Fire Code - Adoption of NFPA 1221 - 19 - Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems.

Except as otherwise provided for in this Section, NFPA 1221 - 19, including the annexes therein, is adopted and incorporated in this Chapter by reference and made a part hereof as if fully set forth herein.

(Ord. 30836.)

17.12.1045 Amendment of NFPA 1221 - 19, Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems

The following sections of NFPA 1221 - 19 edition, Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems, are amended to read as follows:

*9.6.2.3* Backbone cables shall be routed through an enclosure that matches the required fire-resistance rating of the building's primary structural frame, with a maximum of 2 hours and a minimum of 1 hour.

*9.6.2.5* RF-emitting device and active system components shall be located in a room that matches the required fire-resistance rating of the building's primary structural frame, with a maximum of 2 hours and a minimum of 1 hour.

*9.6.13.1 (2) (d)* Active and passive system component (distribution antenna loop) failure

*9.6.13.2.1 (7)* Active and passive system component (distribution antenna loop) malfunction.

(Ord. 30836.)

17.12.1050 Amendment of Chapter 80 - NFPA 2001 - 18 - Standard on Clean Agent Fire Extinguishing Systems

Section 1-4 of NFPA 2001-18 edition is amended to read as follows:

*1.4.2.5* Clean agent systems shall not be used in lieu of required fire sprinkler systems.

(Ord. 30836.)

### Part 11 RESERVED[[16]](#footnote-16)

### Part 12 RESERVED[[17]](#footnote-17)

### Part 13 ADOPTION OF APPENDICES OF THE 2022 CALIFORNIA FIRE CODE[[18]](#footnote-18)

Except as otherwise provided in this Chapter, the following appendices to the 2022 California Fire Code are adopted and incorporated by reference and made a part hereof as if fully set forth herein: Appendix B, Appendix C, Appendix D, Appendix K, Appendix L, Appendix N, and Appendix O.

Appendix B, Section B105.1 of the 2022 California Fire Code is amended to read as follows:

*B105.1 One- and two-family dwellings, Group R-3 and R-4 buildings and townhouses.* The minimum fire-flow and flow duration requirements for one- and two-family dwellings, Group R-3 and R-4 buildings and townhouses shall be as specified in Table B105.1(3).

Appendix B, Section B105.2 of the 2022 California Fire Code is amended to read as follows:

*B105.2 Buildings other than one- and two-family dwellings, Group R-3 and R-4 buildings and townhouses.* The minimum fire-flow and flow duration for buildings other than one- and two-family dwellings, Group R-3 and R-4 buildings and townhouses shall be as specified in Table B105.1(3).

**Table B105.1(3)**  
**San José Fire Flow and Hydrant Policy**

|  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Building Area (square feet)** | | | | | **Fire Flow (gpm)g fand Duration** | | | | | Required Number and Spacing of Fire Hydrantse | | |
| **Type IA and IB\*** | **Type IIA and IIIA\*** | **Type IV and VA\*** | **Type IIB and IIIB\*** | **Type VB\*** | | **Light Hazard Occ.+** | **Ordinary or Extra Hazard Groups 1 and 2 Occ.+** | **<NS> Non-Sprinklered** | **Flow Duration (hours)f** | **Min. # of Hydrants** | **Average Spacing between Hydrants (feet)a b c** | **Max. Distance from Any Point on Street or Road Frontage to a Hydrant (feet)d** |
| 0 - 22,700 | 0 - 12,700 | 0 - 8,200 | 0 - 5,900 | 0 - 3,600 | | 1,500 | 1,500 | 1,500 | 2 | 1 | 500 | 250 |
| 22,701 - 30,200 | 12,701 - 17,000 | 8,201 - 10,900 | 5,901 - 7,900 | 3,601 - 4,800 | | 1,500 | 1,500 | 1,750 | 2 | 1 | 500 | 250 |
| 30,201 - 38,700 | 17,001 - 21,800 | 10,901 - 12,900 | 7,901 - 9,800 | 4,801 - 6,200 | | 1,500 | 1,500 | 2,000 | 2 | 2 | 450 | 225 |
| 38,701 - 48,300 | 21,801 - 24,200 | 12,901 - 17,400 | 9,801 - 12,600 | 6,201 - 7,700 | | 1,500 | 1,688 | 2,250 | 2 | 2 | 450 | 225 |
| 48,301 - 59,000 | 24,201 - 33,200 | 17,401 - 21,300 | 12,601 - 15,400 | 7,701 - 9,400 | | 1,500 | 1,875 | 2,500 | 2 | 3 | 450 | 225 |
| 59,001 - 70,900 | 33,201 - 39,700 | 21,301 - 25,500 | 15,401 - 18,400 | 9,401 - 11,300 | | 1,500 | 2,063 | 2,750 | 2 | 3 | 450 | 225 |
| 70,901 - 83,700 | 39,701 - 47,100 | 25,501 - 30,100 | 18,401 - 21,800 | 11,301 - 13,400 | | 1,500 | 2,250 | 3,000 | 3 | 3 | 400 | 225 |
| 83,701 - 97,700 | 47,101 - 54,900 | 30,101 - 35,200 | 21,801 - 25,900 | 13,401 - 15,600 | | 1,625 | 2,438 | 3,250 | 3 | 3 | 400 | 225 |
| 97,701 - 112,700 | 54,901 - 63,400 | 35,201 - 40,600 | 25,901 - 29,300 | 15,601 - 18,000 | | 1,750 | 2,625 | 3,500 | 3 | 4 | 350 | 210 |
| 112,701 - 128,700 | 63,401 - 72,400 | 40,601 - 46,400 | 29,301 - 33,500 | 18,001 - 20,600 | | 1,875 | 2,818 | 3,750 | 3 | 4 | 350 | 210 |
| 128,701 - 145,900 | 72,401 - 82,100 | 46,401 - 52,500 | 33,501 - 37,900 | 20,601 - 23,300 | | 2,000 | 3,000 | 4,000 | 4 | 4 | 350 | 210 |
| 145,901 - 164,200 | 82,101 - 92,400 | 52,501 - 59,100 | 37,901 - 42,700 | 23,301 - 26,300 | | 2,150 | 3,188 | 4,250 | 4 | 5 | 300 | 180 |
| 164,201 - 183,400 | 92,401 - 103,100 | 59,101 - 66,000 | 42,701 - 47,700 | 26,301 - 29,300 | | 2,250 | 3,375 | 4,500 | 4 | 5 | 300 | 180 |
| 183,401 - 203,700 | 103,101 - 114,600 | 66,001 - 73,300 | 47,701 - 53,000 | 29,301 - 32,600 | | 2,375 | 3,563 | 4,750 | 4 | 5 | 300 | 180 |
| 203,701 - 225,200 | 114,601 - 126,700 | 73,301 - 81,100 | 53,001 - 58,600 | 32,601 - 36,000 | | 2,500 | 3,750 | 5,000 | 4 | 5 | 300 | 180 |
| 225,201 - 247,700 | 126,701 - 139,400 | 81,101 - 89,200 | 58,601 - 65,400 | 36,001 - 39,600 | | 2,625 | 3,938 | 5,250 | 4 | 6 | 300 | 180 |
| 247,701 - 271,200 | 139,401 - 152,600 | 89,201 - 97,700 | 65,401 - 70,600 | 39,601 - 43,400 | | 2,750 | 4,125 | 5,500 | 4 | 6 | 300 | 180 |
| 271,201 - 295,900 | 152,601 - 166,500 | 97,701 - 106,500 | 70,601 - 77,000 | 43,401 - 47,400 | | 2,875 | 4,313 | 5,750 | 4 | 6 | 250 | 150 |
| 295,901 - Greater | 166,501 - Greater | 106,501 - 115,800 | 77,001 - 83,700 | 47,401 - 51,500 | | 3,000 | 4,500 | 6,000 | 4 | 6 | 250 | 150 |
| - | - | 115,801 - 125,500 | 83,701 - 90,600 | 51,501 - 55,700 | | 3,125 | 4,688 | 6,250 | 4 | 7 | 250 | 150 |
| - | - | 125,501 - 135,500 | 90,601 - 97,900 | 55,701 - 60,200 | | 3,250 | 4,875 | 6,500 | 4 | 7 | 250 | 150 |
| - | - | 135,501 - 145,800 | 97,901 - 106,800 | 60,201 - 64,800 | | 3,375 | 5,063 | 6,750 | 4 | 7 | 250 | 150 |
| - | - | 145,801 - 156,700 | 106,801 - 113,200 | 64,801 - 69,600 | | 3,500 | 5,250 | 7,000 | 4 | 7 | 250 | 150 |
| - | - | 156,701 - 167,900 | 113,201 - 121,300 | 69,601 - 74,600 | | 3,625 | 5,438 | 7,250 | 4 | 8 | 200 | 120 |
| - | - | 167,901 - 179,400 | 121,301 - 129,600 | 74,601 - 79,800 | | 3,750 | 5,625 | 7,500 | 4 | 8 | 200 | 120 |
| - | - | 179,401 - 191,400 | 129,601 - 138,300 | 79,801 - 85,100 | | 3,875 | 5,813 | 7,750 | 4 | 8 | 200 | 120 |
| - | - | 191,401 - Greater | 138,301 - Greater | 85,101 - Greater | | 4,000 | 6,000 | 8,000 | 4 | 8 | 200 | 120 |

Occ. = Occupancy Classification <NS> = Non-Sprinklered

\* Types of construction are based on the California Building Code.

+ Types of Hazard are based on NFPA 13.

g  Measured at 20 psi residual pressure.

a  Reduce by 100 feet for dead-end streets or roads.

b  Where streets are provided with median dividers that cannot be crossed by fire fighters pulling hose lines, or where arterial streets are provided with four or more traffic lanes and have a traffic count of more than 30,000 vehicles per day, hydrant spacing shall average 500 feet on each side of the street and be arranged on an alternating basis up to a fire-flow requirement of 7,000 gallons per minute and 400 feet for higher fire-flow requirements.

c  Where new water mains are extended along streets where hydrants are not needed for protection of structures or similar fire problems, fire hydrants shall be provided at spacing not to exceed 500 feet to provide for transportation hazards.

d  Reduce by 50 feet for dead-end streets or roads.

e  The fire code official is authorized to modify the location, number and distribution of fire hydrants based on site-specific constraints and hazards.

f  For one- and two-family dwellings; the minimum fire-flow and flow duration requirements for one- and two-family dwellings having a fire-flow calculation area that does not exceed 3,600 square feet shall be 1,000 gallons per minute for a duration of 1 hour.

Appendix C, Table C102.1 of the 2022 California Fire Code is amended to delete footnotes f and g.

Appendix D, Section D105.1 of the 2022 California Fire Code is amended to read as follows:

*D105.1 Where required.* Where the vertical distance between the grade plane and the highest roof surface exceeds 30 feet (9144 mm), approved aerial fire apparatus access roads shall be provided. For purposes of this section, the highest roof surface shall be determined by measurement to the eave of a pitched roof, the intersection of the roof to the exterior wall, or the top of parapet walls, whichever is greater.

*Exception:* Deleted

Appendix L, Section L101.1 of the 2022 California Fire Code is amended to read as follows:

*L101.1 Scope.* The following buildings shall be equipped with a firefighter breathing air replenishment system, as approved by the Fire Chief or designee. The system shall provide an adequate pressurized air supply through permanent piping system with access stations for replenishment of portable breathing air equipment used by Fire Department personnel:

1. Any building having floors used for human occupancy located more than seventy five feet (75') above the lowest level of the fire department vehicular or personnel access, whichever access is more restrictive, as determined by the Fire Chief;

2. Any building with two (2) or more stories underground;

3. Any tunnel over five hundred feet (500') in length;

4. Any building where the fire apparatus access point is located more than one hundred fifty feet (150') from the nearest entrance to the building.

Appendix L, Section L104.13.1, subparagraphs 1 & 2 of the 2022 California Fire Code is amended to read as follows:

1. Breathing air replenishment access stations shall be located no more than one hundred fifty feet (150') apart, and on at least every third floor in multi-story buildings and structures.

2. In buildings requiring fill stations, one fill station shall be provided adjacent to an exit stair at a location designated by the fire code official. In buildings with three or more exit stairs on a floor, additional fill stations shall be provided at a ratio of one fill station for every three stairs, but in no case exceeding 150 feet apart horizontally or vertically.

Appendix L, Section L104.13.2, subparagraph 5 of the 2022 California Fire Code, shall be amended to delete the exception.

(Ord. 30836.)

## Chapter 17.20 HOUSING CODE[[19]](#footnote-19)

### Part 1 GENERAL PROVISIONS

17.20.010 Title for citation.

This Chapter 17.20 shall be the "San José Housing Code," and may be cited as such or as "the housing code."

(Prior code § 5501.1; Ords. 20659, 21974.)

17.20.020 Purpose.

The purpose of the housing code is to provide for decent housing by safeguarding life, safety, health, property and public welfare by setting minimum standards for buildings used for human habitation within this jurisdiction.

(Prior code § 5501.2; Ords. 20659, 21974.)

17.20.030 Applicability of chapter provisions.

A. The provisions of the housing code shall apply to all buildings or portions thereof used, or designed or intended to be used, for human habitation and shall apply to the construction, movement, conversion, alteration, arrangement, maintenance, sanitation, ventilation and occupancy of such buildings or portions thereof.

B. Where any building or portion thereof is used or intended to be used as a combination apartment house-hotel, the provisions of the housing code shall apply to the separate portions as if they were separate buildings.

C. Whenever there is a guest as defined by Title 20 of this Code, residing in the building, the building shall comply with all the requirements of the housing code for dwellings.

D. Existing buildings which are altered or enlarged shall be made to conform to the housing code insofar as the new work is concerned, and in accordance with Section 104(a) and (b) of the building code.

(Prior code § 5501.3; Ords. 20659, 21974.)

17.20.040 Applicability of more restrictive provisions in other laws or ordinances.

Notwithstanding anything set forth or provided for in this chapter, if the provisions of the state housing law and building regulations of the state, or any other provisions of this Code are more restrictive than the provisions contained herein, then such other laws or ordinances, shall be applicable.

(Prior code § 5501.4; Ords. 20659, 21974.)

17.20.050 Violation of chapter provisions prohibited - Responsibility.

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, move, improve, remove, convert, demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done which does not comply with the standards or requirements set forth in this chapter.

Nothing in this chapter shall preclude a rental or lease agreement from providing that a lessee, sublessee, tenant or occupant has the responsibility for repair and maintenance. Such provision notwithstanding, the owner shall be responsible to ensure compliance with this chapter, unless otherwise specified, and shall repair, remove, reconstruct or correct any condition in any building, structure or portion thereof which does not comply with the standards or requirements of this chapter.

(Prior code § 5515.1, 17.20.1200; Ords. 20659, 21974.)

17.20.060 Enforcement responsibility - Delegation of authority.

The city manager is charged with the responsibility for the enforcement of this chapter. All city employees with enforcement responsibility are authorized to make such inspections and take any actions on behalf of the city manager as may be required to enforce the provisions of this chapter.

(Prior code §§ 5510.1 - 5510.2, 17.20.850 - 17.20.860; Ords. 20659, 21974.)

17.20.070 Chapter provisions not exclusive.

The housing code is not the exclusive regulation of housing within the city. It shall supplement and be in addition to all other regulatory laws, codes or ordinances.

(Prior code § 5501.5, 17.20.050; Ords. 20659, 21974.)

### Part 2 DEFINITIONS

17.20.100 Efficiency dwelling unit.

An efficiency dwelling unit is a dwelling unit containing only one habitable room and meeting the requirements of Section 17.20.270.B.2.

(Prior code § 5502.4; 17.20.120; 17.20.130; Ords. 20659, 21974.)

17.20.110 Independent dwelling unit.

Independent dwelling unit is a building or portion thereof used or designed for occupancy, for residential purposes, for one or more persons or families living independently of each other and doing their own cooking in said building.

(Ord. 21974.)

17.20.120 Hot water.

Hot water is water supplied to plumbing fixtures at a temperature of not less than one hundred ten degrees Fahrenheit.

(Prior code § 5502.6; 17.20.150; 17.20.140; Ords. 20659, 21974.)

### Part 3 SPACE AND OCCUPANCY STANDARDS

17.20.250 Location of buildings on property.

All buildings shall be located with respect to property lines and to other buildings on the same property as required by Section 504 and Part rv of the Building Code. Exit courts from apartment houses to the public way shall not be less than forty-four inches in width and seven feet in height.

(Prior code § 5503.1; Ord. 20659.)

17.20.260 Yards and courts.

A. Scope. This section shall apply to front yards and any courts having required windows opening therein.

B. Yards. Every yard shall be not less than three feet in width for one-story and two-story buildings. For buildings more than two stories in height, the minimum width of the yard shall be increased at the rate of one foot for each additional story. Where yards completely surround the building, the required width may be reduced by one foot. For buildings exceeding fourteen stories in height, the required width of the yard shall be computed on the basis of fourteen stories.

C. Courts.

1. Size of Courts.

a. Every court shall be not less than three feet in width. Courts having windows opening on opposite sides shall be not less than six feet in width.

b. Courts bounded on three or more sides by the walls of the building shall be not less than ten feet in length unless bounded on one end by a street or yard.

c. For buildings more than two stories in height, the court shall be increased by one foot in width and two feet in length for each additional story.

d. For buildings exceeding fourteen stories in height, the required dimensions shall be computed on the basis of fourteen stories.

2. Access and Air Intake.

a. Adequate access shall be provided to the bottom of all courts for cleaning purposes.

b. Every court more than two stories in height shall be provided with a horizontal air intake at the bottom of not less than ten square feet in area and leading to the exterior of the building unless abutting a yard or public space.

c. The construction of the air intake shall be as required for the court walls of the building, but in no case shall be less than one-hour fire-resistive.

(Prior code § 5503.2; Ords. 20659, 21974.)

17.20.270 Room dimensions.

A. 1. Ceiling Heights. Habitable space shall have a ceiling height of not less than seven feet six inches except as otherwise permitted in this section. Kitchens, halls, bathrooms and toilet compartments may have a ceiling height of not less than seven feet measured to the lowest projection from the ceiling. Where exposed beam ceiling members are spaced at less than forty-eight inches on center, ceiling height shall be measured to the bottom of these members. Where exposed beam ceiling members are spaced at forty-eight inches or more on center, ceiling height shall be measured to the bottom of the deck supported by these members provided that the bottom of the members is not less than seven feet above the floor.

2. If any room in a building has a sloping ceiling, the prescribed ceiling height for the room is required in only one-half the area thereof. No portion of the room measuring less than five feet from the finished floor to the finished ceiling shall be included in any computation of the minimum area thereof.

3. If any room has a furred ceiling, the prescribed ceiling height is required in two-thirds the area thereof, but in no case shall the height of the furred ceiling be less than seven feet.

B. Floor Area.

1. Every dwelling unit shall have at least one room which shall have not less than one hundred fifty square feet of floor area. Other habitable rooms, except kitchens, shall have an area of not less than seventy square feet. Where more than two persons occupy a room used for sleeping purposes, the required floor area shall be increased at the rate of fifty square feet for each occupant in excess of two.

2. Exceptions-Efficiency unit: Nothing in this section shall prohibit the use of an efficiency living unit within an apartment house meeting the following requirements:

a. The unit shall have a living room of not less than two hundred twenty square feet of surficial floor area. An additional one hundred square feet of surficial floor area shall be provided for each occupant of such unit in excess of two.

b. The unit shall be provided with a separate closet.

c. The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than thirty inches in front. Light and ventilation conforming to this Code shall be provided.

d. The unit shall be provided with a separate bathroom containing a water closet, lavatory, and bathtub or shower.

3. Exceptions-Single-room occupancy units: Nothing in this section shall prohibit the use of an efficiency living unit within a single-room occupancy (SRO) living unit facility where such unit meets the following requirements:

a. The living unit is designed for occupancy by and is occupied by no more than two persons.

b. The living unit has a minimum floor area of one hundred fifty square feet.

C. Width. No habitable room shall be less than seven feet in any dimension, and no water closet space less than thirty inches in width, and such water closet space shall provide a clear space in front of the toilet stool of not less than twenty-four inches.

(Prior code § 5503.3; Ords. 20659, 23528.)

17.20.280 Light and ventilation.

A. Natural Light and Ventilation. All guestrooms, dormitories and habitable rooms within a dwelling unit shall be provided with natural light by means of exterior glazed openings with an area not less than one-tenth of the floor area of such rooms with a minimum of ten square feet. All bathrooms, water closet compartments, laundry rooms and similar rooms shall be provided with natural ventilation means of openable exterior openings with an area not less than one-twentieth of the floor area of such rooms with a minimum of one and one-half square feet.

All guestrooms, dormitories and habitable rooms within a dwelling unit shall be provided with natural ventilation by means of openable exterior openings with an area of not less than one-twentieth of the floor area of such rooms with a minimum of five square feet.

B. Origin of Light and Ventilation. Required exterior openings for natural light and ventilation shall open directly onto a street or public alley or a yard or court located on the same lot as the building.

Exception: Required windows may open into a roofed porch where the porch:

1. Abuts a street, yard or court; and

2. Has a ceiling height of not less than seven feet; and

3. Has the longer side at least sixty-five percent open and unobstructed.

A required window in a service room may open into a vent shaft which is open and unobstructed to the sky and not less than four feet in least dimension. No vent shaft shall extend through more than two stories. For the purpose of determining light and ventilation requirements, any room may be considered as a portion of an adjoining room when one-half of the area of the common wall is open and unobstructed and provides an opening of not less than one-tenth of the floor area of the interior room or twenty-five square feet, whichever is greater.

C. Mechanical Ventilation. In lieu of required exterior openings for natural ventilation, a mechanical ventilation system may be provided. Such system shall be capable of providing two air changes per hour in all guestrooms, dormitories, habitable rooms and in public corridors. One-fifth of the air supply shall be taken from the outside. In bathrooms, water closet compartments, laundry rooms and similar rooms a mechanical ventilation system conducted directly to the outside, capable of providing five air changes per hour, shall be provided.

D. Hallways. All public hallways, stairs and other exitways shall be adequately lighted at all times in accordance with Section 3312(a) of the Building Code.

(Prior code § 5503.4; Ord. 20659.)

17.20.290 Sanitation.

A. Dwelling Units. Every type of dwelling unit shall be equipped with facilities consisting of a water closet, lavatory, and either a bathtub or shower as required by this Code.

B. Hotels. Where private water closets, lavatories and baths are not provided, there shall be provided on each floor, for each sex, at least one water closet and lavatory and one bath, accessible from a public hallway. Additional water closets, lavatories and baths shall be provided on each floor for each sex at the rate of one for every additional ten guests or fractional number thereof in excess of ten. Such facilities shall be clearly marked for "men" or "women." As an alternative, adequate unisex facilities may be provided.

C. Kitchen. Each independent dwelling unit shall be provided with a kitchen. Every kitchen shall be provided with a kitchen sink. No wooden sink or sink of similarly absorbent material shall be permitted.

D. Fixtures. All plumbing fixtures shall:

1. Be connected to a sanitary sewer or an approved private sewage disposal system;

2. Be connected to an approved system of water supply and provided with hot and cold running water necessary for its normal operation; and

3. Be of an approved glazed earthenware type or of a similarly nonabsorbent material.

E. Water Closet Compartments. Water closet compartments, including but not limited to walls and floors of water closet compartments, toilet facilities, shower areas, and doors and panels shall be finished in accordance with applicable provisions of the building code.

F. Room Separations. Every water closet, bathtub or shower required by this Code shall be installed in a room which will afford privacy to the occupant. A room in which a water closet is located shall be separated from food preparation or storage rooms by a tight-fitting door.

G. Installation and Maintenance. All sanitary facilities shall be installed and maintained in a safe and sanitary condition and in accordance with all applicable laws.

(Prior code § 5503.5; Ords. 20659, 21974.)

### Part 4 STRUCTURAL REQUIREMENTS

17.20.300 Requirements generally - Construction to comply with Uniform Building Code.

Buildings or structures may be of any type of construction permitted by the Building Code. Roofs, floors, walls, foundations, and all other structural components of buildings shall be capable of resisting any and all forces and loads to which they may be subjected. All structural elements shall be proportioned and joined in accordance with the stress limitations and design criteria as specified in the appropriate sections of the building code. Buildings of every permitted type of construction shall comply with the applicable requirements of the building code.

(Prior code § 5504.1; Ord. 20659.)

17.20.310 Protection from weather and dampness.

Every building shall be weather-protected so as to provide shelter for the occupants against the elements and to exclude dampness.

(Prior code § 5504.2; Ord. 20659.)

17.20.320 Protection of wood from decay and termites.

All wood shall be protected against termite damage and decay as provided in the Building Code.

(Prior code § 5504.3; Ord. 20659.)

### Part 5 MECHANICAL REQUIREMENTS

17.20.350 Heating.

Every dwelling unit and guestroom shall be provided with heating facilities capable of maintaining a room temperature of seventy degrees Fahrenheit at a point three feet above the floor in all habitable rooms. Such facilities shall be installed and maintained in a safe condition and in accordance with Chapter 37 of the Building Code, the Mechanical Code, and all other applicable laws. No unvented fuel-burning heater shall be permitted. All heating devices or appliances shall be of an approved type.

(Prior code § 5505.1; Ord. 20659.)

17.20.360 Electrical equipment.

A. All electrical equipment, wiring, and appliances shall be installed and maintained in a safe manner in accordance with all applicable laws. All electrical equipment shall be of an approved type.

B. Where there is electrical power available within three hundred feet of the premises of any building, such building shall be connected to such electrical power. Every habitable room shall contain at least two supplied electric convenience outlets or one such convenience outlet and one supplied electric light fixture. Every water closet compartment, bathroom, laundry room, furnace room and public hallway shall contain at least one supplied electric light fixture.

(Prior code § 5505.2; Ord. 20559.)

17.20.370 Ventilation.

Ventilation for rooms and areas and for fuel-burning appliances shall be provided as required in the Mechanical Code and in this Code. Where mechanical ventilation is provided in lieu of the natural ventilation required by Section 17.20.280 of this Code, such mechanical ventilating system shall be maintained in operation during the occupancy of any building or portion thereof.

(Prior code § 5505.3; Ord. 20659.)

### Part 6 EXITS

17.20.400 Requirements designated.

Every dwelling unit or guestroom shall meet the following standards as specified in the building code, pursuant to Chapter 17.04, for new construction or existing buildings, whichever is applicable:

A. Every dwelling unit or guestroom shall have access directly to the outside or to a public corridor. All buildings or portions thereof shall be provided with exits, exitways and appurtenances.

B. Every sleeping room below the fourth story shall have at least one operable window or exterior door approved for emergency escape or rescue. The units shall be operable from the inside to provide a full clear opening without the use of separate tools.

C. All escape or rescue windows from sleeping rooms shall have the required minimum net clear openings and finished sill heights. Escape or rescue windows shall not be obstructed from the outside of the building.

(Prior code § 5506.1; Ords. 20659, 21974.)

### Part 7 FIRE DETECTION SYSTEMS

17.20.450 Fire detection systems required - Residential buildings.

A. Requirements. Every dwelling unit including single-family dwellings, mobilehomes, multiple-family dwellings and all buildings or dwellings subject to the provisions of Part 8 of Chapter 17.20 of Title 17 of this Code shall provide and maintain smoke detectors as set forth herein. Said smoke detectors shall conform to the requirements of the Uniform Building Code edition in effect on the date of installation.

B. Standards. Every dwelling unit used for sleeping purposes shall be provided with smoke detector(s). The detector(s) shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes. Where sleeping rooms are on an upper level, a detector shall be placed at the center of the ceiling directly above the upper landing of the stairway. Within each and every efficiency dwelling unit or sleeping room or suite of a hotel or lodging house, a detector shall be located on the ceiling of the sleeping room or the ceiling of the main room of the efficiency unit or suite.

Each such detector shall be located in accordance with approved manufacturer's instructions. Care shall be exercised to ensure that the installation shall not interfere in any way with the operating characteristics of the detector. When activated, the detector shall provide an audible alarm in the dwelling unit. Each such detector shall either receive its primary power from the building wiring or be battery operated.

(Ords. 20659, 20979.)

17.20.455 Replacements.

Nothing in Section 17.20.450 shall preclude the owner of said dwelling unit from replacing any smoke detector required by this part with another smoke detector which conforms to the requirements of the Uniform Building Code edition in effect at the time such replacement is installed.

(Ord. 20979.)

17.20.460 Fixtures.

Every smoke detector required under this part shall be deemed to be a fixture for purposes of transfer of title.

(Ord. 20979.)

17.20.465 Maintenance.

A. Single-Family, Duplex Dwellings and Mobilehomes. The owner of any single-family, duplex dwelling or mobilehome shall have the obligation to install smoke detectors as required by this part and to ensure that said smoke detector(s) are maintained in proper working order at all times during which said owner is in possession of the dwelling unit and at the time said owner offers to rent, lease or let for use such dwelling unit to any other person. Thereafter, any person or persons to whom said dwelling unit is rented, leased or let shall be required to maintain said smoke detector(s) in proper working order.

B. Other Dwellings. Every smoke detector required under this part for dwellings other than single-family, duplex dwellings, and mobilehomes shall be maintained in operable condition by the owner of the dwelling unit. In dwelling units which are rented, leased, or otherwise let for use, the owner shall ensure that all required smoke detector(s) are installed and that all smoke detector(s) in the dwelling unit are in proper working over each time an occupant takes possession. After the occupant takes possession, it shall be the duty of the occupant to regularly test all smoke detector(s) in the dwelling unit and the occupant shall notify the owner or owner's agent or the manager of the dwelling units immediately in writing of any problem, defect, malfunction or failure of any such smoke detector(s). Upon such notification by the occupant that a smoke detector in a dwelling unit is not in proper working order, the owner's agent shall be responsible to have such smoke detector(s) repaired or replaced within seven days. The owner shall provide the necessary funds in order to enable the owner's agent or the manager of the dwelling units to repair or replace such smoke detector(s) within the time specified in this subsection for such repair or replacement. Nothing in this provision shall preclude a rental or lease agreement from providing that a tenant has the responsibility for repair or maintenance; however, such provision notwithstanding, the owner, the owner's agent and the manager of the dwelling units shall be responsible to ensure compliance with this provision.

C. Nonowner Responsibility. No tenant or other person shall remove or cause or allow any smoke detector(s) required pursuant to this chapter to be located in any dwelling unit to malfunction as the result of either removal of such smoke detector(s) or removal or alteration of any device(s) providing energy for the operation of such smoke detector(s). No tenant shall cause or allow any other person to remove or cause or allow any smoke detector(s) located in such dwelling unit pursuant to this chapter to malfunction as the result of either removal of such smoke detector(s) or removal or alteration of any device(s) providing energy for the operation of such smoke detector(s).

(Ords. 20979, 21887.)

17.20.470 Holder of permit of occupancy.

Where the holder of a permit of occupancy, as provided in Part 8 of Chapter 17.20, is some person or persons other than an owner of the real property, such person(s) shall be deemed to be an "owner" for purposes of this part.

(Ord. 20979.)

17.20.475 Notice.

Any property owner or his/her authorized agent offering to rent, lease or let residential property subject to the provisions of this part shall give notice of the requirements of Section 17.20.465 to the tenant prior to occupancy. The giving of such notice shall not relieve the property owner from compliance with the requirements of this part.

(Ord. 20979.)

17.20.480 Certification.

Whenever a multiple dwelling is subject to the provisions of Part 8 of Chapter 17.20, the application for a permit of occupancy filed in compliance with Section 17.20.520 shall be accompanied by a certificate signed by the applicant attesting to compliance with this part.

(Ord. 20979.)

17.20.485 Postponement of effective date for single-family, duplex dwellings and mobilehomes.

All existing single-family and duplex dwelling units and mobilehomes not required to be provided with smoke detector(s) under preexisting law shall have until January 1, 1983, to install smoke detectors in conformity to the provisions of this part.

(Ord. 20979.)

17.20.490 Liability.

Nothing in the provisions of this part shall be construed to require any agency of the city to conduct any inspection of the smoke detectors herein required nor shall any actual inspections made imply a duty to inspect other detectors. Furthermore, this part shall not be construed to hold the city or any officer, employee or representative of the city responsible for any damage to persons or property by reason of making an inadequate or negligent inspection or by reason of any failure to make an inspection or reinspection.

(Ord. 20979.)

17.20.495 Civil action.

A civil action against a property owner may be instituted by a buyer, renter or other aggrieved party to obtain damages and/or require compliance with the requirements of this part. Damages shall include actual damages, costs, attorneys' fees and a civil penalty of four hundred dollars in addition thereto. The court may award punitive damages in a proper case. Nothing in this provision shall be construed to limit any other right or remedy otherwise available in law to any party, nor shall this provision in any way limit the city's right to enforcement under Chapter 1.08 of this Code.

(Ord. 20979.)

### Part 8 RESIDENTIAL OCCUPANCY PERMIT

17.20.500 Applicability.

A. The provisions of this Part 8 shall apply to any building which is used for any of the following purposes, as defined or used in Title 20 of the San José Municipal Code:

1. Apartment houses;

2. Emergency residential shelters;

3. Guesthouses;

4. Motels/hotels;

5. Residential care facilities for seven or more persons;

6. Residential service facilities; and

7. Fraternity houses and sorority houses.

(Prior code § 5512.8; Ords. 20659, 22632.)

17.20.505 Applicability to certain other uses.

Title 20 of the San José Municipal Code was amended by Ordinance No. 22631, effective November 12, 1987, to create a new use category entitled "guesthouses." Structures in lawful use as boarding houses and lodging houses as of said date became legal nonconforming uses pursuant to Chapter 20.150 of this Code. Such boarding houses and lodging houses shall be deemed to be guesthouses for the purposes of Section 17.20.500 of this title.

(Ord. 22632.)

17.20.510 Compliance required.

A. No person shall maintain, occupy, or permit the occupation of any building, housing, or unit for which a residential occupancy permit is required until that permit has been issued.

B. No person shall maintain, occupy or permit the occupation of any building for which a residential occupancy permit is required unless there is a current and valid residential occupancy permit in force and effect.

(Ord. 22632.)

17.20.520 Permit required.

A. The owner or the agent of the owner of any building which is used for any of the purposes specified in Section 17.20.500 shall obtain a residential occupancy permit from the director of neighborhood preservation.

B. A residential occupancy permit shall be obtained prior to the time:

1. The use is commenced;

2. The structure or use is converted to another applicable occupancy or use;

3. The structure or use is expanded.

C. The permit shall be renewed annually as provided in Section 17.20.590.

(Prior code § 5512.1; Ords. 20659, 22632.)

17.20.530 Application for permit or permit renewal.

A. The applicant shall file an application for a residential occupancy permit or permit renewal with the director of neighborhood preservation by providing the following information:

1. A complete written application for the residential occupancy permit on the form provided by the director, including the name and address of the owner of the building, structure, or unit, a valid smoke detector certificate, and a completed self-inspection certificate in the form provided by the department of neighborhood preservation.

2. Any necessary certificate of completion issued by the building official of the city;

3. Evidence that the applicant is in compliance with or is exempt from the requirements of the transient occupancy tax set forth in Chapter 4.72 of this Code. If the occupancy is a new occupancy, the applicant shall file with the director evidence of compliance with the transient occupancy tax requirements within sixty days of the issuance of the residential occupancy permit; and

4. Evidence that the applicant is in compliance with the requirements of the business tax set forth in Chapter 4.76 of this Code.

B. The applicant for any permit or renewal permit shall pay the fee for the residential occupancy permit as set forth in the schedule of fees established by resolution of council.

(Prior code § 5512.2; Ords. 20659, 21033, 21049, 21183, 21295, 22632.)

17.20.540 Compliance with state housing law and this Code required.

Each building subject to this chapter shall be in compliance with all of the provisions of the state housing law and this Code which are applicable to the proposed use of the building including, but not limited to, provisions relating to construction, maintenance, sanitation, ventilation, use and occupancy of the building, zoning, and fire.

(Ord. 22632.)

17.20.550 Inspection.

A. Upon receipt of the application and prior to the issuance of the residential occupancy permit, the director of the department of neighborhood preservation may cause the building to be inspected to determine if the building is in compliance with the provisions of this chapter and other applicable provisions of this Code and state law.

B. The building shall be subject to inspection at any time after the issuance of a residential occupancy permit to determine if the building is maintained in compliance with the provisions of this chapter.

C. All inspections shall be performed in accordance with Chapter 17.02 of this Code.

D. Should any inspection reveal noncompliance with any of the provisions of this Code or of the state housing law pertaining to the maintenance, sanitation, ventilation, use or occupancy of guesthouses, hotels, and apartment houses, and should reinspection be needed to determine compliance, the cost of any such reinspection, shall be billed to the owner or lessee in the amount set forth in the schedule of fees established by resolution of the city council.

(Ord. 22632.)

17.20.560 Issuance of permit.

No residential occupancy permit shall be issued or renewed if:

A. The application or any required documentation is incomplete;

B. The application or any required documentation contains false information;

C. The building is found not to comply with this chapter; and/or

D. The applicant has failed to pay any required fees.

(Ord. 22632.)

17.20.570 Transferability of permit.

A. The permit holder shall remain responsible for compliance with the provisions of this chapter until the permit is transferred, or a termination of the occupancy occurs. Failure to renew a permit does not relieve the permitholder of this responsibility.

B. A residential occupancy permit is transferable to any person who is entitled to apply for the permit. A residential occupancy permit may be transferred under the following circumstances:

1. When the director receives a request for the transfer of the permit on a form provided by the director; and

2. When the permitholder and the building are in full compliance with the provisions of this chapter; and

3. When the required transfer fee has been paid in an amount as set forth in the schedule of fees established by resolution of the city council.

C. For the purposes of this chapter, a termination of occupancy requires the following:

1. Notice by the permitholder to the director that the occupancy is being terminated;

2. The conversion of the use to another use described in Section 17.20.500. Any such conversion shall require a new residential occupancy permit 111 accordance with the provisions of this Code; or

3. A discontinuation of the use with no conversion to any other such use, described in Section 17.20.500.

(Ord. 22632.)

17.20.580 Permitholder - Responsibility.

The permit holder shall be responsible for the following:

A. Compliance with the provisions of this chapter until the permit is transferred or any applicable occupancy is terminated;

B. Notices required by this chapter; and

C. Annual renewal of the residential occupancy permit.

(Ord. 22632.)

17.20.590 Annual renewal of permit.

A. The permitholder shall annually renew the residential occupancy permit. Application for renewal shall include the following:

1. Submission of an annual self-inspection certificate to the department of neighborhood preservation;

2. Submission of any evidence or certificates required pursuant to Section 17.20.530 or at the request of the department of neighborhood preservation for the purpose of determining continued compliance with this chapter;

3. The name and address of the permitholder or of an agent of the permitholder upon whom process can be served; and

4. Payment of any fees required pursuant to this chapter.

B. A permit for which any required fee has not been paid results in a permit which is not current or in full force and effect. Any building which does not have a valid permit in full force and effect shall not be used for any occupancy specified in this chapter. The permitholder shall restrict such building from use or occupancy within thirty days of the failure to pay such required fee.

(Ord. 22632.)

17.20.600 Notices.

The following notices shall be filed with the director containing the following information when applicable:

A. Any change of the name or address of the permitholder or agent of the permitholder within thirty days of any such change.

B. Information regarding any transfer of ownership shall be filed within thirty days of the transfer of ownership of the building. The name and address of the owner to whom the building was transferred shall be provided.

C. Upon the death of the permitholder, the executor or administrator of the estate shall file a notice stating the fact of the permitholder's death and the name and address of the person who has succeeded to the property. Such notice shall be filed within thirty days of the probate of the will or within ninety days of the death of the permitholder, whichever is first.

(Ord. 22632.)

17.20.610 Fees.

A. The owner of a building for which a residential occupancy permit is required shall pay the application fee required pursuant to Section 17.20.530, the annual renewal fees required pursuant to Section 17.20.590, any reinstatement permit fees required pursuant to Section 17.20.670, and any inspection fees required pursuant to Section 17.20.550 as such fees are set forth in the schedule of fees established by resolution of council.

B. In the event payment has not been received after thirty days from the date the notice to pay was mailed, an additional penalty assessment, pursuant to the schedule of fees as adopted by resolution of the city council, shall be added to the required residential occupancy permit fee.

C. Failure to pay the fee required pursuant to this chapter shall not excuse the permitholder from the responsibility of ensuring compliance with the other provisions of this chapter.

(Prior code § 5512.7; Ords. 20659, 21033, 21049, 21295, 22632.)

17.20.620 Duration of permit.

The residential occupancy permit shall be issued for a one year period commencing on the date of the issuance of the permit unless earlier revoked.

(Prior code § 5512.3; Ords. 20659, 22632.)

17.20.630 Display of permit.

The person to whom the residential occupancy permit is issued shall display it in a conspicuous place in the building to which it pertains so that it may readily be seen by the residents of the building and any representative of the city with authority to enforce the provisions of this chapter.

(Prior code § 5512.4; Ords. 20659, 22632.)

17.20.640 Revocation of permit - Grounds.

A residential occupancy permit may be revoked for any of the following causes:

A. Fraud, willful misrepresentation, or any willful inaccurate or false statement in any materials submitted in the application for a new permit, renewal of an existing permit or in the information required to be submitted pursuant to the chapter;

B. Failure to submit any information required for a new permit or renewal;

C. Failure to pay any fees required pursuant to this chapter;

D. Failure to comply with any provision of this Code as specified in Section 17.20.540; or

E. The creation or maintenance of any public nuisance as defined by Section 17.20.910 of this Code.

(Ord. 22632.)

17.20.650 Notice of intent to revoke permit of occupancy.

A. Whenever it is determined that revocation of the permit is necessary, the director of neighborhood preservation shall issue by mail a notice of intent to revoke to the permitholder.

B. The notice of intent to revoke shall contain the following information:

1. The street address of the building which is the subject of the residential occupancy permit, the residential occupancy permit number, and the name of the permitholder to whom the residential occupancy permit was issued;

2. A statement of the reasons for the intended revocation;

3. A statement that the permitholder may protest the intended revocation of the residential occupancy permit in accordance with Part 2 of Chapter 17.02, and specifying the time, date and place of the hearing on the intended revocation; and

4. A statement advising that failure to appear at such hearing constitutes a failure to exhaust the administrative remedies available to the permitholder.

(Ord. 22632.)

17.20.660 Protest - Process.

Any project of the intended revocation of a residential occupancy permit shall be in accordance with Part 2 of Chapter 17.02, except that:

A. The notice of intent to revoke shall be in the form specified in Section 17.20.650; and B. Service of such notice is required only for the permitholder as disclosed on the records of the department of neighborhood preservation.

(Ord. 22632.)

17.20.670 Reinstatement of permit.

Any permit which has been revoked may be reinstated upon compliance with the following:

A. The permitholder applies for a reinstated permit in accordance with Section 17.20.530;

B. The building is inspected pursuant to Section 17.20.550;

C. The permitholder appears before the commission designated in Section 17.02.160 and demonstrates to the satisfaction of the commission and the commission finds that:

1. The conditions which resulted in the revocation of the permit have been corrected; and

2. The building is in compliance with all provisions of this chapter: and

D. Any fee for reinstatement of the permit and any other required fees have been paid.

(Ord. 22632.)

17.20.680 Restriction from use or occupancy.

The director of neighborhood preservation may order the restriction from use or occupancy of any building which is occupied in violation of this part. Such restriction from use or occupancy shall be in accordance with Part 5 of Chapter 17.02.

(Ord. 22632.)

### Part 9 SUBSTANDARD HOUSING

17.20.900 Substandard housing - Defined.

Housing, for purposes of this chapter, includes buildings, structures, or portions thereof used or designed or intended to be used, for human habitation or the property on which such building is located. Any housing in which there exists any of the following listed conditions is hereby deemed and declared to be a substandard housing:

A. Inadequate Sanitation/Ventilation/Space Requirements. Inadequate sanitation, ventilation and space requirements shall include, but not be limited to, the following as specified in this Code:

1. Lack of, or inadequate water closets, lavatories, bathtubs or showers;

2. Lack of required kitchen sink or kitchen sink which does not comply with the San José Municipal Code;

3. Lack of hot and cold running water to plumbing fixtures;

4. Lack of adequate heating;

5. Lack, or improper operation of required ventilating equipment;

6. Lack of minimum amounts of natural light and ventilation as required by all applicable laws in effect at the time of construction;

7. Inadequate room and space dimensions as required by all applicable laws in effect at the time of construction;

8. Lack of required adequate electricity and lighting;

9. Dampness of habitable rooms;

10. Infestation of insects, vermin or rodents;

11. Lack of connection to required sewage disposal system;

12. Lack of adequate garbage and rubbish storage and removal facilities.

B. Structural Hazards. Structural hazards shall include, but not be limited to the following:

1. Deteriorated or inadequate foundations, or foundation areas which are not provided with adequate drainage;

2. Defective or deteriorated flooring or floor supports;

3. Flooring or floor supports of insufficient size to carry imposed loads with safety;

4. Members of walls, partitions, or other vertical supports that split, lean, list or buckle due to defective material or deterioration;

5. Members of walls, partitions, or other vertical supports that are of insufficient size to carry imposed loads with safety;

6. Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split or buckle due to defective material or deterioration;

7. Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are of insufficient size to carry imposed loads with safety;

8. Fireplaces or chimneys which list, bulge or settle due to defective material or deterioration;

9. Fireplaces or chimneys which are of insufficient size or strength to carry imposed loads with safety.

C. Hazardous Wiring. Wiring which does not conform with all applicable laws in effect at the time of installation and/or which has not been maintained in good condition and is not being used in a safe manner.

D. Hazardous Plumbing. Plumbing which does not conform with all applicable laws in effect at the time of installation and/or which has not been maintained in good condition and which is not free of cross-connections and siphonage between fixtures.

E. Hazardous Mechanical Equipment. Mechanical equipment, including vents, which does not conform with all applicable laws in effect at the time of installation and/or which has been not maintained in good and safe condition and is not working properly.

F. Faulty Weather Protection. Faulty weather protection, which shall include, but not be limited to the following:

1. Deteriorated, crumbling, or loose plaster;

2. Deteriorated or ineffective waterproofing of exterior walls, roof, foundations or floors, including broken windows or doors;

3. Defective or lack of weather protection for exterior wall covering, including lack of paint, or weathering due to lack of paint or other approved protective covering;

4. Broken, rotted, split or buckled exterior wall coverings or roof coverings.

G. Fire Hazard/Inadequate Fire Protection.

1. Any building or portion thereof, device, apparatus, equipment, combustible waste or vegetation which, in the opinion of the chief of the fire department or his deputy, is in such a condition as to cause a fire or explosion or to provide a ready fuel to augment the spread and intensity of fire or explosion arising from any cause.

2. All buildings, or portions thereof, which are not provided with fire-resistive construction or fire extinguishing systems or equipment required by this Code, except those buildings or portions thereof which conformed with all applicable laws at the time of their construction, and whose fire-resistive integrity and fire extinguishing systems or equipment have been adequately maintained and improved in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

3. Lack of adequate fire detection systems as required by Chapter 17.20.

H. Faulty Materials of Construction. Materials of construction which are not specifically allowed or approved by this Code and the building code, and/or which have not been adequately maintained in good and safe condition.

I. Hazardous or Unsanitary Premises. Those premises on which an accumulation of weeds, vegetation, refuse, dead organic matter, debris, garbage, offal, rat harborages, stagnant water, combustible materials, and similar materials or conditions constitute fire, health or safety hazards.

J. Inadequate Maintenance.

1. Any building or portion thereof which is determined to be an unsafe building in accordance with the building code.

2. General dilapidation or maintenance which is inadequate to maintain minimum standards of sanitation, health or safety.

K. Unhealthy Conditions. Any condition as defined in this Code which results in the failure to maintain minimum standards of sanitation, health or safety or which renders air, food or drink unwholesome or detrimental to health.

L. Inadequate Exits. All buildings or portions thereof not provided with adequate exit facilities as required by this Code, except those buildings or portions thereof whose exit facilities conformed with all applicable laws at the time of their construction and which have been adequately maintained and increased in relation to any increase in occupant load, alteration or addition, or any change in occupancy.

M. Improper Occupancy.

1. All buildings or portions thereof occupied for living, sleeping, cooking or dining purposes which were not designed and permitted to be used for such occupancies.

2. All buildings or portions thereof which are occupied in excess of the maximum occupancy load allowed by any applicable provision of the San José Municipal Code or state law.

(Prior code §§ 5508.1 - 5508.15, 17.20.700; Ords. 20659, 21974.)

17.20.910 Substandard building - Nuisance.

Any building which is substandard is hereby declared and determined to be a nuisance.

(Prior code § 5508.16, 17.20.710; Ords. 20659, 21974.)

17.20.920 General obligation.

A. No person, firm, corporation whether as owner or agent thereof, lessee, sublessee, tenant or occupant shall construct, enlarge, alter (other than to repair), move, equip, use, occupy or maintain any substandard building or shall cause or permit the same to be done. No person, firm or corporation shall take any action or allow any action to be taken in violation of any provision of this chapter or any order issued pursuant thereto.

B. In addition to subsection A, the owner, the agent and the manager for the owner of the building shall be responsible for:

1. The repair, removal, reconstruction, correction or abatement of any condition which causes the building to be substandard even though the same or similar obligation is also imposed on the tenant or occupant of the building by the provisions of a lease or rental agreement. This provision will not apply if the obligation is imposed solely on the tenant or occupant by this Code or other applicable law.

2. Maintaining the areas of the building occupied or controlled by such owner, agent and manager including the shared or public areas, in a clean, sanitary and safe condition.

C. In addition to subsection A, the tenant, lessee, sublessee or occupant of any dwelling unit in the building shall be responsible for:

1. Maintaining the dwelling unit in a clean and sanitary condition;

2. Using reasonable care in the use and operation of required plumbing and other fixtures and maintain them in a clean and sanitary condition;

3. Exterminating any insects, rodents or other pests whenever the dwelling unit is the only one in the building infested, and the building is reasonably insect and rodent proofed;

4. Disposing of all garbage and refuse in compliance with the provisions of this Code;

5. Not placing on the premises any material which causes a fire hazard or otherwise endangers the health or safety of any occupants of the building;

6. Not storing on the premises any furniture, equipment or material which harbors insects, rodents or other pests; and;

7. Not allowing the dwelling unit to be occupied or used in any manner which violates this Code.

(Ord. 21974.)

17.20.930 Substandard buildings - Summary abatement.

Whenever any building has been found to be substandard, in addition to any other remedies available, the city manager may take summary abatement actions or commence proceedings to cause the building to be repaired, restricted from use or occupancy or otherwise abated in accordance with the procedures set forth in Chapter 17.02. Temporary corrective measures, when necessary, may be required prior to the time permanent repairs are instituted.

(Ord. 21974.)

17.20.940 Summary abatement - Imminent danger.

Any substandard building or structure in which there exists a condition or defect which is reasonably believed to be imminently dangerous to the life, limb, health or safety of the occupants or members of the public is deemed to be a dangerous building. Such condition or defect may be summarily abated by the city manager in accordance with the provisions of Chapter 17.40.

(Ord. 21974.)

17.20.950 Abatement procedures.

The city manager may institute procedures for abatement or summary abatement of substandard housing. The procedures set forth in Chapter 17.02 of this title shall apply to any such abatement. Costs for any abatement performed by or on behalf of the city shall be recovered by the city pursuant to the provisions of Part 4 of Chapter 17.02.

(Ord. 21974.)

17.20.960 Abatement actions by city.

A. Any building or structure may be ordered restricted from use or occupancy when there are reasonable grounds to believe that such restriction is necessary to protect the life, limb, safety, health or property of the occupants or members of the public.

B. If the city performs the abatement actions it shall repair and not demolish the substandard, building.

(Ord. 21974.)

17.20.970 Procedures of this chapter - Cumulative.

A. Procedures used and actions taken for the abatement of substandard buildings are not limited by this chapter. Procedures and actions under this chapter may be utilized in conjunction with or in addition to any other procedure applicable to the regulation of buildings or structures.

B. All substandard buildings or structures which are required to be repaired pursuant to the provisions of this chapter shall be subject to all provisions of the San José Municipal Code applicable to building construction and repair, zoning and the fire code.

(Ord. 21974.)

17.20.980 Civil actions - Civil penalties.

Any tenant may institute a civil action against the property owner who creates or maintains substandard housing to obtain damages and/or require compliance with the requirements of this chapter.

A. Damages shall include actual damages, costs, attorney's fees and a civil penalty of five hundred dollars in addition thereto.

B. Nothing in this provision shall be construed to limit any other right or remedy otherwise available to any party, nor shall this provision in any way limit the city's right to enforcement under any other provision of this Code nor shall it create a duty or obligation on the part of the city.

(Ord. 21974.)

### Part 10 NOTIFICATION OF FRANCHISE TAX BOARD OF SUBSTANDARD CONDITIONS OF RENTAL HOUSING

17.20.1050 Substandard housing - Nondeductibility for state income taxes.

The City of San José intends to utilize the provisions of California Revenue and Taxation Code Section 24436.5 in order to encourage the elimination of substandard conditions in rental housing. Said section provides for the disallowance for state income tax purposes of interest, depreciation, taxes or amortization deductions which are derived from ownership of rental housing which is not in compliance with the health, safety or building standard set by city ordinance or state law. These provisions may be initiated by any enforcement officer of the city in accordance with the procedures set forth in this part.

(Ord. 21974.)

17.20.1060 Enforcement officer.

Enforcement officer, as used in this part, shall mean any city employee with the duty to enforce city codes or state laws dealing with health, safety, fire or building standards.

(Ord. 21974.)

17.20.1070 Initiation of procedure.

A. Whenever an enforcement officer determines that a property which is used for rental housing is in a condition of noncompliance with any city code or state law relating to health, safety or building standards, said officer may initiate the franchise tax board notification procedure by forwarding a report of noncompliance to the city manager. Said report shall specify all violations and include information about the number of tenants or rental units involved.

B. Upon determining to utilize the provisions of this chapter, the city manager may request a coordinated inspection of the property by all departments with code enforcement responsibility. Each such department shall report any conditions of noncompliance to the city manager.

(Ord. 21974.)

17.20.1080 Tax warning notice.

A. The city manager may cause a tax warning notice to be issued to the owner of any rental housing property which has been found by any enforcement officer to have conditions of noncompliance.

B. The tax warning notice shall state the city manager's intention to report the conditions of noncompliance to the franchise tax board pursuant to the provisions of California Revenue and Taxation Code Section 24436.5 if full compliance with city codes and state laws is not achieved within six months of the date of the tax warning notice.

C. The city manager may, on the basis of a violator's good faith efforts to correct a condition of noncompliance or for other good cause shown, extend the date of notification of noncompliance to the franchise tax board. Any such extension must be in writing and specify an alternate notification date.

(Ord. 21974.)

17.20.1090 Notice of noncompliance.

In the event the period specified in Section 17.20.1080 expires without full compliance, the city manager may cause a notice of noncompliance to be sent by certified mail to the violator stating the city's intention to notify the franchise tax board of the condition of noncompliance unless the property is brought to a condition of full compliance within ten days of the date of the notice of noncompliance or an appeal is filed with the city manager pursuant to Section 17.20.1120.

(Ord. 21974.)

17.20.1100 Notification of franchise tax board of noncompliance.

The director of neighborhood preservation may notify the franchise tax board of a rental property owner's noncompliance ten days after the date of the notice of noncompliance to the owner, unless the rental property has been placed in a condition of full compliance and such condition of compliance has been verified pursuant to Section 17.20.1110 or unless an appeal has been filed pursuant to Section 17.20.1120.

If an appeal has been filed and denied by the San José appeals hearing board, the director of neighborhood preservation may notify the franchise tax board of the appellant's noncompliance upon notification by the secretary of the San José appeals hearing board of the board's action on appeal.

(Ords. 21974, 23287.)

17.20.1110 Termination of noncompliance - Notice of compliance.

Upon correction of all conditions of noncompliance, the property owner shall request that the city manager arrange verification inspections by appropriate code enforcement officers who will report their finding to the city manager.

If the property is found to be in full compliance by all inspecting departments, and the city manager has previously notified the franchise tax board of noncompliance pursuant to Section 17.20.1100, the city manager shall cause a notice of compliance to be sent to the property owner and the franchise tax board.

(Ord. 21974.)

17.20.1120 Appeal procedure.

The issuance of a notice of noncompliance or the failure to issue a notice of compliance under this part may be appealed by the owner of the property to the San José appeals hearing board by filing written notice of appeal with the director of neighborhood preservation within ten days of the action for which the appeal is taken. When a notice of appeal has been received by the director of neighborhood preservation for filing:

A. The director of neighborhood preservation shall, within ten days after receipt of the notice of appeal, file the notice of appeal with the secretary of the board.

B. The secretary of the board shall set the date for hearing and determination by the board which date shall not be less than ten days nor more than sixty days after the date on which the copy of the notice of appeal was filed by the director of neighborhood preservation with the secretary of the board.

(Ords. 21974, 23287.)

17.20.1130 Grounds for appeal.

The appeal shall be granted if the board finds:

A. The rental building does not violate city codes or state laws dealing with health safety or building standards; or

B. The director of neighborhood preservation is not authorized to send the notice of noncompliance to the franchise tax board under the terms of this part.

(Ords. 21974, 23287.)

17.20.1140 Finding on appeal.

A. Within a reasonable time after the board has concluded its hearing, it shall, by resolution set forth its findings and decision. The decision of the board shall be final, except as set forth in Subsection B below. The secretary of the board shall notify the director of neighborhood preservation of the decision and shall mail a copy of the decision to the appellant at the address shown for such purpose on the notice of appeal.

B. For all relocation appeals to the board arising under California Health and Safety Code Section 33417.5 and Government Code Section 7266, the board shall transmit its findings and recommendations to the redevelopment agency board. The redevelopment agency board shall make a final decision on the findings and recommendations of the appeals hearing board.

(Ords. 21974, 23287.)

17.20.1150 Notice requirements.

Notice requirements stated in this part shall be satisfied by mailing to the address of the property owner or owners as they appear on the latest available tax roll of the county assessor. If the property is owned by more than one owner, the notice requirements will be satisfied by mailing to one of the listed owners.

(Ord. 21974.)

17.20.1160 Exceptions.

A notice of noncompliance will not be mailed pursuant to Section 17.20.1090 if, upon evidence provided by the property owner, the city manager makes one of the following findings:

A. The rental housing was rendered substandard solely by reason of earthquake, flood or other natural disaster and such condition has not existed for more than three years since the disaster; or

B. The owner of the housing has secured financing and commenced necessary repairs to bring such housing into compliance; or

C. The owner of rental housing has attempted to secure financing to bring such housing into compliance with state laws and city codes, and

1. Such financing has been denied solely because such housing is located in a neighborhood in which financial institutions do not provide financing for housing rehabilitation; and

2. The rental housing is neither an owner-occupied residence of less than five dwelling units nor is a nonowner-occupied residence of less than five dwelling units where the owner thereof has applied for a secured home improvement loan to improve this property from a financial institution.

D. The rental housing is rendered substandard solely by the reason of a change in applicable state or local housing standards and such violations do not cause substantial danger to the occupants of such property, as determined by the city manager.

(Ord. 21974.)

17.20.1170 Notice of change in ownership.

The owner of rental housing found to be in noncompliance shall, upon total or partial divestiture of interest in such property, immediately notify the city manager of the name and address of the person or persons to whom the property has been sold or otherwise transferred and the date of the sale or transference.

(Ord. 21974.)

17.20.1180 Report to city council.

On or before July 1 of each year, the city manager will report to the city council the following information, for the preceding calendar year, regarding the activities to secure code enforcement, which will be public information:

A. The number of written tax warning notices issued for substandard dwellings under this part.

B. The number of violations for which compliance was obtained within the period prescribed in Section 17.20.1080.

C. The number of notices of noncompliance issued pursuant to this part.

D. The number of appeals from those notices pursuant to this part.

E. The number of successful appeals of owners.

F. The number of notices of noncompliance mailed to the franchise tax board pursuant to this part.

G. The number of cases in which a notice of noncompliance was not sent pursuant to the provision of Section 17.20.1160.

H. The number of extensions for compliance granted and the mean average length of such extensions.

I. The mean average length of time from the issuance of a tax warning notice to the mailing of a notice of noncompliance to the franchise tax board where such notice is actually sent to the franchise tax board.

J. The number of cases where compliance is achieved after a notice of noncompliance has been mailed to the franchise tax board.

K. The number of instances of disallowance of tax deductions by the franchise tax board resulting from referrals made by the city. This information may be filed in a supplemental report in succeeding years as it becomes available.

(Ord. 21974.)

17.20.1190 Nonexclusive action.

No action taken under the provisions of this part shall preclude, delay or excuse code compliance requirements of the city. This part shall supplement and be in addition to all other remedies provided by other regulatory laws, codes or ordinances.

(Ord. 21974.)

### Part 11 OWNER RELOCATION OBLIGATIONS

17.20.2000 Enforcement action.

For purposes of this part, the term "enforceable action" means the issuance of a notice of summary abatement; notice of hearing on proposed abatement, administrative penalty, nuisance abatement cease and desist order or other administrative action, or the filing of a civil complaint or criminal citation or complaint.

(Ords. 24447, 25711.)

17.20.2010 Notice of violation.

For purposes of this part, the term "notice of violation," in addition to a notice so labeled, means a notice, including but not limited to, a compliance order issued by the city stating that a unit, due to its substandard condition, is in violation of the housing codes or fire codes or stating that a unit shall be vacated because its existence, use or occupancy is unlawful under state law or Title 20 or Title 24 of this Code.

(Ords. 24447, 25711.)

17.20.2020 Tenant.

For purposes of this part, the term "tenant" in the singular or in the plural refers to a person or persons who rent or are otherwise in lawful tenancy of a unit under the terms of tenancy or with the knowledge or consent of the owner or the owner's agent.

(Ord. 24447.)

17.20.2030 Owner.

For purposes of this part, the term "owner" means any person who holds legal title, in whole or in part, to a unit subject to this part.

(Ord. 24447.)

17.20.2040 Unit.

For purposes of this part, the term "unit" means any dwelling or room which is the permanent or customary and usual residence from which a tenant is displaced.

(Ord. 24447.)

17.20.2050 Displacement.

A tenant is displaced for the purposes of this part if a unit must be vacated as provided in subsection A. or B.:

A. Following an enforcement action and either:

1. The owner or owner's agent requests the vacation because the unit is being rehabilitated to bring it into compliance with the provisions of this Code following the receipt by owner or owner's agent of a notice of violation; or

2. The unit is being rehabilitated to bring it into compliance with the provisions of this Code cited in a notice of violation because substandard conditions interfere with the habitability of the unit and the city determines that the substandard condition affects the health and safety of the tenant; or

B. Because the unit or the building which contains the unit has been ordered vacated either by the city or a court order due to the substandard condition of the unit or unlawful existence, use or occupancy of the unit under state law or Title 20 or Title 24 of this Code.

(Ords. 24447, 25711.)

17.20.2060 Owner relocation obligations.

A. When tenants are displaced, the owner of the unit shall provide relocation assistance to the tenants as specified in this part.

B. Any payments required under this part shall be made by the owner directly to the tenants.

(Ord. 24447.)

17.20.2070 Exemptions.

A. An owner shall not be required to provide relocation assistance under this part if any of the following conditions are demonstrated:

1. A tenant or a guest or invitee of the tenants:

a. Caused or substantially contributed to the substandard conditions cited in the notice of violation; or

b. Constructed, used or occupied a unit whose existence, use or occupancy is unlawful, as cited in a notice of violation, without the actual or implied consent or knowledge of the owner or agent of the owner; or

2. The tenants are displaced as a direct result of a natural disaster, as such term is defined in Government Code Section 8680.3; and

a. The city determines that the actions or omissions of the owner or owner's agent did not contribute to the disaster's impact on the unit; and

b. The tenants were not already entitled to relocation assistance under the provisions of this part at the time of the disaster; or

3. The tenants are displaced as a result of a lawful eviction.

B. The owner shall have the burden of proving that any exemption in this section is applicable.

(Ords. 24447, 25711.)

17.20.2080 Notice to tenants.

A. A written summary of an owner's obligation and a tenant's rights under this part shall be attached to or included in any order to immediately vacate any unit or with any notice of violation and may be included with an enforcement action issued by the city.

B. The owner shall deliver the summary of an owner's obligation and a tenant's rights under this part to tenants of all units subject to the enforcement action by personal delivery, or registered or certified mail within twenty-four hours of the receipt by owner or owner's agent of:

1. The enforcement action; or

2. The city or court order to vacate a unit.

C. In addition to the notices provided for in paragraphs A. and B. of this section, the city may post a copy of the summary of tenants' rights in a visible location on the building, property or unit subject to the notice of violation or city order to immediately vacate.

D. Any notice required by this part to be delivered to tenants shall contain the following notice translated in Spanish, Vietnamese, Cambodian, Chinese, Korean, and Laotian in type of at least ten-point:

"This Notice is Important. You May be Entitled to Relocation Assistance. Please Have it Translated. For more information, please call the City of San José, (Address and Phone Number)."

(Ord. 24447.)

17.20.2090 Emergency relocation assistance.

A. Where an owner is required by a city or a court order to have unit vacated immediately, or where vacation is required to enable compliance with a notice of violation from the city with less than ten days notice because of imminent potential harm to the health and safety of tenants, the owner shall provide to the tenants the relocation assistance required by this section until such time as the tenants are able to reoccupy the unit or until the benefits set forth in Section 17.20.2100 or Section 17.20.2110 are provided.

B. The owner, at owner's expense, shall provide the following relocation assistance and benefits under this section:

1. Alternative safe and legal temporary housing for the tenants at no additional rent or cost to the tenants than previously paid by the tenants or the advance payment of the fair market rent as established by the most recent current U.S. Department of Housing and Urban Development schedule for fair market rents for a unit of comparable size in the same general area as the unit and other related costs for alternative safe and legal temporary housing for the tenants.

2. Any additional necessary employment and education transportation costs to the tenants arising as a result of the displacement.

3. If the alternative housing required in this section does not contain furnishings, furnishings appropriate for the tenants in the alternative housing required in this section.

4. Reasonable security for all of the tenants' furnishings and other personal property remaining in the unit until the tenants reoccupy the unit.

C. To the extent feasible, the owner shall provide any alternative housing required under this section in a location in the vicinity of the unit.

D. The relocation assistance required under this section shall be provided by the owner by the time of the displacement of the tenants.

(Ord. 24447.)

17.20.2100 Temporary relocation assistance.

A. If tenants are displaced on a nonemergency basis, either because the existence, use or occupancy of a unit is unlawful or because of repair or rehabilitation of a unit, and the tenants are expected to be able to reoccupy the unit within sixty days from the date of displacement, the owner shall provide to the tenants the relocation assistance required by this section until such time as the tenants are able to reoccupy the unit or until the benefits set forth in Section 17.20.2110 are provided.

B. The owner, at the owner's expense, shall provide the following relocation assistance and benefits under this section:

1. Alternative safe and legal temporary housing for the tenants at no additional rent or cost than previously paid by the tenants or payment to the tenants of the difference between the rent paid on the unit and the fair market rent for alternative safe and legal temporary housing as established by the most current HUD schedule for fair market rents for a unit of comparable size in the same general area as the unit for the tenant for the first thirty days of displacement and related costs and the full rent costs thereafter until such time as the owner's obligation terminates under Section 17.20.2110.

2. Any additional necessary employment and education transportation costs to the tenants arising as a result of the displacement.

3. Furnishings appropriate for the tenants in the alternative housing required in this section.

4. Reasonable security for all of the tenants' furnishings and other personal property remaining in the unit until the tenants reoccupy the unit.

C. To the extent feasible, the owner shall provide any alternative housing required under this section in a location in the vicinity of the unit.

D. The owner shall provide advance written notice of the short-term displacement to the tenants by personal service or by certified mail not less than ten business days prior to any nonemergency short-term displacement. Displacement shall not occur during any period for which rent was due and paid.

E. The relocation assistance required under this section shall be provided by the owner prior to the displacement of the tenants.

(Ords. 24447, 25711.)

17.20.2110 Long-term or permanent relocation assistance.

A. If the owner anticipates that displacement shall continue or if displacement actually continues for more than sixty days, the owner shall provide to the tenants the relocation assistance required in this section.

B. The owner, at the owner's expense, shall provide the following relocation assistance and benefits under this section:

1. Alternative safe and legal housing for the tenants at no additional rent or cost than previously paid by the tenants for a period of three months from the date of displacement or payment to the tenants of replacement housing costs which shall be the greater of:

a. An amount equal to three months' fair market rent for an alternative housing unit, as established by the most current HUD schedule for fair market rents for a unit of comparable size in the same general area as the unit; or

b. An amount equal to three months of the rental amount for the unit.

2. If the tenant elects not to reoccupy the unit or if the unit cannot lawfully be reoccupied, return to the tenants any security deposit or cleaning fee not permitted to be retained by the owner under applicable law within the period specified under applicable law.

3. Moving expenses of the tenants for any displacement under this section as set forth in a schedule established from time to time by resolution of the city council.

4. Any additional necessary employment and education transportation costs to the tenants arising as a result of the displacement for a maximum of three months from the date of displacement.

5. Reasonable security for all of the tenants' furnishings and other personal property remaining in the unit for a maximum of three months from the date of displacement.

C. To the extent feasible, the owner shall provide any alternative housing required under this section in a location in the vicinity of the unit.

D. The relocation assistance required under this section shall be provided by the owner at least thirty days prior to the displacement of the tenants.

E. The relocation assistance required by Sections 17.20.2090, 17.20.2100 and 17.20.2110 shall be cumulative.

(Ords. 24447, 25711.)

17.20.2120 Additional relocation obligations.

A. A displaced tenant and the owner may agree to alternatives to the relocation assistance required under this part only by a separate written agreement signed by the tenant and the owner which contains an acknowledgment by the tenant that the tenant has received a notice of the rights under this part and that the tenant understands those rights.

B. The relocation assistance required by the owner under this part shall be a separate requirement and obligation provided to tenants in addition to any other assistance, refunds or payments available under any other provisions of this Code or other applicable law.

C. The relocation assistance required of the owner under this part shall not affect any rights of the owner under any other provisions of this Code or other applicable law.

(Ord. 24447.)

17.20.2130 Right to reoccupy.

A. To the extent that a unit can legally accommodate the displaced tenants, the tenants shall have the right to reoccupy the unit from which the tenants were displaced when the substandard or otherwise unlawful conditions of the unit are corrected.

B. On or before the time the tenant vacates the unit, the owner shall provide written notice by personal delivery, or registered or certified mail, advising the tenant of the right to reoccupy the unit once the substandard or otherwise unlawful condition is corrected. The notice shall include a statement regarding the tenant's obligation to provide the owner with the information requested in Section 17.20.2130.C. and the consequences of the failure to do so.

C. Unless the owner has provided the alternative temporary housing, within seven days after vacating the unit the tenants shall provide the owner with their current address to be used for future notification by the owner. Failure to provide such information in writing to the owner shall terminate their right to reoccupy the unit.

D. As soon as possible after the unit is available for the tenants to reoccupy the unit, the owner shall provide written notice to the tenants by personal delivery, or registered or certified mail, advising the tenants of the availability of the unit. The owner shall make the unit available to the tenant for a period of thirty days following the date the tenants receive notice of the availability of the unit. The notice shall include the current address of the owner or owner's agent to which the tenants must send a written statement of their desire to exercise the right to reoccupy the unit. The notice shall include a statement regarding the tenant's obligation to provide the owner with the information requested in Section 17.20.2130.E. and the consequences of the failure to do so.

E. Within seven days after receipt of the notice of the availability of the unit, the tenants shall notify the owner in writing that the tenants are exercising the right to reoccupy the unit. Failure to so notify the owner shall terminate their right to reoccupy the unit.

(Ords. 24447, 25711.)

17.20.2140 Rent maintenance.

A. If tenants exercise the right to reoccupy a unit as provided in Section 17.20.2130 of this part, the owner shall not increase the amount of rent paid by the tenants prior to the date of their displacement for a period of twelve months after the date the tenants reoccupy the unit.

B. This section shall not apply to any unit:

1. That is subject to the provisions of Chapter 17.22 or Chapter 17.23 of this Code; or

2. For which rent is subsidized by any government agency.

(Ord. 24447.)

17.20.2150 Private right of action.

A. Tenants who are displaced may bring an action against an owner for damages, injunctive or declaratory relief or any other appropriate action, in a court of competent jurisdiction to enforce the provisions of this part.

B. Tenants who prevail in such an action shall be entitled to recover from the owner damages, including the relocation assistance provided for under this part; costs, including reasonable attorney fees; and such other relief as determined by the court. In addition to all other damages or other relief, the court may award the tenants a civil penalty of up to one thousand dollars for each violation of this part.

C. The remedies provided by this part are in addition to any other legal or equitable remedies and are not intended to be exclusive.

(Ord. 24447.)

## Chapter 17.22 MOBILEHOME RENT ORDINANCE

### Part 1 PURPOSE

17.22.010 Findings and declarations.

The council of the City of San José finds and declares as follows:

A. There is a shortage of and an increasing demand for all types of housing in the City of San José. This circumstance, coupled with the rising cost of developing new housing, the unavailability of land, and other factors, has put substantial upward pressure on residential rents.

B. The City of San José contains a limited number of mobilehome parks that rent mobilehomes or mobilehome lots to a significant number of the city's population. The vacancy rate among these mobilehome parks is very low and there is also a shortage of available mobilehomes and mobilehome lots in neighboring communities.

C. A substantial majority of mobilehome residents in the city own their own mobilehomes and virtually all mobilehome owners have made a substantial financial investment in their mobilehomes.

D. The cost and risk of potential damage in moving mobilehomes is great, as is the cost of preparing a new site and meeting the code requirements for installing a new mobilehome.

E. Recent changes in state law regarding mobilehomes have imposed substantial limitations on the ability of owners of older mobilehomes to relocate such mobilehomes.

F. A significant proportion of mobilehome park residents are senior citizens, many of whom live on limited or fixed incomes.

G. This chapter is a necessary measure to protect the health, safety and welfare of the citizens of San José.

(Ords. 22020, 22053, 22284.)

17.22.020 Purpose.

The purpose of the city council in enacting this chapter is to prevent excessive and unreasonable rent increases to mobilehome park residents, to prevent an exploitation of the shortage of available mobilehome lots in the city, to permit mobilehome park owners to receive a fair and reasonable return, and to establish a process for rent dispute resolution.

(Ord. 22284.)

17.22.030 Interpretation.

No provision of Chapter 17.22 of Title 17 of this Code shall be applied so as to prohibit the administrative hearing officer from granting a rent increase that is demonstrated necessary to provide a mobilehome park owner with a fair return on investment.

(Ord. 25996.)

### Part 2 DEFINITIONS

17.22.040 General.

For purposes of this chapter, certain words and phrases are defined in this part and shall be construed as set forth herein unless it is apparent from the context that a different meaning is intended.

(Ords. 22020, 22053, 22284.)

17.22.050 Administrative hearing officer.

"Administrative hearing officer" means a person who, pursuant to a written agreement approved by the city council or the city manager, serves as the hearing officer at a hearing to resolve a rent dispute pursuant to the provisions of this chapter.

(Ords. 22053, 22284.)

17.22.060 Affected rental unit.

"Affected rental unit" means a rental unit which is benefitted by a particular capital improvement or rehabilitation.

(Ord. 22284.)

17.22.070 Anniversary date.

"Anniversary date" means the date on which a rent increase becomes effective.

(Ord. 22284.)

17.22.080 Base rent.

"Base rent" means the rent charged by a landlord on the effective date of this chapter, plus any rent increase allowed under this chapter.

(Ord. 22284.)

17.22.090 Capital improvements.

"Capital improvements" means the addition or replacement of any improvement to a unit or property within the geographic boundaries of a mobilehome park which meets the following conditions:

A. The addition or replacement has a useful life of at least five years: and

B. Either:

1. The addition or replacement is necessary in order to maintain compliance with applicable local code requirements affecting health and safety; or

2. The addition or replacement is provided by the mobilehome park owner primarily to benefit the residents of the affected rental units.

C. Capital improvements do not include additions or replacement made to bring the rental unit into compliance with a provision of the San José Municipal Code or state law where the rental unit has not been in compliance from the time of its original construction or installation and such provision was in effect at the time of such construction or installation.

(Ords. 22020, 22053, 22284.)

17.22.100 City rental rights and referrals program.

"City rental rights and referrals program" means the section of the department of housing that provides staff services to the commission. References in any previous ordinance to the "Rental Dispute Program" shall be deemed as references to the city rental rights and referrals program.

(Ords. 22284, 22802, 24400, 26792.)

17.22.110 Commission.

"Commission" means the mobilehome advisory commission as established in Part 26 of Chapter 2.08 of Title 2 of this Code.

(Ord. 22284.)

17.22.115 Consumer Price Index.

For the purposes of this chapter, Consumer Price Index means the Consumer Price Index for all urban consumers in the San Francisco-Oakland all items index (1982-84 equals 100), as reported by the Bureau of Labor Statistics of the United States Department of Labor.

(Ords. 22284, 24400.)

17.22.120 Costs of operation and maintenance.

A. "Costs of operation and maintenance" means all expenses incurred in the operation and maintenance of a rental unit and the buildings or complex of buildings of which it is a part together with common areas, but excluding costs of debt service, costs of capital improvements and costs of rehabilitation.

B. "Costs of operation and maintenance" includes, but is not limited to, real property taxes, business taxes and fees (including fees payable by landlords under this chapter), insurance, sewer service charges, utility costs for common areas, utility costs for rental units to the extent such costs are included in the rent, janitorial services, professional property management fees, pool maintenance, building and grounds maintenance, supplies, equipment, refuse removal, and security services or systems.

(Ords. 22020, 22053, 22284.)

17.22.130 Costs of rehabilitation.

A. "Costs of rehabilitation" means the costs of any rehabilitation or repair work done on or in the mobilehome park (but not including such work done on or in an owner-occupied mobilehome) which was done in order to comply with an order issued by the San José building department, the director or the fire department, or to repair damage resulting from fire, earthquake or other natural disaster.

B. Costs of rehabilitation do not include costs of any rehabilitation or repair work done to bring a rental unit into compliance with a provision of the San José Municipal Code or state law where the rental unit has not been in compliance from the time of its original construction or installation and such provision was in effect at the time of such construction or installation.

(Ords. 22020, 22053, 22284, 24400.)

17.22.135 Dealer pullout.

"Dealer pullout" means a transaction in which: a mobilehome dealer, as such term is defined in Section 18002.6 of the Health and Safety Code, purchases a mobilehome from a mobilehome owner; the mobilehome owner terminates the tenancy and ceases to be a tenant of the mobilehome park; the dealer replaces the old mobilehome on the lot with a new one and pays a storage fee to the park owner; and the dealer transfers the new mobilehome to a new mobilehome owner.

(Ord. 24257.)

17.22.136 Department.

"Department" means the department of housing.

(Ords. 24400, 26792.)

17.22.138 Director.

"Director" means the director of the department.

(Ord. 24400.)

17.22.140 Housing services.

"Housing services" means those services provided in connection with the occupancy of a rental unit including but not limited to repairs, replacement, maintenance, painting, light, heat, water, laundry facilities and privileges, janitorial service, refuse removal, furnishings, telephone, parking, and any other benefits, privileges or facilities.

(Ords. 22053, 22284.)

17.22.145 In-place transfer.

"In-place transfer of a mobilehome" means the transfer of the ownership of a mobilehome with the mobilehome remaining on the mobilehome lot following the transfer.

(Ord. 23914.)

17.22.150 Landlord.

"Landlord" means a mobilehome park owner, mobilehome owner, lessor or sublessor who receives or is entitled to receive rent for the use and occupancy of any rental unit or portion thereof, and the agent, representative or successor of any of the foregoing.

(Ords. 22020, 22053, 22284.)

17.22.155 Maximum standard annual percentage increase.

"Maximum standard annual percentage increase" means:

A. For increases effective prior to October 1, 1993, five percent.

B. For increases effective between October 1, 1993, and September 30, 1994, three percent.

C. 1. For increases effective on or after October 1, 1994, a percentage equal to seventy-five percent of the increase in the Consumer Price Index measured from the April of the calendar year preceding the year in which the increase is effective to the April of the calendar year in which the increase is effective, but in no event greater than seven percent nor less than three percent.

2. For increases effective on or after October 1, 1995, if the necessary information is not available to the rental rights and referrals program by May 15 of the calendar year for which the increase is determined, the measurement may be calculated based on the latest available information.

D. Maximum standard annual percentage increases calculated pursuant to subsection C. shall apply to rent increases effective between October 1 of the calendar year in which the maximum standard annual percentage increase is determined by the city rental rights and referrals program and September 30 of the next calendar year.

(Ords. 24400, 24666, 26792.)

17.22.160 Mobilehome.

"Mobilehome" means a structure transportable in one or more sections, designed and equipped to contain not more than one dwelling unit, to be used with or without a foundation system.

(Ord. 22284.)

17.22.170 Mobilehome lot.

"Mobilehome lot" means a portion of a mobilehome park designated or used for the occupancy of one mobilehome.

(Ord. 22284.)

17.22.180 Mobilehome owner.

"Mobilehome owner" means a person who has the right to the use of a mobilehome lot within a mobilehome park on which to locate, maintain and occupy a mobilehome, lot improvements and accessory structures for human habitation, including the use of the services and facilities of the park.

(Ord. 22284.)

17.22.190 Mobilehome park.

"Mobilehome park" means any area or tract of land where two or more mobilehome lots are rented or leased, or held out for rent or lease, to accommodate mobilehomes used for human habitation for permanent, as opposed to transient, occupancy.

(Ord. 22284.)

17.22.200 Mobilehome resident.

"Mobilehome resident" means a person, including a mobilehome owner or mobilehome tenant, who occupies a mobilehome.

(Ord. 22284.)

17.22.210 Mobilehome tenant.

"Mobilehome tenant" means a person who rents or leases a mobilehome from a mobilehome owner.

(Ord. 22284.)

17.22.220 Owner.

"Owner" means a mobilehome owner.

(Ord. 22284.)

17.22.230 Party.

"Party" means a landlord, mobilehome owner or mobilehome tenant whose rent increase is the subject of the administrative hearing process pursuant to this chapter.

(Ords. 22284, 22802.)

17.22.240 Rent.

A. "Rent" means the consideration, including any bonus, benefit or gratuity, demanded or received by a landlord for or in connection with the use or occupancy, including housing services, of a rental unit or in connection with the assignment of a lease or in connection with subleasing of the rental unit.

B. "Rent" shall not include utility charges for utility services (including gas, electricity, water, refuse disposal, and/or sewer service), provided to an individual mobilehome resident, as opposed to utility services provided to the mobilehome park in general, where such charges are billed to the mobilehome resident separately from the rent for the mobilehome or mobilehome lot.

(Ords. 22022, 22053, 22284.)

17.22.250 Rent increase.

"Rent increase" means any rent demanded of or paid by a mobilehome owner or mobilehome tenant in excess of rent paid for the rental unit immediately prior to such demand or payment. Rent increase includes any reduction in services provided to a mobilehome resident without a corresponding reduction in the moneys demanded for or paid as rent.

(Ords. 22020, 22053, 22284.)

17.22.260 Rental agreement.

"Rental agreement" means a written agreement between a landlord and a mobilehome owner or mobilehome tenant for the use and occupancy of a rental unit to the exclusion of others.

(Ord. 22284.)

17.22.270 Rental unit.

"Rental unit" means a mobilehome or mobilehome lot, located in a mobilehome park in the City of San José, which is offered or available for rent. Rental unit includes the land, with or without a mobilehome, and appurtenant buildings thereto and all housing services, privileges and facilities supplied in connection with the use or occupancy of the mobilehome or mobilehome lot.

(Ords. 22020, 22053, 22284.)

17.22.280 Service reduction.

"Service reduction" means a decrease or diminution in the basic service level required to be provided by the landlord pursuant to any of the following:

A. California Civil Code Section 1941.1 and 1941.2.

B. The Mobilehome Residency Law, California Civil Code Section 798 et seq.

C. The Mobilehome Parks Act, California Health and Safety Code Sections 18200 et seq.

D. The landlord's implied warranty of habitability.

E. An express or implied agreement between the landlord and the resident.

F. The level of service as implied by the condition of improvements, fixtures, and equipment, and their availability for use by the resident, at the time of the last rent increase.

G. Applicable rules or regulations of the mobilehome park.

(Ord. 22284.)

17.22.290 Tenant.

"Tenant" means a mobilehome tenant.

(Ords. 22020, 22053, 22284.)

17.22.300 Working day.

"Working day" means a day the San José City Hall is open for public business.

(Ord. 22284.)

### Part 3 EXEMPTIONS

17.22.350 New rental units.

A. The provisions of this chapter shall not apply to rent or rent increases for mobilehome lots for which plumbing, electrical and sewer permits were issued after September 7, 1979. If a plumbing or an electrical or a sewer permit was issued for a mobilehome lot on or before September 7, 1979, the provisions of this chapter shall apply to such mobilehome lot.

B. The provisions of this chapter shall not apply to rent or rent increases for mobilehomes situated on mobilehome lots which are excluded from coverage pursuant to subsection A. of this section.

(Ord. 22284.)

17.22.360 Governmental agencies.

A. The provisions of this chapter shall not apply to mobilehomes or mobilehome parks owned or operated by any governmental agency.

B. The provisions of this chapter shall not apply to any rental unit whose rent is subsidized pursuant to the Housing Assistance Payments Program (Pub. L. 93-383, Section 8, as amended).

(Ord. 22284.)

17.22.370 Rental agreements.

A. The provisions of this chapter shall not apply to any mobilehome lot which is the subject of a rental agreement voluntarily entered into between a landlord and a mobilehome owner where the rental agreement meets all of the following criteria:

1. The rental agreement was entered into on or after January 1, 1986.

2. The term of the rental agreement is in excess of twelve months' duration.

3. The mobilehome lot which is the subject of the rental agreement is used for the personal and actual residence of the mobilehome owner.

4. The first paragraph of the rental agreement contains a provision notifying the mobilehome owner that the mobilehome lot will be exempt from the provisions of this chapter.

B. This exclusion shall apply only for the duration of the term of the rental agreement and any uninterrupted, continuous extensions thereof. If the term of the rental agreement is not extended and no new rental agreement meeting the above-stated criteria is entered into, this chapter shall immediately become applicable to the mobilehome lot and the last rental rate charged for the lot under the immediately preceding rental agreement shall be the rent for purposes of determining the base rent under this chapter.

(Ord. 22284.)

17.22.390 Burden of proof.

The burden of proving that a mobilehome or mobilehome lot is not subject to this chapter shall be on the landlord.

(Ord. 22284.)

### Part 3.5 FIRM OFFER BASE RENT

17.22.400 Firm offer base rent for transfer of mobilehome.

A. Any mobilehome owner may request the landlord quote the base rent that would be charged for the rent or lease of the mobilehome lot immediately following the transfer of the mobilehome by the mobilehome owner where the mobilehome will remain on the mobilehome lot. The request shall be in writing.

B. Within five working days from the receipt of the request for a base rent quote, the landlord shall provide a written base rent quote to the mobilehome owner.

C. The base rent quote provided by the landlord shall be a firm offer of base rent that would be charged by the landlord for the rent or lease of the mobilehome lot upon the transfer of the mobilehome by the mobilehome owner in the case of any transfer where the mobilehome will remain on the mobilehome lot. Subject to subsection D. below, said firm offer shall remain in effect for not less than one hundred fifty days from the date the landlord gives such written notice to the mobilehome owner.

D. In the event the rent increase anniversary date for the mobilehome park falls within the one-hundred-fifty-day period of the firm offer, the firm offer base rent shall be adjusted by the rent increase permitted on the anniversary date under the provisions of this chapter. This adjusted amount shall be the "adjusted firm offer base rent."

E. Upon the transfer of the mobilehome, the transferee shall pay the firm offer base rent, or the adjusted firm offer base rent if applicable, as the rent for the mobilehome lot. The landlord shall not charge, demand or receive any rent in excess of the firm offer base rent, or the adjusted firm offer base rent if applicable, until the next anniversary date rent increase applicable to the park. Any increase of said base rent shall be in accordance with the provisions of this chapter.

F. If the one-hundred-fifty-day firm offer period expires before the transfer of the mobilehome, the mobilehome owner may request a new firm offer quote from the landlord in accordance with this section.

(Ord. 23294.)

### Part 4 ALLOWABLE RENT INCREASES

17.22.450 Rent increases allowable without review.

The following rent increases shall not be subject to review under the administrative hearing process set forth in Part 7 of this chapter:

A. Any rent increase which does not exceed the maximum annual percentage increase as applied to the then current base rent.

B. If the effective date of the last rent increase for the rental unit was more than twenty-four months prior to the effective date of the current rent increase, then a rent increase equal to the cumulative total of the maximum annual percentage increase for the current year and the previous year, as applied to the then current base rent.

C. Any rent increase immediately following the termination of the tenancy of the mobilehome owner by the landlord in accordance with the Mobilehome Residency Law, California Civil Code Sections 798.55 through 798.58 and Section 798.60, as amended.

D. Any rent increase immediately following a voluntary vacancy by the mobilehome owner.

1. A voluntary vacancy includes the following situations:

a. A vacancy occurring pursuant to a post-judgment settlement following the termination of the tenancy of the mobilehome owner by the landlord in accordance with the Mobilehome Residency Law, California Civil Code Sections 798.55 through 798.58 and Section 798.60, as amended.

b. An abandonment of the mobilehome as such term is defined in the Mobilehome Residency Law.

c. A dealer pullout as defined in Section 17.22.135.

2. The following situations shall not constitute a voluntary vacancy under this subsection D. and no rent increase shall be allowed:

a. A removal of the mobilehome from the lot for the purpose of performing rehabilitation or capital improvements to the lot or for the purpose of upgrading the mobilehome.

b. An in-place transfer of a mobilehome.

c. A repossession of a mobilehome as that term is defined in the Mobilehome Residency Law, Chapter 2.5 of Part 2 of Division 2 of the California Civil Code.

d. A transfer following the death of the mobilehome owner to an heir, joint tenant or personal representative of the decedent in accordance with the provisions of the Mobilehome Residency Law, Chapter 2.5 of Part 2 of Division 2 of the California Civil Code.

E. Any rent increase immediately following a vacancy by a mobilehome tenant under the following circumstances:

1. A vacancy occurring because the prior mobilehome tenant was evicted for nonpayment of rent; issuance by the tenant of checks drawn against insufficient funds or closed accounts; chronically late payment of rent; the tenant's commission of waste upon the mobilehome; the tenant's maintenance, commission or permitting of a nuisance on the premises; the tenant's use of the premises for an unlawful purpose; or other material violation of a reasonable provision of a written rental agreement; or

2. A voluntary vacation of the mobilehome by the prior tenant. A vacancy arising from the issuance of a termination notice pursuant to the California Civil Code, which notice does not state a reason that would legally entitle a landlord to evict a tenant on three days notice under Section 1161(2) through 1161(4) of the California Code of Civil Procedure shall not be deemed a voluntary vacancy for the purposes of this subsection E.

(Ords. 22020, 22053, 22284, 24257, 24400, 26792.)

17.22.452 Burden of proof regarding rent increases.

The burden of proving that a rent increase is not subject to review under this chapter shall be on the landlord.

(Ord. 24257.)

17.22.455 Required notice following allowable rent increases.

When a new rent is established following the vacancy of a rental unit the landlord shall give written notice to the new mobilehome owner or mobilehome tenant of the anniversary date for rent increases and shall give written notice to such owner or tenant that the rental unit may be subject to a rent increase on such anniversary date.

(Ord. 24257.)

17.22.460 Increases subject to hearing.

A. The rent increases permitted by Section 17.22.450 are presumed to be sufficient to account for any increased costs of operation and maintenance, debt service, capital improvements and/or rehabilitation incurred by a landlord and to permit the landlord to receive a fair and reasonable return. Any rent increase in excess of the amounts specified in Section 17.22.450 shall be subject to the administrative hearing process set forth in Part 7 of this chapter.

B. No rent increase in excess of the amounts specified in Section 17.22.450 shall become effective or be collected by the landlord until such time as the excess is approved by an administrative hearing officer.

(Ords. 22020, 22053, 22284.)

17.22.470 Fair return rent increases.

A. It is expected that a rent increase pursuant to Section 17.22.450 will provide the landlord with a fair and reasonable return. However, in the event a rent increase in the amounts specified in Section 17.22.450 does not provide the landlord with a fair and reasonable return, the landlord may request an increase in excess of said amounts by filing a petition in accordance with the provisions of Part 6 of this chapter.

B. In the case of a rent increase in conjunction with the consolidation of rent increase anniversary dates as required or permitted by Section 17.22.670, the administrative hearing officer shall approve rent increases as set forth in Section 17.22.680. if the administrative hearing officer makes the following findings:

1. The landlord filed a timely petition requesting such rent increases;

2. The landlord submitted the statements required by Section 17.22.700.D.;

3. The proposed rent increases are in the percentage amounts set forth in Section 17.22.680; and

4. The landlord has demonstrated to the satisfaction of the administrative hearing officer the number of months since the last rent increase for each rental unit subject to the proposed rent increases.

C. In all cases where the rent increase is not in conjunction with the consolidation of rent increase anniversary dates and in all cases where the consolidated rent increase is in excess of the amounts set forth in Section 17.22.680, the administrative hearing officer's determination of the rent increase necessary to provide the landlord with a fair and reasonable return shall be made in accordance with the standards set forth in this part.

(Ords. 22020, 22053, 22284, 22470.)

17.22.480 Presumption of fair base year net operating income.

For the purposes of determining the rent increase necessary to provide the landlord with a fair and reasonable return, it shall be presumed that the net operating income, as described in this part, received by the landlord in the base year, provided the landlord with a fair and reasonable return.

(Ord. 22284.)

17.22.490 Base year.

A. Except as provided in subsection B. of this section, base year means the 1985 calendar year.

B. For rental units which were exempt from the provisions of this chapter pursuant to a rental agreement as described in Section 17.22.370 and which are subject to the provisions of this chapter because of the expiration or other termination of such rental agreement, base year means the last twelve months of the term of the rental agreement.

(Ord. 22284.)

17.22.495 Lost or missing base year records.

Notwithstanding any provision of Chapter 17.22 of Title 17 of this Code, in instances in which the exact information regarding base year income and expenses is not available for the mobilehome park which is the subject of the hearing, the hearing officer shall have the discretion to consider all other information available to estimate the 1985 net operating income for the mobilehome park.

A. Such information may include, but shall not be limited to the following:

1. Information from tax returns, bank statements, annual reports or other financial data.

2. Information from the files of the rental rights and referrals program regarding the mobilehome park which is the subject of the hearing, including but not limited to previously issued rental mediation and arbitration decisions.

3. Such other information which may be available.

B. In making an estimation under this section, the hearing officer may make reasonable inference and assumptions about the existing data as are necessary to project what the actual amount was.

C. The hearing officer shall consider the comments form all parties to the hearing regarding the accuracy of the data used and the methodology in arriving at the estimated data.

D. In determining the burden of proving the reasonableness of the rent increase under Section 17.22.820, the hearing officer may consider the circumstances under which missing data became unavailable as well as the credibility of testimony from all parties.

(Ords. 25996, 26792.)

17.22.500 Determination of base year net operating income.

The base year net operating income shall be determined by subtracting the actual operating expenses for the base year from the gross income realized during the base year.

(Ord. 22284.)

17.22.510 Rebuttal of fair net operating income presumption.

The landlord or any mobilehome resident who is a party to the administrative hearing may present evidence to rebut the presumption of fair and reasonable return based upon the base year net operating income as set forth in Section 17.22.480 and the administrative hearing officer may adjust said net operating income accordingly if the administrative hearing officer makes at least one of the following findings:

A. The landlord's operating expenses in the base year were unusually high or low in comparison to other years. In such instances, adjustments may be made in calculating operating expenses so the base year operating expenses reflect average expenses for the property over a reasonable period of time. The administrative hearing officer shall consider the following factors in making this finding:

1. Extraordinary amounts were expended for necessary maintenance and repairs.

2. Maintenance and repair was below accepted standards so as to cause significant deterioration in the quality of services provided.

3. Other expenses were unreasonably high or low notwithstanding the application of prudent business practices.

4. Costs of debt service paid during the base year, where the proceeds of the debt were used for capital improvements or rehabilitation in the mobilehome park, do not reflect increases in interest payments resulting from either:

a. Refinancing of the outstanding principal where such refinancing is mandated by the terms of the financing transaction; or

b. Increased interest costs incurred as a result of a variable interest rate loan.

B. The gross income during the base year was disproportionate. In such instances, adjustments may be made in calculating gross income consistent with the purposes of this chapter. The administrative hearing officer shall consider the following factors in making this finding:

1. The gross income during the base year was lower than it might have been because some residents were charged reduced rent.

2. The gross income during the base year was significantly lower than normal because of the destruction of the premises and/or temporary eviction for construction or repairs.

(Ords. 22284, 22802.)

17.22.520 Determination of current net operating income.

The net operating income as of the date of filing a petition requesting an increase in excess of the amounts specified in Section 17.22.450 shall be determined by:

A. Annualizing the rents in effect as of the date of filing to determine the annualized gross income.

B. Determining the operating expenses during the immediately preceding calendar or fiscal year.

C. Subtracting the operating expenses determined pursuant to subsection B. from the annualized gross income.

(Ord. 22284.)

17.22.530 Calculation of gross income.

A. For the purposes of determining the net operating income, gross income shall be the sum of the following:

1. Gross rents calculated as gross rental income at one hundred percent occupancy, adjusted for uncollected rents as provided in subsection B. of this section;

2. Income from laundry facilities and garage or parking fees;

3. Costs of utilities paid directly to the landlord by the mobilehome owners or mobilehome tenants; and

4. All other income or consideration received or receivable in connection with the use or occupancy of the rental unit.

B. Gross rents shall be adjusted for uncollected rents due to vacancy and bad debts to the extent such are beyond the control of the landlord. No such adjustment shall be greater than three percent of gross rents unless justification for a higher rate is demonstrated by the landlord.

(Ord. 22284.)

17.22.540 Calculation of operating expenses.

A. For the purposes of determining net operating income, operating expenses shall include the following:

1. Costs of operation and maintenance.

2. Utility costs to the extent they are not included in costs of operating and maintenance.

3. Landlord-performed labor compensated at reasonable hourly rates.

a. No landlord-performed labor shall be included as an operating expense unless the landlord submits documentation showing the date, time, and nature of the work performed.

b. There shall be a maximum allowed under this provision of five percent of gross income unless the landlord shows greater services were performed for the benefit of the residents.

4. License and registration fees required by law to the extent such are not otherwise paid by the residents.

5. Costs of capital improvements where all of the following conditions are met:

a. The capital improvement is made at a direct cost of not less than one hundred dollars per affected rental unit or at a total direct cost of not less than five thousand dollars, whichever is lower.

b. The costs, less any insurance proceeds or other applicable recovery, are averaged on a per unit basis for each rental unit actually benefitted by the improvement.

c. The costs are amortized over a period of not less than sixty months.

d. The costs do not include any additional costs incurred for property damage or deterioration resulting from any unreasonable delay in the undertaking or completion of any repair or improvement.

e. The costs do not include costs incurred to bring the rental unit into compliance with a provision of the San José Municipal Code or state law where the rental unit has not been in compliance from the time of its original construction or installation and such provision was in effect at the time of such construction or installation.

f. At the end of the amortization period, the allowable monthly rent is decreased by any amount it was increased because of the application of this provision.

6. Costs of rehabilitation, where all of the following conditions are met:

a. The costs, less any insurance proceeds or other applicable recovery, are averaged on a per unit basis for each rental unit actually benefitted by the rehabilitation.

b. The costs are amortized over a period of not less than thirty-six months.

c. The costs do not include any additional costs incurred for property damage or deterioration resulting from any unreasonable delay in the undertaking or completion of any repair or improvement.

d. The costs do not include costs incurred to bring the rental unit into compliance with a provision of the San José Municipal Code or state law where the rental unit has not been in compliance from the time of its original construction or installation and such provision was in effect at the time of such construction or installation. The costs may include costs incurred to maintain code compliance.

e. At the end of the amortization period, the allowable monthly rent is decreased by any amount it was increased because of the application of this provision.

7. Legal expenses limited to attorneys' fees and costs incurred in connection with successful good faith attempts to recover rents owing, successful good faith unlawful detainer actions not in derogation of applicable law, and legal expenses necessarily incurred in dealings with respect to the normal operation of the park to the extent such expenses are not recovered from adverse or other parties, subject to the following requirements:

a. Allowable legal expenses which are of a nature that recurs annually shall be considered as elements of operating expenses.

b. Allowable legal expenses which are not of a nature that recurs annually shall be amortized over a reasonable period of time and at the end of the amortization period, the allowable monthly rent shall be decreased by any amount it was increased because of the application of this provision.

B. Operating expenses shall not include the following:

1. Mortgage principal or interest payments or other debt service costs.

2. Any penalties, fees or interest assessed or awarded for violation of any provision of this chapter or of any other provision of law.

3. Legal expenses, including attorneys' fees and costs, incurred in relation to administrative or judicial proceedings in connection with this chapter and legal expenses, where the pass-through of the expenses would constitute a violation of public policy.

4. Political contributions.

5. Depreciation of the rental unit or rental units.

6. Any expenses for which the landlord has been reimbursed by any utility rebate or discount, security deposit, insurance settlement, judgment for damages, settlement or any other method or device.

(Ords. 22284, 25017.)

17.22.550 Fair and reasonable return.

A. A fair and reasonable return is that amount required for the landlord to maintain the base year net operating income adjusted for inflation.

B. The adjustment for inflation shall be that amount required for the base year net operating income to be increased annually by a percentage of the Consumer Price Index. The applicable percentage of the Consumer Price Index shall be set in accordance with Section 17.22.570.

C. The increase in the consumer price index shall be the increase from the filing date of the last landlord petition to the filing date of the current landlord petition. For the first net operating income adjustment, the increase in the Consumer Price Index shall be the increase from the effective date of the last rent increase to the filing date of the current landlord petition.

(Ord. 22284.)

17.22.570 Applicable percentage of Consumer Price Index.

A. The city rental rights and referrals program shall set the percentage of the Consumer Price Index to be used in the adjustment for inflation described in Section 17.22.550. Said percentage shall be set annually before November 1 of each year.

B. The inflation adjustment percentage of the Consumer Price Index shall be eighty-five percent.

C. The inflation adjustment percentage shall apply to all rent increases which become effective on or after the first day of January immediately following the determination.

(Ords. 22284, 24666, 26792.)

17.22.580 Determination of allowable rent increase.

A. The administrative hearing officer shall set the rent increase in the amount required to provide the landlord with a fair and reasonable return.

B. In determining the rent increase required to provide the landlord with a fair and reasonable return, the administrative hearing officer shall determine:

1. The fair and reasonable return in accordance with Section 17.22.550.

2. The gross income required to produce the fair and reasonable return.

3. The rent increase needed to produce the required gross income.

C. Rent increases based upon costs of capital improvements and/or costs of rehabilitation shall apply only to those rental units benefitted by the capital improvements and/or rehabilitation.

D. Rent increases based upon increased operating expenses shall apply only to those rental units for which such increased operating expenses were incurred.

(Ord. 22284.)

17.22.590 Service reductions.

A. If the administrative hearing officer finds that service reductions have occurred, the administrative hearing officer shall determine the value of the service reductions and shall offset the allowable rent increase by the value of the service reductions. Service reductions which affect all rental units subject to the proposed rent increase shall be prorated over all such rental units, regardless of the number of residents claiming such service reductions.

B. In determining the value of any service reductions, the administrative hearing officer shall consider the following factors:

1. The area affected by the service reduction.

2. The length of time the resident has been subjected to the service reduction.

3. The degree of discomfort the service reduction imposes on the resident.

4. The extent to which the service reduction causes the rental unit or rental units to be uninhabitable.

5. The extent to which the service reduction causes a material reduction in the usability of the rental unit.

6. Other similar factors deemed relevant by the administrative hearing officer.

(Ord. 22284.)

### Part 4.5 INTERIM REGULATION OF RENT INCREASES UPON IN-PLACE TRANSFERS OF MOBILEHOMES

17.22.600 Reasonable interim rent increases.

Upon an in-place transfer of a mobilehome, the landlord may increase the rent by an amount which does not exceed eight percent of the then current base rent without being subject to further provisions of this part.

(Ord. 23914.)

17.22.610 Excessive interim rent increases.

If a landlord increases the rent upon an in-place transfer of a mobilehome by an amount in excess of eight percent of the then current base rent, then the entirety of such increase shall be deemed to be an "excessive interim rent increase" and shall be subject to the following provisions of this part.

(Ord. 23914.)

17.22.611 Notice of transfer.

A. No later than thirty days after the landlord enters into a rental agreement which includes a rent increase subject to Section 17.22.610, the landlord shall file a notice of transfer with the rental rights and referrals program and shall mail a copy to the new owner. In addition, the landlord shall include a blank notice of correction form with the copy of the notice of transfer. The notice of transfer shall be in the format available from the rental rights and referrals program and shall be signed under penalty of perjury by the person filing the notice of transfer. The notice shall contain the following information:

1. The name and address of the mobilehome park owner;

2. The name of the mobilehome park;

3. The number of the lot or space on which the mobilehome is located;

4. The name and address of the transferor of the mobilehome;

5. The name and address of the transferee of the mobilehome;

6. The date of transfer;

7. The rent charged prior to transfer;

8. The rent charged following the transfer;

9. The name and address of the person who signed the notice;

10. The anniversary date for rent increases; and

11. A statement that, if the mobilehome owner disagrees with any of the information contained in the notice, the mobilehome owner has thirty days within which to fill out a notice of correction and file it with the rental rights and referrals program.

B. No later than thirty days after the landlord mails a copy of the notice of transfer to the mobilehome owner, the mobilehome owner may file a notice of correction with the rental rights and referrals program and shall mail a copy to the landlord. The notice of correction shall be in the format available from the rental rights and referrals program and shall be signed under penalty of perjury by the person filing the notice of correction. The notice shall contain the following information:

1. The name and address of the mobilehome park owner;

2. The name of the mobilehome park;

3. The number of the lot or space on which the mobilehome is located;

4. The name and address of the transferor of the mobilehome;

5. The name and address of the transferee of the mobilehome;

6. The date of transfer;

7. The rent charged prior to transfer;

8. The rent charged following the transfer;

9. The name and address of the person who signed the notice; and

10. A copy of the notice of transfer to which the notice of correction refers.

(Ords. 23914, 26792.)

17.22.612 Adjusted base rent.

A. Following the adoption of a resolution by the city council terminating the suspension of Section 17.22.381, the rent charged for each mobilehome lot which has been subject to an excessive interim rent increase shall be adjusted in accordance with the provisions of subsection B. The adjusted amount shall be referred to as the "adjusted base rent."

B. The adjusted base rent shall be the amount equal to the sum of the following:

1. The pretransfer base rent, which shall be the base rent in effect on the date immediately prior to the date of first rent increase subject to the provisions of Section 17.22.610; plus

2. Any anniversary date increases actually imposed thereafter, calculated by applying any such percentage increase to the pretransfer base rent as if there had been no increases subject to Section 17.22.610.

(Ord. 23914.)

17.22.613 Rebate of excessive interim rent increases.

A. The excessive rent rebate shall be equal to the difference between the total amount of rent actually paid subsequent to the first in-place transfer subject to Section 17.22.610, and the maximum amount of rent that would have been permitted under this chapter had Section 17.22.381 been in effect at the time of the in-place transfer.

B. The monthly installments shall be determined by dividing such excessive rent rebate by the number of months that an excessive interim rent was in effect.

(Ord. 23914.)

17.22.614 Adjusted monthly rent.

The adjusted base rent shall be reduced by a credit in the amount of the monthly installment of the excessive rent rebate. This amount shall be known as the "adjusted monthly rent."

(Ord. 23914.)

17.22.615 Notification of adjusted rent.

A. Unless the landlord has filed a petition for fair return hearing in accordance with the provisions of Section 17.22.617, the landlord shall provide written notice of rent adjustment to the mobilehome owner and file a copy of the notice with the rental rights and referrals program within thirty days of the adoption of a resolution by the city council terminating the suspension of Section 17.22.381.

B. The notice shall be in the format available from the rental rights and referrals program and shall contain the following:

1. The dollar amount of the adjusted base rent;

2. The dollar amount of the monthly rebate of excessive rent increase;

3. The dollar amount of the adjusted monthly rent;

4. The number of months the rebate will be in effect;

5. The effective date of all anniversary date increases imposed since the transfer and the percentage increase and amount of each such increase;

6. A demonstration of the calculation of each of the amounts specified in the notice;

7. A statement of the date on which the adjusted base rent and rebate will be effective as that date is set forth on the resolution terminating the suspension of Section 17.22.381, unless a request for administrative calculation is made;

8. The address and telephone number of the rental rights and referrals program and a statement that information concerning the law regarding rent increases is available from the rental rights and referrals program; and

9. A statement that the mobilehome owner has ten days from the receipt of the notice within which to contest the amount of the adjusted base rent, excessive rent rebate, rebate period, or adjusted monthly rent by filing a request for an administrative calculation with the rental rights and referrals program.

(Ords. 23914, 26792.)

17.22.616 Administrative calculation of rent.

A. Within ten days following the receipt of the notice of rent adjustment, the mobilehome owner may file a written request for an administrative calculation with the rental rights and referrals program.

B. In the event the mobilehome owner does not receive a timely notice of rent adjustment, the mobilehome owner may file a written request for an administrative calculation with the rental rights and referrals program within one year of the date of adoption of the resolution by the city council pursuant to Section 17.22.630.

C. Following receipt of a request for an administrative calculation, an administrative hearing officer shall make a determination in accordance with the following provisions:

1. In the event the landlord has filed a notice of transfer with the rental rights and referrals program and the mobilehome owner did not file a notice of correction within the time provided for in Section 17.22.611, the administrative hearing officer shall, without a hearing, make an order of administrative calculation of rent based upon the information contained in the notice of transfer on file with the rental rights and referrals program.

2. In the event the mobilehome owner filed a notice of correction in accordance with the provisions of Section 17.22.611, the landlord shall file copies of records demonstrating the amount of rent immediately prior to and following the in-place transfer and the mobilehome owner may present evidence of the amount of the pretransfer rent. The administrative hearing officer, following a hearing on such evidence, shall make an order of administrative calculation of rent based upon the evidence presented.

3. In the event no notice of transfer was filed, the administrative hearing officer shall conduct an evidentiary hearing to determine the adjusted base rent.

D. The administrative hearing officer shall issue a written order of administrative calculation of rent setting forth the following determinations:

1. The dollar amount of the adjusted base rent;

2. The dollar amount of the monthly rebate of excessive rent increase;

3. The number of months that the rebate is to be in effect;

4. The date of the order;

5. A statement that the adjusted base rent and the rebate will be effective on the thirty-fifth day following the date of the order; and

6. Where applicable pursuant to the provisions of Section 17.22.618, the cost of the hearing.

E. The administrative hearing officer shall mail each party a copy of the order in the manner set forth in Section 17.22.618.

(Ords. 23914, 26792.)

17.22.617 Fair return hearing.

A. If the landlord contends that the implementation of the adjusted base rent or the rebate, or both, results in the landlord's receiving less than a fair and reasonable return, the landlord may file a petition with the rental rights and referrals program for a hearing to determine a fair and reasonable return.

B. A petition for a determination of a fair and reasonable return shall be filed in writing in the format available at the rental rights and referrals program not less than thirty days after the adoption of a resolution by the city council pursuant to Section 17.22.620.A. The petition shall contain the facts upon which the landlord relies to claim that a fair and reasonable return will not be received and shall contain the following additional information:

1. The name and address of the mobilehome park owner;

2. The name of the mobilehome park;

3. For each mobilehome with an increase subject to the provisions of Section 17.22.610:

a. The number of the lot or space on which the mobilehome is located;

b. The name and address of the transferor of the mobilehome;

c. The name and address of the transferee of the mobilehome;

d. The date of transfer;

e. The rent charged prior to transfer; and

f. The rent charged following the transfer;

g. The dollar amount of the adjusted base rent;

h. The dollar amount of the monthly rebate of excessive rent increase;

i. The number of months that the rebate is to be in effect; and

4. The name and address of the person who signed the notice.

C. The landlord shall mail a copy of the petition to all mobilehome owners whose rents are the subject of the petition. The petition shall contain a proof of service that a copy of the petition was mailed to all such mobilehome owners.

D. The landlord shall bear the burden of proving by a preponderance of the evidence at the hearing that because of the rent adjustment or the rebate, or both, the landlord is unable to obtain a fair and reasonable return.

E. If the administrative hearing officer finds that the rent adjustment or the rebate, or both, would deprive the landlord of a fair and reasonable return, the administrative hearing officer shall make one or both of the following orders:

1. That the effective date of rent adjustment be deferred until the next anniversary date;

2. That the excessive rent increase be rebated in lower monthly installments and over a longer period of time than that provided for in Section 17.22.613.

(Ords. 23914, 26792.)

17.22.618 Fees.

In addition to the administrative fees imposed pursuant to Section 17.22.900:

A. If the administrative hearing officer determines that the information on the notice of transfer filed by the landlord is inaccurate or that the landlord failed to file a notice of transfer, the administrative hearing officer shall further order that the landlord pay to the city the amount necessary to reimburse the city for the full cost of the administrative hearing, including all charges of the administrative hearing officer.

B. If the landlord requests a hearing pursuant to Section 17.22.617, the administrative hearing officer shall further order that the landlord pay to the city the amount necessary to reimburse the city for the full cost of the administrative hearing, including all charges of the administrative hearing officer. The landlord shall accompany any petition for a fair return hearing pursuant to section 17.22.617 with a deposit as set forth in the schedule of fees adopted by resolution of the city council.

(Ord. 23914.)

17.22.620 Effective date of adjusted monthly rent.

A. If no request for administrative calculation or petition for a fair return hearing has been filed in accordance with the provisions of this part, the adjusted monthly rent shall be effective on the sixtieth day following the adoption of a resolution terminating the suspension of Section 17.22.381.

B. In the event a request for an administrative calculation or a petition for a fair return hearing has been filed in accordance with the provisions of this part, the adjusted monthly base rent shall become effective on the thirty-fifth day following the mailing by first class mail, postage prepaid, of the order of the administrative hearing officer unless the administrative hearing officer determines in the order that another date shall be the effective date.

C. After the adjusted monthly rent becomes effective pursuant to this section, unless the effectiveness of any adjustment in rent is stayed by a court of competent jurisdiction, no mobilehome owner shall be required to pay any rent greater than the adjusted base rent as reduced by the credit of any applicable monthly installment of excessive rent rebate and as further adjusted by any anniversary date increases.

(Ord. 23914.)

17.22.625 General interim provisions.

A. Increases which are imposed upon transfer of a mobilehome by the mobilehome owner where the mobilehome remains on the mobilehome lot shall be subject to review exclusively under this part and shall not be subject to review under the administrative hearing process set forth in Part 7 of this chapter.

B. Except as provided in subsection C. below, anniversary date rent increases which occur during the effectiveness of this part are not subject to the limitations in this part but remain subject to the other provisions of this chapter.

C. In hearings to determine an allowable rent increase pursuant to Part 4 of this chapter, the administrative hearing officer shall:

1. During any period in which an excessive interim rent increase is charged: include the excessive interim rent in the calculation of the landlord's gross income and apply the same dollar amount rent increase to all affected mobilehome spaces.

2. During the rebate period: deduct the amount of the rebate from the calculation of the landlord's gross income and apply the same dollar amount of increase to all affected spaces without reference to the amount of any rebate.

D. In the event a landlord files a petition pursuant to Part 6 of this chapter, all hearings pursuant to this part shall be consolidated with any Part 6 hearing regarding the same mobilehome park.

(Ord. 23914.)

17.22.630 Application of interim regulation.

The provisions of this part shall apply only to in-place transfers of mobilehomes which were completed between October 25, 1991, and April 7, 1992.

(Ords. 23914, 24257.)

### Part 5 RENT INCREASE LIMITATIONS

17.22.650 Frequency of rent increases.

Except as otherwise provided in this chapter, the rent of any rental unit may not be increased more than once in any twelve-month period.

(Ords. 22020, 22053, 22284.)

17.22.660 Notice of rent increase.

A. Whenever a landlord serves notice to a mobilehome owner or mobilehome tenant of a proposed rent increase which exceeds the amounts specified in Section 17.22.450, said notice shall include all of the following information:

1. The name of the mobilehome owner or mobilehome tenant occupying the rental unit which is the subject of the rent increase;

2. The mobilehome lot number or the mobilehome space number where the rental unit is located;

3. Notice that under the provisions of this chapter, the landlord is required to file a petition requesting a rent increase in excess of the amounts specified in Section 17.22.450;

4. Notice of the date the petition requesting a rent increase in excess of the amounts specified in Section 17.22.450 was filed with the city rental rights and referrals program;

5. Notice that the portion of the rent increase in excess of the amounts specified in Section 17.22.450 will not take effect until approved by an administrative hearing officer and a statement of the rent that will be in effect until such approval;

6. The current address and telephone number of the city rental rights and referrals program offices;

7. Notice that documentation supporting the proposed rent increase is on file with the city rental rights and referrals program and in the mobilehome park office;

8. The name and current address of the landlord to whom notices are to be sent; and

9. A statement of the proposed rent increase expressed both as an actual dollar amount and as a percentage of the then current base rent.

B. The notice shall be given to the mobilehome owners and mobilehome tenants within five working days from the date the landlord's petition requesting the increase is filed with the city rental rights and referrals program.

C. A copy of the notice shall be filed with the city rental rights and referrals program within five working days of service of the notice on the mobilehome owners or mobilehome tenants together with an affidavit of proof of service on such owners or tenants.

D. No rent increase in excess of the amounts specified in Section 17.22.450 shall be effective unless notice is given in accordance with the provisions of this section and such excess is approved by an administrative hearing officer.

(Ords. 22020, 22053, 22284, 26792.)

17.22.670 Consolidation of anniversary dates.

A. In order to facilitate the efficient operation of the administrative hearing process, anniversary dates for rent increases within a mobilehome park shall be consolidated as follows:

1. For the calendar years 1987 and 1988, there shall be no more than two anniversary dates for rent increases within a single mobilehome park.

2. For the calendar year beginning 1989, there shall be no more than one anniversary date for rent increases within a single mobilehome park.

3. Whenever a rent increase is proposed for a rental unit which was subject to a new rent pursuant to Section 17.22.380 less than twelve months prior to the consolidated anniversary date, such rent increase shall be subject to the provisions of Section 17.22.470.

B. This section shall not apply to anniversary dates of rent increases in connection with the rent or lease of a mobilehome owned by a person who is not the resident of the mobilehome. However, nothing herein shall preclude consolidation of anniversary dates for rent increases for the rent or lease of such mobilehome.

(Ords. 22284, 22470.)

### Part 6 LANDLORD RENT PETITION

17.22.700 Petition by landlord.

A. Any landlord whose rental unit is subject to this chapter and who seeks to increase the rent of such rental unit by an amount in excess of the amounts specified in Section 17.22.450 shall file a petition requesting such rent increase with the city rental rights and referrals program.

B. Such petition shall be on a form prescribed by the commission and shall include:

1. A list of the names and addresses of all mobilehome owners and mobilehome tenants subject to the rent increase; and

2. A statement of the date the rent increase is proposed to be effective.

C. The petition shall be accompanied by a copy of any and all documentation upon which the landlord relied in determining the proposed rent increase. Such documentation shall, at a minimum, include but shall not be limited to:

1. A statement of the gross income described in Section 17.22.530, and documentation supporting such statement;

2. A statement of the operating expenses described in Section 17.22.540 incurred during the calendar or fiscal year immediately preceding the filing of the petition, and documentation supporting such statement;

3. A statement of the base year net operating income and the current net operating income calculated in accordance with Part 4 of this chapter; and

4. A statement of the fair and reasonable return calculated in accordance with Section 17.22.550.

D. In the case of a petition seeking a rent increase in conjunction with the consolidation of anniversary dates as provided in section 17.22.680, instead of the documentation required by subsection C. above, the petition shall be accompanied by a statement listing the date of the last rent increase for each mobilehome owner and each mobilehome tenant subject to the proposed rent increase and a statement setting forth the proposed rent increase for each such mobilehome owner and mobilehome tenant.

E. The documentation required by this section shall be available for inspection and copying by any mobilehome owner or mobilehome tenant whose rent increase is the subject of a timely filed petition, or by such owner's or tenant's representative, at the city rental rights and referrals program during the normal business hours of the city rental rights and referrals program. A copy of such documentation shall be maintained at the mobilehome park office and shall be available for inspection during the normal business hours of such office.

F. If the landlord fails to submit any of the documentation required by this section, the administrative hearing officer may order production of such documentation. Failure by the landlord to submit the documentation ordered by the administrative hearing officer shall be grounds for the administrative hearing officer to find that a rent increase in the amounts specified in Section 17.22.450 will provide the landlord with a fair and reasonable return.

(Ords. 22020, 22053, 22284, 22470, 26792.)

17.22.710 Time for petition.

A. A landlord's petition requesting a rent increase in excess of the amounts specified in section 17.22.450 shall be filed at least ninety-five calendar days, but not more than one hundred twenty calendar days, prior to the effective date of the proposed rent increase.

B. The notice of the rent increase shall be given by the landlord to the affected mobilehome owners or mobilehome tenants within five working days of the date the petition is filed.

(Ords. 22284, 24666.)

17.22.720 Effect of failure to file timely petition.

If a landlord fails to file a petition requesting a rent increase in excess of the amounts specified in Section 17.22.450 or if a landlord fails to file the petition within the time set forth in Section 17.22.710, that portion of the proposed increase which is in excess of the amounts specified in Section 17.22.450 of the then current base rent shall not take effect or be collected by the landlord.

(Ords. 22284, 24400.)

### Part 7 ADMINISTRATIVE HEARING

17.22.750 Purpose of administrative hearing.

The purpose of the administrative hearing is to make a determination of the allowable rent increase pursuant to this chapter.

(Ord. 22284.)

17.22.760 Time of hearing.

A. The administrative hearing officer shall conduct an administrative hearing on the petition within sixty calendar days of the date the landlord's petition is filed.

B. The administrative hearing may be scheduled during the normal business hours of the city rental rights and referrals program unless a party requests that the hearing be scheduled during the evening.

C. The administrative hearing may be held at the mobilehome park with the consent of the mobilehome park landlord, or at such other place as the city rental rights and referrals program may designate.

(Ords. 22020, 22053, 22284, 26792.)

17.22.770 Notice of hearing.

A. Written notice of the time, date and place of the administrative hearing and of the name of the administrative hearing officer assigned to hear the petition shall be given by the city rental rights and referrals program to the landlord and to all affected mobilehome owners and mobilehome tenants within ten working days of receipt of the landlord's petition requesting a rent increase in excess of the amounts specified in Section 17.22.450.

B. Such notice shall be personally served on the parties or shall be sent by first class mail, with a proof of service affidavit.

C. The notice of hearing shall specify the date by which any documentation the mobilehome owners or mobilehome tenants wish to introduce at the administrative hearing must be filed with the city rental rights and referrals program. Said date shall not be more than thirty calendar days from the date such notice is personally served or mailed by the city rental rights and referrals program.

(Ords. 22020, 22053, 22284, 26792.)

17.22.780 Submission of documents.

A. The mobilehome owners or mobilehome tenants shall submit to the city rental rights and referrals program and to the landlord a copy of all written documentation, including any allegations of service reductions which the owners or tenants wish to present at the hearing within the time specified in the notice described in Section 17.22.770.

B. Either party may request that additional specific supporting documentation be provided to substantiate the claims made by the other party. The request shall be presented in writing to the administrative hearing officer.

C. The administrative hearing officer may order production of such requested documentation, except documentation required by Section 17.22.700, as the administrative hearing officer determines is relevant to the proceedings. The requested documentation shall be submitted to the city rental rights and referrals program and shall be available to the requesting party for inspection and copying during the normal business hours of the city rental rights and referrals program.

D. A copy of all documentation required by this section shall be maintained at the mobilehome park office and shall be available for inspection during the normal business hours of such office.

E. The failure of a party to produce documentation ordered by the administrative hearing officer shall be grounds for the administrative hearing officer to find that such party has not met its burden of proof with respect to the matters to which such documentation pertains.

(Ords. 22284, 22802, 26792.)

17.22.785 Prehearing conferences.

A. At the request of the administrative hearing officer, the rental rights and referrals program may schedule a prehearing conference to be held prior to the commencement of a hearing where proposed rent increases are based on the net operating income standard set forth in Part 4 of this chapter. Any such prehearing conference shall be held no earlier than ten calendar days after the date mobilehome owners and mobilehome tenants must file documentation to be introduced at the administrative hearing, as specified in the notice described in Section 17.22.770.

B. The purpose of the prehearing conference shall be for the parties and the administrative hearing officer to review the documentation to be presented at the administrative hearing, for the administrative hearing officer to determine an agenda for the administrative hearing, and for the parties to have an opportunity to stipulate to uncontested matters, if any.

C. In the event the administrative hearing officer desires that a prehearing conference be scheduled, the administrative hearing officer shall so notify the rental rights and referrals program. If the rental rights and referrals program schedules a prehearing conference, the rental rights and referrals program shall give written notice to the landlord and all affected mobilehome owners and mobile home tenants of the time, date and place of the prehearing conference not less than five calendar days prior to the date of the prehearing conference.

D. Any procedural determinations made at the prehearing conference by the administrative hearing officer regarding the conduct of the administrative hearing shall be binding on all parties to the hearing.

(Ords. 23102, 26792.)

17.22.790 Conduct of hearing.

A. The hearing shall be conducted by the administrative hearing officer in accordance with such rules and regulations as may be promulgated by the city council.

B. The administrative hearing officer shall have the power and authority to require and administer oaths or affirmations where appropriate, and to take and hear evidence concerning any matter pending before the administrative hearing officer.

C. The rules of evidence generally applicable in the courts shall not be binding on the administrative hearing officer. Hearsay evidence and any and all other evidence which the administrative hearing officer deems relevant and proper may be admitted and considered.

D. Any party or such party's representative, designated in writing by the party, may appear at the hearing to offer such documents, oral testimony, written declaration or other evidence as may be relevant to the proceedings.

E. The administrative hearing officer may grant or order not more than two continuances of the hearing for not more than ten working days each. Additional continuances may be granted only if all parties stipulate in writing. Such continuances may be granted or ordered at the administrative hearing without further written notice to the parties.

F. A tape recording of the proceedings shall be made by the administrative hearing officer or the city rental rights and referrals program and shall be maintained by the city rental rights and referrals program.

(Ords. 22020, 22053, 22284, 26792.)

17.22.800 Representation of parties.

A. The parties in any administrative hearing are entitled and encouraged to be represented at the hearings by a person of the party's choosing. The representative need not be an attorney.

B. Written designation of representatives shall be filed with the city rental rights and referrals program.

C. The written designation of representative shall include a statement that the representative is authorized to bind the party to any stipulation, decision or other action taken at the administrative hearing.

(Ords. 22284, 26792.)

17.22.810 Hearing - Findings and determination.

A. The administrative hearing officer shall, within fifteen working days of the close of the hearing, submit to the city rental rights and referrals program a written statement of decision, together with written findings of fact upon which such decision is based.

B. The administrative hearing officer's decision shall include a determination in accordance with the provisions of this chapter of the amount of the rent increase, if any, which is required to provide the landlord with a fair and reasonable return.

C. The administrative hearing officer's allowance or disallowance of any proposed rent increase or portion thereof may be reasonably conditioned in any manner necessary to effectuate the purposes of this chapter.

D. The city rental rights and referrals program shall forthwith mail copies of the decision to the landlord and all affected mobilehome owners and mobilehome tenants.

(Ords. 22020, 22053, 22284, 26792.)

17.22.815 Duty to keep 1985 records.

A. All mobilehome park owners who own rental units which are subject to the provisions of Chapter 17.22 of this Code are hereby put on notice that they are required to keep all financial records for 1985 which may be necessary for making a net operating income determination and that failure to do so may result in the loss of the ability to obtain a rent increase in excess of the annual rent increase authorized under Section 17.22.450.

B. This section is intended to be merely a restatement of previously existing obligations under Chapter 17.22.

(Ord. 25996.)

17.22.820 Burden of proof.

A. The burden of proving the reasonableness of the rent increase shall be on the landlord.

B. The burden of proving service reductions shall be on the mobilehome owner or mobilehome tenant alleging that service reductions have occurred.

(Ord. 22284.)

17.22.830 Attendance of mobilehome owner or tenant.

A. The administrative hearing officer's decision shall apply to all mobilehome owners or mobilehome tenants subject to the proposed rent increase regardless of whether such owner or tenant was present or represented at the administrative hearing.

B. The administrative hearing officer's decision regarding service reductions shall apply to all mobilehome owners and mobilehome tenants who are subject to the proposed rent increase and are affected by the service reduction.

(Ords. 22284, 222802.)

17.22.840 Decision final.

Except as provided in Section 17.22.850, the decision of the administrative hearing officer shall be final and binding on the landlord and all mobilehome owners and mobilehome tenants who are parties to the hearing either personally or through their designated representatives.

(Ords. 22020, 22053, 22284.)

17.22.850 Mathematic or clerical inaccuracies.

Any party alleging that the administrative hearing officer's statement of decision contains mathematic or clerical inaccuracies may so notify the city rental rights and referrals program within fifteen calendar days of the mailing of the decision by the city rental rights and referrals program. The city rental rights and referrals program shall forthwith refer such allegations to the administrative hearing officer, who shall review the decision, make any corrections warranted, and refile the statement of decision within five working days of referral by the city rental rights and referrals program. Upon refiling of the statement, the decision shall be final and binding on the parties.

(Ords. 22284, 26792.)

### Part 8 FEES

17.22.900 Imposition of fee.

A rent dispute fee is hereby imposed upon each rental unit which is subject to the provisions of this chapter. Said fee is imposed for the purpose of reimbursement to the city's general fund the costs of providing and administering the administrative hearing process established by this chapter.

(Ords. 22020, 22053, 22284, 22802.)

17.22.910 Amount of fee.

The city manager and the commission shall report to the city council not less than once each fiscal year their recommendation regarding the amount of the fee necessary to recover the costs of administering this chapter. The amount of the fee shall be set forth in the schedule of fees adopted by resolution of the city council. The fee shall not exceed the amount found by the council to be necessary to recover the costs of administering this chapter, and the council's finding in this regard shall be final.

(Ords. 22020, 22053, 22284.)

17.22.920 Payment of fee.

A. The mobilehome park landlord shall pay the rental dispute fee for all of the landlord's rental units which are subject to this chapter on or before January 31 of each year.

B. All payments shall be made to the city's director of finance.

C. The mobilehome park landlord may pass one-half the amount of the rental dispute fee to the resident of each space which is subject to the fee, provided that the amount of the pass through is set forth as a line item which is separate from the base rent.

(Ords. 22020, 22053, 22284, 24258, 24760.)

17.22.930 Proration of fee.

The first rent dispute fee to be paid shall be prorated by the director of finance to adjust future payments to a calendar year basis as follows:

A. A fee paid at any time during the first quarterly period shall be paid at the rate of one hundred percent of the full annual fee.

B. A fee paid at any time during the second quarterly period shall be paid at the rate of seventy-five percent of the full annual fee.

C. A fee paid at any time during the third quarterly period shall be paid at the rate of fifty percent of the full annual fee.

D. A fee paid at any time during the fourth quarterly period shall be paid at the rate of twenty-five percent of the full annual fee.

(Ords. 22020, 22053, 22284.)

17.22.940 Penalty for late payment.

A. The rent dispute fee is due and payable on the date the mobilehome park operating fee is due and payable.

B. Any mobilehome park landlord who fails or refuses to pay any fee required under this chapter for a period of thirty days from and after the date such fee is due shall, in addition to the fee, pay a penalty of ten percent of the amount of the unpaid fee.

(Ords. 22020, 22053, 22284.)

17.22.950 Transferability of fee.

In the event the mobilehome park operating permit is transferred to a successor landlord of a park for which the annual rent dispute fee has been paid, the transferring landlord or the successor landlord shall provide notice of the transfer to the city rental rights and referrals program and the successor landlord shall register with the city rental rights and referrals program as provided in Section 17.22.1050. Upon registration by the successor landlord in accordance with Section 17.22.1050, the successor landlord shall be deemed to have paid said rental dispute fee for the park.

(Ords. 22020, 22053, 22284, 22850, 26792.)

### Part 9 GENERAL PROVISIONS

17.22.1000 Notices.

A. Any notice required to be given by any provision of this chapter may be given by personal service, by registered or certified mail, return receipt requested, or by first class mail, postage prepaid.

B. If personally served or if sent by registered or certified mail, such notice shall be deemed given on the date actually received.

C. If sent by first class mail, such notice shall be deemed given five days after the deposit of the notice in the United States mail or, if said fifth day is a day on which there is no mail delivery service, on the first day following said fifth day on which there is mail delivery service.

D. If a party has filed a written designation of a representative pursuant to Section 17.22.800, a notice shall be deemed given to such party if it is given to such party's designated representative.

(Ord. 22284.)

17.22.1010 Role of rental rights and referrals program.

The city rental rights and referrals program shall provide staff services to the commission including, but not limited to, the following:

A. Maintain files pertaining to rent disputes for which petitions are filed pursuant to this chapter.

B. Review petitions for timeliness and completeness.

C. Send notices to landlords, mobilehome owners and mobilehome tenants as required by this chapter.

D. Screen applications from persons applying for positions as administrative hearing officers and make recommendations to the city council or city manager regarding employment of such persons.

E. Send notices of commission meetings to interested parties.

F. Prepare the agenda and the minutes of commission meetings and prepare packets of materials relating to matters before the commission.

G. Determine the maximum annual percentage increase in accordance with the provisions of Section 17.22.155.C.

H. Other duties as determined by the city manager.

(Ords. 22284, 24400, 26792.)

17.22.1020 Appeal of rental rights and referrals program decision.

Any landlord, mobilehome owner or mobilehome tenant aggrieved by an action or decision of the city rental rights and referrals program pursuant to this chapter may appeal such decision to the director by filing a written statement with said director within ten working days of the action or decision of the city rental rights and referrals program, with a copy to the city rental rights and referrals program, setting forth the grounds upon which such person believes the action or decision of the city rental rights and referrals program should be reversed. The director shall review the decision and make a final ruling.

(Ords. 22284, 24400, 26792.)

17.22.1030 Role of city attorney.

A. The city attorney shall provide legal services to the commission.

B. The city attorney shall prepare formal legal opinions in response to requests from the city council, the commission, city staff or any administrative hearing officer. Legal questions raised by other persons shall be forwarded to the commission which may, in its discretion, refer questions of general interest or applicability to the city attorney.

(Ord. 22284.)

17.22.1040 Judicial review.

Any landlord, mobilehome owner or mobilehome tenant aggrieved by any decision of an administrative hearing officer in a proceeding pursuant to this chapter in which such landlord, owner or tenant is a party may seek judicial review in a court of competent jurisdiction.

(Ord. 22284.)

17.22.1050 Registration of landlords.

A. Each mobilehome park landlord shall register with the city rental rights and referrals program on or before September 1, 1988. Such registration shall consist of filing with the city rental rights and referrals program the following information:

1. The name and address of the mobilehome park.

2. The number of lots in the mobilehome park which are occupied or available for occupancy.

3. The names and addresses of the owners of the mobilehome park.

4. The name and address of the manager of the mobilehome park.

5. The name and address of the person or persons designated for service of process on behalf of the mobilehome park landlord.

B. Upon the sale or transfer of a mobilehome park, the seller or transferor shall notify the city rental rights and referrals program of the date of the sale or transfer and of the name and address of the buyer or transferee.

C. Within ten days of the sale or transfer of a mobilehome park, the buyer or transferee shall register with the city rental rights and referrals program by providing the information required by subsection A. above.

D. No mobilehome park landlord shall demand, receive or collect any rent increase from any mobilehome owner or mobilehome tenant in excess of the amounts specified in Section 17.22.450 unless such landlord is registered with the city rental rights and referrals program as the landlord of the mobilehome park in which the rent increase is sought and has provided the information required by subsection A. above.

(Ords. 22850, 26792.)

17.22.1055 Notice of ordinance to mobilehome park residents and prospective residents.

A. The city rental rights and referrals program shall prepare a summary of the mobilehome rent ordinance set forth in this chapter and, upon approval of the summary by the mobilehome advisory commission, shall give a copy of the summary to the landlord of each mobilehome park located in the city.

B. The mobilehome park landlord shall maintain the summary in the mobilehome park office and shall give a copy of the summary to each resident of the mobilehome park annually prior to February 1 of each year.

C. At the time an offer is made to purchase or otherwise acquire any mobilehome that will remain in the park, the selling or transferring mobilehome owner shall give a copy of the summary to the potential buyer or transferee.

(Ords. 22851, 26792.)

17.22.1070 Establishment of maximum annual percentage increase.

A. On or before July 1 of each year, the city rental rights and referrals program shall determine the maximum standard annual percentage increase for the next year beginning October 1 in accordance with the provisions of Section 17.22.155C., and prepare a notice of the maximum standard annual percentage increase, and shall give a copy of the notice to the landlord of each mobilehome park located in the city.

B. The mobilehome park landlord shall post a copy of the notice in the mobilehome park office within twenty-four hours of receipt.

(Ords. 24400, 24666, 26792.)

### Part 10 RESERVED

### Part 11 ENFORCEMENT

17.22.2000 Waiver of rights.

A. Any waiver or purported waiver by a mobilehome owner or mobilehome tenant of rights granted under this chapter prior to the time when such rights may be exercised shall be void as contrary to public policy, except as provided in Section 17.22.370.

B. It shall be unlawful for a landlord to require or attempt to require, as a condition of tenancy in a mobilehome park, a mobilehome owner, mobilehome tenant, prospective mobilehome owner, or prospective mobilehome tenant to waive in a lease or rental agreement or in any other agreement the rights granted to a mobilehome owner or mobilehome tenant by this chapter.

C. It shall be unlawful for a landlord to deny or threaten to deny tenancy in a mobilehome park to any person on account of such person's refusal to enter into a lease or rental agreement or any other agreement under which such person would waive the rights granted to a mobilehome owner or mobilehome tenant by this chapter.

D. Nothing in this section shall preclude a mobilehome park landlord and a mobilehome owner, mobilehome tenant, prospective mobilehome owner or prospective mobilehome tenant from entering into a lease or rental agreement described in Section 17.22.370 provided that such lease or rental agreement is not procured by a requirement that it be entered into as a condition of tenancy in the mobilehome park and is not procured under threat of a denial of tenancy in the mobilehome park.

(Ords. 22020, 22053, 22284, 22850.)

17.22.2010 Retaliation prohibited.

A. It shall be unlawful for any landlord to evict a mobilehome owner or mobilehome tenant where the landlord's dominant motive in seeking to recover possession of the rental unit is:

1. Retaliation for the mobilehome owner's or mobilehome tenant's organizing, petitioning government for rent relief, or exercising any right granted under this chapter; or

2. Evasion of the purposes of this chapter.

B. It shall be unlawful for a landlord to retaliate against a mobilehome owner or mobilehome tenant for the owner's or tenant's assertion or exercise of rights under this chapter in any manner, including but not limited to:

1. Threatening to bring or bringing an action to recover possession of a rental unit.

2. Engaging in any form of harassment that causes the owner or tenant to quit the premises.

3. Decreasing housing services.

4. Increasing rent.

5. Imposing or increasing a security deposit or other charge payable by the owner or tenant.

(Ords. 22020, 22053, 22284.)

17.22.2020 Excessive rents or demands therefor.

A. It shall be unlawful for a landlord to demand any rent in excess of the amounts specified in Section 17.22.450 during the period from the filing of a timely petition to the date an administrative hearing officer's decision approving such excess is rendered.

B. It shall be unlawful for a landlord to demand, accept, receive or retain any rent in excess of the maximum rent allowed by the decision of an administrative hearing officer under this chapter.

C. It shall be unlawful for a landlord to demand, accept, receive or retain any rent in excess of the maximum rent allowed by Section 17.22.450 or Part 4.5.

(Ords. 22020, 22053, 22284, 23914, 24400.)

17.22.2030 Excessive rents - Civil penalties.

A. If any person is found to have demanded, accepted, received or retained any payment of rent:

1. In excess of the maximum rent allowed by decision of an administrative hearing officer under this chapter, or

2. In violation of the notice provisions of Section 17.22.660, or

3. In the form of a service reduction without a corresponding reduction in rent, or

4. In violation of Section 17.22.450 or Part 4.5, such person shall be liable to the mobilehome owner or mobilehome tenant from whom such payment was demanded, accepted, received or retained, for damages as determined by a court of competent jurisdiction.

B. In the event a mobilehome owner or mobilehome tenant is the prevailing party in a civil action against a person found to have demanded, accepted, received or retained any payment of rent described in subsection A., such mobilehome owner or mobilehome tenant, in addition to damages as determined by the court pursuant to subsection A., may, in the discretion of the court, be awarded an amount not to exceed five hundred dollars or three times the damages determined by the court pursuant to subsection A., whichever is greater. For the purposes of this subsection, a mobilehome owner or mobilehome tenant shall be deemed to be a prevailing party if the judgment is rendered in such mobilehome owner's or mobilehome tenant's favor or if the litigation is dismissed in such mobilehome owner's or mobilehome tenant's favor prior to final judgment, unless the parties otherwise agree in the settlement or compromise.

C. Any person who suffers damages because of the failure of a mobilehome park landlord or a selling or transferring mobilehome owner to provide the information required to be provided by Section 17.22.1060, may bring an action for damages in a court of competent jurisdiction and shall be entitled to recover damages, as determined by the court, from such mobilehome park landlord or such selling or transferring mobilehome owner.

D. Remedies provided by this section are in addition to any other legal or equitable remedies and are not intended to be exclusive.

(Ords. 22020, 22053, 22284, 22802, 22851, 23914, 24400.)

## Chapter 17.23 RENTAL DISPUTE MEDIATION AND ARBITRATION FOR DWELLING UNITS EXCLUDING MOBILEHOMES AND MOBILEHOME PARKS[[20]](#footnote-20)

### Part 1 GENERAL

17.23.010 Title.

Parts 1 through 9 of this Chapter 17.23 shall be known as the "Apartment Rent Ordinance."

(Ord. 30032.)

17.23.020 Policy and purposes declaration.

The purposes of the Apartment Rent Ordinance are to promote stability and fairness within the residential rental market in the City, thereby serving the public peace, health, safety, and public welfare. The Apartment Rent Ordinance recognizes the value of residential rental units as a critical resource amid the continuing shortage of and persistent demand for housing in the City of San José. In July 1979, the City enacted a rent control ordinance to alleviate some of the more immediate needs created by San José's housing situation: including but not limited to the prevention of excessive and unreasonable rent increases, the alleviation of undue hardship upon individual tenants, and the opportunity for landlords to earn a fair return. To further protect tenants from excessive and unreasonable rent increases, the Apartment Rent Ordinance generally limits annual rent increases, requires notices be provided to the City, regulates how much and what types of costs may be passed through to tenants, provides for monitoring of rents, and provides for an administrative review process for housing-related disputes. The rights and obligations created by the Apartment Rent Ordinance for landlords and tenants are created pursuant to the City's general police powers to protect the health, safety, and welfare of its residents and are in addition to any rights and obligations under state and federal law.

(Ord. 30032.)

17.23.030 Scope and application.

Parts 1 through 9 of the Apartment Rent Ordinance apply to each Rent Stabilized Unit, as defined in Section 17.23.167 and, as applicable, to each Covered Property as defined in Section 17.23.123.

(Ord. 30032.)

17.23.040 Regulations; forms authorized.

The City Manager may adopt or amend regulations for the administration and implementation of the Apartment Rent Ordinance. The Director, with the approval of the City Attorney, may adopt forms and notices to facilitate the administration and implementation of the Apartment Rent Ordinance. All forms and notices called for in this Chapter and the Regulations shall be adopted by the Director unless otherwise indicated.

(Ord. 30032.)

17.23.050 Notice of apartment rent ordinance to tenant households.

A. Each Landlord shall post a written notice and maintain such posting, on a form approved by the Director, of the applicability of the Apartment Rent Ordinance in a conspicuous location within each building containing one (1) or more Rent Stabilized Units. The Landlord shall have complied with this requirement by posting a Notice of the Apartment Rent Ordinance in the same location as a notice to tenants posted in accordance with subsections (1) or (2) of California Civil Code Section 1962.5(a) or immediately adjacent to the posting of the Residential Occupancy Permit in compliance with Section 17.20.630.

B. Each Landlord shall notify the Tenant Household of the applicability of the Apartment Rent Ordinance prior to entering an oral or written rental agreement for a Rent Stabilized Unit. The Landlord shall have complied with the affirmative obligation to notify a Tenant under this Section by providing (1) written notice that the Rent Stabilized Unit is subject to this Chapter and, (2) a copy of the current City informational notice or handbook for Tenants of Rent Stabilized Units ("Informational Notice"), if such notice is available from the City of San José, to the Tenant upon entering an oral or written rental agreement for the Rent Stabilized Unit.

(Ord. 30032.)

17.23.060 Limit on electronic payment.

It shall be unlawful for any Landlord to demand or require either cash or an electronic funds transfer or online internet payment as the exclusive method of payment of Rent or Security Deposits, except that cash may be required for a limited period of time under the conditions allowed by California Civil Code Section 1947.3(a)(2), as amended.

(Ord. 30032.)

17.23.070 Reasonable accommodation; fair housing.

A. Nothing in this Chapter is intended to authorize a Landlord to deny a request for reasonable accommodation required under state or federal law, or to impose a charge for that accommodation where no charge is allowed by law.

B. Nothing in this Chapter is intended to authorize a Landlord to avoid obligations imposed by federal, state or local fair housing law.

(Ord. 30032.)

### Part 2 DEFINITIONS

17.23.100 General.

Unless the context otherwise requires, the definitions set forth in this Part govern the construction of the Apartment Rent Ordinance.

(Ord. 30032.)

17.23.105 Administrative decision.

"Administrative Decision" means a Petition Examiner's final written determination on a Landlord or Tenant Petition.

(Ord. 30032.)

17.23.110 Affordable rental unit.

"Affordable Rental Unit" means each Rental Unit that is owned or operated by any government agency, or any individual Rental Unit for which the Rent is limited to no more than affordable rent, as such term is defined in California Health & Safety Code Section 50053, for lower income households pursuant to legally binding restrictions recorded for the benefit of a government agency. However, if the ownership or operation, or the Rent limitation ceases, then the Rental Unit will no longer be considered an Affordable Rental Unit. The presence of one (1) or more Affordable Rental Units in a Multiple Dwelling shall not exempt any other Rental Unit in the same building that does not also meet the definition of Affordable Rental Unit.

(Ord. 30032.)

17.23.112 Annual general increase.

"Annual General Increase" shall have the meaning provided in Section 17.23.310.

(Ord. 30032.)

17.23.115 Base year.

"Base Year" shall have the meaning provided in Section 17.23.810.B.

(Ord. 30032.)

17.23.116 Buyout agreement.

"Buyout Agreement" shall have the meaning provided in Section 2.01.3 of the Regulations.

(Ord. 30032.)

17.23.117 Buyout offer.

"Buyout Offer" shall have the meaning provided in Section 2.01.4 of the Regulations.

(Ord. 30032.)

17.23.120 Capital improvements.

"Capital Improvements" means building, unit or property additions or modifications that replace or enhance an existing physical feature of a Rent Stabilized Unit or of a building containing a Rent Stabilized Unit or that provides new Housing Services to the Tenants as compared to the level of services as previously provided.

(Ord. 30032.)

17.23.121 Commission.

"Commission" means the Housing and Community Development Committee or successor.

(Ord. 30032.)

17.23.122 Consumer price index.

"Consumer Price Index" means the Consumer Price Index For All Urban Consumers in the San Francisco-Oakland-San José all items index (1982-84 equals 100), as reported by the Bureau of Labor Statistics of the United States Department of Labor. In the event a successor index to the Consumer Price Index for all urban consumers for all items for the San Francisco-Oakland-San José area or comparable area is established by the Bureau of Labor Statistics, this definition may be updated accordingly in the Regulations.

(Ord. 30032.)

17.23.123 Covered property.

"Covered Property" means an individual building or complex of buildings containing one (1) or more Rent Stabilized Units, together with any common areas.

(Ord. 30032.)

17.23.124 Current year.

"Current Year" shall have the meaning provided in Section 17.23.810.C.

(Ord. 30032.)

17.23.125 Director.

"Director" means the City's Director of the Department of Housing or the Director's designee.

(Ord. 30032.)

17.23.126 Ellis Act ordinance.

"Ellis Act Ordinance" means the ordinance codified in Part 11 of Chapter 17.23.

(Ord. 30032.)

17.23.127 For-cause termination.

"For-Cause Termination" is the termination of a tenancy based on a reason for eviction that would legally entitle a Landlord to evict a Tenant Household on three (3) days' notice under California Code of Civil Procedure Sections 1161(2) (for Tenant's nonpayment of Rent), 1161(3) (for Tenant's failure to perform a material term of rental agreement), or 1161(4) (for Tenant allowing a nuisance or other unlawful activity).

(Ord. 30032.)

17.23.130 Gross income.

"Gross Income" shall have the meaning provided in Section 17.23.820.A.

(Ord. 30032.)

17.23.131 Guest room.

"Guest Room" shall have the meaning provided in Section 20.200.460.

(Ord. 30032.)

17.23.132 Guesthouse.

"Guesthouse" shall have the meaning provided in Sections 20.200.470 and 20.200.480.

(Ord. 30032.)

17.23.135 Hearing officer.

"Hearing Officer" shall have the meaning provided in Section 2.01.11 of the Regulations.

(Ord. 30032.)

17.23.136 Housing services.

"Housing Services" means those services provided and associated with the use or occupancy of a Rental Unit, including but not limited to repairs, replacement, maintenance, painting, light, heat, water, elevator service, pest control, laundry facilities and privileges, janitorial service, refuse removal, furnishings, telephone, parking, storage, and any other benefits, privileges, or facilities.

(Ord. 30032.)

17.23.137 Initial rental rate.

"Initial Rental Rate" means the actual amount paid by the Tenant for the use and occupancy of the Rent Stabilized Unit at the commencement of the tenancy, or in the case of a Rental Voucher Unit, the sum of the rent paid by the Tenant and government agency.

(Ord. 30032.)

17.23.140 Landlord.

"Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive Rent for the use and occupancy of any Rental Unit or portion thereof, and the agent, representative, or successor of any of the foregoing. For purposes of this Chapter, Landlord does not include an individual who is a member of the Tenant Household whose primary residence is the same Rental Unit as the Tenant.

(Ord. 30032.)

17.23.145 Multiple dwelling.

"Multiple Dwelling" means a multiple dwelling as that term is defined and used in Title 20 of this Code and includes all units subject to Part 8 of Chapter 17.20.

(Ord. 30032.)

17.23.146 Municipal code.

"Municipal Code" means the San José Municipal Code.

(Ord. 30032.)

17.23.150 Net operating income.

"Net Operating Income" shall have the meaning provided in Section 17.23.810.A.

(Ord. 30032.)

17.23.151 Notices.

The following notices are defined terms for purposes of this Chapter with the following meanings.

A. "Informational Notice" shall have the meaning provided in Section 17.23.050.B.

B. Notice of the Apartment Rent Ordinance" shall have the meaning provided in Section 17.23.050A.

C. "Notice of Re-Rental" shall have the meaning provided in Section 17.23.600.

D. "Notice of Termination" means the notice informing a Tenant of the termination of its tenancy including but not limited to a notice to quit or vacate, a notice in accordance with California Civil Code Section 1946.1 or California Code of Civil Procedure Section 1162, as amended.

(Ord. 30032.)

17.23.155 Operating expenses.

"Operating Expenses" shall have the meaning provided in Section 17.23.820.C.

(Ord. 30032.)

17.23.160 Petition.

"Petition" shall have the meaning provided in Section 2.01.14 of the Regulations.

(Ord. 30032.)

17.23.161 Petition examiner.

"Petition Examiner" shall have the meaning provided in Section 6.06.05 of the Regulations.

(Ord. 30032.)

17.23.165 Regulations.

"Regulations" means the regulations adopted by the City Council or pursuant to Section 17.23.040.

(Ord. 30032.)

17.23.166 Rent.

"Rent" means the consideration, including any funds, labor, bonus, benefit, or gratuity, demanded or received by a Landlord for or in connection with the use or occupancy of a Rental Unit, including Housing Services, or for the assignment of a lease or rental agreement for a Rental Unit, including subletting.

(Ord. 30032.)

17.23.167 Rent stabilized unit.

A. "Rent Stabilized Unit" means a Rental Unit in any Guesthouse or in any Multiple Dwelling building for which a certificate of occupancy was issued on or prior to September 7, 1979 or that was offered or available for rent on or before this date.

B. The following shall not be considered Rent Stabilized Units:

1. Rooms or accommodations in hotels, motels, or Guesthouses which are legally rented to transient guests for a period of less than thirty (30) days consistent with the Municipal Code, except those rooms or accommodations subject to Part 2.5 of Chapter 20.80;

2. Housing accommodations in any hospital, convent, monastery, extended care facility, emergency residential shelter, residential care facility, residential service facility, nonprofit home for Senior Citizens (as defined in the Unruh Act, as may be amended), fraternity house or sorority house, or in dormitories owned and operated by an institution of higher education, a high school or elementary school;

3. Affordable Rental Units; and

4. Rental Units in a building containing only one (1) or two (2) dwelling units.

(Ord. 30032.)

17.23.168 Rental unit.

"Rental Unit" means a structure or part of a structure (including but not limited to a Guest Room in a Guesthouse) offered or available for rent as a home, residence, or sleeping place, whether or not the residential use is a conforming use permitted under the San José Municipal Code, together with the land and appurtenant buildings thereto, and all Housing Services, privileges, and facilities supplied in connection with the use or occupancy thereof. A Rental Unit shall not include a Mobilehome or Mobilehome Lot as defined in Section 17.22.160 and 17.22.170.

(Ord. 30032.)

17.23.169 Rental voucher unit.

"Rental Voucher Unit" means a Rental Unit that is restricted to occupancy by lower income households by a contract where the Tenant pays no more than 35% of their income towards the Rent, the remainder being paid with a government agency or a nonprofit administering government agency's funds, and where the rent is not increased on an annual basis, but only where allowed under the rules of the government agency.

(Ord. 30032.)

17.23.170 Section.

"Section" means a numbered section in Municipal Code Chapter 17.23 unless otherwise indicated.

(Ord. 30032.)

17.23.171 Security deposit.

"Security Deposit" shall have the meaning provided in California Civil Code Section 1950.5, as amended.

(Ord. 30032.)

17.23.172 Specified capital improvements.

"Specified Capital Improvements" shall have the meaning provided in Section 17.23.330.

(Ord. 30032.)

17.23.175 Tenant.

"Tenant" means a person or persons entitled by written or oral agreement, or by sufferance, to the use or occupancy of a Rental Unit.

(Ord. 30032.)

17.23.176 Tenant household.

"Tenant Household" means all Tenant(s) who occupy any individual Rental Unit, and each minor child of any Tenant whose primary residence is the Rental Unit.

(Ord. 30032.)

17.23.177 Tenant protection ordinance.

"Tenant Protection Ordinance" means the ordinance codified in Part 12 of Chapter 17.23.

(Ord. 30032.)

### Part 3 INITIAL RENT AND RENT INCREASES; PETITION AND HEARING PROCESS

17.23.300 Initial rent and vacancy decontrol.

A. Valid Decontrol. The Initial Rental Rate for a new tenancy in a Rent Stabilized Unit may be set by the Landlord if the Rent Stabilized Unit was vacant due to one (1) of the following two (2) circumstances.

1. Voluntary Vacancy. The prior Tenant Household voluntarily terminated the tenancy.

2. For-Cause Termination. A Landlord legally terminated the prior tenancy as a For-Cause Termination.

B. Exceptions to Decontrol. Only the Rent charged consistent with this Chapter to the former Tenant, plus any annual adjustment authorized by this Chapter, may be charged for a Rent Stabilized Unit in the following circumstances.

1. No Cause Termination. A Landlord terminated a tenancy without cause in accordance with Section 1946.1 of the California Civil Code or Section 827 of the California Civil Code.

2. Continuing Tenancy. An existing Tenant or existing member of the Tenant Household, (including individuals who are not listed on an existing rental agreement), has entered into a new oral or written rental agreement for the same Rent Stabilized Unit.

3. Unlawful Landlord Activity. A Landlord effectively terminated a tenancy without cause by encouraging the Tenant to terminate the tenancy through unlawful activities prohibited under the Tenant Protection Ordinance, the Apartment Rent Ordinance, or state law.

4. Any Other Illegal Evasion. A Tenant terminated a tenancy because of illegal conduct by the Landlord or any other means by which a Landlord fraudulently seeks to set a new Initial Rental Rate.

(Ord. 30032.)

17.23.310 Limits on rent increases.

A. Annual Rent Increase Limit. The Rent of any Rent Stabilized Unit may not be increased by more than the Annual General Increase unless otherwise authorized by Petition. If the Landlord has not substantially complied with the City's request to register or re-register a Rent Stabilized Unit pursuant to the procedures in the Regulations, the Landlord may not increase the Rent for the Rent Stabilized Unit.

B. The "Annual General Increase" is limited to:

The monthly Rent charged for the previous twelve (12) months for the Rent Stabilized Unit multiplied by five percent (5%).

C. Rent Adjustments Based Upon COVID-19 Rent Increase Moratorium.

1. Notwithstanding subsection B., Landlords who enter into reduced rent agreements with their Tenants pursuant to the COVID-19 Rent Increase Moratorium Ordinance, Ordinance No. 30405, may calculate their Annual General Increase upon the prior charged rent under their rental contract and not on the monthly rent charged under the reduced rent agreement.

2. This subsection shall expire twelve (12) months after expiration of the COVID-19 Rent Increase Moratorium Ordinance, Ordinance No. 30405.

D. Rent Increase Frequency Limit. Not more than one (1) Rent increase, including the Annual General Increase, any increase allowed under Chapter 13 of the Regulations, and any increase authorized by a final decision after a Petition may be imposed in any twelve (12)-month period. An increase in Rent authorized by a decision on a Petition filed pursuant to Section 17.23.350 C. or Part 8 of this Chapter may be imposed after notice has been provided pursuant to California Civil Code Section 827, if the decision states that the initial increase is exempt from the twelve (12) month interval requirement under this Section.

E. Rental Voucher Unit - Rent Increases. During the time a Rental Unit serves as a Rental Voucher Unit, the Initial Rent shall be subject to this Chapter, but its Rent may be adjusted annually consistent with the published rules of the applicable government agency in lieu of the Rent adjustments allowed under this Chapter.

(Ord. 30032, 30421.)

17.23.315 Limits on all fees and pass through charges.

A. Limitation on Pass Through Charges. No pass through of charges to Tenants is authorized except as expressly provided in this Chapter. Without altering the generality of the foregoing sentence, no charges for utility services (such as electricity, natural gas, telephone, water, waste water, sewer and refuse or waste management services) may be passed through to Tenants by Landlord. No charges may be passed through that are assigned to Tenants by virtue of ratio utility billing or similar unmetered allocation arrangements. This section is not intended to prohibit the government entity or nonprofit administering the voucher from imposing conditions based on regulations with respect to utility payments on Rental Voucher Units, or to prohibit submetered water, gas or electricity.

1. Existing Agreements End; New Agreements Prohibited.

i. Existing written rental agreement, amendment or addenda provisions for payment or pass through of utility service or similar charges or for ratio utility billing to the Tenant ("Passthrough Agreements") that were executed by the Landlord and the current Tenant prior to January 1, 2018 are void on the date that the Petition Examiner's or Hearing Officer's decision is issued on the petition described in subsection A.2 or A.3, or void after October 31, 2018 if the Landlord does not submit a complete petition on or before October 31, 2018. A renewal by the same parties on the same terms of a Passthrough Agreement initially executed prior January 1, 2018 shall be subject to this subsection A.1.i, not subsection A.1.ii.

ii. Passthrough Agreements entered into after January 1, 2018 are void.

iii. Verbal rental agreement, amendment or addenda provisions for payment or pass through of utility service or similar charges or for ratio utility billing to the Tenant are void.

iv. Notwithstanding subsection A.1.ii, Passthrough Agreements executed prior to May 1, 2018 with a new Tenant shall be shall be subject to subsection A.1.i, not subsection A.1.ii, if the Landlord can prove that he/she has, prior to July 1, 2017 required utility pass through agreements with the same terms for all Tenants in the building.

2. Landlord Petition for One-time Offset Increase. If a Landlord has a written Passthrough Agreement for water, sewer and/or trash executed by the existing Tenant prior to January 1, 2018, the Landlord may file a petition with the City during the period from July 5 to October 31, 2018 for a one-time increase in rent ("Offset Increase") which increase, if awarded, shall not be subject to the one (1) increase in any twelve (12) month period limitation in Section 17.23.310. The petition process shall be in accordance with the Regulations.

3. Landlord Petition for One-time Offset Increase for Unmetered Gas and Electricity. If the units in the Landlord's building are not metered for gas and electricity due to the age or type of the building, the Landlord has complied with the requirements of Civil Code Section 1940.9 at the commencement of tenancy and Landlord has a written Passthrough Agreement for gas and/or electricity executed by the existing Tenant prior to January 1, 2018, the Landlord may file a petition with the City during the period from July 5 to October 31, 2018 for a one-time increase in rent for gas and electricity ("Gas/Electricity Offset Increase") which increase, if awarded, shall not be subject to the one (1) increase in any twelve (12) month period limitation in Section 17.23.310. The petition process shall be in accordance with the Regulations.

4. If the pass through or Passthrough Agreement has been the subject of a Hearing Officer Decision or Voluntary Agreement that disallowed the pass through, no Offset Increase is allowed. If the unit is a Rental Voucher Unit no Offset Increase is allowed.

5. The Offset Increase amount will be the lesser of: (i) the average of the monthly charges paid by the Tenant in 2017 under the Passthrough Agreement for water, sewer and/or trash, or (ii) $86 for a studio, $91 for a one-bedroom, $102 for a two-bedroom and $149 for a three bedroom.

6. The Gas/Electricity Offset Increase amount will be the lesser of: (i) the average of the monthly charges paid by the Tenant in 2017 under the Passthrough Agreement for gas and/or electricity, or (ii) $36 for a studio, $58 for a one-bedroom, $70 for a two-bedroom and $84 for a three bedroom.

7. The Petition for One-Time Offset Increase can be challenged by the Tenant as provided in the Regulations.

8. For a petition brought under subsection A.1.iv, the offset amount, the references in subsection A.5 and A.6 to the average of the monthly charges paid by the Tenant shall refer to 2018, prior to the date of petition filing.

B. Limitation on Fees. The following fees may not be charged to Tenants except as provided:

1. Excess Replacement Fees. No Landlord shall charge a Tenant a replacement fee for a key or security card that exceeds the actual replacement cost plus ten dollars ($10.00) unless approved by Petition or the Regulations.

2. Excess Bounced Check Service Fees. No Landlord shall charge a Tenant a service charge for a dishonored ("bounced") check that exceeds the amount allowed under California Civil Code Section 1719(a)(1), as amended. Landlord need not provide Tenant with a third party invoice for this service charge.

3. Late Payment Fees. No Landlord shall charge a Tenant a fee for late payment of Rent exceeding a total of five percent (5%) of the monthly Rent for each payment of Rent that is three (3) or more days late.

4. Application Screening Fees. No Landlord shall charge a Tenant an application screening fee in excess of the amount allowed under California Civil Code Section 1950.6(b), as amended.

C. Separate Line-Item Required. No Landlord may pass through any charge to any Tenant allowed under this Part unless the charge is clearly listed on the rental agreement and the Rent invoice (if any) and is accompanied by a true and correct copy of the invoice or bill paid by the Landlord for such charge.

D. Tenant Petitions Authorized. In the event a Tenant disputes the pass through of a charge or the calculation of the Tenant's share of the charge, the Tenant may file a Petition for a determination as to whether such charge may be passed through pursuant to this Section and whether the calculation of the Tenant's share comports with this Section and any Regulations governing such pass through. Any of the following reasons provide grounds for such a Petition:

1. There exists a dispute as to the genuineness of the bill or the amount of the charge.

2. The pass through of the charge is not authorized under this Chapter.

3. There exists a dispute as to whether the Tenant had the right to use and occupy the Rental Unit during the billing period or any portion of the billing period.

4. Mathematical errors in the relevant calculations.

5. Copies of the Landlord's invoice or bill were not provided as required.

E. Security Deposit. Except as provided in Section 17.23.320.C, a Security Deposit, once established, cannot be raised for the duration of the tenancy. For purposes of this Section only, where several Tenants occupy one (1) Rental Unit, the Tenancy shall be deemed to continue so long as any one (1) of the Tenants who occupied the Rental Unit when the deposit was set continues to occupy the Rental Unit.

(Ords. 30032, 30090, 30110.)

17.23.320 Exceptions to limits on rent increases and other charges.

A. Rent Increase Awards for Landlord Fair Return Petitions. A Landlord may increase rents in excess of the Annual General Increase to the extent a higher rent is authorized in a final Hearing Officer's decision on a Landlord Petition for fair return filed in accordance with Part 8 of this Chapter.

B. Pass Through Awards for Landlord Specified Capital Improvements Petitions. A Landlord may impose a pass-through charge in addition to Rent to the extent authorized in a final Administrative Decision or Hearing Officer's decision on a Landlord Specified Capital Improvements Petition filed in accordance with Section 17.23.330. Provided however, in no event may the total monthly amount imposed for Specified Capital Improvements exceed three percent (3%) of the monthly Rent validly charged for the Rent Stabilized Unit on the date of the filing of the Petition. Charges for Specified Capital Improvements shall not be considered Rent for purposes of this Chapter and shall not increase when Rent increases, nor shall they be considered part of Rent for the purpose of calculation of the Annual General Increase. Following a valid vacancy decontrol of Rent for a Rent Stabilized Unit in accordance with Section 17.23.300, any awarded charges for Specified Capital Improvements for that unit shall expire.

C. One-Time Payments for New Additional Housing Services. A Tenant Household may file a joint Petition to allow the Tenant to make a payment of a one-time fee or increase the Tenant's Security Deposit in order to receive or be entitled to certain new or additional Housing Services that are expressly excluded in the written rental agreement, to the extent that these Housing Services that are identified in the Regulations. The one-time payment for new or additional Housing Services may not exceed five percent (5%) of the monthly Rent validly charged at the time of the Tenant request. The one-time payment or additional Security Deposit shall not be considered Rent for purposes of this Chapter and shall not be included when calculating a Rent increase or subject to the one (1) increase in any twelve (12)-month period limitations in Section 17.23.310.

(Ord. 30032.)

17.23.325 Council initiated exceptions to limits on rent increases and other charges.

A. Other Fees, Charges, and Costs that May Be Passed Through to Tenants. The following charges may be passed through to Tenants, separate from Rent only in compliance with the requirements below. These charges shall not be considered Rent for purposes of this Chapter and shall not increase when Rent increases, nor shall they be considered part of Rent for the purpose of calculation of the Annual General Increase.

Annual Fees imposed under Chapter 17.23.

1. Reserved.

2. New Charges. A Landlord may pass through to a Tenant a share of charges imposed on the Landlord by governmental agencies or by public utilities subject to regulation by the California Public Utilities Commission, subject to the limitations in subsection 3 below where all of the following conditions are met:

a. The charge is a new charge, as opposed to an increase in an existing charge, which the governmental agency or the public utility requires the Landlord to pay; and

b. Such pass through has been authorized by resolution of the City Council in which the charge in question was expressly identified; and

c. The Landlord passes through the charge in accordance with the rules specified in such a resolution adopted by the City Council and the Regulations; and

d. The Landlord passes through the charge in accordance with the rules specified in such a resolution adopted by the City Council and the Regulations.

3. Conditions to Pass Through Charges to Tenants. No charge described in subsection 2 above may be passed through to any Tenant pursuant to this Section unless all of the following conditions are satisfied:

a. The total charge by the Landlord may not exceed fifty percent (50%) of the total amount paid by the Landlord; and

b. No Landlord may require a Tenant to pay any amount of any charge that is attributable to any period of time that the Tenant was not entitled to use and occupy the Rental Unit; and

c. No Landlord may require a Tenant to pay any amount of any charge that is attributable to common areas or Rental Units other than the Tenant Household's Rental Unit; and

d. No Landlord may require a Tenant to pay more than its share of the charge attributable to that Tenant's Rental Unit that is permitted to be passed through to Tenant.

(Ord. 30032.)

17.23.330 Petitions for pass through for specified capital improvements.

A. Purpose. The purpose of this Section is to provide an incentive for certain improvements by allowing Landlords to petition for a limited pass through to the Tenant of the amortized costs of the improvements listed in Appendix B to the Regulations ("Specified Capital Improvements") subject to the following conditions:

1. The charge must comply with the limitations in Section 17.23.320.B.

2. The Specified Capital Improvement must do one (1) of the following: provide new Housing Services or enhanced Housing Service functionality to the Tenants; increase the safety (including ADA accessibility), sustainability (water or energy conservation) or seismic readiness of the Rent Stabilized Unit (or of a building containing a Rent Stabilized Unit).

3. The Specified Capital Improvement must have been completed within twelve (12) months prior to the filing of the Petition and must meet the criteria in the Regulations.

B. Petition Required. A Landlord must petition for and receive an Administrative Decision authorizing a pass through for any costs to be charged to Tenants pursuant to this Section prior to passing through any charges.

C. No Pass Through for Improvements to Maintain Existing Housing Services. The following may not be passed through to the Tenant unless explicitly authorized by the Regulations: (1) the costs of a Specified Capital Improvement that replaces an existing physical feature of a Rent Stabilized Unit (or of a building containing a Rent Stabilized Unit) with a physical feature of similar kind and quality; or (2) the costs of a Specified Capital Improvement that maintains a similar level of functionality as a prior physical feature of a Rent Stabilized Unit (or of a building containing a Rent Stabilized Unit).

(Ord. 30032.)

17.23.350 Petition process.

A. Tenant Petitions. There is hereby established a Tenant Petition process, which process and procedures shall be set forth in the Regulations. A member of a Tenant Household may submit a Petition to the Director on any one (1) or more of the following grounds: to allege a Rent increase in violation of the Ordinance; to request a reduction in Rent based on decreased Housing Services; to contest a fee or charge as an unauthorized or excessive pass through; to allege other violations of the Ordinance or Regulations; or other specific grounds that may be provided by the Regulations.

B. Landlord Petitions. There is hereby established a Landlord Petition process, which process and procedures shall be set forth in the Regulations. A Landlord may submit a Petition to the Director on any one (1) or more of the following grounds: to request a Rent increase in excess of the Annual General Increase in order to obtain a fair return as described in Part 8; to request the ability to pass through a charge for Specified Capital Improvements; or other specific grounds that may be provided by the Regulations.

C. Joint (Unopposed) Petitions. There is hereby established a Joint Petition process, which process and procedures shall be set forth in the Regulations. A Tenant may file a Petition to request approval of a one-time payment or Security Deposit increase pursuant to Section 17.23.320.C, if the Landlord has signed the Petition. Subject to the conditions in the Regulations, a Tenant may file a Petition for an increase in the Rent of up to five percent (5%) for an additional Tenant if additional occupants are prohibited in the written rental agreement or an increase in the Rent of up to fifty dollars ($50) for a second parking space if only one (1) parking space is reserved for the Tenant in a written rental agreement, provided that no increase in the Rent is allowed for a Tenant's dependent child, foster child, spouse, domestic partner, parent or minor in the Tenant's care, which terms may be further defined in the Regulations.

D. Petitions Affecting Rental Voucher Units. A Tenant or Landlord filing a Petition that applies to a Rental Voucher Unit must indicate that on the Petition and provide a copy of the Petition to the government agency or nonprofit administering government agency's funds within the time period specified in the Regulations for notice to the other party. The government agency or nonprofit administering government agency's funds shall be entitled to participate in the Petition process, and to file a Petition or response within the time period specified in the Regulations.

(Ord. 30032.)

### Part 4 FEES

17.23.400 Fee - Rental unit.

The costs of providing services and administering this Chapter shall be reimbursed to the General Fund by imposition of a fee chargeable against each Rental Unit in the City of San José subject to the provisions of this Chapter. This is the fee previously codified in Section 17.23.480 and 17.23.490 pursuant to Ordinance No. 19696.

(Ord. 30032.)

17.23.410 Fee - Timing, method and exemptions.

A. Timing and Method. The fee imposed pursuant to Section 17.23.400 shall be paid at the time at which the residential occupancy permit fee, if applicable, is due and paid under Title 17 of this Code, provided that the fee may also be collected by a supplemental billing, or collected in an alternative manner if so provided in the Regulations. Said fee may be included as an Operating Expense under the definition contained in Section 17.23.820. The City Manager shall report to the City Council no less than once each year regarding the City Manager's recommendation and the recommendation of the Commission as to the amount of such fee necessary to recover the costs of administering this Chapter. The amount of the fee shall be determined by resolution of the City Council adopted from time to time. The fee shall not exceed the amount found by the City Council to be necessary to administer this Chapter, and the Council's finding in this regard shall be final. Payment by the Landlord of the fee shall be made at the same time and in conjunction with the residential occupancy permit fee, or in an alternative manner if so provided in the Regulations and the Director of Finance is hereby authorized to collect said fees in this manner.

B. Late Payment. Whoever fails, for more than thirty (30) days after date of notice, to pay the fee required hereunder shall, in addition to said fee, pay an additional late charge assessment as determined by resolution of the City Council. No portion of any charge or fee for late payment or submission authorized by this Section, or any portion thereof, may be passed-through to the Tenant.

C. Fee Credit Upon Transfer. In the event the residential occupancy permit is transferred to a subsequent owner of the Rental Unit for which the fee has been paid, the subsequent owner shall be deemed to have paid said fee for the Rental Unit.

D. Fee Exemptions. The Regulations shall provide procedures and standards for a Landlord to prove eligibility for fee exemptions for Rent Stabilized Units based on claims of owner occupied units or units exempt pursuant to the definition provided in Section 17.23.167.B, Rent Stabilized Unit.

(Ord. 30032.)

### Part 5 ENFORCEMENT

17.23.500 Penalties.

A. Penalty for Violations of this Chapter. In addition to all other remedies provided by law, including those set forth in Chapter 1.08 of Title 1 of the San José Municipal Code, and as part of any civil action brought by the City, a court may assess a civil penalty in an amount up to the greater of two thousand five hundred dollars ($2,500) per violation per day, or ten thousand dollars ($10,000) per violation, payable to the City, against any person who commits, continues, operates, allows, suffers, or maintains any violation of a provision of this Chapter 17.23, subject to California Civil Code Section 1947.7, as amended.

B. Attorney Fees. The prevailing party in any civil action brought pursuant to this Chapter 17.23 shall be entitled to the reasonable costs of bringing such civil action, including court costs and attorney fees.

(Ord. 30032.)

17.23.510 Retaliatory eviction.

Possession of a Rental Unit shall not be recovered by a Landlord from a Tenant, and the Tenant Household, who is not otherwise in violation of the terms of occupancy of the Rental Unit, if either:

A. The Landlord's dominant motive in seeking to recover possession of the Rental Unit is retaliation against the Tenant for exercising any rights under this Chapter 17.23; or

B. The Landlord's dominant motive in seeking to recover possession of the Rental Unit is to evade the purposes of this Chapter 17.23.

(Ord. 30032.)

17.23.520 Waivers.

A. Nonwaiver. Any waiver or purported waiver by a Tenant of rights granted under this Chapter 17.23 prior to the time when such rights may be exercised shall be void as contrary to public policy.

B. Waiver of Rights. It shall be unlawful for a Landlord to attempt or seek to waive, or to waive, in a written or oral rental agreement, the rights granted a Tenant under this Chapter prior to the execution of, or as a condition of entering into or extending, a written or oral rental agreement.

(Ord. 30032.)

17.23.530 Excessive rents demanded or received; civil and criminal liability.

A. Misdemeanor. Any Landlord found to have received, imposed, or demanded prohibited pass through charges, other fees or charges or any Rent in excess of the Rent allowed under this Chapter 17.23 and its implementing Regulations shall be guilty of a misdemeanor, subject to the provisions of California Civil Code Section 1947.7, as amended.

B. Civil Penalties. Any person found to have demanded, accepted, received or retained any payment of Rent in excess of the Rent allowed under this Chapter 17.23 and its implementing Regulations or pass through charges, other fees or charges that are not allowed under this Chapter 17.23, shall be liable to the Tenant from whom such payment was demanded, accepted, or received for the amount that was impermissibly charged, plus damages as determined and not to exceed five hundred dollars ($500) or three (3) times the amount by which such payment exceeded the Rent allowed, whichever is greater. Remedies provided in this paragraph are in addition to any other legal remedies and are not intended to be exclusive.

(Ord. 30032.)

17.23.540 Affirmative defense against unlawful detainer actions.

Rent Stabilized Units. A Landlord seeking to terminate a tenancy of a Tenant or Tenant Household for a Rent Stabilized Unit must comply with Section 17.23.600(A) of the Apartment Rent Ordinance and the Tenant Protection Ordinance. Non-compliance shall constitute an affirmative defense for a Tenant of a Rent Stabilized Unit against any unlawful detainer action under California Code of Civil Procedure Section 1161.

(Ord. 30032.)

17.23.550 Civil action for wrongful eviction.

In addition to any other remedies provided by law, any Landlord found to have evicted a Tenant from a Rental Stabilized Unit in violation of the Apartment Rent Ordinance is liable to that Tenant for a fine of up to ten thousand dollars ($10,000), and the reasonable costs incurred by the Tenant as a result of the eviction, including the costs of moving the Tenant Household and the reasonable costs of bringing such suit, including court costs and attorney fees.

(Ord. 30032.)

17.23.560 Disclosure to purchasers of real property.

A. Any Owner, as that term is defined in Part 11 of this Chapter 17.23, of a Rent Stabilized Unit shall disclose to a potential buyer in writing, prior to the close of escrow that the Rent Stabilized Unit is subject to this Chapter 17.23 and implementing regulations. Upon request by the City, such Owner or former Owner shall provide the City with a copy of such written disclosure.

B. Failure of an Owner to make the disclosure set forth in Section 17.23.560 shall in no way excuse a purchaser of a Rent Stabilized Unit from any right, responsibility, or obligation under this Chapter 17.23.

(Ord. 30032.)

17.23.570 Administrative citations; injunctive relief.

A. The Director may enforce the rights and responsibilities created by this Chapter 17.23 and the Regulations, including issuance of an administrative citation in accordance with Chapter 1.15 of the San José Municipal Code.

B. The City Attorney may seek injunctive relief to restrain or enjoin any violation of this Chapter or the Regulations.

(Ord. 30032.)

17.23.580 Rights and obligations cumulative.

A. Rental in Violation of City Ordinance. If a Landlord rents a Rent Stabilized Unit: (i) in violation of the City's Short Term Rental Ordinance, Part 2.5 of Chapter 20.80, or for an unpermitted non-residential use; (ii) in material violation of the City's Housing, Fire or Building Codes, Chapter 17.20, or Title 24; or (iii) in violation of the implied warranty of habitability, such rental shall also be considered a violation of this Chapter and may give rise to any of the remedies or penalties identified in this Part 5.

B. Tenant Protections. Tenants shall have the right to seek the protections set forth in the Tenant Protection Ordinance in addition to any remedies available under Parts 1 through 9 of this Chapter.

C. Failure to Provide a Notice of Termination; Evasion. If a Landlord fails to comply with Section 17.23.600, requires a Tenant to enter into a new lease under another name, or otherwise seeks to evade the restrictions on Rent in this Chapter, such actions shall also be considered a violation of this Chapter and may give rise to any of the remedies or penalties identified in this Part 5.

D. Additional Rights and Obligations. The rights and obligations set forth in Parts 1 through 9 of this Chapter are in addition to those set forth in any other Part or Chapter of the Municipal Code.

(Ord. 30032.)

### Part 6 EVICTIONS - RENT STABILIZED UNITS

17.23.600 Notices of termination of tenancy - Mandatory notice to city.

A. Copy of Notice of Termination to City. A copy of each and every Notice of Termination issued to a Tenant of a Rent Stabilized Unit shall be filed with the Director within three (3) days after the service thereof on the Tenant.

B. Supplement to Notice of Termination of Tenancy Filing. Until the Rent Stabilized Unit is first registered pursuant to the Regulations, the copy of the Notice of Termination provided to the Director, excluding copies of the Notice of Termination based on a three (3)-day notice to pay or quit, shall be accompanied by a "filing statement" from the Landlord or property manager, made under penalty of perjury, setting forth all of the following information in a form approved by the Director:

1. The amount of Rent that the Tenant Household being evicted is currently paying each month;

2. The date of the most recent Rent increase to the Tenant who has received the Notice of Termination;

3. The physical address of the Rent Stabilized Unit being vacated;

4. The names of the Tenants being evicted; and

5. Such other information as may be reasonably requested by the City.

C. Notice of Re-Rental to the City. Unless the Landlord is already obligated to re-register the Rent Stabilized Unit on vacancy or re-rental pursuant to the Regulations, once a Tenant Household has vacated a Rent Stabilized Unit, such Landlord shall be required to provide the Director with the following information in a form approved by the Director, subject to California Civil Code 1947.7, as amended:

1. The amount of Rent that the subsequent Tenant is actually paying each month; and

2. The physical address of the Rent Stabilized Unit; and

3. The name, of each subsequent Tenant; and

4. A copy of the written rental agreement (if any) between the Landlord and Tenant; and

5. The reason the prior Tenant vacated the Rent Stabilized Unit, if known; and

6. Such other information as may be reasonably requested by the City.

D. Use of Personal Information. Personally-identifying information about Tenants and Tenant Households received by the City pursuant to this Section shall be used for investigation and prosecution of violations of the Municipal Code or other applicable laws. Unless the City receives permission from such individuals, City staff shall not otherwise provide such information to third parties unless required to do so by law or court order. For so long as the City requires registry of rents and requires the Landlord to provide the name of present or former tenant, the following information, when required to be provided by and received from the Landlord is confidential and shall be treated as confidential information within the meaning of the Information Practices Act of 1977: the name of a present or former Tenant and any additional information provided concerning the Tenant.

E. Each Violation a Separate Violation. For purposes of assessing civil and criminal penalties, violations of the requirements set forth in this Section shall be considered separate violations of this Chapter.

(Ord. 30032.)

### Part 7 TENANT BUYOUT AGREEMENTS

17.23.700 Purpose.

The purpose of this Part 7 is to increase the fairness of Buyout Offers and Agreements by requiring Landlords provide Tenants with a City Disclosure form, and permitting Tenants to rescind Buyout Agreements, provided certain conditions are met, within forty-five (45) days of executing the Buyout Agreement. An additional goal is for the City to obtain data relating to the prevalence of Buyout Agreements, so as to monitor the level of tenant displacement, and regulate compliance with the purposes of this Chapter.

(Ord. 30032.)

17.23.705 Tenant buyout.

Subject to the requirements of Chapter 14 of the Regulations, a Landlord may negotiate with a Tenant to obtain a voluntary vacancy by agreement.

(Ord. 30032.)

### Part 8 FAIR RETURN STANDARD

17.23.800 Purpose.

A Landlord may Petition for a Rent adjustment in order to obtain a fair return in the event that the other increases allowed pursuant to the Apartment Rent Ordinance do not provide a fair return. This Part sets forth the standards for determining whether or not a Landlord is obtaining a fair return and what Rent increase would be required to provide a fair return if a Landlord is obtaining less than a fair return.

(Ord. 30032.)

17.23.810 Fair return standard.

A. Fair Return Standard. A fair return is the Base Year Net Operating Income adjusted by the percentage increase in the Consumer Price Index since the Base Year. "Net Operating Income" is the Gross Income from a Covered Property net of Operating Expenses, as such amounts are calculated and adjusted pursuant to this Part. Debt service costs are not included in calculating Net Operating Income.

B. Base Year. The "Base Year" is the 2014 calendar year, provided that where the Rent for Rent Stabilized Units has been set in a prior fair return decision regarding a Petition pursuant to this Part, in which case the calendar year that was the Current Year in the prior determination may be used as the Base Year for the purposes of reviewing a subsequent fair return Petition.

C. Current Year. The Current Year is the most recent calendar year preceding the submission of a Petition pursuant to this Part.

D. Calculation of Consumer Price Index. The Consumer Price Index ("CPI-U") for the Base Year shall be 251.985, which equals the annual average for 2014 reported by the Bureau of Labor Statistics for the CPI-U index for all urban consumers for all items for the San Francisco-Oakland-San José area. The CPI-U for the Current Year shall be the annual average for the Current Year reported by the Bureau of Labor Statistics for the CPI-U index for all urban consumers for all items for the San Francisco-Oakland-San José area. In the event a successor index to the CPI-U index for all urban consumers for all items for the San Francisco-Oakland-San José area is established by the Bureau of Labor Statistics, this calculation method may be updated accordingly in the Regulations.

(Ord. 30032.)

17.23.820 Calculations of gross income and operating expenses.

A. Calculation of Gross Income. For the purposes of determining the Net Operating Income, Gross Income shall be the sum of the following:

1. Rent, calculated on the basis of one hundred percent (100%) rental occupancy at the Rents in effect at the end of the Base Year or Current Year, as applicable; and

2. Income from coin operated laundry facilities, vending machines and similar income; and

3. Interest from security and cleaning deposits (except to the extent paid to Tenants); and

4. All other income or consideration received or receivable in connection with the use or occupancy of the Rent Stabilized Units and the Covered Property.

B. Adjustments of Gross Income.

1. Vacancy and Unpaid Rent. Rents shall be adjusted for uncollected rents due to vacancy and unpaid Rent to the extent such are reasonable and beyond the control of the Landlord. Adjustments pursuant to this Section are subject to the limitation that the ratio of uncollected Rents due to vacancies and unpaid Rent in the Current Year shall not exceed the ratio in the Base Year, unless the Landlord can demonstrate that the higher ratio is reasonable, is not the outcome of asking Rents exceeding market rents, and will likely be reoccurring.

2. Separately Charged Fees. Gross Income shall be adjusted to include other fees and charges not included in Rent that are paid to the Landlord or Landlord's designee by Tenants. If the Landlord collects any fees or charges that are not allowed under the Apartment Rent Ordinance, this fact may be considered in the determination on the Petition. In no event shall the collection of unauthorized fees or charges in the Base Year or Current Year be applied so as to result in a Rent increase to the Tenant.

3. Owner Occupied Rental Units or Rental Units Otherwise Not Rented at Market Levels. If a Rent Stabilized Unit is not rented in an arm's length transaction during the Base Year or Current Year or a portion thereof, the potential market rental income for such Rent Stabilized Units shall be included in calculating adjustments to Gross Income, which income shall be estimated based on the Rents of comparable Rental Units on the Covered Property, or if there are no comparable Rental Units on the Covered Property, the current market rents of comparable Rental Units in the immediate area.

4. Increases in Rent Based on Vacancy Decontrol. The Rent of Rent Stabilized Units that received a Rent increase following a valid vacancy decontrol pursuant to California Civil Code Section 1954.53 at any time from the first date of the Petition's Current Year through the date of the last hearing on the Petition, shall be computed at the Rent Stabilized Unit's new Rent after vacancy, for all twelve (12) months of the Petition's Current Year. In addition, if the Rent Stabilized Unit is eligible for an Annual General Increase during any month of the Current Year, the general adjustment shall be included for such months.

5. Illegal or Uninhabitable Rentals during the Base Year. If a Rent Stabilized Unit was rented in violation of the Municipal Code during the Base Year, the Base Year rent for that unit shall be established pursuant to Section 17.23.820.B.3, unless the Rent Stabilized Unit was uninhabitable in the Base Year. If a Rent Stabilized Unit is uninhabitable in the Base Year, any adjustment to income shall be made in consideration of the duties of the Landlord under law and the purpose of this Chapter.

6. Other Income in Violation of Municipal or State Law. If not already accounted for as Rent, Gross Income shall be adjusted to include other income to a Landlord from renting a Rent Stabilized Unit in violation of the City's Short Term Rental Ordinance, Part 2.5 of Chapter 20.80, in violation of any other local or state law or regulation. If the Landlord earns income in violation of the law, this fact may be considered in the determination on the Petition. In no event shall the collection of unpermitted or illegal Rent or Gross Income in the Base Year or Current Year be applied so as to result in a Rent increase to a Tenant Household.

C. Calculation of Operating Expenses. For the purposes of determining Net Operating Income, Operating Expenses shall include the following expenses to the extent they are incurred in connection with the operation of the Covered Property:

1. Annual fees assessed under Chapter 17.23 to the extent that they are not passed through to Tenants;

2. Business license fees;

3. Real property taxes;

4. Utility costs paid by the Landlord to the extent that they are not passed through to Tenants;

5. Insurance;

6. Normal and reasonable repair and maintenance expenses for one (1) or more Rental Units and the Covered Property. Repair and maintenance expenses shall include, but not be limited to, building maintenance including carpentry, painting, plumbing and electrical work, supplies, equipment, refuse removal, security services or systems, cleaning, fumigation, landscaping, and repair or replacement of furnished appliances, drapes, and carpets;

7. Reasonable management expenses (contracted or owner performed), including necessary and reasonable advertising, accounting, other managerial expense. Management expenses are presumed to be six percent (6%) of Gross Income, unless established otherwise. Management expenses in excess of eight percent (8%) of Gross Income are presumed to be unreasonable and shall not be allowed unless it is established that such expenses do not exceed those ordinarily charged by commercial management firms for similar residential properties;

8. Attorneys' fees and costs that are:

a. Incurred in connection with successful good faith attempts to recover Rents owed or with successful unlawful detainer actions not in violation of applicable law, to the extent the same are not recovered from Tenants;

b. Legal expenses that are necessarily incurred in dealings with respect to the normal operation of the Rent Stabilized Units or Covered Property, to the extent such expenses are not recovered from adverse or other parties;

c. Reasonable and necessary costs incurred in obtaining a Rent increase pursuant to this Chapter, including administrative or judicial proceedings in connection with this Chapter, except where the pass-through of such expenses would constitute a violation of public policy or would contravene the exclusion in Section 17.23.820.D.5.

Any attorneys' fees and costs included in Operating Expenses pursuant to this Section shall be amortized over a period of five (5) years, unless it is demonstrated that an alternate amortization period would be more reasonable and more consistent with the purposes of this Chapter.

9. Replacement of facilities, materials or equipment not included in Section 17.23.820.C.6 necessary to maintain the same level of services as previously provided, to the extent that they are not passed through to Tenants and subject to the condition that said expenses shall be amortized in accordance with the standards for Operating Expense amortization in the Regulations.

D. Exclusions from Operating Expenses. For the purposes of determining Net Operating Income, Operating Expenses shall not include:

1. Avoidable and unnecessary expenses incurred during or since the Base Year including expenses for additional maintenance and repair work which would not have been necessary if the maintenance had not been unreasonably deferred by the Owner or a prior Owner;

2. Debt service, including mortgage interest and principal payments and other expenses associated with obtaining debt services, including but not limited to appraisal and title insurance costs;

3. Fees, other than fees expressly authorized by Section 17.23.820.C;

4. Penalties, fees or interest imposed for violation of this Chapter or any other law;

5. Legal expenses excluded as set forth in this Chapter or the Regulations;

6. Contributions to lobbying efforts or organizations which lobby on behalf of apartment owners on local, state or federal legislative issues;

7. Depreciation;

8. Any expenses for which the Landlord has been or was eligible for reimbursement by any rebate or discount, Security Deposit, insurance, judgment for damages, settlement or any other method or device;

9. Any expense incurred in conjunction with the purchase, sale, lease (but not including individual rental agreements with Tenants) financing or re-financing of the building that contains the Rent Stabilized Units, including, but not limited to, loan fees, payments to real estate agents or brokers, appraisals, legal fees, accounting fees, etc.; and

10. Any other expense that does not benefit the Covered Property, including, but not limited to, the cost of or forming a corporation, partnership or other entity or buying out a stockholder or partner of the Landlord.

E. Adjustments to Operating Expenses.

1. Interest Allowance for Amortized Expenses. Allowances for amortized Operating Expenses shall include an interest allowance as provided in the Regulations.

2. Adjustment of Unusually Low or High Expenses. A claimed expense(s) for a particular type of Operating Expense shall be adjusted if the claimed expense(s) is:

a. Not representative of the annual recurring level of the expense; or

b. In the case of Base Year expenses, not a reasonable representation of average expenditures for that item in the years preceding and following the Base Year; or

c. In the case of Current Year expenses, is not a reasonable estimate of future recurring annual expenditures for that item.

Unusually high or low expenses in a particular year shall be adjusted to allow for a reasonable comparison between the annual recurring level of the expense(s) in the Base Year and the Current Year. This adjustment may be made by using an average of the particular expense over a number of years or amortizing an amount that is above the average, or using an industry average or adjusting expense levels from other years by the CPI-U or by some other reasonable methodology. In making such adjustments for specific items, the goal shall be to establish an amount for that particular Operating Expense that most reasonably serves the objectives of obtaining a reasonable comparison between the recurring level of expense(s) in the Base Year and the Current Year.

3. Amortization of Non-recurring expenses. Non-recurring expenses which are "substantial" shall be amortized over a reasonable period. For purposes of this paragraph, non-recurring expenses are substantial if they exceed one (1%) of the annual Rent (as determined pursuant to Section 17.23.820.A.1).

4. Calculation of Management Expenses. It shall be presumed that management expenses increased by the percentage increase in the CPI-U between the Base Year and the Current Year, unless the Landlord can demonstrate that the level of management services that are beneficial to the Tenants has increased. A change from owner management in the Base Year to third party management in the Current Year, in itself, shall not be considered an increase in management services beneficial to the Tenants.

5. Mixed Use Properties; Segregation of Expenses and Income. If a portion of the Covered Property is not used as residential rental property with Rent Stabilized Units or includes units which are not rent stabilized, this must be declared in the Petition, and any Income and Operating Expenses must be fairly allocated, consistent with the purposes of this Chapter, between the other uses and the rent stabilized portion of the property covered by the Petition.

6. Apportionment of Operating Expenses. In the event that a particular Operating Expense covers several years of costs, the costs shall be fairly allocated to the year that they are attributable to, even if they were paid for in a different year.

(Ord. 30032.)

17.23.830 Adjustment of base year net operating income.

A. Presumption of Fair Return. The Apartment Rent Ordinance presumes that the Landlord received a fair return in the Base Year.

B. Rebutting the Presumption. The presumption that the Landlord received a fair return in the Base Year based on reasonable expenses may be overcome by sufficient evidence showing that income was unusually low or expenses were unusually high for a particular Covered Property in the Base Year as described in this Part.

C. Authority to Adjust Net Operating Income. The Hearing Officer may adjust the Base Year Net Operating Income if the Hearing Officer finds:

1. The Landlord's Operating Expenses in the Base Year were unusually high or low in comparison to other years due to unusual circumstances. In such instances, adjustments may be made in calculating Operating Expenses so the Base Year Operating Expenses reflect average expenses for the Covered Property over a reasonable period of time. The Hearing Officer shall consider the following factors in making this finding:

a. The Landlord made substantial Capital Improvements during the Base Year, which were not reflected in the Base Year rents;

b. Substantial repairs exceeding one (1%) of the annual Rent (as determined pursuant to Section 17.23.820.A.1) were made due to damage caused by uninsured disaster or vandalism, provided that the property was not uninsured or unreasonably underinsured as determined by the Hearing Officer, which were not reflected in the Base Year rents;

c. Maintenance and repair were below accepted standards or resulted from the unreasonable deferral of other repairs or work;

d. Other expenses were unreasonably high or low, notwithstanding prudent business practice.

2. The Landlord's Gross Income during the Base Year was unusually high or low. In such instances, adjustments may be made in calculating Gross Income consistent with the purposes of this Chapter. The Hearing Officer shall consider the following factors in making this finding:

a. The Gross Income during the Base Year was unusually low because some Tenants had unusually low Rents for the quality, location, age, amenities and condition of the housing as compared to the Rent for comparable units without housing violations in the immediate area in which the Rent Stabilized Unit is located. In the event that a claim is made pursuant to this Section, the Landlord shall pay for an appraisal of Base Year rents for comparable buildings made by an appraiser selected by the City. The appraisal, which shall be presented as evidence, shall be conducted in a manner consistent with the standards in the Regulations.

b. The Gross Income during the Base Year was significantly lower than normal because of destruction of all or part of the premises and/or temporary eviction for construction or repairs;

c. There was a special relationship between the Landlord and Tenant (such as a family relationship) resulting in abnormally low rent charges;

d. The Rents had not been increased for five (5) years preceding the Base Year;

e. The Tenant lawfully assumed maintenance responsibilities in exchange for low Rent increases or no Rent increases; or

f. Other special circumstances which establish that the Rent was not set as the result of an arms-length transaction.

(Ord. 30032.)

17.23.840 Establishment of base year operating expenses in the absence of expense records.

If Base Year Operating Expense information is unavailable, the Landlord shall submit a request to the City to accept the Petition without complete Base Year Operating Expense information in a manner consistent with the standards in the Regulations. In the absence of Base Year Operating Expense information, it shall be presumed that Operating Expenses have increased by the same percentage as the CPI-U since the Base Year, except that data or rate information or other sources of cost information may be considered in estimating the level of particular Operating Expenses in the Base Year. Information on increases or decreases in costs between the Base Year and the Current Year may be introduced by the Landlord, Tenant or members of the Tenant Household, City staff, and/or the Hearing Officer.

(Ord. 30032.)

17.23.845 Purchasers of rent stabilized properties after the base year.

If the Landlord can show that the Landlord purchased the Covered Property between January 2015 and May 2016 in an arm's length transaction, and that reasonable attempts were made to obtain the records regarding Gross Income from the prior owner, and no information on the Base Year Gross Income is available from Tenants or City Staff, the Landlord may request to the City to accept a Petition for an adjustment under Section 17.23.820 using the year of purchase as an Alternative Base Year, in which case, the provisions of Section 17.23.810 shall be adjusted accordingly.

(Ord. 30032.)

17.23.850 Allocation of rent increases.

Rent increases resulting from a Landlord Petition for fair return shall be allocated equally among all Rent Stabilized Units in the Covered Property; subject to the condition that the Hearing Officer, in the interests of justice, shall have the discretion to apportion the Rent increases in another manner necessary to ensure fairness.

(Ord. 30032.)

17.23.860 Authority to insure a fair return.

If a court finds that a Landlord has been denied a fair return, notwithstanding any other provision in this Section, the Hearing Officer may provide for a Rent adjustment that is adequate to provide a fair return.

(Ord. 30032.)

17.23.870 Landlords to retain 2014 records.

Landlords are required to keep all financial records for 2014 which may be necessary for making a Net Operating Income determination. Failure to retain such records of Base Year Operating Expenses may result in the loss of the ability to demonstrate the need for a fair return Rent increase after September 1, 2016.

(Ord. 30032.)

### Part 9 RENT REGISTRY

17.23.900 Rent Registry.

A. Rent Registration. The procedures for registration shall be established in this Part and the Regulations. All registration requirements are subject to California Civil Code Section 1947.7, as may be amended. The Landlord shall complete and submit to the Director a registration for each Rent Stabilized Unit on a City approved form, annually unless some other interval is specified by the City in the Regulations.

B. Copy of Registration to Tenant. If requested by the City, each Landlord shall provide to an adult member of the Tenant Household of a Rent Stabilized Unit a true and correct copy of the completed registration form that pertains to their Rent Stabilized Unit within ten (10) days of submission to the Director. The Landlord may redact any information that does not pertain to that Rent Stabilized Unit except the name and address of the Landlord.

C. Regulations. The Regulations adopted by the City Manager for the implementation and administration of this Chapter 17.23 may address the contents and submission of registrations, including deadline for submissions by Landlords.

D. Implementation of an Alternate Registry Procedure. Notwithstanding Section 17.23.900.A, the City Council by resolution may, at any time after the second annual registration cycle is complete, change to another interval for, or vacancy-based, registration.

E. Landlord Tenant Collusion. It shall be a violation of this Chapter to report an amount of Rent for a Rent Stabilized Unit to the Director other than the actual amount paid by the Tenant Household for the use and occupancy of the Rent Stabilized Unit, or in the case of a Rental Voucher Unit, the sum of the rent paid by the Tenant and government agency.

F. Upon failure to submit the registration or re-registration for a Rent Stabilized Unit required pursuant to the Regulations within thirty (30) days of the date the registration or re-registration is due, the Landlord shall pay a late registration fee as set forth in the schedule of fees adopted by resolution of the City Council.

(Ord. 30032.)

### Part 10 RESERVED

### Part 11 ELLIS ACT

17.23.1100 Title.

This part shall be known as the "Ellis Act Ordinance."

(Ord. 29902.)

17.23.1110 Policy and purposes declaration.

A. Owners of residential rental property are entitled to certain rights under California Government Code Sections 7060 - 7060.7, as amended (the "Ellis Act"). The purposes of this Part 11 are to: (1) set forth the city's requirements for withdrawal of a building containing covered residential rental units from the residential rental market in accordance with the Ellis Act; and (2) mitigate any adverse impact on persons displaced by that withdrawal through the provision of relocation assistance. This Part 11 complements existing state regulation of the landlord-tenant relationship and is intended to provide tenants with the maximum protections under the Ellis Act and to support the city's apartment rent ordinance. This Part 11 does not supersede any state law, or grant or deny any entitlement to the use of real property. The rights and obligations created by this Part 11 for owners of residential rental property and tenants are created pursuant to the city's general police powers to protect the health, welfare, and safety of its residents and are in addition to any rights and obligations under state and federal law and are being adopted pursuant to the provisions of the Ellis Act.

B. The Ellis Act broadly regulates how property owners may remove any tenants from residential rental units in order for the property owner to withdraw all units in a building from the residential rental market. The sequence of events to remove a tenant, withdraw a building, and subsequent regulation of the property is summarized in the table below. The table below is provided for information purposes. The provisions of the Ellis Act and this part shall govern.

**Summary of State and Local Ellis Act Removal Provisions**

|  |  |  |  |
| --- | --- | --- | --- |
| # | Timeline | Activity or Event | Citations |
| 1 |  | Notice of intent to withdraw ("withdrawal notice") is provided to tenants (if any) base assistance payment is deposited into escrow; fee is paid to city. | Gov. §7060.5  SJMC §17.23.1140  SJMC §17.23.1150 |
| 2 | Within 10 days of delivery of notice to tenants | A copy of the withdrawal notice is delivered to the director. | Gov. §7060.4  SJMC §17.23.1140 |
| 3 | Within 10 days of delivery of notice to city | Owner must record summary memorandum encumbering the property for 10 years within 10 days and before sale or transfer to another party. | Gov. §7060.3 - .4  SJMC §17.23.1145 |
| 4 | Within 60 days of delivery of notice to city | Owner deliver a conformed copy of the recorded summary memorandum to city. | SJMC §17.23.1145 |
| 5 | 120 days from delivery of notice to the city | Earliest\* effective date of withdrawal of a building from the residential rental market ("withdrawal"); or  Earliest date to provide tenant 3-day notice to quit. | Gov. §7060.4  SJMC §17.23.1160 |
| 6 | 1 year from delivery of notice to the city | Earliest effective date of withdrawal if tenant household includes an elderly or disabled person. | Gov. §7060.4  SJMC §17.23.1160 |
| 7 | Within 2 years of withdrawal | Owner must notify city and former tenants of intent to return unit to residential rental market; and  Tenant displaced by withdrawal has right to return to the unit under the original lease terms.\*\* | Gov. §7060.2  SJMC §17.23.1170 |
| 8 | Within 5 years of withdrawal | Owner must notify city of intent to return unit to residential rental market;  Tenant displaced by withdrawal has right to return to the unit;  Covered unit returned to market after withdrawal remains subject to city apartment rent ordinance; and  Any newly constructed unit on site of covered unit that is placed in residential rental market is subject to apartment rent ordinance. | Gov. §7060.2  SJMC §17.23.1170 |
| 9 | Within 10 years of withdrawal | Owner must notify city of intent to return unit to residential rental market; and  Tenant displaced by withdrawal of unit has right to return to the unit. | Gov. §7060.2  SJMC §17.23.1170 |
| \*Earliest effective withdrawal date for certain tenant households with minors in school may be extended to 60 days after the conclusion of the school year. (SJMC §17.23.1160.)  \*\*The right to return to a unit under the original lease terms applies to all tenancies created after December 31, 2002; different rules apply for tenancies commenced prior to that date. (Gov. §7060.2(e).) | | | |

(Ord. 29902.)

17.23.1120 Definitions.

In addition to the definitions provided in Title 17, Chapter 23, Part 2, for purposes of this Part 11 the following terms are defined as follows:

A. "Base assistance" means that portion of the relocation assistance provided to all tenant households to mitigate any adverse impact on persons displaced from a covered unit due to the withdrawal of a building containing the covered unit from the residential rental market.

B. "Catastrophically ill" means having a severe illness requiring prolonged hospitalization or recovery as certified by a physician.

C. "Covered unit" means all of the following:

1. Rent stabilized units, as defined in Subsection G of Section 17.23.1130.

2. All residential rental dwelling units in a building that contains a residential rental dwelling unit that would be a rent stabilized unit but is temporarily exempt under Subsection C of Section 17.23.150 because the unit is owned or operated by any government agency or the rents for the unit are subsidized by any government agency.

D. "Director" means the director of the department of housing or the director's designee.

E. "Notice of intent to withdraw" means a city approved form giving notice of an owner's intent to withdraw a building containing at least one covered unit from the residential rental market in accordance with California Government Code Sections 7060 - 7060.7, as amended.

F. "Owner" means the fee owner of property that includes a building that contains at least one covered unit, and includes any successor in interest.

G. "Qualified assistance" means that portion of the relocation assistance provided to mitigate the adverse impact on tenant households that are low income, or contain minor children, elderly persons, terminally or catastrophically ill persons and/or disabled persons displaced due to the withdrawal of a building containing the covered unit from the residential rental market.

H. "Relocation assistance" means the total payments of financial assistance from an owner to a qualified tenant household in accordance with Section 17.23.1150.

I. "Rent stabilized units" means the units subject to the city's apartment rent ordinance provided in Title 17, Chapter 23, which includes rooms or accommodations occupied for thirty days or more in a guesthouse and units in any multiple dwelling building for which a certificate of occupancy was received on or prior to September 7, 1979, as those terms are defined in Sections 20.200.340, 20.200.470, and 20.200.480 of the San José Municipal Code.

J. "Right to return" means the obligation of the owner(s) of a building containing a covered unit to honor a request by certain tenants to receive an offer to return to and rent a covered unit when an owner returns the covered unit to the residential rental market, or, if the covered unit has been demolished, the right to rent a replacement covered unit, under certain circumstances and terms described in Section 17.23.1170. The right to return shall serve as a right of first refusal which must be complied with and specifically described in the memorandum required under Section 17.23.1145.

K. "Tenant" means a residential tenant, subtenant, lessee, sublessee, occupant, or any other person entitled by written or oral lease, or by sufferance, to use or occupy a covered unit.

L. "Tenant household" means one or more tenant(s) who occupy any individual covered unit, including each dependent of any tenant whose primary residence is the covered unit.

M. "Terminally ill" means certified by a physician as having a terminal illness.

(Ord. 29902.)

17.23.1130 General.

A. Fees. The City shall establish fees for City-incurred costs which shall be paid by any Owner who exercises the privilege to withdraw Covered Units from rent or lease. The City shall set the fee so as to recover all costs of administering this Part. The fees shall be paid to the City prior to the service of the Notice of Intent to Withdraw on any Tenant. Failure to pay the fees prior to service of the Notice of Intent to Withdraw shall invalidate such notice.

B. Copies of Forms. Owner shall make copies of notices and forms available if a Tenant indicates the items have been misplaced or lost or are otherwise needed.

C. New Tenants During the Withdrawal Process. If the Owner desires to rent a Covered Unit to a new occupant after delivery of the Notice of Intent to Withdraw, the Owner shall comply with this subsection). Owner shall first comply with all requirements of this Part 11, including but not limited to the delivery of notices to the City and Tenants, and the provision of Relocation Assistance in accordance with Section 17.23.1150 with respect to the unit to be rented. Prior to such rental, Owner shall also provide a Notice of Pending Withdrawal on a City approved form to any new potential occupant of the Covered Unit for acknowledgement. If the Owner complies with this subsection, the new occupant shall not be entitled to Relocation Assistance or other benefits under this Part. If the Owner fails to comply, the new occupant of the Covered Unit shall be entitled to Relocation Assistance under this Part.

D. City Approved Forms. Director may adopt such forms as are necessary or convenient for the administration of this Part 11, subject to review and approval of the City Attorney.

E. Every Owner must provide to each Tenant of a Covered Unit a notice of Tenant rights to extend the tenancy on a form specified by the City, which may include contact information for the City and shall include the following statement:

"In accordance with the State's Ellis Act, the City of San José requires landlords to allow certain tenants to extend their tenancy beyond the minimum one hundred twenty (120) day notice period when a landlord intends to withdraw the dwelling unit from the residential rental market. The elderly, disabled, and households with a child enrolled in kindergarten through 12th grade may be eligible for extended tenancies if requested."

F. Withdrawal of less than an entire building is not allowed under this Part.

G. The City Manager may adopt regulations for the administration of this Part.

H. Non-Rent Stabilized Properties. Buildings with three (3) or more units that do not contain any Covered Units may be permanently withdrawn from the residential rental market. Such a permanent withdrawal of a building will be consistent with this Part if the Owner has completed all of the following as described this Part and the Regulations: (i) served Notices of Intent to Withdraw on the Tenants and the City, (ii) complied with the provisions of Section 17.23.1160 requiring 120 day notice for all Tenants and Extended Notice for certain Tenants prior to termination of tenancy, and (iii) paid the filing fee including the fee for Relocation Specialist Services described in Section 17.23.1150.E. Upon completion of these requirements for the entire building and expiration of the notice periods, the Owner will be considered to have met the relocation obligations of this Part for the purposes of evaluation for demolition permits under Section 20.200.460 and for the purposes of satisfying the requirements for relocation under the Tenant Protection Ordinance, Sections 17.23.1250.A.9 and 17.23.1250.B.2. These properties shall not be subject to the requirement to pay Base or Qualified Assistance, to provide the Tenant Qualification forms, to record a memorandum regarding re-control, or to provide a right of return.

(Ords. 29902, 30088.)

17.23.1140 Notices of intent to withdraw.

A. Service on Tenants; Filing Fee. No less than one hundred twenty days prior to the date upon which the building is intended to be withdrawn from the rental market, the owner shall pay to the city the fee set pursuant to Section 17.23.1130 and personally serve or deliver by first class mail the notice of intent to withdraw to each tenant. Failure to pay the fee shall invalidate the notice of intent to withdraw.

B. Service on City. Any owner seeking to withdraw a building from the residential rental market that contains at least one covered unit must deliver to the director a copy of each notice of intent to withdraw within ten days of service on the tenants.

C. Contents. The notice of intent to withdraw shall contain the following statements, under penalty of perjury, stating that the owner intends to evict in order to remove the building from rental housing use, the address or location of the building and covered unit, the number of covered units to be removed from rental housing use, the names of the tenants of each covered unit, the date on which the covered unit will be withdrawn from rental housing use and the rent applicable to that covered unit. It shall describe the rights of return and the re-control of rents that may apply under this Part 11 and the tenant's rights to regain possession of the premises and to damages as set forth in Sections 17.23.1170 - 17.23.1190, and such other information reasonably necessary for the city's administration of this Part 11. The notice of intent to withdraw shall be accompanied by tenant qualification forms, postage prepaid, addressed to the owner and the director which form will allow the tenant household to qualify for a qualified assistance or an option to extend tenancy pursuant to Section 17.23.1160, and to correct erroneous information on the notice of withdraw.

D. Correction. Any tenant that receives a notice of intent to withdraw may correct or supplement any of the information on the notice of intent to withdraw via written notice delivered to the director and owner within thirty days.

E. The director shall adopt a form notice of intent to withdraw and provide versions in the other two most commonly spoken languages in San José. Owners must provide the tenant household with a completed copy of the notice of intent to withdraw in English and, if requested, a copy of a non-English version.

(Ord. 29902.)

17.23.1145 Recording of memorandum.

The owner shall record a memorandum on a city approved form in the official records of Santa Clara County encumbering the property where the covered unit is located upon the earlier of: ten days of delivery to the city of the notice of intent to withdraw, or at least one day prior to sale or transfer of any property on which a building containing a covered unit to be withdrawn from the residential rental market is located. The memorandum must be executed by the fee owners of the property. The memorandum shall summarize the obligations of the owner and any successor in interest to the owner related to the property including the tenant right to return and the re-control requirement under this Part 11 and the city's apartment rent ordinance for certain units returned to the residential rental market in accordance with Section 17.23.1180. The summary memorandum must encumber the property for ten years from the effective date of withdrawal of the building containing the covered unit from the residential rental market. The owner shall deliver to the director a conformed copy of the recorded memorandum within sixty days of delivery to the city of the notice of intent to withdraw.

(Ord. 29902.)

17.23.1150 Relocation assistance.

A. Relocation Assistance Benefits. When an owner withdraws a building containing a covered unit from the residential rental market and in connection with the withdrawal causes one or more tenancies to be terminated, the owner must provide, and each tenant household residing in a covered unit is entitled to receive from the owner, notice of and access to an application for all vacant residential rental unit(s) owned by the owner and located within the City of San José, as well as the following:

1. The owner must pay and the tenant household must receive relocation assistance. The base assistance required pursuant to Subsection C of Section 17.23.1150 must be deposited into escrow at the time of delivery of the notice of intent to withdraw to the tenants. Any qualified assistance due pursuant to clauses (a) - (d) of Subsection C.2 of Section 17.23.1150, must be deposited into escrow as soon as the completed tenant qualification form has been verified by the relocation specialist and approved by the director. The owner is neither responsible for nor liable to divide the relocation assistance among the tenant(s) that comprise a tenant household entitled to relocation assistance.

2. Owner must pay to the city a fee for the relocation specialist services as described in Subsection E of Section 17.23.1150 which fee shall be collected as part of the filing fee.

3. Refund of Security Deposit. Owner must refund to tenant any security deposit paid by the tenant with any interest due. The owner may withhold any properly itemized deductions from the security deposit under California Civil Code Section 1950.5, as amended.

B. Escrow Account. The owner must deposit the relocation assistance into an escrow account with a San José bank or commercial escrow company and provide for disbursement to the tenants consistent with this part. The tenant household may obtain the base assistance from escrow immediately. The tenant household may obtain the qualified assistance from escrow on or before the earlier of: the first business day after the tenant gives a thirty-day notice to the owner under California Civil Code Section 1946.1, as amended, or the last day of tenancy for which the owner has received rent.

C. The amount of relocation assistance per covered unit shall be set by the city council via resolution and may be based on the number of bedrooms per covered unit or such other metric as provided in the resolution. The amount of relocation assistance per covered unit may thereafter be amended by resolution, and shall be comprised of the following components.

1. Base assistance for all tenant households.

2. Qualified assistance for tenant households that qualify under one or more of the following categories:

a. Tenant households that are lower income households, as defined in California Health and Safety Code Section 50079.5, as amended, and annually listed, as adjusted for household size, by the regulations of the state housing and community development department for the County of Santa Clara.

b. Tenant households when at least one tenant is sixty-two years old or older.

c. Tenant households when at least one tenant is a person with a disability, as defined in California Government Code Section 12955.3, as amended, or is terminally or catastrophically ill as evidenced by a physician's determination.

d. Tenant households when at least one tenant has a custodial or family relationship with an individual residing in the covered unit who is under the age of eighteen and is enrolled in school in any grade between and including kindergarten through twelfth grade.

3. Special assistance, in lieu of base assistance and qualified assistance, for a tenant household that accepts an offer of an alternate rent stabilized unit pursuant to Section 17.23.1151.

Each tenant household shall receive the base assistance payments and may receive one allocation of qualified assistance if the tenant household is eligible for a category of qualified assistance as described in clauses (a) - (d) of Subsection C.2 of Section 17.23.1150. Any tenant household that is eligible for any of the qualified assistance categories identified above must complete a tenant qualification form and provide a copy to the owner and the city.

D. Annual Adjustment. The amounts set by the city council via the resolution shall be adjusted each year as provided in this subsection unless otherwise specified by the city council in a subsequent resolution. The annual adjustment shall be an increase that is equal to the amounts for each component of the relocation assistance multiplied by the percentage increase (if any) in the Consumer Price Index - Rent for all urban consumers for the San Francisco-Oakland-San José area as published by the U.S. Department of Labor Statistics for the twelve-month period ending on the last day of February of each year, unless otherwise specified by the city council. Amounts shall be rounded to the nearest whole dollar.

E. Relocation Specialist Services. When an owner withdraws a building containing a covered unit from the residential rental market and in connection with the withdrawal causes one or more tenancies to be terminated, the owner must, pay a fee to the city for providing relocation counseling for the tenant. The city will contract with a relocation specialist with experience in providing relocation services to tenants in the San José area to provide these services. The relocation specialist shall contact the tenants to explain the procedures for obtaining assistance under the part. The relocation specialist shall verify tenant qualification forms. The relocation specialist shall provide services including meetings with tenants on site; providing current information on local vacancies, and assisting each tenant household in crafting a relocation plan on a form approved by the city. The relocation specialist must provide services to disabled persons and persons with no or limited English proficiency and ensure relocation assistance, procedures and tenant's rights are fully explained to those persons.

(Ord. 29902.)

17.23.1151 Voluntary alternative relocation.

A. If the owner is withdrawing a building containing a covered unit as defined in Subsection G of Section 17.23.1130 then the owner, at its sole discretion, may offer to relocate the tenant household to another rent stabilized unit owned by the owner ("alternate rent stabilized unit") prior to delivering the first relocation assistance payment into escrow, so long as the alternate rent stabilized unit was voluntarily vacated in accordance with the apartment rent ordinance. The terms of the rental agreement for the alternate rent stabilized unit must be substantially similar to a continuance of the tenancy of the initial rent stabilized unit in accordance with California Civil Code Section 1945, including but not limited to the same monthly rent as would be due for the initial rent stabilized unit.

B. The alternate rent stabilized unit offered in accordance with this section may be accepted by the tenant household at the tenant household's sole discretion. All tenants on the existing rental agreement must agree in writing to the rental of the specific alternate rent stabilized unit for the acceptance to be effective. If the written agreement is obtained prior to the tenant household's inspection of the alternate rent stabilized unit, it must be contingent on the tenant household's inspection of the alternate rent stabilized unit.

C. If the offer of the alternate rent stabilized unit is not accepted or if it is revoked after inspection of the alternate rent stabilized unit, the tenant household shall be entitled to receive all additional relocation assistance to which the tenant household is entitled pursuant this part.

D. The offer by an owner and acceptance by a tenant household pursuant to the terms herein to create a new tenancy in an alternate rent stabilized unit under substantially similar terms as the tenancy in the initial rent stabilized unit is an express waiver by the owner of any right to vacancy decontrol of the alternate rent stabilized unit as may be conferred by state or local law and an express waiver by the tenant household to any additional relocation assistance payments under Subsection C of Section 17.23.1150 beyond the special assistance payment. An offer by an owner to relocate a tenant household to an alternate rent stabilized unit and provide special assistance shall only fulfill the owner's duty to provide relocation assistance under Subsection C of Section 17.23.1150 if the tenant household accepts the offer and executes a new rental agreement with terms substantially similar to the terms of tenancy for the initial rent stabilized unit.

E. If the tenant household accepts the offer and executes a new rental agreement with the owner in accordance with this section and the owner provides the special assistance, then the owner shall have no further relocation assistance obligation regarding the initial rent stabilized unit under Subsection C of Section 17.23.1150.

(Ord. 29902.)

17.23.1160 Effective date of withdrawal; extension of tenancy.

A. If the covered unit is occupied on the date of delivery to the city of the notice of intent to withdraw, then the tenancy may only be terminated for cause as defined in Subsection B.2 of Section 17.23.1110 and the owner may not withdraw the building containing the covered unit from the market until one hundred twenty days from the date of delivery to the city in person or by first-class mail of the notice of intent to withdraw.

B. Notwithstanding Subsection A of Section 17.23.1160, if at least one tenant in a covered unit to which a notice of intent to withdraw applies is either at least sixty-two years old, disabled (as defined in California Government Code Section 12955.3, as amended), terminally ill, or catastrophically ill and if that tenant has lived in the covered unit for at least one year prior to the date of delivery to the city of the notice of intent to withdraw, then the owner must provide notice of and allow the tenant to exercise an option to extend the tenancy for one year from the date of delivery to the city of the notice of intent to withdraw.

1. To exercise the option to extend the tenancy for one year from the date of delivery to the city of the notice of intent to withdraw, the qualifying tenant must give written notice to the owner of the extension of the tenancy within sixty days of delivery to the city of the notice of intent to withdraw.

2. If the owner receives a notice of extension of the tenancy, then the owner must provide notice of the extension of the tenancy to the director in the monthly report pursuant to Section 17.23.1175.

C. Notwithstanding Subsection A of Section 17.23.1160, if at least one tenant in a covered unit to which a notice of intent to withdraw applies has a custodial or family relationship with an individual residing in the covered unit who is under the age of eighteen and is enrolled in school in any grade between and including kindergarten through twelfth grade, and if that minor individual has lived in the covered unit for at least one year prior to the date of delivery to the city of the notice of intent to withdraw, then the owner must provide notice of and allow the tenants to exercise an option to extend the tenancy through the current scholastic year, plus an additional sixty days from the completion of the scholastic year.

1. To exercise the option to extend the tenancy through the scholastic year plus sixty days, the tenant must give written notice to the owner of the extension of the tenancy within sixty days of delivery to the city of the notice of intent to withdraw.

2. If the owner receives a notice of extension of the tenancy through the scholastic year plus sixty days, then the owner must provide notice of the extension of the tenancy to the director in the monthly report pursuant to Section 17.23.1175.

(Ord. 29902.)

17.23.1170 Right to return.

A. Tenant(s) of covered units whose tenancies are terminated in connection with the withdrawal of a building containing the covered unit(s) from the residential rental market in accordance with this Part 11, are entitled to receive, and owner(s) must deliver to the tenant household, on a form approved by the city notice of the tenant(s) right to return to and rent the same unit at the rent determined pursuant to Section 17.23.1180A if:

1. The tenant has provided the owner a current mailing address and email address at which to receive a notice of the right to return; and

2. An owner returns the covered unit to the residential rental market within five years of the effective date of withdrawal of a building containing the covered unit from the residential rental market.

B. Owner(s) of a building containing a covered unit that was withdrawn from the residential rental market within the previous ten years but after the five-year period described in Subsection A of Section 17.23.1170 must provide one hundred twenty days written notice to the city and tenant of the intent of the owner(s) to return the covered unit to the residential rental market.

C. Any tenant(s) displaced from a covered unit in connection with the withdrawal of a building containing a covered unit from the residential rental market may request the right to return from the owner(s) within thirty days of receipt by the city of an owner(s) written notice of intent to return the covered unit to the residential rental market. Following the notice required to be given to the city, the city may request that the owner extend an offer to renew the tenancy to the tenant. However, nothing in this section shall be construed to relieve the owner of the obligation to directly contact the tenant or former tenant and to advise the tenant that the withdrawn covered unit is again offered for rent or lease. Notice shall be on a form approved by the city.

D. The city may create a registry of tenant contact information for use by tenants and owners to facilitate communication regarding a right to return, relocation assistance, and other topics. Each owner shall use any information in the registry, in addition to information provided voluntarily by each tenant, when complying with right to return obligations under Subsection A of Section 17.23.1170. The city may attempt to inform any tenant(s) displaced due to the withdrawal of a building containing a covered unit upon receipt by the city of an owner(s) written notice of intent to return the covered unit to the residential rental market.

(Ord. 29902.)

17.23.1175 Owner's reporting obligations.

A. Owner shall submit a monthly report to director during period that commences with the city's receipt of the notice of intent to withdraw and ends with the final termination of tenancy for all covered units and completion of withdrawal under this part. The report shall be on a city form and shall include information relating to the occupancy of units, any thirty-day notices received, request for right to return, and any leasing activity with asking rents.

B. At least one hundred twenty days before the rental or leasing of any unit in a building being returned to the rental market, owner shall submit a report to director regarding compliance with Section 17.23.1170 and Section 17.23.1180 and status of tenant notification of right to return, and list of tenants not found/contacted.

(Ord. 29902.)

17.23.1180 Re-Control.

A. If a building containing a Covered Unit is withdrawn from the residential rental market and is returned by an Owner to the residential rental market within five (5) years, then that unit must be offered and rented or leased at the lawful rent in effect at the time the Notice of Intent to Withdraw was delivered to the City, plus any annual adjustments authorized by Title 17, Chapter 23 of this Code. This Section applies regardless of the occupancy status of each Covered Unit when the building was withdrawn from the residential rental market and regardless of whether a displaced Tenant exercises a Right to Return.

B. If a building containing a Covered Unit is demolished and new unit(s) are built on the same property and offered for rent or lease within five (5) years of the effective date of withdrawal of the building containing the Covered Unit, the number of newly constructed rental units equal to greater of (i) the number of Covered Units or (ii) fifty percent (50%) of all newly constructed rental units located on the property where the Covered Unit was demolished shall be deemed Rent Stabilized Units subject to the Apartment Rent Ordinance, Title 17, Chapter 23 of this Code. Any new units made subject to the Apartment Rent Ordinance which are in excess of the number of demolished Covered Units shall remain subject to the Annual General Increase limit of the monthly Rent charged for the previous twelve (12) months for the Rent Stabilized Unit multiplied by five percent (5%) in the event that Section 17.23.310.B is amended to change the Annual General Increase limit.

C. Waiver for Projects with On-Site Affordable Units. If at least twenty (20) newly constructed rental units are being created, the re-control requirement under this Section will be waived in the event that the Owner:

(i) develops fifteen percent (15%) of the newly constructed units as on-site affordable rental units consistent with the standards and affordability restriction requirements in the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the San José Municipal Code and its implementing guidelines; and

(ii) develops an additional five percent (5%) of the newly constructed units as on-site affordable rental units restricted at 100% of area median income, but otherwise consistent with the standards in the Inclusionary Housing Ordinance and implementing guidelines.

(Ords. 29902, 30088.)

17.23.1190 Enforcement.

A. Criminal Penalty. Any owner found by a court of competent jurisdiction to be guilty of a willful violation of Subsection A of Section 17.23.1170 shall be subject to up to a one thousand dollar fine and/or six months in jail.

B. Civil Enforcement.

1. Any owner(s) that fail(s) to comply with this Part 11 may be subject to civil proceedings for exemplary damages for displacement of tenant(s) initiated by the city for actual and exemplary damages, as well as any other alternative remedy available under the law or equity, including without limitation, injunctive relief to prevent termination of a tenancy.

2. Any owner(s) that fail(s) to comply with the notice requirement defined in Subsection A of Section 17.23.1170 if the violation occurs within two years of the effective date of withdrawal may be subject to civil proceedings for actual, exemplary, and/or punitive damages (in an amount which does not exceed the contract rent for six months) initiated by the city or by any tenant who would otherwise be entitled to a right to return, which action(s) must be brought within three years of withdrawal of the building containing a covered unit from the residential rental market.

3. Any owner(s) that fail(s) to comply with this Part 11 may be subject to civil proceedings for actual and exemplary damages as well as any other alternative remedy available under the law or equity, initiated by any tenant who would otherwise be entitled to relocation assistance. Civil proceedings by any tenant regarding relocation assistance under this Part 11 shall be brought within three years of the withdrawal of the building containing a covered unit.

4. If an owner seeks to displace any tenant(s) from a covered unit in a building to be withdrawn from the residential rental market by an unlawful detainer proceeding, the tenant(s) may appear and answer or demur pursuant to Section 1170 of the California Code of Civil Procedure, as amended, and may assert by way of defense that the owner has not complied with the applicable provisions of this Part 11 and/or the Ellis Act.

(Ord. 29902.)

### Part 12 TENANT PROTECTION[[21]](#footnote-21)

17.23.1200 Title.

This Part shall be known as the "Tenant Protection Ordinance."

(Ords. 29912, 29911.)

17.23.1210 Policy and purposes declaration.

The purposes of this Part are to promote stability and fairness within the residential rental market in the City, thereby serving the public peace, health, safety, and public welfare. This Part is intended to enable tenants in the City to petition for regarding their grievances, request correction of code violations and necessary repairs, and exercise all of their rights under local, state, and federal laws without fear of retaliation. This Part regulates landlord and tenant relations by promoting fair dealings between landlords and tenants in recognition of the importance of residential housing and the landlord-tenant relationship as components of a healthy, safe, and vibrant city. The rights and obligations created by this Part for landlords and tenants are created pursuant to the City's general police powers to protect the health, safety, and welfare of its residents and are in addition to any rights and obligations under state and federal law.

(Ords. 29912, 29911.)

17.23.1220 Definitions.

Subject to any exceptions, additions, and clarifications included in regulations that may be adopted by the City Manager for administration of this Part, the below listed terms are defined as follows:

A. "Apartment Rent Ordinance" means Parts 1 - 10 of Chapter 17.23 of Title 17 of the San José Municipal Code.

B. "Director" means the Director of the Housing Department or the Director's designee.

C. "Ellis Act Ordinance" means Part 11 of Chapter 17.23 of Title 17 of the San José Municipal Code.

D. "Just Cause Protections" means those protections afforded to a Tenant Household under Section 17.23.1240.

E. "Just Cause Termination" shall have the meaning provided in Section 17.23.1250.

F. "Guesthouse" shall have the meaning provided in Sections 20.200.470 and 20.200.480.

G. "Guest Room" shall have the meaning provided in Section 20.200.460.

H. "Habitual" shall have the meaning provided in regulations adopted by the City Manager for administration of this Part.

I. "Hotel or Motel" shall have the meaning provided in Section 20.200.540.

J. "Landlord" means an owner, lessor, or sublessor who receives or is entitled to receive rent for the use and occupancy of any Rental Unit, and the agent, representative, or successor of any of the foregoing.

K. "Multiple Dwelling" means "Dwelling, Multiple" as defined in Section 20.200.340.

L. "Notice of Termination" shall have the meaning provided in Section 17.23.1260.

M. "Owner" means a fee owner of the property where the Rental Unit is located who holds at least a fifty (50) percent interest in the property.

N. "Rent Stabilized Units" means Rental Units that are subject to rent stabilization under the City's Apartment Rent Ordinance, which includes rooms or accommodations occupied for thirty (30) days or more in a Guesthouse and units in any Multiple Dwelling building for which a certificate of occupancy was received on or prior to September 7, 1979, as those terms are defined in Sections 20.200.340, 20.200.470, and 20.200.480 of the San José Municipal Code.

O. "Rental Unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household, and which household pays Rent for the use and occupancy for periods in excess of seven days whether or not the residential use is a conforming use permitted under the San José Municipal Code. For purposes of this Part, Rental Unit includes Guest Rooms in any Guesthouse and, subject to any requirements in the Regulations, does not include Rental Units owned or operated by any government agency, or any individual Rental Unit for which the Rent is limited to no more than affordable rent, as such term is defined in California Health & Safety Code Section 50053, for lower income households pursuant to legally binding restrictions recorded for the benefit of a government agency.

P. "Security Deposit" means shall mean funds deposited with the Landlord for the purposes described in California Civil Code Section 1950.5, as amended.

Q. "Tenant" means a residential tenant, subtenant, lessee, sublessee, or any other person entitled by written or oral rental agreement, or by sufferance, to the use or occupancy of a Rental Unit.

R. "Tenant Household" means one or more Tenant(s) who occupy any individual Rental Unit, including each dependent of any Tenant whose primary residence is the Rental Unit.

S. "Unpermitted Unit" means a structure or parts of a structure that are being rented as a home, residence, or sleeping place, where the use as a home, residence, or sleeping place is not authorized, permitted, or otherwise approved by the City.

(Ords. 29912, 29911, 30031.)

17.23.1230 Scope; regulations.

A. Subject to any exceptions, additions, and clarifications included in regulations that may be adopted by the City Manager for administration of this Part, this Part applies to the following:

1. Rent Stabilized Units;

2. Rental Units in any Multiple Dwelling, excepting permitted Hotels and Motels;

3. Guest Rooms in any Guesthouse; and

4. Unpermitted Units.

B. The City Manager may adopt regulations for the administration and implementation of this Part. The Director of Housing, with the approval of the City Attorney, may adopt forms and notices to facilitate the administration and implementation of this Part.

C. Tenants of a unit or guestroom described in subsection A, above, shall be entitled to Just Cause Protections commencing on the first day of tenancy.

(Ords. 29912, 29911.)

17.23.1240 Just cause protections.

A. A Landlord may not terminate the tenancy of a Tenant unless the Landlord can demonstrate:

1. that the Landlord served a Notice of Termination to the Tenant Household and delivered a copy of the Notice of Termination to the City in accordance with Section 17.23.1260; and

2. that the termination qualifies as a Just Cause Termination in compliance with Section 17.23.1250.

B. Nothing under this Part shall abrogate the protections afforded to survivors of violence consistent with California Code of Civil Procedure Section 1161.3, as amended, and the Violence Against Women Act, Public Law 103-322, as amended.

C. Each Landlord shall either post a written notice and maintain such posting, or serve each existing and future Tenant a copy of a notice, on a form approved by the Director in the three most commonly spoken languages, of the applicability and requirements of the Tenant Protection Ordinance, placed in a conspicuous location within each building containing one (1) or more Rental Units. The Landlord shall have complied with this requirement by posting a Notice of the Tenant Protection Ordinance in the same location as a notice to Tenants posted in accordance with subsections (1) or (2) of California Civil Code Section 1962.5(a) or immediately adjacent to the posting of the Residential Occupancy Permit in compliance with Section 17.20.630.

D. A notice terminating tenancy shall include a statement of the following: 1) The notice is being served in good faith; and 2) That information regarding the notice terminating tenancy, including information on homeless prevention, is available from the Rent Stabilization Program, 200 E. Santa Clara St., 12th Floor, San José, CA 95112, phone (408) 975-4480.

(Ords. 29912, 29911, 30194, 30194.)

17.23.1250 Just cause termination.

A. Just Cause Terminations. If a Landlord can show any of the following circumstances with respect to a termination of tenancy, the termination will qualify as a "Just Cause Termination."

1. Nonpayment of Rent. After being provided with written notice of the identity and mailing address of the Landlord, and the amount of rent due, the Tenant has failed to pay rent to which the Landlord is legally entitled pursuant to any written or oral rental agreement and under the provisions of state or local law, unless the Tenant has withheld rent pursuant to applicable law, and said failure has continued after service on the Tenant of a written notice setting forth the amount of rent then due and requiring it to be paid, within a period, specified in the notice, of not less than three days.

2. Material or Habitual Violation of the Tenancy.

a. The Tenant has failed to cure a violation of any material term of the rental agreement within a reasonable time after receiving written notice from the Landlord of the alleged violation or has committed Habitual violations of the rental agreement, but only if either clause (i) or (ii) applies:

i. The demand to cure is based on terms that are legal and have been accepted in writing by the Tenant or made part of the rental agreement; or

ii. The demand to cure is based on terms that were accepted by the Tenant or made part of the rental agreement after the initial creation of the tenancy, so long as the Landlord first notified the Tenant in writing that he or she need not accept such terms or agree to their being made part of the rental agreement.

b. The following potential violations of a tenancy can never be considered material or Habitual violations:

i. An obligation to surrender possession on proper notice as required by law.

ii. An obligation to limit occupancy when the additional Tenant(s) who join the Tenant Household are any of the following: a dependent child or foster child, a minor in the Tenant's care, the spouse, domestic partner, or parent (which terms may be further defined in the regulations adopted by the City Manager), of a Tenant; so long as the total number of adult Tenants in the unit does not exceed the greater of either the maximum number of individuals authorized in the rental agreement or two adults per bedroom, or in the case of a studio unit, two adults. The Landlord has the right to approve or disapprove a prospective additional Tenant who is not a dependent child or foster child, a minor in the Tenant's care, spouse, domestic partner, or parent of a Tenant, provided that the approval is not unreasonably withheld.

3. Substantial Damage to the Rental Unit. The Tenant, after written notice to cease and a reasonable time to cure, causes substantial damage to the Rental Unit, or common area of the structure or rental complex containing the Rental Unit beyond normal wear and tear, and refuses, after written notice, to pay the reasonable costs of repairing such damage and to cease engaging in the conduct identified in the notice to cease.

4. Refusal to Agree to a Like or New Rental Agreement. Upon expiration of a prior rental agreement the Tenant has refused to agree to a new rental agreement that contains provisions that are substantially identical to the prior rental agreement as may be further described in the regulations adopted by the City Manager, and that complies with local, state and federal laws.

5. Nuisance Behavior. The Tenant, after written notice to cease, continues to be so disorderly or to cause such a nuisance as to destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit. Such nuisance or disorderly conduct includes violations of state and federal criminal law that destroy the peace, quiet, comfort, or safety of the Landlord or other Tenants of the structure or rental complex containing the Rental Unit, and may be further defined in the regulations adopted by the City Manager.

6. Refusing Access to the Unit. The Tenant, after written notice to cease and a reasonable time to cure, continues to refuse the Landlord reasonable access to the Rental Unit, so long as the Landlord is not abusing the right of access under California Civil Code section 1954, as amended.

7. Unapproved Holdover Subtenant. The Tenant holding over at the end of the term of the oral or written rental agreement is a subtenant who was not approved by the Landlord.

8. Substantial Rehabilitation of the Unit. The Landlord after having obtained all necessary permits from the City, seeks in good faith to undertake substantial repairs which are necessary to bring the property into compliance with applicable codes and laws affecting the health and safety of Tenants of the building, provided that:

a. The repairs costs not less than the product of ten (10) times the amount of the monthly rent times the number of Rental Units upon which such work is performed. For purposes of this subsection, the monthly rent for each Rental Unit shall be the average of the preceding twelve-month period; and

b. The repairs necessitate the relocation of the Tenant Household because the work will render the Rental Unit uninhabitable for a period of not less than thirty (30) calendar days; and

c. The Landlord gives advance notice to the Tenant of the ability to reoccupy the unit upon completion of the repairs at the same rent charged to the Tenant before the Tenant vacated the unit or, if requested by Tenant, the right of first refusal to any comparable vacant Rental Unit which has been offered at comparable rent owned by the Landlord; and

d. In the event the Landlord files a petition under the Apartment Rent Ordinance within six (6) months following the completion of the work, the Tenant shall be party to such proceeding as if he or she were still in possession, unless the Landlord shall submit with such application a written waiver by the Tenant of his or her right to reoccupy the premises pursuant to this subsection; and

e. The Landlord shall have provided relocation assistance as required by subsection B of Section 17.23.1250, below.

9. Ellis Act Removal. The Landlord seeks in good faith to recover possession of the Rental Unit to remove the building in which the Rental Unit is located permanently from the residential rental market under the Ellis Act and, having complied in full with the Ellis Act and Ellis Act Ordinance, including the provision of relocation assistance as required by subsection B of Section 17.23.1250, below.

10. Owner Move-In. The Owner seeks in good faith, honest intent, and without ulterior motive to recover possession for: (a) the Owner's own use and occupancy as the Owner's principal residence for a period of at least 36 consecutive months commencing within three months of vacancy; or (b) the principal residence of the Owner's spouse, domestic partner, parent(s), child or children, brother(s), or sister(s) (each an "authorized family member") for a period of at least 36 consecutive months and commencing within three months of vacancy, so long as the Rental Unit for the Owner's authorized family member is located in the same building as the Owner's principal residence and no other unit in the building is vacant. It shall be a rebuttable presumption that the Owner has acted in bad faith if the Owner or the Owner's qualified relative for whom the Tenant was evicted does not move into the Rental Unit within three months from the date of the Tenant's surrender of possession of the premises or occupy said unit as his/her principal residence for a period of at least thirty-six (36) consecutive months. The Owner shall have provided relocation assistance as required by subsection B of Section 17.23.1250, below.

11. Order to Vacate. The Landlord seeks in good faith to recover possession of the Rental Unit in order to comply with a court or governmental agency's order to vacate, order to comply, order to abate, or any other City enforcement action or order that necessitates the vacating of the building in which the Rental Unit is located as a result of a violation of the San José Municipal Code or any other provision of law, and provides a notice of the right to reoccupy. The Landlord shall have provided relocation assistance as required by subsection B.3 of Section 17.23.1250, below.

12. Vacation of Unpermitted Unit. The Landlord seeks in good faith to recover possession of an Unpermitted Unit in order to end the unpermitted use. The Landlord shall have provided relocation assistance as required by subsection B.3 of Section 17.23.1250, below.

13. Criminal Activity.

a. The Tenant Household, after receiving a written notice to cure (which notice shall include the return provisions listed in subsection d below) by removing the Violating Tenant (as defined below) from the household, and, where necessary, amending the lease to remove the Violating Tenant's name, fails to do so within a reasonable time, by one of the following methods as further described in the regulations:

i. Filing a restraining order or providing evidence to the Landlord of similar steps being taken to remove the Violating Tenant from the household.

ii. Removing the Violating Tenant from the household and providing written notice to the landlord that the Violating Tenant has been removed.

b. For purposes of this subsection 13, a "Violating Tenant" shall mean an adult Tenant that is indicted by a grand jury or held to answer pursuant to Penal Code Section 872, as amended, for a serious felony as defined by Penal Code Section 1192.7(c), as amended, or a violent felony as defined by Penal Code Section 667.5(c), as amended, which occurred during the tenancy and within 1,000 feet of the premises on which the Rental Unit is located. The term "premises" shall mean "Lot," as defined in Section 20.200.660 of the San José Municipal Code.

c. The past criminal history of a Tenant shall not be a factor in determining whether the Tenant is a Violating Tenant.

d. If a Violating Tenant, as defined above, is acquitted from the charges or the charges are dismissed or reduced, he or she may return to the Rental Unit as a Tenant, so long as: 1) the Tenant Household still resides in the Rental Unit; and 2) the Tenant Household consents to the Violating Tenant's return.

B. Relocation Assistance.

1. Tenants who receive a Notice of Termination that relies on subsections A.8 or A.10 of Section 17.23.1250 as the just cause rationale to terminate the tenancy must receive, and the Landlord must provide the following relocation assistance to the Tenant Household. The relocation assistance must be provided to the Tenant Household concurrent with delivery of the Notice of Termination to the Tenant Household.

a. Relocation Assistance. An amount equal to the Base Assistance provided for in the Ellis Act Ordinance, as set by resolution of the City Council.

b. Refund of Security Deposit. Owner must refund to the Tenant Household any security deposit paid by the Tenant Household, provided, however, that the Owner may withhold any properly itemized deductions from the security deposit pursuant to California Civil Code section 1950.5, as amended.

2. Tenants who receive a Notice of Termination that relies on subsection A.9 of Section 17.23.140 as the just cause rationale to terminate the tenancy must have received, and the Landlord must have provided, all applicable Relocation Assistance provided for in the Ellis Act Ordinance.

3. Tenants who receive a Notice of Termination that relies on subsection A.11 or A.12 of Section 17.23.1250 as the just cause rationale to terminate the tenancy must receive, and the Landlord must provide, Relocation Assistance as defined in Part 11 of Chapter 17.20, or if the unit is unpermitted, an amount equal to the Base Assistance provided for in the Ellis Act Ordinance.

(Ords. 29912, 29911, 30031, 30089, 30194, 30194.)

17.23.1260 Notice of termination to the tenant and city.

A. A Notice of Termination means the notice informing a Tenant Household of the termination of its tenancy in accordance this Section and with California Civil Code Section 1946.1 and California Code of Civil Procedure Section 1162, as amended.

B. Each Notice of Termination delivered to a Tenant or to a Tenant Household residing in a Rent Stabilized Unit must use the form approved by the Director or such other notice in compliance with the requirements of this Part.

C. The Notice of Termination provided to Tenants must contain the reason for the termination of tenancy in accordance with subsection A of Section 17.23.1250.

D. A Landlord must mail or deliver to the City a true and accurate copy of any Notice of Termination delivered to a Tenant within 3 days of delivering such notice to a Tenant or Tenant Household.

E. A Landlord must mail or deliver to the City a true and accurate copy of any summons and complaint delivered to a Tenant or Tenant Household for unlawful detainer to pursuant to California Code of Civil Procedure Section 1161, as amended, within 3 days of delivering such summons and complaint to a Tenant or Tenant Household.

(Ords. 29912, 29911.)

17.23.1270 Anti-retaliation protections.

A. No Landlord may threaten to bring, or bring, an action to recover possession, cause the Tenant to quit the Rental Unit involuntarily, serve any notice to quit or Notice of Termination, reduce any housing services, report or threaten to report the Tenant, Tenant Household, or individuals the Landlord knows to be associated with the Tenant to the immigration authorities, or increase the rent where the Landlord's intent is retaliation against the Tenant for the Tenant's assertion or exercise of rights under this Part.

B. Any such retaliation shall be a defense to an action to recover possession, or it may serve as the basis for an affirmative action by the Tenant for actual and punitive damages and injunctive relief. In an action by or against a Tenant, evidence of the assertion or exercise by the Tenant of rights under this Part within six months prior to the alleged act of retaliation shall create a rebuttable presumption that the Landlord's act was retaliatory. For purposes of this subsection, "rebuttable presumption" means that the Court must find the existence of the fact presumed unless and until its nonexistence is proven by a preponderance of the evidence. A Tenant may assert retaliation affirmatively or as a defense to the Landlord's action without the aid of the rebuttable presumption regardless of the period of time which has elapsed between the Tenant's assertion or exercise of rights under this Part and the alleged act of retaliation.

C. No Landlord shall provide information to any immigration authority regarding the immigration or citizenship status of any Tenant, Tenant Household, or individual the Landlord knows to be associated with the Tenant or Tenant Household, for the purposes of harassing, intimidating, or retaliating against a Tenant or Tenant Household, influencing a Tenant to vacate a Rental Unit, or recovering possession of a Rental Unit, in accordance with Civil Code Section 1940.35(a), as amended.

D. A Landlord does not violate subsection (A) or (C), by complying with any legal obligation under any federal government program that provides for rent limitations or rental assistance to a qualified Tenant.

(Ords. 29912, 29911, 30089.)

17.23.1280 Affirmative defense to eviction; penalties and remedies.

A. Affirmative Defense. Each Landlord that seeks to terminate a tenancy of a Tenant must comply with this Part. Non-compliance with any applicable component of this Part shall constitute an affirmative defense for a Tenant against any unlawful detainer action under California Code of Civil Procedure Section 1161, as amended.

B. Criminal Penalties. Any Landlord found by a court of competent jurisdiction to be guilty of violating any provision or failing to comply with any requirements of this Chapter shall be guilty of a misdemeanor punishable by up to a $500 fine for a first offense and up to a $1000 fine for any subsequent offenses.

C. Civil Remedies.

1. Any Landlord that fail(s) to comply with this Part may be subject to civil proceedings for displacement of Tenant(s) initiated by the City or the Tenant Household for actual and exemplary damages.

2. Whoever is found to have violated this Part shall be subject to appropriate injunctive relief and shall be liable for damages, costs and reasonable attorneys' fees.

3. Treble damages shall be awarded for a Landlord's willful failure to comply with the obligations established under this Part.

4. Nothing herein shall be deemed to interfere with the right of a Landlord to file an action against a Tenant or non-Tenant third party for the damage done to said Landlord's property. Nothing herein is intended to limit the damages recoverable by any party through a private action.

(Ords. 29912, 29911.)

17.23.1290 Reserved.

Editor's note(s)—Ord. 30031, § 3, adopted Nov. 28, 2017, repealed § 17.23.1290, which pertained to notices to vacate; Chapter 17.23 suspended, and derived from Ords. 29912 and 29911.

## Chapter 17.24 FENCE VARIANCES FOR RESIDENTIAL LOTS

17.24.010 Purpose.

This chapter shall regulate fences constructed and maintained upon any parcel of property in the city that is used for residential purposes and is not subject to a development permit requirement pursuant to Chapter 20.100 of Title 20 of the code.

(Ord. 23405.)

17.24.020 Definitions.

As used in this chapter:

A. "Buildable area" is the area of a lot exclusive of the required setback areas.

B. "Corner lot" is a lot which abuts two or more streets or street segments, forming an interior angle not greater than 135 degrees.

C. "Corner triangle" is the triangular area formed by the two street lot lines of a corner lot and their projection and a line connecting them at points forty-five feet measured at the outer edge of the curb L from the intersection of the projected lot lines measured at the outer edge of the curb.

D. "Director" means the director of neighborhood preservation.

E. "Fence" is any hedge, wall, or other structure in the nature of a fence.

F. "Flag lot" is an interior lot accessed by a corridor having a street frontage of less than twenty-seven feet.

G. "Front setback area"

1. For an interior lot, the "front setback area" is the area which extends across the full width of the lot and from the front lot line along the street to a line defined by the front setback, excluding frontage area which is used primarily for ingress or egress to a flag lot; or

2. For a residentially zoned corner lot, the "front setback area" is the area which extends across the full width of the lot and from the narrower lot line along a public street to a parallel line defined by the front setback line.

H. "Interior lot" is any lot other than a "corner lot."

I. "Key lot" is the first interior lot abutting the rear of a corner lot. The front lot line of the key lot is a continuation of the side lot line of the corner lot, excluding any lot which is separated from a corner lot by an alley.

J. "Lot line" is defined to include:

1. "Front lot line" is the boundary line of a lot which abuts a public street.

2. "Front lot line of a residentially zoned corner lot" is the narrower lot line abutting a public street.

3. "Side lot line" is the boundary line of a lot which intersects the front lot line.

4. "Side corner lot line" is the boundary line of a residentially zoned corner lot which is the longer of the two boundary lines abutting a public street.

5. "Rear lot line" is the boundary line of a lot which is opposite, and does not intersect, the front lot line.

K. "Rear setback area"

1. For an interior lot, the "rear setback area" is the area which extends across the full width of the lot and from the rear lot line to a parallel line defined by the rear setback distance; or

2. For a residentially zoned corner lot, the "rear setback area" is the area which extends across the full width of the lot and from the lot line opposite the narrower lot line along a street to a parallel line defined by the rear setback line.

L. "Setback" is the minimum distance by which buildings, structures, and parking must be separated from any lot line.

1. "Front setback" is measured from the front lot line.

2. "Rear setback" is measured from the rear lot line.

3. "Side setback" is measured from the side lot line.

M. "Side setback area"

1. For an interior lot, is that area which is neither a front setback area nor rear setback area; or

2. For a corner lot,

a. "Interior side setback area" is that area which extends from the lot line opposite the wider (larger) street frontage defined as the interior side lot line to a parallel line defined by the side setback; and

b. "Corner side setback area" is that area which extends from the lot line along the wider street frontage to a parallel line defined by the side setback.

(Prior code § 8801; 17.24.010; Ord. 23405.)

17.24.030 Conditions for permitted fences.

The following fences may be constructed and maintained upon any parcel of property in the city that is used for residential purposes and is not subject to a development permit requirement pursuant to Chapter 20.100 of Title 20 of the code.

A. Interior Lots.

1. Front setback area: Fences not over three feet in height in the front setback area.

2. Rear setback area: Fences not over seven feet in height in the rear setback area.

3. Side setback area: Fences not over seven feet in height in the side setback area.

4. Buildable area: Fences not over six feet in height in the buildable area between the front setback and the front of any existing or proposed residence.

B. Corner Lots.

1. Front setback area: Fences not over three feet in height in the front setback area.

2. Rear setback area: Fences not over seven feet in height in the rear setback area. In the case of a rear setback area that backs up onto a side setback area of an adjacent key lot or corner lot, such fences shall not exceed three feet in height for a distance of twelve and one-half feet measured from the street property line and fifteen feet as measured from the rear lot line; nor shall any fence exceed six feet in height in any rear setback area adjacent to a street so long as such fence is at least five feet from the lot line inside the sidewalk. No fence shall exceed three feet in height in any rear setback area adjacent to a street between the lot line inside the sidewalk and five feet from the lot line inside the sidewalk.

3. Side setback area: Fences not over six feet in height in any side setback area adjacent to a street so long as such fence is at least five feet away from the lot line inside the sidewalk. No fence shall exceed three feet in height in any side setback area adjacent to a street between the lot line inside the sidewalk and five feet from the lot line inside the sidewalk.

C. Fences at Intersections. A fence located at the intersection of any two streets shall not exceed three feet in height within the corner triangle; provided however, that single-stem plants or trees without foliage with a height between three feet and eight feet may be planted and maintained within the corner triangle on any corner lot.

D. Exceptions for Posts and Gates. Support posts or columns, not exceeding four feet in height and eighteen inches in width, and gates and trellises used for pedestrian purposes, not exceeding eight feet in height and five feet in length shall be permitted, provided such entry is at least fifteen feet away from an intersection.

(Prior code § 8800; 17.24.020; Ord. 23405.)

17.24.040 Prohibited fences.

A. Barbed wire, razor wire and electric fences are prohibited from use on any parcel of property in the city that is used for residential purposes and is not subject to a development permit requirement pursuant to Chapter 20.100 of Title 20 of the code.

B. No glass or other sharp materials may be embedded on the surface of a fence constructed and maintained on any parcel of property in the city that is used for residential purposes and is not subject to a development permit requirement pursuant to Chapter 20.100 of Title 20 of the code.

(Ord. 23405.)

17.24.050 Seven-foot fence height limit.

No fence may be erected or constructed which exceeds seven feet in height except as specifically allowed by Sections 17.24.030, and 17.24.060 through 17.24.150 inclusive, or by a development permit pursuant to Chapter 20.100 of Title 20 of the code.

(Ord. 23405.)

17.24.060 Variance applications.

A. An application for a variance from the fence height requirements of this chapter shall be filed with the director of neighborhood preservation. The form and content of the application shall be prescribed by the director.

B. The director shall not accept any application for a fence variance unless all information is set forth as required by the form, all documents and other material required by the form are filed with the director, and the filing fee required by Section 17.24.150 has been paid.

(Prior code § 8802; 17.24.030; Ords. 20636, 21033, 21049, 21295, 23405.)

17.24.070 Hearing notice.

A. The director shall investigate and conduct a public hearing on each fence variance application accepted for filing. The date of such hearing shall be not less than ten nor more than sixty days from the date such application is accepted as complete.

B. Notice of the time, date and place of the hearing shall be furnished by the director by mail, postage prepaid, at least five days before the date set for hearing, to the applicant and to all property owners within three hundred feet of the property which is the subject of the application, at the addresses shown on the last equalized assessment roll.

C. In addition, notice of the hearing shall be conspicuously posted on the property which is the subject of the application. The form of this notice shall be provided by the director and shall be posted on the property at least five days before the date set for hearing.

(Ord. 23405.)

17.24.080 Director's hearing.

At the director's hearing, the applicant, any person with objections to the fence variance application and any other person with relevant evidence, shall be allowed to testify and present relevant evidence to the director. Strict rules of evidence shall not apply. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(Ord. 23405.)

17.24.090 Director's decision.

A. At the conclusion of the hearing, the director may take the matter under submission for a reasonable time.

B. The findings and decision of the director on each application shall be in writing.

C. The director shall mail a copy of the findings and decision to the applicant at the address shown for such purpose on the application. In addition, the director shall mail a copy of the decision to any person who requests one in writing.

D. The date of the decision shall be the date that the director's decision is placed in the mail to the applicant. Each decision shall become final and effective on the eleventh day from the date of decision unless a written notice of appeal is received by the director within ten days of the date of decision.

E. If a notice of appeal is received within the ten-day period, the decision of the director shall be of no force or effect.

(Ord. 23405.)

17.24.100 Appeal.

A. The applicant, or any property owner or any tenant of property (including tenants at will or tenants with month-to-month occupancy) within three hundred feet of the subject property may file a written notice of appeal from the director's decision to the planning commission within ten days after the director's decision was placed in the mail.

B. If a notice of appeal is received, the director shall set a date for a public hearing on the appeal. The date of the hearing shall not be less than ten nor more than sixty days from the date the notice of appeal was received.

C. Notice of the hearing shall be mailed to the party seeking appeal and to all other persons who were given notice of the director's hearing pursuant to Section 17.24.070.

(Ord. 23405.)

17.24.110 No waiver.

Notwithstanding the provisions in Sections 17.24.070, 17.24.090 and 17.24.100, the failure of any person to receive any prescribed notice, shall not affect, in any way whatsoever, the validity of any proceedings taken under this chapter, nor any action taken or decision made by the director or commission in any proceedings, nor prevent the director or commission from proceeding with any hearing at the time and place set forth in the notice of hearing.

(Ord. 23405.)

17.24.120 Hearing on appeal.

A. The director shall file with the planning commission at its hearing on appeal the application for fence variance, the notice of appeal and all other papers, documents and physical exhibits filed at the hearing before the director.

B. The hearing before the planning commission shall be a hearing de novo.

C. Within a reasonable time after the hearing has been concluded and the matter submitted for decision, the commission shall, by a written resolution, set forth its findings and decision on the matter.

D. The decision of the planning commission shall be final.

E. The director of planning shall mail a certified copy of the decision of the planning commission to the applicant and to the appellant at the addresses shown for such purpose on the application and notice of appeal, respectively. The director shall also mail a copy of the decision to any person who requests one in writing.

(Ord. 23405.)

17.24.130 Findings required.

A. Neither the director nor the planning commission on appeal shall grant a fence variance unless it is found that:

1. Because of special circumstances uniquely applicable to the subject property, the strict application of the requirements and regulations prescribed in Sections 17.24.030 and 17.24.050 of this chapter deprives such property of privileges enjoyed by other property in the vicinity of and in the same zoning district as the subject property; and

2. The fence variance, subject to such conditions as may be imposed thereon,

a. Will not substantially impair the utility or value of adjacent property or the general welfare of the neighborhood; and

b. Will not substantially impair the integrity and character of the zoning district in which the subject property is situated.

B. The special circumstances to be considered in the above Subsection A include, but are not limited to, size, shape, topography, location or surroundings of the subject property.

1. In the case of a corner lot, special circumstances to be considered under Subsection A above include the fact that the legal front lot line of the corner lot does not serve as the actual front entry into the residence.

2. The fence variance for a side corner lot shall not be granted unless it is found that the fence variance will not result in an adverse impact upon the neighboring properties any differently than if the side corner lot line were the actual front lot line.

(Ord. 23405.)

17.24.140 Conditions.

The director or the planning commission, in granting any fence variance, may make any such variance subject to such conditions as the director or the planning commission may deem reasonably necessary to meet the requirements of Section 17.24.130 of this chapter and to secure the general purposes of this chapter. Without limiting the generality of the preceding sentence, such conditions may include specifications on materials to be used in construction of the fence.

(Ord. 23405.)

17.24.150 Costs of application and appeal.

No variance application or appeal shall be accepted for filing unless accompanied by the fee as set forth in the schedule of fees established by resolution of the city council.

(Ord. 23405.)

## Chapter 17.28 SWIMMING POOL ENCLOSURES

17.28.010 Purpose of chapter provisions.

The purpose of this chapter is to protect small children of the age of five years or under from the attractive hazards of outdoor swimming and wading pools.

(Prior code § 8820.)

17.28.020 Swimming or wading pool defined.

"Swimming or wading pool," as used in this chapter, means an artificial basin, chamber or tank constructed of impervious material, having a depth of eighteen inches or more, and used, intended to be used, or displayed for use or sale, for swimming, diving or recreational bathing.

(Prior code § 8821; Ord. 18955.)

17.28.030 Exemptions to chapter applicability.

The provisions of this chapter shall not apply to swimming or wading pools owned, operated and maintained by governmental bodies or political subdivisions thereof.

(Prior code § 8827.)

17.28.040 New installations.

On and after March 22, 1962, on which date the provisions codified in this chapter first became effective, no person who owns or is in possession of any premises, whether as legal or equitable owner, purchaser under contract, lessee, tenant or licensee, shall construct, install, place or maintain, or permit to be constructed, installed, placed or maintained, on or within such premises, any outdoor swimming or wading pool unless the same is enclosed in the manner hereinafter provided; and, after such date, no building permit shall be issued for any such swimming or wading pool unless the plans for the same conform with the provisions of this chapter.

(Prior code § 8822; Ord. 18955.)

17.28.050 Enclosure specifications.

A. Each outdoor swimming or wading pool constructed or installed within any premises shall be completely enclosed by a fence, wall or other durable enclosure. Such fence, wall or enclosure shall be not less than four feet in height at all points, shall be located a minimum of four feet from the nearest edge of the pool, and shall be so constructed that openings, holes or gaps in the fence, wall or enclosure shall not exceed four inches in any dimension, except for openings, holes or gaps protected by doors or gates. The surrounding fence, wall or enclosure may consist of a house, building or other permanent construction.

B. Any gate or door in the surrounding fence, wall or enclosure, including those which open from a garage into the enclosed pool area, but excepting doors in any surrounding building or enclosure other than a fence, shall be equipped with a self-closing and self-latching device designed to keep the gate or door securely closed at all times when not in actual use. Such device shall be located at least three-and one-half feet above the deck or walkway.

C. The provisions of this Section 17.28.050 shall apply only to outdoor swimming or wading pools for which building permits were filed on or after May 26, 1989.

D. Swimming or wading pools not subject to this Section 17.28.050 shall be subject to the provisions of this chapter that were in effect at the time of construction or installation of such pools.

(Prior code § 8823; Ords. 18955, 23103.)

17.28.060 Existing installations.

A. From and after the effective date of the provisions codified in this chapter, the city health officer or his authorized representative shall have the power to determine whether any existing swimming or wading pool which was constructed, installed or placed within any premises in the city prior to such effective date constitutes a health or safety hazard by virtue of such pool not being completely enclosed by a fence, wall or other structure as provided in Section 17.28.050 above. In making such determination, the health officer shall consider such factors as the character of the neighborhood, the physical nature of the premises and the location of the pool thereon, the accessibility of the pool thereon, the accessibility of the pool to small children, and similar circumstances.

B. Should the health officer determine that a hazard exists, he may order the person legally responsible for the premises to comply with the provisions of Section 17.28.050, or such lesser provisions as shall alleviate the unsafe or unhealthful condition. The health officer shall in his order specify a reasonable time for compliance. Failure to comply with the order shall constitute a misdemeanor.

(Prior code § 8824.)

17.28.070 Enforcement agencies.

The enforcing agencies for this chapter shall be the city building department and the city health department.

(Prior code § 8826.)

17.28.080 Appeals.

A. Any person claiming to be aggrieved by an order of the health officer issued pursuant to this chapter may appeal same by filing a written notice thereof with the secretary of the advisory board of health, such notice to be filed within ten days of receipt of the order, and setting forth reasons and grounds.

B. The advisory board of health, upon consideration of the appeal, may amend, modify or vacate the health officer's order.

(Prior code § 8825.)

## Chapter 17.32 HOUSING RESALE INSPECTION

17.32.010 Definitions and interpretation of terms.

A. As used in this chapter:

1. "Family" means the same as said word is defined in Section 5502.15 of Article V of this Code.

2. "Residence" means any dwelling or dwellings capable of being used for residential purposes by one or two single-family units.

3. "Sale" means any transfer of title of any such residence, except that the first transfer of title of a new residence shall not be deemed a "sale," nor shall any transfer of title that is exempt from taxation under the provisions of this Code.

4. "Sell" means to make a sale of any such residence.

5. "Serious violations" means any violation or violations of any provision of law applicable to any residence, or to any owner or occupant thereof, which expose persons or property to a serious risk of injury, death or damage.

B. The masculine gender shall include the feminine and the neuter, and the singular number (e.g. "seller," "buyer") shall include the plural.

(Prior code §§ 5601, 5601.1 - 5601.5.)

17.32.020 Certificate of occupancy - Requirements generally.

Any person wishing to sell any residence in the city may apply in writing to the director of neighborhood preservation on a form to be prescribed by said director, for a certificate of occupancy. If he does so, he shall:

A. Pay the fee prescribed therefor by the council;

B. Permit the authorized representative of said director to inspect such residence to determine whether or not a certificate of occupancy should issue;

C. Deliver to the applicant of such residence a true copy of each preliminary or final inspection report and each certificate of occupancy pertaining to such residence, which may be issued by said director.

(Prior code § 5602; Ord. 21657.)

17.32.030 Certificate of occupancy - Inspection requirements - Procedures in case of serious violations.

A. Within five working days from and after receipt of each application for a certificate of occupancy and payment of the required fee, the director of neighborhood preservation shall cause the residence to be inspected to determine whether or not it complies with the requirements of the San José housing code and other provisions of law applicable thereto.

B. If such inspection reveals no violations of any such provisions of law, the director shall issue a certificate of occupancy for the residence, and a final inspection report, both of which shall be delivered to the applicant for such certificate of occupancy. If such inspection reveals one or more violations of any such provisions of law, the director shall issue a preliminary inspection report to the applicant in which he shall specify such violations. If any such violations constitute serious violations, as defined in Section 17.32.010, the director shall not issue a certificate of occupancy unless and until he is satisfied that such serious violations have been corrected, or unless and until he is satisfied that neither the buyer nor the seller of the residence is financially able to correct such serious violations in which event he may issue a certificate of occupancy upon condition that the buyer correct the serious deficiency when he is financially able to do so, which condition shall be endorsed upon the face of the certificate of occupancy and shall be accepted in writing by the buyer. Each and every conditional certificate of occupancy shall be recorded in the office of the county recorder. Within five working days after he is informed that all such serious violations have been corrected, the director shall cause the residence to be reinspected, and if he finds that such serious violations no longer exist, and not before, he shall issue to the applicant a certificate of occupancy and a final inspection report for the residence.

(Prior code § 5602.1; Ord. 21657.)

17.32.040 Inspection fee.

The inspection fee referred to in this chapter shall be as set forth in the schedule of fees established by council.

(Prior code § 5603; Ords. 20636, 21033, 21049, 21295.)

17.32.050 Certificate of occupancy - Period of validity.

Each certificate of occupancy shall be valid for a period of twelve months from and after the date of its issue.

(Prior code § 5602.2.)

## Chapter 17.36 HOUSE MOVING

17.36.010 Compliance with code required.

No person shall move any building, containing over one hundred square feet of floor space, on, over or through any public street except in accordance with the provisions of this Code.

(Prior code § 8500; Ord. 24088.)

17.36.020 Permit requirement - Application - Issuance conditions.

A. No building shall be moved over any public street without a building removal permit issued pursuant to the provisions of this chapter by the director of the department of streets and traffic.

B. All applications for permits, approvals or appeals filed pursuant to this chapter shall be filed with the director. The form of such application and the information and data required to be set forth thereon shall be as prescribed by the director.

C. If said building is to be moved onto a parcel situate within the city, a development permit must be obtained pursuant to the provisions of Chapter 20.100 of Title 20 of this Code, as a condition precedent to the issuance of the building removal permit.

D. If the building is to be moved from a parcel situate within the city, a development permit must be obtained pursuant to the provisions of Part 5 of Chapter 20.80 of Title 20 of this Code, as a condition precedent to the issuance of the building removal permit.

(Prior code § 8502; Ords. 21657, 22578, 22723, 23734, 24088.)

17.36.030 Permit fee - Required.

For each such building to be moved there is hereby imposed a permit fee payable to the director of finance in such amount as the city council shall fix from time to time by resolution. Such fee shall be in addition to business license and any other fees or costs associated with the move.

(Prior code § 8501; Ord. 18325.)

17.36.040 Permit - Conditions generally.

Any permit issued under this chapter shall be subject to the conditions set forth in this chapter.

(Prior code § 8506.)

17.36.050 Permit fee - Payment.

No permit shall be issued unless there is first tendered to the director of finance the permit fee referred to in Section 17.36.030 above.

(Prior code § 8507; Ord. 18325.)

17.36.060 Permit fee - Certain entities exempt.

Permit fees shall not be required for permits for moving a building over any public street where the building is being moved for and on behalf of the United States Government, any state, county, city, or department, agency or instrumentality of the foregoing, and said building is to be used for governmental purposes. Notwithstanding any of the foregoing, school districts shall be required to pay such permit fees.

(Prior code § 8511.1; Ord. 19720.)

17.36.070 Accessory building - No additional fee required when.

An accessory building not over four hundred square feet in area may be moved in conjunction with the moving of a residence from the same location to the same location without paying an additional fee.

(Prior code § 8512.)

17.36.080 Permit requirements - Certificates.

No permit shall be issued unless there is first filed with the director of streets and traffic a certificate of inspection signed by the building official certifying that he or she examined the building and that it is structurally strong; or unless there is also filed with the director of streets and traffic a certificate of the superintendent of parks certifying that the removal of said building on the route proposed will not result in damage to or destruction of trees.

(Prior code § 8508; Ords. 21657, 23734.)

17.36.090 Permit requirements - Insurance.

A. No permit shall be issued unless there has been filed with the risk manager a certificate of insurance in form satisfactory to the risk manager, issued by an insurer that is satisfactory to the risk manager and authorized under and by the state of California to issue the insurance hereinafter described, certifying that said insurer has issued to the applicant for said permit a policy of public liability insurance containing the following minimum provisions:

1. Limits of liability of not less than one hundred thousand dollars for each person and three hundred thousand dollars each occurrence, insuring said applicant against liability for damages which may be imposed upon him by law because of bodily injury or death sustained by any person or persons, arising out of operations performed under said permit;

2. Limits of liability of not less than fifty thousand dollars each occurrence, with an aggregate, where applicable, of not less than two hundred thousand dollars, insuring said applicant against liability for damages which may be imposed upon him by law because of property damage sustained by any person or persons, arising out of operations performed under said permit;

3. Contractual liability coverage in the above limits of liability.

B. Said certificate of insurance shall contain the following:

"Statement of Insurer to be Attached to Certificate of Insurance "Policy No. \_\_\_\_\_\_\_\_\_, referred to in the attached certificate shall not be cancelled, suspended or terminated, nor shall any exposure therein covered be eliminated, nor shall the limits of liability therein expressed be reduced until ten days after receipt by the City of San José of written notice thereof, such notice to be given by registered mail, marked for the attention of the risk manager of the City of San José, City Hall, San José, California, and such receipt to be evidenced by return receipt for registered letter.

"The aforesaid policy includes coverage for bodily injury liability and property damage liability and property damage liability assumed, or to be assumed, by \_\_\_\_\_\_\_\_\_, hereinafter called "permittee," under the following quoted indemnity provisions in any and all written permits issued during the policy period by the director of streets and traffic of said city to said permittee for moving any building or buildings over, along or upon any public street in said city:

"Indemnity provisions

"Permittee shall indemnify the City of San José, its officers and employees against and save them, and each of them, harmless from all loss, damage, expense or liability resulting from injury to or death of any person, or damage to or destruction of any property, except

(a) Injury to or death of permittee, or

(b) Damage to or destruction of the property of permittee, caused by or claimed to have been caused by any act or omission, negligent or otherwise, of permittee, of any contractor of permittee, or any employee of either of them, and arising out of or in any way connected with the moving by or on behalf of permittee of any and all buildings over, along or upon any public street or streets in said city. Permittee shall, upon request of the City of San José, defend any suit asserting a claim covered by this indemnity, and pay and satisfy any judgment or decree that may be rendered against said city, its officers and employees or any of them, in any such suit; and permittee shall pay any costs and attorney's fees that may be incurred by said city, its officers and employees, or any of them, in connection with any such claims and suits or in enforcing this indemnity.

Dated \_\_\_\_\_\_\_, 19\_\_\_

Insurer

By \_\_\_\_\_\_\_\_\_\_\_

Insurer's Authorized Representative"

C. In lieu of the above, the city may be furnished with liability insurance in the form known as "contingent" or "owner's protective liability insurance," in form satisfactory to the risk manager, in which the city, its officers and employees, are named as insured, with minimum limits of liability as set forth in subdivisions 1 and 2 of subsection A. above, and in which are contained the following provisions:

1. A description of the operations to be insured, as follows: "All building moving operations of \_\_\_\_\_\_\_, during the policy period, as carried on under permits issued by the director of streets and traffic of the City of San José, and performed by \_\_\_\_\_\_\_, or on his behalf;"

2. A clause reading as follows: "It is understood and agreed that operations covered hereunder include operations performed for the City of San José, and all operations performed for or on behalf of others within the political boundaries of the City of San José, but only those operations performed under, or required to be performed under, permits issued by the director of streets and traffic of the City of San José. It is understood and agreed that the insured under this policy shall be the City of San José, its officers and employees, and no other person or organization;"

3. A clause deleting the provisions of the policy exclusion, if any, pertaining "to any act or omission of the named insured, or any of his or her employees, other than general supervision of work performed for the named insured by independent contractors," or other policy exclusion or exclusions of similar import; provided, however, that an exclusion of operations of the named insured, other than those in connection with house moving operations of the permittee, shall be acceptable if in any form and substance satisfactory to the risk manager;

4. A clause providing that the phrase "premises owned by or rented to the named insured," or other similar phrase, in the policy condition defining the aggregate limit of property damage liability, or in any other policy condition or exclusion, shall not be construed so as to avoid coverage for operations performed on public streets, highways, roads, avenues, lanes, alleys or other public ways of the city;

5. A clause reading as follows: "The insurance afforded by this policy shall be primary insurance to the full limits of liability stated in the declarations, and if the City of San José, its officers and employees, have other insurance against a loss covered by this policy, that other insurance shall be excessive insurance only."

(Prior code § 8508.1; Ords. 21657, 23734.)

17.36.100 Permit requirements - Police escort and other services.

No permit shall be issued unless there is first filed with the director of streets and traffic written undertaking to arrange for and provide such San José police officers and vehicles as traffic escorts, other city employees for tree and route clearing, and any other services necessary to protect the public interest as the director of streets and traffic deems necessary. The city council shall fix from time to time by resolution the fees to be charged for such services.

(Prior code § 8508.2; Ords. 21657, 23734.)

17.36.110 Permit requirements - Buildings moved through city.

No permit shall be issued to move a building through the city from one location outside the city to another location outside the city unless the proposed route to be followed within the city shall be approved by the director of streets and traffic.

(Prior code § 8509; Ords. 21657, 23734.)

17.36.120 Permit requirements - Inspection of buildings moved into the city.

No permit shall be issued by the director of streets and traffic to move a building from a location outside the city to a location inside the city unless and until a site development permit or a planned development permit has been obtained pursuant to the provisions of Chapter 20.100 of this Code, and unless the building has been inspected and approved by city building officials, and the route to be followed has been approved by the director of streets and traffic.

(Prior code § 8510; Ords. 21657, 22578, 22723, 23734.)

17.36.130 Permit requirements - Deposit for costs.

No permit shall be issued unless there is first deposited with the director of streets and traffic the sum set forth in the schedule of fees established by resolution of council, from which sum the director shall deduct and pay the costs, if any, of police escorts and other services undertaken to be provided by the applicant, when due and owing; and from which he or she shall also deduct such sums as will be necessary to cover any damage done to the property of any person along the route of the removal. Any dispute between the holder of a permit and the director of streets and traffic as to the cost of any service rendered by any person or the amount of damage done to the property of any person shall be referred to the city manager, building official and city attorney, and their decision shall be final.

(Prior code § 8511; Ords. 21295, 21657, 21701, 23734.)

17.36.140 Moving procedures - Duties of person in charge.

Every person in charge of the moving of any building on or over the streets of the city shall:

A. Notify the fire department within one-half hour after sunset of the location of the building and the route over which the building is to be moved during the night;

B. Give twenty-four hours' written notice to any person responsible for trimming trees, removing wires or the doing of other things necessary to permit the moving of the building over the route designated;

C. Maintain red lights at each corner of the building from one-half hour after sunset until one-half hour before sunrise;

D. Notify the chief of police of the time of moving and the route over which said building is to be moved.

(Prior code § 8517.)

17.36.150 Moving procedures - Rollers or soft-tired vehicle required.

No building shall be moved unless moved on rollers or upon a truck having wheels equipped with pneumatic or solid rubber tires.

(Prior code § 8516.)

17.36.160 Moving procedures - Metal tires prohibited.

No building shall be moved upon any truck having metal tires.

(Prior code § 8514.)

17.36.170 Moving procedures - Roller requirements.

No building shall be moved upon rollers unless planks are placed under said rollers of such width and in such manner as to protect the surface of the street from damage.

(Prior code § 8515.)

## Chapter 17.38 MAINTENANCE AND REHABILITATION OF NEGLECTED VACANT OR ABANDONED BUILDINGS

### Part 1 GENERAL PROVISIONS

17.38.010 Purpose.

Neglected vacant or abandoned buildings and storefronts are a major source of blight in the City of San José and pose serious threats to the public's health, safety and welfare. They attract children, vagrants, gang members, and criminal activities. They are also vulnerable to fire set by transients or others using the property illegally. The presence of neglected vacant or abandoned buildings and storefronts can lead to neighborhood decline, create an attractive public nuisance, lower property values, and discourage economic development in the area. Furthermore, the presence of vacant, neglected, or abandoned buildings and storefronts acutely affects the vitality and economic development of the downtown area.

It is the responsibility of property owners, lenders, trustees, or others with possessory, equitable, or legal interests in the neglected vacant or abandoned buildings, including without limitation, historic buildings or structures, to maintain, secure, and prevent these buildings and storefronts from becoming a burden to the neighborhood and community or a threat to the public health, safety and welfare. The purpose of this Chapter is to provide standards for maintaining vacant and abandoned buildings and storefronts and to establish a monitoring program for those that are determined to be neglected or are vacant for longer than thirty days within the downtown area.

(Ords. 28745, 30096.)

17.38.020 Definitions.

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

A. "Abandoned" means a Property, including a residence, building, structure, or any structural improvement on real property, that is Vacant and is (i) under a current Notice of Default and/or Notice of Trustee's Sale; (ii) subject to Foreclosure sale where title was retained by the Beneficiary of a Deed of Trust; or (iii) transferred under a Deed In-Lieu of Foreclosure/Sale.

B. "Beneficiary" means a lender under a note secured by a Deed of Trust.

C. "Deed In-Lieu of Foreclosure/Sale" means a recorded document that transfers ownership of real property from the Trustor to the holder of a Deed of Trust upon consent of the Beneficiary of the Deed of Trust.

D. "Deed of Trust" means an instrument by which title to real property is transferred to a third party Trustee as security for a real estate loan. This definition applies to any and all subsequent Deeds of Trusts.

E. "Default" means the failure to comply or fulfill any contractual obligation under the Deed of Trust.

F. "Director" means the Director of Planning, Building and Code Enforcement, or designee, or such other director designated by the City Manager to administer this Chapter.

G. "Downtown Registration Area" means that area bounded by the following streets and portions of streets: to the north, Julian Street from Highway 87 to 4th Street, then St. John Street from 4th Street to 10th Street; to the south, Interstate 280 from Highway 87 to 4th Street, then San Fernando Street from 4th Street to 10th Street; to the west, Highway 87 from Julian Street to Interstate 280; and, to the east, 4th Street from Julian to St. John Street, then 10th Street from St. John Street to San Fernando Street.

H. "Foreclosure" means the process by which real property, placed as security for a real estate loan, is sold at an auction to satisfy the debt when the Trustor (borrower) Defaults on the real estate loan.

I. "Historic" means any building or structure that is listed on (i) the National Register of Historic Places; (ii) the California Register of Historic Resources; or (iii) the City of San José Register of Historic Landmarks.

J. "Neglected Vacant" building or structure means any Vacant building or structure that is not maintained in accordance with this Chapter.

K. "Notice of Default" means a recorded notice that a Default has occurred under a Deed of Trust and the Beneficiary intends to proceed with a Trustee's sale of the real property or asserts any of its rights under the Deed of Trust.

L. "Owner" means any person, partnership, association, company, corporation, entity, financial institutions, or fiduciary having a legal, possessory, or equitable title or any interest in a Property.

M. "Property" means any improved real property, or portion thereof, situated in the City and includes any residence, building, structure or any other improvement located on the real property.

N. "Storefront" means any area located on the ground floor or street level of a building that may be individually leased or rented for any purpose other than residential use.

O. "Trustee" means any person, partnership, association, company, corporation, or any other person or entity holding a Deed of Trust on a Property.

P. "Trustor" means a borrower under a Deed of Trust who deeds Property to a Trustee as security for the payment of a debt.

Q. "Vacant" means any building or structure which has remained unoccupied for a period of more than thirty (30) days or which has been occupied by any unauthorized person for any length of time. A building or structure is not deemed to be Vacant for purposes of this Chapter if construction, alteration, improvements, rehabilitation, or repair is in progress pursuant to a valid, unexpired building permit with inspections occurring at least every six (6) months.

(Ords. 28745, 30096.)

17.38.030 Compliance required.

A. Every owner of a property shall maintain the property in accordance with this chapter.

B. Every owner of a property is liable for violation of this chapter regardless of any contract or agreement the owner has with any third party.

C. Except as otherwise provided herein, the director shall have the authority to enforce the provisions of this chapter.

(Ord. 28745.)

17.38.040 Public nuisance.

Any property in violation of this chapter shall constitute a public nuisance.

(Ord. 28745.)

### Part 2 MAINTENANCE STANDARDS

17.38.200 Vacant or abandoned building.

A. It shall be unlawful for any building or structure, whether residential, commercial, industrial, or historic, to be vacant for more than one hundred and eighty calendar days unless one of the following conditions exists:

1. The building or structure is subject to an active building permit for construction, alteration, modification, rehabilitation, or repair and the owner is progressing diligently to complete the construction, alteration, modification, rehabilitation, or repair within the time frame set forth in the building permit.

2. The building or structure complies with all codes, ordinances, or laws adopted by the city, does not otherwise constitute a public nuisance, is ready for use or occupancy, and is actively being offered for sale, lease, or rent.

3. The building or structure, including the property on which it is located, does not otherwise constitute a public nuisance and is unlikely to become a public nuisance because the property is actively maintained and monitored. Actively maintained and monitored shall mean the condition of the property complies with the minimum standards set forth in Part 2 of this chapter and any other applicable provisions of this Municipal Code.

B. The owner of any vacant or abandoned building or structure, whether boarded by voluntary action of the owner or as a result of enforcement activity by city, shall rehabilitate the boarded building or structure for occupancy, in accordance with all applicable code and regulations, within one hundred and eighty calendar days after the building is boarded, unless the building or structure meets one of the conditions set forth in Section 17.38.200.A. Rehabilitation shall mean taking corrective action to meet the minimum standards set forth in Part 2 of this chapter and complying with any other applicable provisions of the Municipal Code so the property is not a public nuisance.

(Ord. 28745.)

17.38.210 Structural and building standards.

A. All vacant or abandoned property shall be maintained in a structurally sound condition and meet the following minimum building standards:

1. Complies with all applicable building codes adopted by the City of San José.

2. All electrical, natural gas, sanitary and plumbing facilities shall be maintained in a condition which does not create a hazard to public health or safety.

3. All fences, walls, arbors, or other similar structures, whether made of masonry, wood, metal, vinyl or other materials, shall be maintained in a structurally sound condition in accordance with Chapters 17.20 and 17.72 of this Municipal Code.

(Ord. 28745.)

17.38.220 Fire safety.

A. All vacant or abandoned property shall be maintained in a manner which does not create an unreasonable risk of fire and which meets the following minimum fire safety standards:

1. Complies with all applicable fire codes adopted by the City of San José.

2. Is maintained in a manner where the property is free of all vegetation, weeds, dry brush, garbage, trash, debris, appliances, building materials, rubbish, accumulation of newspapers, circulars, flyers, notices, except those required by law, which may constitute a safety or fire hazard.

3. Is maintained in a manner where the property is free of any storage of flammable liquids or other materials which would constitute a safety or fire hazard.

4. Is maintained in a manner where the heating facilities or heating equipment are either removed pursuant to a valid permit or maintained in accordance with applicable codes and ordinances. If heating equipment is removed, any fuel supply shall be removed or terminated in accordance with applicable permits, codes and ordinances.

5. Is maintained in a manner where all existing fire protection systems are kept in operating condition in accordance with applicable codes and ordinances, unless written authorization for removal of those systems has been granted by the City of San José fire marshal.

6. Is maintained in a manner where no fire hydrants, including private hydrants, that provide water flow to a property, are removed, tampered with, or taken out of service, unless authorized in writing by the City of San José fire marshal.

(Ord. 28745.)

17.38.230 Security standards.

A. All vacant or abandoned property shall be maintained in a manner which secures it from any unauthorized entry and meets the following minimum security standards:

1. All windows, doors, gates, fences or any other opening of such size that may allow access of persons, animals, or other elements, to the interior of the property, building or structure shall be secured, locked, closed, or maintained in such a manner so as to prevent unauthorized entry. Windows, sliding doors, or similar openings shall provide either intact glazing or resistance to entry equivalent to or greater than that of a solid sheet of one-quarter-inch plywood, painted to protect it from the elements, cut to fit the opening, and securely nailed using 6D galvanized nails spaced not more than six inches on the center.

2. Doors and service openings with thresholds located ten feet or less above grade, stairway, landing, ramp, porch, roof or similarly accessible area shall provide resistance to entry equivalent to or greater than that of a closed single panel or hollow core door one and three-eighths inches thick equipped with a half-inch throw deadbolt.

3. Exterior doors, other than the operable door described in Section 17.38.230.A.4., may be closed from the interior of the building or structure by toe nailing them to the door frame using 10D or 16D galvanized nails.

4. There shall be at least one operable door into each building or structure to allow access to all portions of the building or structure. If an existing door is operable, it may be used and secured with a suitable lock such as a hasp and padlock or a one-half inch deadbolt or deadlatch.

5. All locks shall be kept locked. When a door cannot be made operable and is not visible from the public right-of-way or neighboring property, a door shall be constructed of three-quarter-inch CDX plywood and shall be equipped with a lock as described above.

6. There shall be a sign no less than 18" x 24" posted on the front of the exterior building or structure so it is legible from the public-right-of-way with the following information: (i) name and twenty-four hour contact telephone number and address of the owner, responsible party, or property management company; and (ii) the statement that "THIS PROPERTY MANAGED BY" with the appropriate name inserted and "TO REPORT PROBLEMS OR CONCERNS CALL" with the twenty-four hour telephone number listed. The sign shall be constructed and printed with weather resistant materials.

(Ord. 28745.)

17.38.240 Debris removal.

All vacant or abandoned property including all adjoining yard areas shall be maintained free of debris, combustible materials, litter, garbage, or any other item that gives the appearance the property is vacant or abandoned in accordance with Chapters 9.10, 17.72, and other applicable provisions of this Municipal Code.

(Ord. 28745.)

17.38.250 Appearance.

A. All vacant or abandoned property must be maintained in a manner which minimizes the appearance of vacancy and meets the following minimum appearance standards:

1. The property shall be maintained free of graffiti, tagging, or similar markings by removal or painting over within twenty-four hours with similar exterior grade paint to match the color of the exterior of the building or structure in accordance with Chapters 9.57 and 9.58 and other applicable provisions of this Municipal Code.

2. Any construction, alteration, improvements, or rehabilitation shall be completed during the term of a valid building permit or building permit extension issued by the director, building official, or their designee.

3. All exterior surfaces visible from the public right-of-way or neighboring properties shall be maintained to prevent entry including replacement or repair to any broken windows, doors or siding materials and be applied with sufficient paint, siding, stucco or other finish to weatherproof the vacant or abandoned building or structure and to create a sufficient appearance of repair to deter unauthorized occupation.

4. All exterior surfaces not visible from the public right-of-way or neighboring properties, including any boarded windows or doors shall be applied with sufficient paint, siding, stucco or other finish to weatherproof the vacant or abandoned building or structure and to create a sufficient appearance of repair to deter unauthorized occupation.

5. All landscaping, including grass, turf, trees, hedges, shrubs, flowers, and other similar materials, shall be kept in accordance with Chapter 17.72 of this Municipal Code and in such condition as not to create the appearance of a vacant or abandoned building or structure.

6. All pools, spas, or other areas of standing water shall be kept in working order so that the water remains clear and free of pollutants or debris, unless the pools, spas, or other areas are drained and kept dry. All properties with pools, spas, or other areas of standing water must meet the minimum fencing requirements outlined in Chapter 17.28 of this Municipal Code and state law.

(Ord. 28745.)

17.38.260 Vacant or abandoned historic building.

A. This chapter shall apply to any vacant or abandoned historic building or structure located in the City of San José.

B. In addition to any other requirement of this chapter, a vacant or abandoned historic building or structure shall also be safeguarded and maintained in accordance with this section.

1. All vacant or abandoned historic buildings or structures shall have an operating security alarm system at all times as approved by the director, such as, movement detectors, automatic signal device, intrusion alert, closed circuit television monitoring, or similar type of security systems.

2. All vacant or abandoned historic buildings or structures shall be maintained in accordance with Section 311 of the California Fire Code. A vacant or abandoned historic building that is deemed unsafe by the City of San José fire marshal may become subject to an abatement action that may require corrective action including, but not limited to, installation of a fire alarm system, sprinkler system, smoke detector, or a combination thereof.

(Ord. 28745.)

17.38.270 Additional authority.

In addition to any other rights, remedies, or enforcement provided in this chapter or Municipal Code, the director shall have the authority to require the owner of any property in violation of this chapter, to implement additional maintenance, security, fire or other corrective or preventive measures as may be reasonably required to combat the decline of the property, such as securing the property, installing additional lighting, or increase on-site inspections.

(Ord. 28745.)

### Part 3 ENFORCEMENT

17.38.300 Neglected vacant or abandoned building monitoring program.

A. If the director determines that a property is subject to this chapter, director shall send a notice and require the owner of any vacant or abandoned building or structure to register the property into the neglected vacant or abandoned building monitoring program within ten calendar days of the date of the notice to register.

B. The owner of a neglected vacant or abandoned building or structure may appeal the director's decision to place the building or structure into the neglected vacant or abandoned building monitoring program by filing a notice of appeal with the director within ten days of the date of the notice.

C. If the director finds that a vacant or abandoned building or structure which has been placed in the monitoring program has not been in further violation of the provisions of this chapter for more than six consecutive months, the director shall have the discretion to remove the building or structure from the monitoring program.

(Ord. 28745.)

17.38.310 Registration.

A. The owner of a vacant or abandoned building or structure which is required to register in the neglected vacant or abandoned building monitoring program pursuant to this chapter shall be registered in accordance with the requirements of this section.

B. The registration information shall include:

1. The address of the vacant or abandoned building or structure.

2. The assessor parcel number of the real property where the vacant or abandoned building or structure is located.

3. The name, address, and telephone number of the owner. If a notice of default has been issued, the name, address, and phone number of the beneficiary or trustee on the deed of trust shall be included. In the case of a corporation or out of area beneficiary or trustee, as defined below, the local property management company or agent responsible for the security, maintenance, and monitoring of the property shall be included.

4. The date the building or structure became vacant.

C. Any change in the information provided pursuant to this section, including but not limited to a change in ownership, shall be filed with the director within fifteen days of the change.

(Ord. 28745.)

17.38.320 Responsible agent.

A. The owner of any vacant or abandoned building or structure which is subject to the registration requirements of this chapter shall designate a responsible agent for the building or structure. Any owner who lives within sixty miles of the vacant or abandoned building or structure may designate himself or herself as the responsible agent.

B. The owner of any vacant or abandoned building or structure who lives more than sixty miles from the building or structure shall name a responsible agent who lives within or whose place of business is within the City of San José. In the event an owner is a corporation, association, or other type of entity, the owner shall either have its principal place of business within the City of San José or may designate a responsible agent who has its principal place of business within the City of San José or lives within sixty miles from the building or structure.

C. The designation of responsible agent shall constitute an authorization by the owner for the responsible agent to act on behalf of the owner with regard to all requirements under this chapter and may accept all notices, including all notices pursuant to this chapter, all notices of proposed abatements or summary abatements pursuant to Title 17 of this Municipal Code, and all compliance orders and administrative orders pursuant to Chapter 1.14 of Title 1 of this Municipal Code, on behalf of the owner.

D. The owner's designation of a responsible agent shall not relieve the owner of any obligation to comply with the provisions of this chapter.

(Ord. 28745.)

17.38.330 Inspections.

A. The owner or responsible agent of a vacant or abandoned building or structure which is required to be registered in the neglected vacant or abandoned building monitoring program shall inspect or cause the inspection of such vacant or abandoned building or structure not less than one time in every two-week period.

B. Such owner or responsible agent shall keep or cause to be kept a written log of all inspections. The log shall contain the following information:

1. The date and time of the inspection;

2. The name and signature of the person performing the inspection;

3. A notation of any problems or violation of this chapter or Municipal Code identified;

4. A detailed description of any corrective action performed to address any violation of this chapter or Municipal Code.

C. A copy of the log shall be provided to the city upon request of the director.

(Ord. 28745.)

17.38.340 Fees.

A. The Owner of a Vacant or Abandoned Property or Storefront subject to registration shall pay the Neglected Vacant or Abandoned Building and Storefront Monitoring Program fee as set forth in the schedule of fees adopted by resolution of the City Council. Payment of the monitoring program fee shall be made to the City at the same time the Owner submits the registration form to the City.

B. The fee shall be calculated on a quarterly basis and the entire fee shall be due and owing at the time of registration. Registration fees will not be prorated.

(Ords. 28745, 30096.)

17.38.350 Appeals.

A. The Appeals Hearing Board shall have jurisdiction to hear appeals of the following:

1. The placement of the Vacant or Abandoned Property into the Neglected Vacant or Abandoned Building Monitoring Program; or

2. The requirement to pay fees under this Chapter.

B. A determination which is appealable under 17.38.350(A) may be appealed by the Owner of the Property to the San José Appeals Hearing Board by filing written notice of appeal with the Director within ten (10) days of the action for which the appeal is taken. When a notice of appeal has been received by the Director for filing:

1. The Director shall, within ten (10) days after receipt of the notice of appeal, file it with the Secretary of the Board.

2. The Secretary of the Board shall set the date for hearing and determination by the Board which date shall not be less than ten (10) days nor more than sixty (60) days after the date on which the copy of the notice of appeal was filed with the Secretary of the Board.

C. Within a reasonable time after the Board has concluded its hearing, it shall by resolution set forth its findings and decision. The decision of the Board shall be final. The Secretary of the Board shall notify the Director of the decision and shall mail a copy of the decision to the appellant at the address shown for such purpose on the notice of appeal.

(Ords. 28745, 30096.)

17.38.360 Administrative penalties.

Any owner of a vacant or abandoned property in violation of this chapter is subject to the administrative remedies ordinance set forth in Chapter 1.14 of this Code.

(Ord. 28745.)

17.38.370 Remedies.

The provisions of this chapter are nonexclusive and supplementary to any existing rights and remedies, and the provisions of this chapter may be enforced by any remedies provided for in this Code or otherwise available at law. Violations of this chapter may be prosecuted criminally, civilly, or administratively either undertaken separately or in conjunction with other remedies, at the sole discretion of the city. Nothing in this chapter shall be deemed to prevent the city from commencing any administrative or legal proceeding to enforce this chapter, Code, or any law.

(Ord. 28745.)

### Part 4 VACANT OR ABANDONED PROPERTY OR STOREFRONT DOWNTOWN REGISTRATION AREA

17.38.400 Obligation to register.

The Owner of a Vacant or Abandoned Property or Storefront located within the Downtown Registration Area shall, within thirty (30) days after it has become Vacant or Abandoned, whichever occurs first, register the Property or Storefront, as applicable, in the Neglected Vacant or Abandoned Building Monitoring Program. The Owner shall be registered in accordance with the requirements set forth in Sections 17.38.310 through 17.38.340.

(Ord. 30096.)

17.38.410 Notice and appeal.

A. If the Director determines that a Property or Storefront, as applicable, within the Downtown Registration Area is Vacant or Abandoned and has not been registered as required by Section 17.38.400, the Director shall send a notice and require the Owner of any Vacant or Abandoned storefront, building or structure to register the Property into the Neglected Vacant or Abandoned Building Monitoring Program within ten (10) calendar days of the date of the notice to register.

B. The Owner of a Vacant or Abandoned Property may appeal the Director's decision to place the storefront, building, or structure into the Neglected Vacant or Abandoned Building Monitoring Program by filing a notice of appeal with the Director within ten (10) days of the date of the notice. Appeals shall be scheduled and conducted in accordance with Section 17.38.350.

(Ord. 30096.)

17.38.420 Removal from monitoring program.

The Owner of a Vacant or Abandoned Property or Storefront in the Downtown Registration Area may apply to be relieved from the obligation to register the Property into the Neglected Vacant or Abandoned Building Monitoring Program if the Owner demonstrates that the Property or Storefront, as applicable, either:

A. Ceases to be Vacant and the Owner provides satisfactory evidence of physical occupancy of the Property or Storefront, as applicable; or

B. Has not been in violation of this Code for at least six (6) consecutive months and also meets one of the following:

1. Construction, alteration, improvements, rehabilitation, or repair is in progress at the Property or Storefront, as applicable, pursuant to a valid, unexpired building permit with inspections occurring at least every six (6) months;

2. The Owner provides satisfactory evidence that the Property or Storefront, as applicable, is actively being offered for sale, lease, or rent. Satisfactory evidence shall include, but is not limited to, evidence that the Owner has hired a real estate agent or other rental agent who advertises and promotes the property for rent, lease or sale, or proof that the property if offered for sale on the Multiple Listing Service or any other comparable real estate listing service.

(Ord. 30096.)

17.38.430 Maintenance standards.

All requirements listed in Part 2 of this Chapter shall also apply to a Vacant or Abandoned Property or Storefront, within the Downtown Registration Area. Additionally, a Vacant or Abandoned Property within the Downtown Registration Area shall have exterior lighting continuously lit from dusk to dawn.

(Ord. 30096.)

## Chapter 17.40 DANGEROUS BUILDING CODE

### Part 1 GENERAL PROVISIONS

17.40.010 Dangerous building - Nuisance.

A dangerous building is any building or structure or portion thereof which creates an endangerment to the life, limb, health, property, safety or welfare of the occupants of the building or members of the public. All such dangerous buildings are hereby declared and determined to be public nuisances.

(Prior code § 8912.2; 17.40.190; Ord. 21971.)

17.40.020 Conditions or defects which cause public endangerment.

Conditions or defects which cause endangerment to the life, limb, health, property, safety or welfare of the occupants of a building or to the members of the public include, but are not limited to:

A. Fire Hazards:

1. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size, or is not so arranged as to provide a safe and adequate means of exit in case of fire or panic; or

2. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction as required by this Code or state law, faulty electric wiring, gas connections or heating apparatus, or other cause, is a fire hazard; or

3. Whenever any building or structure is so situated as to provide a ready fuel supply to augment the spread and intensity of a fire arising from any cause.

B. Structural Hazards:

1. Whenever any building or portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is materially less than the minimum requirements of Title 17, Buildings and Construction, for new buildings of similar structure, purpose or location.

2. Whenever any portion of, or attachment or accessory to, a building or structure is likely to fail, or to become detached or dislodged, or to collapse and injure persons or damage property.

3. Whenever any portion of a building or structure has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

4. Whenever the building or structure, or any portion thereof is likely to partially or completely collapse because of:

a. Dilapidation, deterioration, or decay;

b. Inadequate design and construction;

c. The removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building;

d. The deterioration, decay or inadequacy of its foundation or underpinning; or

e. The entire structure or any structural component thereof, having less than twenty-five percent of the resistance to wind or earthquake forces required of new buildings by the 1973 edition of the Uniform Building Code; or

f. Any other cause.

C. Occupancy:

1. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated by any cause or is in any stage of demolition such that it becomes an attractive nuisance to children, a harbor for vagrants, criminals or other persons, or as to enable persons to resort thereto for the purpose of committing a nuisance or unlawful acts; or

2. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

D. Code Violations: Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building, fire, or public safety regulations of any law of this state or ordinance of this city such that the building or structure endangers the life, limb, health, property, safety or welfare of the occupants of the building or the members of the public.

(Prior code § 8913.2; 17.40.060; Ords. 18486, 21971.)

17.40.030 General obligation.

No person, firm or corporation whether as owner, lessee, sublessee or occupant shall erect, construct, enlarge, move, remove, equip, use, occupy, maintain or alter, other than to repair, any dangerous building or shall cause or permit the same to be done. No person, firm or corporation shall take any action or allow any action to be taken in violation of any provision of this chapter or any order issued pursuant thereto.

(Prior code § 8912.3; 17.40.200; Ords. 21735, 21971.)

17.40.040 Enforcement responsibility - Delegation of authority.

The city manager is charged with the responsibility for the enforcement of this chapter. All city employees charged with enforcement responsibilities under this Code are authorized to make such inspections and take any actions on behalf of the city manager as may be required to enforce the provisions of this chapter.

(Prior code § 8912.1(a); 17.40.150; Ords. 19032, 21971.)

17.40.050 Dangerous buildings abatement required.

Whenever a building or structure has been found to be dangerous, the city manager may take abatement actions or commence proceedings to cause the building or structure to be repaired, restricted from use or occupancy, demolished or otherwise abated, in accordance with the provisions of Chapter 17.02 and this chapter. Temporary corrective measures, when necessary, may be required prior to the time permanent repairs are instituted.

(Prior code § 8914.1(a); 17.40.260; Ord. 21971.)

17.40.060 Abatement actions by city.

A. Any building or structure may be ordered restricted from use or occupancy when there are reasonable grounds to believe that such restriction is necessary to protect the life, limb, safety, health or property of its occupants or the members of the public.

B. If the city performs the abatement actions it shall repair and not demolish the dangerous building, if the city manager determines that the cost of the abatement actions to be taken is less than fifty percent of the current replacement cost of the dangerous building. If the cost of such abatement actions exceeds fifty percent of the current replacement cost of the dangerous building, the dangerous building may be demolished at the discretion of the city.

(Prior code § 8914.3a; 17.40.250; Ord. 21971.)

### Part 2 ABATEMENT ACTIONS

17.40.100 Summary abatement - Imminent danger.

A. Any condition or defect in a building or structure which is reasonably believed to be imminently dangerous to the life, limb, health or safety of the occupants or members of the public may be summarily abated by the city manager in accordance with Chapter 17.02 of this title.

B. Actions taken to abate imminently dangerous conditions or defects may include, but are not limited to, restriction from use or occupancy, repair, or demolition of the dangerous building or any other abatement action determined by the city manager to be necessary.

(Prior code § 8914.1(f); 17.40.310; Ord. 21971.)

17.40.110 Restriction from use.

If there exists in a dangerous building or structure any defect or condition, reasonably believed to be imminently dangerous to life, should such building be occupied or used by human beings, the city manager may order the immediate restriction from use or occupancy of the dangerous building or of any building or structure endangered by a dangerous condition in accordance with the provisions set forth in Part 5 of Chapter 17.02. In addition to restricting use or occupancy, the order may require repair or demolition of such building or structure.

(Ord. 21971.)

17.40.120 Abatement procedures.

The city manager may institute procedures for summary abatement or abatement of any dangerous building. The procedures set forth in Chapter 17.02 of this title shall apply to any such abatement. Costs for any abatement performed by or on behalf of the city shall be recovered by the city pursuant to the provisions of Part 4 of Chapter 17.02.

(Ord. 21971.)

17.40.130 Procedures of the chapter - Cumulative.

A. Procedures used and actions taken for the abatement of dangerous buildings are not limited by this chapter. Procedures and actions under this chapter may be utilized in conjunction with or in addition to any other procedure applicable to the regulation of buildings or structures.

B. All dangerous buildings or structures which are required to be repaired or demolished pursuant to the provisions of this chapter shall be subject to all provisions of the San José Municipal Code, including but not limited to, provisions relating to building construction, repair or demolition, zoning and the fire code.

(Ord. 21971.)

### Part 3 EARTHQUAKE HAZARD REDUCTION IN UNREINFORCED MASONRY BUILDINGS

17.40.200 Purpose.

A. Buildings of unreinforced masonry bearing wall construction have been widely recognized as more potentially hazardous to life and property than other types of structures as a result of partial or complete collapse during past moderate to strong earthquakes. The purpose of this part is to promote public safety and welfare by reducing the risk of death or injury that may result from the effects of earthquakes.

B. The provisions of this part provide minimum standards for structural seismic resistance established primarily to reduce the risk of life loss or injury; they will not necessarily prevent earthquake damage to an existing building which complies with this part.

(Ord. 23766.)

17.40.210 Scope.

A. The requirements of this part shall apply to all buildings containing unreinforced masonry bearing walls.

B. Exception: This part shall not apply to:

1. A detached Group R, Division 3 Occupancy nor to a detached Group R, Division 1 Occupancy containing less than six dwelling units used solely for residential purposes; and

2. Warehouses or similar structures not used for human habitation, unless such warehouses or structures house emergency services, equipment or supplies.

(Ord. 23766.)

17.40.220 General requirements.

A. The owner of each building within the scope of this part shall cause a structural analysis to be made of the building by a civil or structural engineer or architect licensed by the state of California, and if the building does not meet the minimum earthquake standards specified in this part, the owner shall cause it to be structurally altered to conform to such standards or cause the building to be demolished.

B. The owner of a building within the scope of this part shall comply with the requirements set forth above by submitting the following to the department of planning and building for review within the stated time limits:

1. Within one year after May 17, 1991, a structural analysis. Such analysis, which is subject to approval by the director, shall demonstrate that the building meets the minimum requirements of this part, or

2. Within one year after May 17, 1991, the structural analysis and plans for the proposed structural alterations of the building necessary to comply with the minimum requirements of this part, or

3. Within one year after May 17, 1991, plans for the demolition of the building.

4. By May 17, 1992, a statement in a form acceptable to the director from the person providing the structural analysis and plan for proposed structural alteration verifying that the building owner and the person providing services have entered into an agreement and that the structural analysis and plan for proposed structural alterations shall be submitted to the director by September 17, 1992.

C. After plans are submitted and approved by the director, the owner shall obtain a building permit, commence and complete the required construction or demolition within the following time limits:

1. Obtain a building permit by November 1, 1995;

2. Commence construction or demolition by November 1, 1996;

3. Complete construction or demolition by November 1, 1997.

(Ords. 23766, 24026, 24834.)

17.40.230 Fee exemptions.

A. Notwithstanding any provision of Chapters 13.36 and 13.48 of Title 13, Chapters 17.04, 17.10, 17.52, 17.56, and 17.60 of Title 17, Chapter 20.100 of Title 20, and Chapter 21.04 of Title 21 of the San José Municipal Code, the fees charged by the city and redevelopment agency for the following permits and procedures shall not be required to be paid in connection with the retrofit of any building or structure pursuant to Chapter 17.40, Part 3:

1. Revocable permit fee (§ 13.36.070).

2. Historic preservation permit fee (§ 13.48.230).

3. Building permit fee (§ 17.04.080).

4. Building plan check fee (§ 17.04.080).

5. Grading permit fee (§ 17.04.350).

6. Geologic hazard clearance fee (§ 17.10.130).

7. Electrical permit fee (§ 17.52.130).

8. Plumbing permit fee (§ 17.56.370).

9. Mechanical permit fee (§ 17.60.170).

10. Planning development permit fees (§ 20.100.120).

11. Planning development variances and exceptions fees (Part 11 of Chapter 20.100).

12. Environmental clearance process fees (§ 21.04.500).

B. This part shall be applicable to all completed applications for the permits and procedures described in subsection A of this section that are submitted to the appropriate city department or redevelopment agency on or after December 11, 1990.

C. The exemption from payment of fees provided by this subsection shall remain in effect until May 17, 1993, unless further action is taken by ordinance of the council prior to that date.

(Ords. 23766, 24026.)

17.40.240 Definitions.

For the purpose of this part, certain terms are defined as follows:

A. "Cross walls" are interior walls of masonry or wood frame construction with surface finish of wood lath and plaster, minimum 1/2-inch-thick gypsum wallboard or solid horizontal wood sheathing. In order to be considered as a cross wall within the intent of this chapter, the cross walls shall be spaced at not more than forty feet apart in each story, and shall be full story height with a minimum length of one and one-half times the story height.

B. "Director" means the director of planning and building.

C. "Unreinforced masonry bearing walls" are masonry walls having all of the following characteristics:

1. Provide vertical support for a floor or roof;

2. Have a total superimposed load exceeding one hundred pounds per linear foot of wall;

3. Have an area of reinforcing steel less than fifty percent of the minimum required by the 1985 Uniform Building Code, for reinforced masonry.

(Ords. 23766, 24834.)

17.40.250 Historic buildings.

A. General. A historic building may comply with the special provisions set forth in this part or the provisions of Chapter 17.70 of this Code.

B. Archaic Materials. Allowable stresses for archaic materials not specified in the 1985 Uniform Building Code shall be based on substantiating research data or engineering judgment with the approval of the director.

(Ords. 23766, 24834.)

17.40.260 Alternate materials.

Alternate materials, designs and methods of construction may be approved by the building official in accordance with the 1985 Uniform Building Code.

(Ord. 23766.)

17.40.270 Administration.

Service of Order. When the director determines that a building is within the scope of this part, the owner shall comply with Section 17.40.220. If the owner does not comply, the director shall issue an order to the owner of each building as provided in Parts 1 and 2 of Chapter 17.40.

(Ords. 23766, 24834.)

17.40.280 Contents of order.

The order shall be in writing and shall be served either personally or by certified or registered mail upon the owner as shown on the last equalized assessment. The order shall specify that the building has been determined by the director to be within the scope of this part and, therefore, is required to meet the minimum seismic standards of this part. The order shall be accompanied by a copy of Section 17.40.220 which sets forth the owner's alternatives and time limits for compliance.

(Ords. 23766, 24834.)

17.40.290 Appeal from order.

The owner of the building may appeal the director's initial determination that the building is within the scope of this part to the code enforcement appeals commission pursuant to the provisions of Parts 1 and 2 of Chapter 17.40, and Chapter 2.08, Part 9.

(Ords. 23766, 24834.)

17.40.300 Recordation.

A. At the time that the director serves the order referred to in Section 17.40.270, the director may file with the office of the county recorder a certificate stating that the subject building is within the scope of this part. The certificate shall also state that the owner thereof has been ordered to structurally analyze the building and to structurally alter or demolish it when the director determines the building is not in compliance with this part.

B. If the building is either demolished, found not to be within the scope of this part, or is structurally capable of resisting minimum seismic forces required by this part, as a result of structural alterations or an analysis, the director may file with the office of the county recorder a certificate terminating the status of the subject building as being classified within the scope of this part.

(Ords. 23766, 24834.)

17.40.310 Enforcement.

If the owner or other person in charge or control of the subject building fails to comply with any order issued by the director pursuant to this chapter within any of the time limits set forth in Section 17.40.220, the director may order that the entire building or a portion thereof be vacated and that the building or a portion thereof remain vacated until such order has been complied with. This remedy is in addition to any other remedies as may already exist in Parts 1 and 2 of Chapter 17.40.

(Ords. 23766, 24834.)

17.40.320 Analysis and design.

A. General.

1. Every structure within the scope of this part shall be analyzed and constructed to resist minimum total lateral seismic forces assumed to act nonconcurrently in the direction of each of the main axes of the structure in accordance with the following equation: V = ZIKCSW.

This equation shall hereinafter be referred to as Formula (A1-1).

2. The value of KCS need not exceed but shall not be less than .100 for one story buildings with less than one hundred occupants; and need not exceed but shall not be less than .133 for one story buildings containing one hundred or more occupants and buildings over one story above grade. The value of Z and I shall equal 1.0. The value of W shall be as defined in Chapter 23 of the 1985 Uniform Building Code.

B. Lateral Forces on Elements of Structures.

1. Parts or portions of buildings shall be analyzed and designed for lateral loads in accordance with Chapter 23 of the 1985 Uniform Building Code but not less than the value from the following equation: Fp = ICpSWp.

This equation shall hereinafter be referred to as Formula (A1-2).

2. For the provisions of this section, the product of I and S shall equal 1.0. The value of Cp shall be in accordance with Table 23-J of the 1985 Uniform Building Code. The value of Wp shall be as defined in Chapter 23 of the 1985 Uniform Building Code.

3. Exception: Unreinforced masonry walls may be designed in accordance with Section 17.40.330.

C. Regulated Elements of Buildings. The elements of buildings required to be analyzed by this chapter include:

1. Height-to-thickness ratio of masonry walls;

2. Tension bolts in bending;

3. In-plane shear stress;

4. Parapets; and

5. Diaphragm stresses and diaphragm chords in floors and roof.

D. Anchorage and Interconnection. Anchorage and interconnection of all parts, portions and elements of the structure shall be analyzed and designed for lateral forces in accordance with the 1985 Uniform Building Code and Formula (A1-2) of subsection B.1 of this section. Masonry walls shall be anchored to all floors and roof to resist a minimum force of two hundred pounds per linear foot acting normal to the wall at the level of the floor or roof.

E. Level of Required Repair. Alterations and repairs required to meet the provisions of this chapter shall comply with all other applicable requirements of the 1985 Uniform Building Code except as specifically provided in this part.

F. Required Analysis.

1. General.

a. Except as modified herein, the analysis and design relating to the structural alteration of existing buildings within the scope of this part shall be in accordance with the analysis specified in the 1985 Uniform Building Code. In addition the compatibility of the roof diaphragm stiffness with the out-of-plane stability of the unreinforced masonry bearing walls of the story immediately below the roof shall be verified in accordance with the provisions of Section 17.40.350.

b. Exception: Buildings with rigid concrete or steel and concrete roof diaphragms shall use the h/t values for all other buildings in Table No. 1.

TABLE NO. 1   
ALLOWABLE VALUE OF HEIGHT-   
THICKNESS (h/t) RATIO OF   
UNREINFORCED MASONRY WALLS   
WITH MINIMUM QUALITY MORTAR1

|  |  |  |
| --- | --- | --- |
|  | ***Buildings with Complying*** ***Cross Walls*** | ***All Other Buildings*** |
| One story building walls | 13-162, 3, 4 | 13 |
| First story of multi-story  buildings | 16 | 15 |
| Walls in the top story of multi-story buildings | 9-142, 3, 4 | 9 |
| All other walls | 16 | 13 |

1 Minimum mortar quality shall be determined by laboratory testing in accordance with this chapter.

2 The minimum mortar shear strengths required in the following footnotes 3 and 4 shall be that shear strength without the effect of axial stress in the wall at the point of the test.

3 The larger height-to-thickness ratio may be used where mortar shear tests in accordance with Section 17.40.330D establish a minimum mortar shear strength of not less than one hundred psi or where the tested mortar shear strength is not less than sixty psi and a visual examination of the vertical wythe-to-wythe wall joint (collar joint) indicates not less than fifty percent mortar coverage.

4 Where a visual examination of the collar joint indicates not less than fifty percent mortar coverage and the minimum mortar shear strength when established in accordance with Section 17.40.330D is greater than thirty psi but less than sixty psi, the allowable height-to-thickness ratio may be determined by linear interpolation between the larger and smaller ratio values in direct proportion to the mortar shear strength.

2. Continuous Load Path. A complete, continuous load path from every part or portion of the structure to the ground shall be provided for the required horizontal forces.

3. Positive Connections. All parts, portions or elements of the structure shall be interconnected by positive means.

G. Analysis Procedure.

1. General. Stresses in materials and existing construction utilized to transfer seismic forces from the ground to parts or portions of the structure shall conform to those permitted by the 1985 Uniform Building Code and those materials and types of construction specified in Section 17.40.330.

2. Connections. Materials and connectors used for the interconnection of parts and portions of the structure shall conform to the requirements of the 1985 Uniform Building Code. Nails may be used as a part of an approved connector.

3. Unreinforced Masonry Walls.

a. In addition to the analysis of seismic forces required by this chapter, unreinforced masonry walls shall be analyzed as specified in the 1985 Uniform Building Code to withstand all vertical loads as specified in the 1985 Uniform Building Code. Such walls shall meet the minimum requirements set forth in the 1985 Uniform Building Code.

b. Exception: When calculating shear or diagonal tension stresses due to seismic forces, existing masonry shear walls may be designed to resist 1.0 times the required forces in lieu of the 1.5 factor required by the 1985 Uniform Building Code.

c. i. No allowable tension stress will be permitted in unreinforced masonry walls. Walls not capable of resisting the required design forces specified in this part shall be strengthened or shall be removed and replaced.

ii. Exceptions: (i) Unreinforced masonry walls may be analyzed in accordance with Section 17.40.330; (ii) unreinforced masonry walls which carry no design loads other than their own weight may be considered veneer if they are adequately anchored to new supporting elements.

4. a. Substantial changes in wall thickness or stiffness shall be considered in the analysis for out-of-plane and in-plane wall stability; and the wall shall be restrained against out-of-plane instability by anchorage and bracing to the roof or floor diaphragm in accordance with subsection D of this section.

b. Exception: Variations in wall stiffness caused by nominal openings such as windows and doors need not be considered.

H. Combination of Vertical and Seismic Forces.

1. New Materials. All new materials introduced into the structure to meet the requirements of this section which are subject to combined vertical and horizontal forces shall comply with the 1985 Uniform Building Code.

2. Existing Materials. When stress in existing lateral force resisting elements is due to a combination of dead loads plus live loads plus seismic loads, the allowable working stress specified in the 1985 Uniform Building Code may be increased one hundred percent. However, no increase will be permitted in the stresses allowed in Section 17.40.330. The stresses in elements due to only seismic and dead loads shall not exceed the values permitted by the 1985 Uniform Building Code.

3. Allowable Reduction of Bending Stress by Vertical Load. Calculated tensile fiber stress may be reduced by the full direct stress due to vertical dead loads.

(Ord. 23766.)

17.40.330 Materials of construction.

A. General. All materials permitted by the 1985 Uniform Building Code, including their appropriate allowable stresses and those existing configurations of materials specified herein, may be utilized to meet the requirements of this part.

B. Existing Materials.

1. Unreinforced Masonry Walls. Unreinforced masonry walls analyzed in accordance with this part may provide vertical support for roof and floor construction and resistance to lateral loads.

a. All units of both bearing and nonbearing walls shall be laid with full shoved mortar joints; all head, bed and wall (collar) joints shall be solidly filled with mortar; and the bonding of adjacent wythes of multi-wythe walls shall be as follows:

b. The facing and backing shall be bonded so that not less than four percent of the wall surface of each face is composed of headers extending not less than four inches into the backing. The distance between adjacent full-length headers shall not exceed twenty-four inches either vertically or horizontally. In walls where a single header does not extend through the wall, headers from the opposite sides shall overlap at least four inches, or headers from opposite sides shall be covered with another header course overlapping the header below at least four inches.

c. Wythes of walls not bonded as described above shall be considered as veneer. The veneer wythe shall not be included in the effective thickness used to calculate the height-to-thickness ratio and the shear capacity of the wall.

d. Tension stresses due to seismic forces normal to the wall may be neglected if the wall does not exceed the height-to-thickness ratio set forth in Table No. 1 of Section 17.40.320 F.1.b. and the in-plane shear stresses due to seismic loads set forth in Table No. 2. If the wall height-to-thickness ratio exceeds the specified limit, the wall may be supported by vertical bracing members designed to satisfy the requirements of the 1985 Uniform Building Code. The deflection of such bracing members at design loads shall not exceed one-tenth of the wall thickness.

TABLE NO. 2   
VALUES FOR EXISTING MATERIALS1

|  |  |
| --- | --- |
| 1. Horizontal diaphragms |  |
| a. Roofs with straight sheathing with the roof covering applied directly to the sheathing. | 100 PLF for seismic shear. |
| b. Roofs with diagonal sheathing with the roof covering applied directly to the sheathing. | 400 PLF for seismic shear. |
| c. Floors with straight tongue and groove  sheathing. | 150 PLF for seismic shear. |
| d. Floors with straight sheathing and finished wood flooring. | 300 PLF for seismic shear. |
| e. Floors with diagonal sheathing and finished wood flooring. | 450 PLF for seismic shear. |
| f. Floors or roofs with straight sheathing and plaster applied to the joists or rafters.2 | Add 50 PLF to the allowable values in items 1a  and 1c. |
| 2. Shear walls |  |
| Wood stud walls with lath and plaster. | 100 PLF for side for seismic shear. |
| 3. Plain concrete footings | f'c = 1500 psi unless otherwise shown by tests. |
| 4. Douglas Fir wood | Same as 1985 UBC values for No. 1 Douglas  Fir.3 |
| 5. Reinforcing steel | f'c = 18,000 psi maximum.3 |
| 6. Structural steel | f'c = 20,000 psi maximum.3 |

1 Material must be sound and in good condition.

2 Wood lath and plaster must be reattached to existing joists or rafters in a manner approved by the building official.

3 Stresses given may be increased for combinations of loads as specified in Section 17.40.320.

e. Exception: The wall may be supported by flexible bracing members designed in accordance with Section 17.40.320B of this part if the deflection at design loads is not less than one-quarter nor more than one-third of the wall thickness at the level under consideration.

f. All vertical bracing members shall be attached to floor and roof construction for their design loads independently of required wall anchors. Horizontal spacing of vertical bracing members shall not exceed one-half the unsupported height of the wall nor ten feet, whichever is less.

g. The wall height may be measured vertically to bracing elements other than a floor or roof. Spacing of bracing elements and wall anchors shall not exceed six feet. Bracing elements shall be detailed to minimize the horizontal displacement of the wall by components of vertical displacements of the floor or roof.

2. a. Veneer. Veneer shall be anchored with approved anchor ties, conforming to the required design capacity specified in Section 3004(c) of the 1985 Uniform Building Code, and placed at a maximum spacing of twenty-four inches.

b. Exception: Existing veneer anchor ties may be acceptable provided the ties are in good condition and conform to the minimum size, maximum spacing and material requirements as indicated below. The veneer anchor ties shall be corrugated galvanized iron strips not less than one inch in width, eight inches in length and one-sixteenth of an inch in thickness and shall be located and laid in every alternate course in the vertical height of the wall at a spacing not to exceed seventeen inches on center horizontally. As an alternate, the spacing may be every fourth course vertically at a spacing not to exceed nine inches on center horizontally.

c. The existence and condition of existing veneer anchor ties shall be verified as follows:

i. An approved testing laboratory shall verify the location and spacing of the ties and shall submit a report to the building official for approval as a part of the structural analysis.

ii. The veneer in a selected area shall be removed to expose a representative sample of ties (not less than four) for inspection by the building official.

iii. Existing Roof, Floors, Walls, Footings, and Wood Framing. Existing materials, including wood shear walls, may be used as a part of the lateral load resisting system, provided that stresses in these materials do not exceed the values shown in Table No. 2.

C. Strengthening of Existing Materials: New materials, including wood shear walls may be utilized to strengthen portions of the existing seismic resisting system provided that stresses do not exceed the values shown in Table No. 3.

TABLE NO. 3   
ALLOWABLE VALUES OF NEW   
MATERIALS USED IN CONJUNCTION   
WITH EXISTING CONSTRUCTION

|  |  |
| --- | --- |
| ***New Materials or Configuration of Materials*** | ***Allowable Values*** |
| 1. Horizontal diaphragms |  |
| Plywood sheathing applied directly over  existing straight sheathing with ends of plywood  sheets bearing on joists or rafters and edges of  plywood located on center of individual  sheathing boards. | Same as specified in Table 25-J of the 1985  Uniform Building Code for blocked diaphragms. |
| 2. Shear walls |  |
| a. Plywood sheathing applied directly over  existing wood studs. (No value shall be given to  plywood applied over existing plaster or wood  sheathing boards.) | Same as values specified in Table No. 25-K of  the 1985 UBC for shear walls. |
| b. Dry wall or plaster applied directly over  existing wood studs. | 75 percent of the values specified in Table No.  47-I of the 1985 UBC. |
| c. Dry wall or plaster applied to plywood  sheathing over wood studs. | One-third of the values specified in Table No.  47-I of the 1985 UBC. |
| 3. Shear bolts |  |
| Shear bolts and shear dowels embedded a  minimum of 8 inches into unreinforced masonry  walls. Bolt centered in a 2-1/2-inch diameter  hole with dry-pack or nonshrink grout around  the circumference of the bolt.1, 3 | 133 percent of the values for plain masonry  specified in Table No. 24-J of the 1985 UBC.  No values larger than those given for 3/4-inch  diameter bolts shall be used. |
| 4. Tension bolts |  |
| Tension bolts and tension dowels extending  entirely through URM walls secured with  bearing plates on far side of wall with at least 30  square inches of area.2 | 1,200 pounds per bolt. |
| 5. Combination shear and tension wall anchors |  |
| a. Bolts extending to the exterior face of the  wall with a 2-1/2-inch round plate under the  head. Install as specified for shear bolts. Spaced  not closer than 12 inches on centers.1, 2, 3 | 600 lbs. per bolt for tension.4 See item 3 (shear  bolts) for shear values. |
| b. Bolts or dowels extending to the exterior face of  the wall with a 2-1/2-inch round plate under the  head and drill at an angle of 22-1/2 degrees to the  horizontal. Install as specified for shear bolts.1, 2, 3 | 1200 lbs. per bolt or dowel for tension.4 See item 3  for shear values. |
| c. Through bolt with bearing plate for tension per  item 4. Combined with minimum 8-inch grouped  section for shear per item 3. | See item 4 (tension bolts) for tension values.4 See  item 3 for shear values. |
| 6. Infilled walls |  |
| Reinforced masonry infilled openings in existing  unreinforced masonry walls with keys or dowels to  match reinforcing. | Same as values specified for unreinforced masonry  walls in this chapter. |
| 7. Reinforced masonry |  |
| Masonry piers and walls reinforced as specified in  Chapter 24 of the 1985 Uniform Building Code. | Same as values specified in Table No. 24-B of the  1985 Uniform Building Code. |
| 8. Reinforced concrete |  |
| Concrete footings, walls and piers reinforced as  specified in Chapter 26 and designed for tributary  loads. | Same as values specified in Chapter 26 of the 1985  Uniform Building Code. |
| 9. Existing foundation loads |  |
| Foundation loads for structures exhibiting no  evidence of settlement. | Calculated existing foundation loads due to  maximum dead load plus live load may be increased  by 25 percent and may be increased 50 percent for  dead load plus seismic loads required by this  chapter. |

1 Bolts and dowels to be tested as specified in Section 17.40.300E.

2 Bolts and dowels to be 1/2-inch diameter minimum.

3 Drilling for bolts and dowels shall be done with an electric rotary drill. Impact tools shall not be used for drilling holes or tightening anchor and shear bolt nuts.

4 Allowable bolt and dowel values specified are for installations in minimum three wythe wall. For installations in two wythe walls use fifty percent of the value specified, except that no value shall be given to tension bolts that do not extend entirely through the wall and are secured with bearing plates on the far side.

D. Minimum Acceptable Quality of Existing Unreinforced Masonry Walls:

1. General Provisions. All unreinforced masonry walls utilized to carry vertical loads and seismic forces parallel and perpendicular to the wall plane shall be tested as specified in this subsection. All masonry quality shall be equal or exceed the minimum standards established herein or shall be removed and replaced by new materials. The quality of mortar in all masonry walls shall be determined by performing in-place shear tests. Alternate testing methods may be approved by the building official upon submission of adequate evidence to indicate its equivalence. The vertical wall joint between wythes (collar joint) shall be inspected at each test location after the in-place shear tests, and an estimate of the percentage of wythe-to-wythe mortar coverage shall be reported along with the results of the in-place shear tests. Where the exterior face is veneer, the type of veneer, its thickness and its bonding and/or ties to the structural wall masonry shall also be reported. Nothing shall prevent the pointing with mortar of all the masonry wall joints before the tests are first made. Prior to any pointing, the mortar joints must be raked and cleaned to remove loose and deteriorated mortar. Mortar for pointing shall be Type S or N except masonry cements shall not be used. All preparation and mortar pointing shall be done under the continuous inspection of a special inspector. At the conclusion of the inspection, the inspector shall submit a written report to the person responsible for the seismic analysis of the building setting forth the results of the work inspected. Such report shall be submitted to the building official for approval as part of the structural analysis. All testing shall be performed in accordance with the requirements specified in this section by an approved agency. An accurate record of all such tests and their location in the building shall be recorded and these results shall be submitted to the building official for approval as part of the structural analysis.

2. Number and Location of Tests. The minimum number of tests shall be as follows:

a. At each of both the first and top stories, not less than two per wall line or line of wall elements providing a common line of resistance to lateral forces.

b. At each of all other stories, not less than one per wall element providing a common line of resistance to lateral forces.

c. In any case, not less than one per fifteen hundred square feet of wall surface and a total of eight.

The shear tests shall be taken at locations representative of the mortar conditions throughout the entire building, taking into account variations in workmanship at different building height levels, variations in weathering of the exterior surfaces, and variations in the condition of the interior surfaces due to deterioration caused by leaks and condensation of water and/or by the deleterious effects of other substances contained within the building. Where the higher h/t ratios allowed in footnotes 3 and 4 of Table No. 1 of Section 17.40.320 F.1.b. are to be utilized, all the in-place shear tests taken at the top story shall be included in the eighty percent of the shear tests uses to determine the minimum mortar shear strength. The exact test locations shall be determined at the building site by the person responsible for the seismic analysis of the subject building.

3. In-Place Shear Tests. The bed joint of the outer wythe of the masonry wall shall be tested in shear by laterally displacing a single brick relative to the adjacent bricks in the wythe. The opposite head joint of the brick to be tested shall be removed and cleaned prior to testing. The minimum quality mortar in eighty percent of the shear tests shall not be less than the total of thirty psi plus the axial stress in the wall at the point of the test. The shear stress shall be based on the gross area of both bed joints and shall be that at which movement of the brick is first observed.

E. Testing Shear Bolts.

1. One-fourth of all new shear bolts and dowels embedded in unreinforced masonry walls shall be tested by a special inspector using a torque calibrated wrench to the following minimum torques:

a. 1/2-inch diameter bolts or dowels = 40 foot-pounds.

b. 5/8-inch diameter bolts or dowels = 50 foot-pounds.

c. 3/4-inch diameter bolts or dowels = 60 foot-pounds.

2. No bolts exceeding 3/4-inch diameter shall be used. All nuts shall be installed over malleable iron or plate washers when bearing on wood and heavy cut washers when bearing on steel.

F. Determination of Allowable Stresses for Design Methods Based on Test Results.

1. Design Shear Values. Design seismic in-plane shear stresses shall be substantiated by tests performed as specified in subsection D.3 of this section. Design stresses shall be related to test results obtained in accordance with Table No. 4. Intermediate values between five and ten psi may be interpolated.

TABLE NO. 4   
ALLOWABLE SHEAR STRESS. FOR TESTED   
UNREINFORCED MASONRY WALLS

|  |  |  |
| --- | --- | --- |
| ***80 Percent of Test Results,*** ***in psi, Not Less Than*** | ***Average Test Result*** ***of Cores*** ***in psi*** | ***Seismic In-Plane Shear*** ***Based on Gross Area*** |
| 30 plus axial stress | 20 | 3 psi\* |
| 40 plus axial stress | 27 | 4 psi\* |
| 50 plus axial stress | 33 | 5 Psi\* |
| 100 plus axial stress | 67 or more | 10 psi max\* |

\* Allowable shear stress may be increased by addition of 10 percent of the axial stress due to weight of wall directly above.

2. Design Compression and Tension Values. Compression stresses for unreinforced masonry having a minimum design shear value of three psi shall not exceed one hundred psi. Design tension values for unreinforced masonry shall not be permitted.

G. Existing Wall Anchors. Five percent of the existing wall anchors utilized as all or part of the required wall anchors shall be tested in pullout by an approved testing agency. The minimum number tested shall be four per floor, with two tests at walls with joist parallel to the wall. The test apparatus shall be supported on the masonry wall at a minimum distance equal to the wall thickness from the anchor tested. The rod anchor shall be given a preload of three hundred pounds prior to establishing a datum for recording elongation. The tension test load reported shall be recorded at 1/8-inch relative movement of the anchor and the adjacent masonry surface. Results of all tests shall be reported. The report shall include the test results as related to the wall thickness and joist orientation. The allowable resistance value of the existing anchors shall be forty percent of the average of those tested anchors having the same wall thickness and joist orientation.

H. Qualification Tests. Qualification tests for new devices used for wall anchorage shall be tested with the entire tension load carried on the enlarged head at the exterior face of the wall. Bond on the part of the device between enlarged head and the interior wall face shall be eliminated for the qualification tests. The resistance value assigned the device shall be twenty percent of the average of the ultimate loads.

(Ord. 23766.)

17.40.340 Information required on plans.

A. General. In addition to the seismic analysis required in this part the person responsible for the seismic analysis of the building shall determine and record the information required by this section on the approved plans.

B. Construction Details. The following requirements with appropriate construction details shall be made a part of the approved plans:

1. All unreinforced masonry walls shall be anchored at the roof and ceiling levels by tension bolts through the wall as specified in Table No. 3 of Section 17.40.330C or by an approved equivalent at a maximum anchor spacing of six feet.

2. a. All unreinforced masonry walls shall be anchored at all floors and ceilings with tension bolts through the wall or by existing rod anchors at a maximum anchor spacing of six feet. All existing rod anchors shall be secured to the joists to develop the required forces. Tests conforming to this part will be required to verify the adequacy of the embedded ends of existing rod anchors.

b. Exception: Walls need not be anchored to ceiling systems that, because of their low mass and/or relative location with respect to the floor or roof systems, would not impose significant normal forces on the wall and cause out-of-plane wall failure. Calculations and drawings to verify this exception must be submitted as part of the analysis.

3. At the roof and all floor levels, the anchors nearest the building corners shall be combination shear and tension anchors located not more than two feet horizontally from the inside corners of the walls.

4. When access to the exterior face of the masonry wall is prevented by proximity of an existing building, wall anchors conforming to items 5(a) or (b) in Table No. 3 of Section 17.40.330C may be used.

5. Alternative devices to be used in lieu of tension bolts for masonry wall anchorage shall be tested as specified in Section 17.40.330H.

6. Diaphragm chord stresses of horizontal diaphragms shall be developed in existing materials or by the addition of new materials.

7. Where trusses and beams other than rafters or joists are supported on masonry independent secondary columns shall be installed to support vertical loads.

8. Parapets and exterior wall appendages not capable of resisting the forces specified in this part shall be removed, stabilized, or braced to ensure that the parapets and appendages remain in their original position. The maximum height of an unbraced, unreinforced masonry parapet above the lower of either the level of tension anchors or roof sheathing shall not exceed one and one-half times the thickness of the parapet wall. If the required parapet height exceeds this maximum height a bracing system designed for the force factors specified in the Table 23-J of the 1985 Uniform Building Code shall support the top of the parapet. Parapet corrective work must be performed in conjunction with the installation of tension roof anchors.

9. a. The minimum height of a parapet above the wall anchor shall be twelve inches.

b. Exception: If a reinforced concrete beam is provided at the top of the wall, the minimum height above the wall anchor may be six inches.

10. All deteriorated mortar joints in unreinforced masonry walls shall be pointed with Type S or N mortar. Prior to any pointing, the wall surface must be raked and cleaned to remove loose and deteriorated mortar. All preparation and pointing shall be done under the continuous inspection of a special inspector. At the conclusion of the project, the inspector shall submit a written report to the building official setting forth the portion of work inspected.

11. Repair details for any cracked or damaged unreinforced masonry wall required to resist forces specified in this part.

C. Existing Construction. The following existing construction information shall be made part of the approved plans:

1. The type and dimensions of existing walls and the size and spacing of floor and roof members.

2. The extent and type of existing wall anchorage to floors and roof.

3. The extent and type of any parapet bracing or other structural reinforcement to parts or portions of the building which were previously performed.

4. Accurately dimensioned floor plans and masonry wall elevations showing dimensioned opening, piers, wall thickness and heights, veneer locations and existing anchorages.

5. The locations of cracks or other damaged portions of unreinforced masonry walls requiring repair.

6. The type of interior wall surfaces and ceilings, and if reinstalling or anchoring of existing plaster is necessary.

7. The general condition of the mortar joints and if the joints need repointing.

8. The location of all in-place shear tests or core tests shall be shown on the floor plans and building wall elevations.

(Ord. 23766.)

17.40.350 Roof diaphragm stiffness.

A. General. The requirements of this section are in addition to the other analysis requirements of this part. The relative stiffness and strength of a diaphragm govern the amount of amplification of the seismic ground motion by the diaphragm, and therefore, a diaphragm stiffness and strength related check of the out-of-plane stability of unreinforced masonry walls anchored to wood diaphragms shall be made. This section contains a procedure for evaluation of the out-of-plane stability of unreinforced masonry walls anchored to wood diaphragms that are coupled to shear resisting elements.

B. Definitions. The following definitions are applicable to this section:

1. Cross wall. A wood framed wall having a height-to-length ratio complying with Section 4713(d) or Table 25-I of the 1985 Uniform Building Code and sheathed with any of the materials described in Table No. 5 or Table No. 6. The total strength of all cross walls located within any forty feet length of diaphragm measured in the direction of the diaphragm span shall not be less than thirty percent of the strength of the diaphragm in the direction of consideration.

2. Demand capacity ratio (DCR) is a ratio of the following:

a. Demand equals the lateral forces due to thirty-three percent of the combined weight of the diaphragm and the tributary weight of the walls and other elements anchored to the diaphragm.

b. Capacity equals the diaphragm total shear strength in the direction under consideration as determined using the values in Table Nos. 5 or 6 of subsection B of this section.

TABLE NO. 5   
ALLOWABLE VALUES FOR EXISTING   
MATERIALS TO BE USED ONLY IN   
THE COMPUTATION OF THE DEMAND   
CAPACITY RATIO DESIGN CHECK

|  |  |
| --- | --- |
| ***Existing Materials or*** ***Configuration of Materials1*** | ***Allowable Values*** |
| 1. Horizontal diaphragms |  |
| a. Roofs with straight sheathing and roofing  applied directly to the sheathing. | 100 lbs. per foot for seismic shear. |
| b. Roofs with diagonal sheathing and roofing  applied directly to the sheathing. | 250 lbs. per foot for seismic shear. |
| 2. Cross walls2 | Per side; |
| a. Plaster on wood or metal lath. | 200 lbs. per foot for seismic shear. |
| b. Plaster on gypsum lath. | 175 lbs. per foot for seismic shear. |
| c. Gypsum wall board unblocked edges. | 75 lbs. per foot for seismic shear. |
| d. Gypsum wall board blocked edges. | 125 lbs. per foot for seismic shear |

1  Materials must be sound and in good condition.

2  For cross walls, values of all materials may be combined, except the total combined value shall not exceed three hundred lbs. per foot for seismic shear.

TABLE NO. 6   
ALLOWABLE VALUES FOR NEW   
MATERIALS USED IN CONJUNCTION WITH   
EXISTING CONSTRUCTION MATERIALS TO   
BE USED ONLY IN THE COMPUTATION OF   
THE DEMAND CAPACITY RATIO DESIGN CHECK

|  |  |
| --- | --- |
| ***New Materials or Configuration of New and*** ***Existing Materials1*** | ***Allowable Values*** |
| 1. Horizontal diaphragms |  |
| a. Plywood sheathing applied directly over  existing straight sheathing with ends of plywood  sheets bearing on rafters and edges of plywood  located on the center of individual sheathing  boards. | 225 lbs. per foot for seismic shear. |
| 2. Cross walls2 |  |
| a. Plywood sheathing applied directly over  existing wood studs. No value shall be given to  plywood applied over existing plaster or wood  sheathing. | 1.33 times the values specified in Table 25-K of  the 1985 UBC. |
| b. Drywall or plaster applied directly over  existing wood studs. | 100 percent of the values specified in Table 47-I  of the 1985 UBC. |

1  Materials must be sound and in good condition.

2  For cross walls, values of all materials may be combined, except the total combined shear value shall not exceed three hundred lbs. per foot for seismic shear.

C. Notations.

D = depth of diaphragm, in feet, measured perpendicular to the diaphragm span.

h/t = height-to-thickness of an unreinforced masonry wall. The height shall be measured between wall anchorage levels and the thickness shall be measured through the wall cross section at the level under consideration.

L = span of diaphragm between masonry shear walls or steel frames.

Vc = total shear capacity of cross walls in the direction of analysis immediately below the diaphragm level being investigated as determined by using Table Nos. 5 or 6 of subsection B of this section.

vu = maximum shear strength in pounds per foot for a diaphragm sheathed with any of the materials given in Table Nos. 5 or 6 of subsection B of this section.

Wd = total dead load of the diaphragm plus the tributary weight of the walls anchored to the diaphragm, the tributary ceiling and partitions and weight of any other permanent building elements at the diaphragm level under consideration.

D. Design Check Procedure.

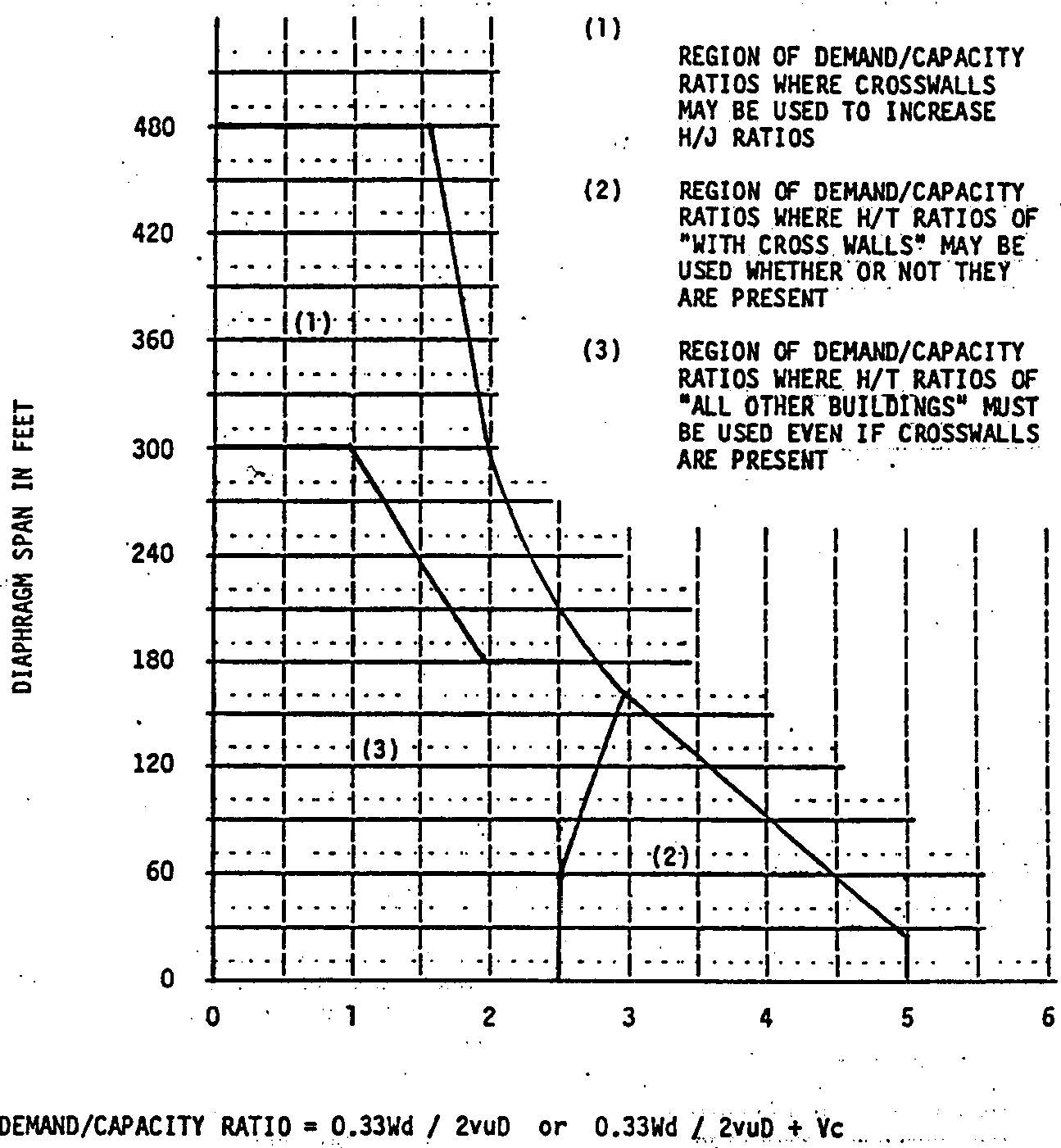
1. General. The demand-capacity ratio (DCR) for the building shall be calculated using the following equations:

DCR = 0.33 Wd / 2 vu D For building without cross walls; or

DCR = 0.33 Wd / 2 vu V + Vc For building with cross walls.

2. Diaphragm Deflection. The calculated DCR shall be to the left of the curve in Figure No. A1. Where the calculated DCR is outside (to the right of) the curve, the diaphragm deflection limits are exceeded and cross walls may be used to reduce the deflection.

3. Unreinforced Masonry Wall Out-of-Plane Stability. The DCR shall be calculated discounting any cross wall. If the DCR from this method corresponding to the diaphragm span is to the right of the curve in Figure No. A1 of this subsection, the region within the curve at and below the intersection of the diaphragm span with the curve may be used to determine the allowable h/t values per Table No. 1 of Section 17.40.320 F.1.b.



(Ord. 23766.)

### Part 4 FINANCIAL ASSISTANCE FOR UNREINFORCED MASONRY BUILDINGS

17.40.400 Authority to administer structural design grants.

The director of neighborhood preservation is authorized to grant financial assistance to owners of buildings with unreinforced masonry wall construction to assist in funding the cost of structural design work to retrofit such buildings in order to meet the requirements of Part 3 of this chapter.

(Ord. 23767.)

17.40.410 Eligibility.

All owners of buildings with unreinforced masonry wall construction located within the city limits of San José, except owners of buildings exempt pursuant to Section 17.40.210B, who have structural design work performed in order to meet the retrofit requirements of Part 3 of this chapter, shall be eligible to apply for grants to assist in paying the actual cost incurred for structural design work.

(Ord. 23767.)

17.40.420 Grant procedures.

A. An eligible building owner must submit a completed application to the director of neighborhood preservation which includes reasonably sufficient documentation that:

1. Structural design plans have been submitted and approved by the director; and

2. Structural design costs have actually been incurred by the building owner.

B. The director shall provide grants to eligible building owners in the order that completed applications are received by the director.

C. The city shall have no obligation to make payments under this part unless sufficient appropriated funds are available.

(Ord. 23767.)

17.40.430 Grant awards.

The amount of the structural design grant to be provided to a building owner for a retrofit project shall be based upon the following schedule:

|  |  |
| --- | --- |
| Building Square  Footage | Grant Amount |
| 1. Less than or equal to 5,000 sq. ft. | $6,000 |
| 2. Greater than 5,000  to 10,000 sq. ft. | $6,000 + 0.75 sq. ft.  times the area over  5,000 sq. ft. up to a  maximum grant of  $9,750. |
| 3. Greater than 10,000  to 20,000 sq. ft. | $9,750 + 0.50 per  sq. ft. times the area  over 10,000 sq. ft. up  to a maximum grant  of $14,750. |
| 4. Greater than 20,000  sq. ft. | (a) Single-story  building: $14,750. |
|  | (b) Multi-story  buildings: $14,750 +  0.20 per sq. ft. times  the area over 20,000  sq. ft. up to a  maximum grant of  $20,000. |

(Ord. 23767.)

17.40.440 Retroactivity.

The provisions of this part shall apply to any structural design work on a retrofit project where the structural design plans were approved by the director on or after December 11, 1990.

(Ord. 23767.)

17.40.450 Sunset.

The provisions of this part shall remain in effect until May 17, 1993, unless further action is taken by ordinance of the council prior to that date.

(Ord. 23767.)

## Chapter 17.44 ABATEMENT OF ABANDONED SERVICE STATIONS[[22]](#footnote-22)

### Part 1 GENERAL PROVISIONS AND DEFINITIONS

17.44.010 Purpose of chapter.

The purpose of this chapter is to promote the health, safety and general welfare of the public by protecting it from health and safety hazards and from the impairment of property values which is the result of property deterioration and blight and by providing the aesthetic improvement of this city in order to preserve social and economic stability.

(Prior code § 8940; Ords. 19247, 21972.)

17.44.020 Definitions.

As used in this chapter:

A. "Building" means any and all physical improvements or structures which are designed, built or adapted solely for use as or in connection with a gasoline service station use, and shall include, but are not limited to, offices and accessory structures.

B. "Converted use" means any conversion from a gasoline service station use to change to any other use pursuant to the provisions of Title 20 of this Code.

C. "Equipment" includes, but is not limited to pump islands, tanks, mechanical equipment, wells, insignias, trademarks, signs, kiosks, and the supporting structures, mountings, and foundations of any of the listed items. This definition applies to gasoline service station uses and does not apply to any other use which may be operating in conjunction with such gasoline service station use.

D. "Gasoline service station" means any lot of real property on which there exists buildings and/or equipment designed for commercially dispensing fuels for internal combustion engines of any type or types of automotive vehicles whether or not in conjunction with facilities for the provision of other services to customers.

(Ord. 21972.)

17.44.030 General obligation.

A. No person, firm or corporation whether as owner, lessee or sublessee shall maintain or allow to be maintained an abandoned gasoline service station. An abandoned gasoline service station is a gasoline service station which has been operated as a gasoline service station use for less than thirty consecutive days within any one hundred and eighty day period of time; and

B. No person, firm or corporation shall take any action or allow any action to be taken in violation of any provision of this chapter or order issued pursuant thereto.

(Ord. 21972.)

17.44.040 Enforcement responsibility.

The city manager is charged with the responsibility for the enforcement of this chapter. All city employees charged with enforcement responsibilities under this Code are authorized to make such inspections and take such actions on behalf of the city manager as may be required to enforce the provisions of this chapter.

(Ord. 21972.)

17.44.050 Abandoned service station - Declared a nuisance.

Abandoned gasoline service stations are hereby declared and determined to be public nuisances.

(Ord. 21972.)

17.44.060 Abandoned gasoline service station - Abatement required.

Whenever a gasoline service station is found to be abandoned, the city manager may commence proceedings to cause abatement actions to be taken regarding the abandoned gasoline service station in accordance with the provisions of Chapter 17.02 and this chapter. Temporary measures, when necessary, may be required prior to the time permanent abatement actions are instituted.

(Ord. 21972.)

17.44.070 Abatement.

Once a gasoline service station has been abandoned as set forth in Section 17.44.030, it must be abated in accordance with the following:

A. Said premises must be tested for soil contamination. If such contamination is found, the soil must be rendered free of such contamination through appropriate cleanup procedures. All soil testing and cleanup procedures shall be in accordance with applicable federal, state and local regulations.

B. Said premises shall be used or occupied for any purpose only in accordance with the following:

1. The premises may be reinstated to a gasoline service station only if a reinstatement permit has been issued pursuant to Section 17.44.080.

2. The premises may be converted and another use allowed by this Code pursuant to either a special use permit or a conditional use permit as set forth in Title 20 of this Code.

C. The premises may be abated by removal of all buildings and equipment and safeguarding or removal of any flammable or combustible liquid storage tanks, in compliance with the provisions of Chapter 17.68. The site shall be cleaned and all trash, refuse, automotive parts, vehicles and any other items on the site as a result of the gasoline service station use shall be removed.

(Ord. 21972.)

17.44.080 Reinstatement permit.

A. Prior to the issuance of a notice and order pursuant to Section 17.44.110, or the time Indicated on any such notice which may have been issued or within such later time as is set by the designated commission, a reinstatement permit shall be issued if the applicant demonstrates to the satisfaction of the city manager that:

1. The gasoline service station was not a legal nonconforming use.

2. Such reinstatement is in conformity with any site development or conditional use permit previously issued pursuant to Title 20 of this Code.

3. All buildings or structures on the premises have been inspected and found to be in compliance with all city ordinances and state law provisions applicable to such occupancy.

4. The testing required by Section 17.44. 070 has been completed and all required cleanup has been accomplished.

5. A hazardous materials permit pursuant to Chapter 17.68 has been issued.

6. The reinstatement fee has been paid as specified in the schedule of fees adopted by resolution of the city council.

B. After all time periods specified in subsection A above have expired, no reinstatement of use of the premises as a gasoline service station, pursuant to this section, shall be permitted. Any reinstatement of use shall be treated as a new use for purposes of Title 20 and shall be required to comply with all permit requirements thereof.

(Ord. 21972.)

### Part 2 ABATEMENT ACTIONS - PROCEDURE

17.44.100 Abatement procedure.

Unless otherwise specified in this chapter, the abatement procedures of Chapter 17.02 shall be applicable to this chapter. Costs for any abatement performed by or on behalf of the city shall be recovered by the city pursuant to the provisions of Part 4 of Chapter 17.02.

(Ord. 21972.)

17.44.110 Abatement notice and order - Contents.

Whenever a gasoline service station has been found to be abandoned, the city manager shall issue a notice and order directed to the record owner of the real property on which the service station is located. The information contained in the notice and order includes:

A. The information required in Section 17.02.110.

B. A statement that the abandoned gasoline service station must be abated in conformity with Section 17.44.070.

(Prior code § 8940.14; 17.44.110; Ords. 19247, 21972.)

17.44.150 Procedures of the chapter - Cumulative.

A. Procedures used and actions taken for the abatement of abandoned gasoline service stations are not limited by this chapter. Procedures and actions under this chapter may be utilized in conjunction with or in addition to any other procedure applicable to the regulation of buildings or gasoline service stations. All provisions of Chapter 17.68 of this Code applicable to gasoline service stations remain in full force and effect and are not modified by this chapter.

B. All abatement actions performed pursuant to the provisions of this chapter must be performed in compliance with all provisions of this Code, including but not limited to building construction, repair or demolition, zoning, hazardous materials regulation, and fire code provisions.

C. No person shall reoccupy or reinstate any use of any buildings on the property unless and until such buildings have been inspected and found to be in compliance with all municipal code and state law provisions applicable to such occupancy.

(Ord. 21972.)

## Chapter 17.48 SIGNS, MARQUEES AND AWNINGS

### Part 1 GENERAL PROVISIONS AND DEFINITIONS

17.48.010 Application.

A. This chapter shall apply to all signs erected or maintained in the City of San José.

B. No person shall erect, maintain or allow, or cause to be erected, maintained or allowed, any sign in the city except in strict conformity with this chapter, including in conformity with all conditions of any permit issued pursuant to this chapter.

(Ord. 24203.)

17.48.020 Other applicable laws.

Nothing in this chapter shall be deemed or construed to permit the erection or maintenance of a sign in violation of any other applicable provision of this Code, including without limitation Title 23, and other applicable ordinances of the city.

(Ord. 24203.)

17.48.030 Definitions generally.

For purposes of this chapter, certain words and abbreviations shall be defined as specified in this Part 1. Any term not defined in this Part 1, but defined in Title 23 of this Code, shall have the meaning set forth in Title 23.

(Ord. 24203.)

17.48.040 Approved plastic material.

"Approved plastic material" means approved plastic material as defined in the San José building code.

(Ord. 24203.)

17.48.050 Building official.

"Building official" means the building official of the City of San José.

(Ord. 24203.)

17.48.060 Curbline.

"Curbline" means the line at the face of the curb nearest to the street. In the absence of a curb, the curbline shall be as established by the director of public works.

(Ord. 24203.)

17.48.070 Electric sign.

"Electric sign" means any sign containing electric wiring, but not including signs illuminated by external lighting.

(Ord. 24203.)

17.48.080 Incombustible material.

"Incombustible material" means any material which will not ignite at or below a temperature of one thousand two hundred degrees Fahrenheit during an exposure of five minutes, and which will not continue to burn or glow at that temperature. Tests shall be made as specified in the San José building code standards therefor.

(Ord. 24203.)

17.48.090 Nonstructural trim.

"Nonstructural trim" means the molding, battens, caps, nailing strips, latticing, cutouts or letters and walkways which are attached to the sign structure.

(Ord. 24203.)

17.48.100 Plastic materials.

"Plastic materials" means those made wholly or principally from standardized plastics listed and described in the San José building code standards therefor.

(Ord. 24203.)

### Part 2 SIGN REQUIREMENTS GENERALLY

17.48.200 General requirement.

In addition to the regulations in Title 23, all signs shall comply with the regulations in this chapter.

(Ord. 24203.)

17.48.210 Permit requirement.

A. The following signs shall require a building permit from the building official, in addition to any other permits required by this Code:

1. A freestanding sign, any part of which extends six or more feet above the ground;

2. A projecting sign, any part of which projects two or more feet from the surface of the wall by which it is supported;

3. Any sign which projects one or more feet into the air space above a public right-of-way.

B. A sign for which a permit is not required under the provisions of this section shall nevertheless comply with all the provisions of this part except the requirement for a permit or fee.

C. No permit issued under this part shall be deemed or construed to authorize the erection, construction, alteration or display of any sign in an illegal or unlawful manner, or in violation of any provision of the San José Municipal Code or of any other ordinance of the city.

(Ord. 24203.)

17.48.220 Permit application.

Application for a sign building permit under this part shall be made in writing upon forms furnished by the building official. Such application shall contain the location by street and number of the proposed sign, as well as the name and address of the owner and the sign contractor or erector. The building official may require the filing of plans or other pertinent information where, in the official's opinion, such information is necessary to ensure compliance with the provisions of this part.

(Ord. 24203.)

17.48.230 Permit fees.

Application and permit fees for each sign permit shall be as set forth in the schedule of fees established by resolution of the council.

(Ord. 24203.)

17.48.240 Design and construction - Loads and bracing systems.

Signs and supporting structures shall be designed according to accepted principles of engineering and design. All bracing systems shall be designed and constructed to transfer lateral forces to the foundation. For signs on buildings, the dead and lateral loads shall be transferred through the structural frame of the building to the ground in such manner as not to overstress any of the elements thereof.

(Ord. 24203.)

17.48.250 Design and construction - Allowable stresses.

A. The design of wood, concrete or steel members shall conform to the requirements of the San José building code. Loads, both vertical and horizontal, exerted on the soil shall not produce stresses exceeding those specified in the building code.

B. The working stresses of wire rope and its fastenings shall not exceed twenty-five percent of the ultimate strength of the rope or fasteners.

(Ord. 24203.)

17.48.260 Design and construction - Wind loads.

A. For purposes of design, wind pressure for all signs shall be twenty pounds per square foot, and for all roof signs and open-frame signs, thirty pounds per square foot. The area of an open-frame sign, for the purposes of this section, shall be the net area of framing members exposed to the wind. Vertical design loads, except for roof live loads, shall be assumed to be acting simultaneously with wind loads.

B. Notwithstanding subsection A. above, portable signs shall be so designed and/or weighted as necessary to resist tip-over under wind gusts and continuous wind load.

(Ords. 24203, 24757.)

17.48.270 Construction materials.

A. Supporting structures shall be securely built, constructed and erected in conformance with the requirements of this chapter.

B. Materials of construction for signs and supporting structures shall be of the quality and grade as specified for buildings in the Uniform Building Code. Not limiting the generality of the preceding sentence:

1. All steel shall be galvanized steel;

2. Anchors and supports, when of wood embedded in the soil or within six inches of the soil, shall be pressure-treated with an approved preservative.

C. No sign may be constructed of combustible materials except as follows:

1. Signs may be constructed of wood;

2. Temporary signs may be of paper;

3. Electric signs may use approved plastics in their construction.

D. Nonstructural trim may be of wood, metal, approved plastics or any combination thereof.

(Ord. 24203.)

17.48.280 Clearance from fire escapes, windows and power lines.

A. No sign or supporting structure shall be erected in such a manner that any portion of its surface or supports will interfere in any way with the free use of any fire escape, exit or standpipe.

B. No sign shall obstruct any window to such an extent that any light or ventilation is reduced to a point below that required by any law.

C. Signs shall be so located as to maintain all required clearances from overhead power and service lines.

(Ord. 24203.)

17.48.290 Projection into air space over public right-of-way.

Subject to the provisions set forth in this section, signs may project into the air space over a public right-of-way. The foregoing permission to project signs into the air space over a public right-of-way shall be revocable at the will of the city council at any time. No part of any sign which projects into the air space over a public right-of-way:

A. Shall project to within three feet of the curbline;

B. Shall be below seven feet above grade; and

C. Shall interfere with the effectiveness of any traffic control device.

(Ord. 24203.)

17.48.300 Dimension restriction.

No sign which projects into the air space over a public right-of-way shall have a depth or thickness in excess of two feet nor a sign area which is in excess of one hundred fifty square feet.

(Ord. 24203.)

17.48.310 Electrical equipment.

Electrical equipment used in connection with signs shall be installed in accordance with the San José electrical code.

(Ord. 24203.)

17.48.320 Signs across public rights-of-way.

Every cable-hung banner extending across a public right-of-way:

A. Shall maintain a minimum clearance of sixteen feet;

B. Shall be perforated over at least ten percent of its area to reduce wind resistance;

C. Shall be supported and attached with wire rope of three-eighths-inch minimum diameter; and

D. Shall not be supported or anchored with strings, fiber ropes or wood slats.

(Ord. 24203.)

17.48.330 Maintenance.

All signs, together with all of their supports, braces, guys and anchors, shall be kept in repair and in a proper state of preservation.

(Ord. 24203.)

17.48.340 Inspections - Building official authority.

All signs for which a permit is required under this part shall be subject to inspection by the building official.

(Ord. 24203.)

17.48.350 Investigation fee for signs erected without a permit.

A. Should any sign for which a permit is required by this chapter be erected without first obtaining such permit, a special investigation shall be made before a permit may be issued for such sign.

B. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be set forth in the schedule of fees adopted by resolution of the city council. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this chapter nor from any penalty prescribed by law.

(Ord. 24203.)

### Part 3 AWNINGS AND MARQUEES

17.48.400 Construction standards and restrictions.

A. All cloth or canvas awnings shall be either movable or constructed in such a manner so as to be collapsible, in which latter case their construction shall meet the approval of the fire department. All awnings shall be kept in good repair, and ragged or dilapidated awnings are prohibited hereunder.

B. Metal or plastic awnings may be permitted under the provisions of this part where such awnings conform to the following standards:

1. Metal awnings shall be of corrosive-resistant, noncombustible material (metal);

2. Metal and plastic awnings shall be collapsible in a manner to be approved by the fire department;

3. Both metal and plastic awnings shall be designed to support minimum loading of five pounds per square foot;

4. Any single section of metal or plastic awning shall not exceed twenty feet in length.

C. No awning of any kind permitted under this chapter shall have an outermost edge whose vertical height exceeds twelve inches, or a vertical projected height of the entire awning which exceeds five feet, or any balance attachment from the projection above the plane or roof of the awning.

(Prior code § 8694.)

### Part 4 LICENSE EXEMPTIONS

17.48.500 Contracting business exempt when.

The provisions of this chapter shall not require any person to procure any city license or pay any city license tax in order to engage in or carry on any contracting business and/or contracting work for the engaging in or performance of which a state contractor's license is required by the laws of the state of California.

(Prior code § 8699.)

## Chapter 17.68 HAZARDOUS MATERIALS STORAGE PERMIT

### Part 1 GENERAL PROVISIONS

17.68.010 Purpose.

The purpose of this chapter is the protection of health, life, resources, and property through prevention and control of unauthorized discharges of hazardous materials.

(Ord. 21334.)

17.68.020 General obligation - Safety and care.

A. No person, firm or corporation shall cause, suffer, or permit the storage of hazardous materials:

1. In a manner which violates a provision of this chapter or any other local, federal or state statute, code, rule, or regulation relating to hazardous materials; or

2. In a manner which causes an unauthorized discharge of hazardous materials or poses a significant risk of such unauthorized discharge.

B. City shall have discretion to exempt an applicant from any specific requirements of this chapter, other than the requirement for secondary containment in underground storage facilities, except as provided in Section 17.68.160C4, or to require applicant to meet additional or modified requirements, where such action would be appropriate and consistent with achieving the general obligation of this chapter for protecting public health, safety, and welfare.

(Ords. 21334, 21508.)

17.68.030 Specific obligation.

A. Any person, firm or corporation which stores any material regulated by Section 17.68.100 which is not excluded by Section 17.68.110 shall obtain and keep current a hazardous materials storage permit or permits as required by this chapter

B. All such hazardous materials shall be contained in conformity with Part 3 of this chapter

C. The storage of such hazardous materials shall be in conformance with the approved hazardous materials management plan.

D. The city shall apply for, and the officer shall consider and issue where appropriate, a permit, in conformity with this chapter, for the storage of hazardous materials by the city in an underground storage tank, as those terms are defined in Chapter 6.7 of Division 20 of the California Health and Safety Code, wherever the city's storage facility may be situate. Any other city, county, district or department or agency of the state which stores any hazardous substance in an underground storage tank, as those terms are defined in Chapter 6.7, in this city without a permit meeting the requirements of said Chapter 6.7 issued by such other local agency shall obtain and keep current a permit from the city which conforms at a minimum to Sections 25284 and 25284.1 of the Health and Safety Code.

(Ords. 21334, 21508, 22555.)

17.68.040 Definitions.

Unless otherwise expressly stated, whenever used in this chapter, the following terms shall have the meanings set forth below:

A. "Abandoned," when referring to a storage facility, means out of service and not safeguarded in compliance with this chapter.

B. "Facility" means a building or buildings, appurtenant structures, and surrounding land area used by a single business entity at a single location or site.

C. "Hazard class" means explosives A, explosives B, explosives C, blasting agents, flammable liquids, combustible liquids, flammable solids, oxidizers, organic peroxides, nonflammable gases, poisons A, poisons B, irritating materials, etiologic agents, radioactive materials, other regulated materials (ORM) A, B, C, D and E. For purposes of this chapter, the U.S. Department of Transportation (DOT) definitions in 49 CFR Part 173, as amended, shall be utilized; however, whenever the definitions in 49 CFR 173 refer to transportation or hazards associated with transportation, they shall be deemed to refer to storage or other regulated activity under this chapter.

D. "Hazardous material" means any material which is subject to regulation pursuant to Part II of this chapter. A mixture shall be deemed to be a hazardous material if it either is a waste and contains any material regulated pursuant to Part II of this chapter, or is a nonwaste and contains one percent by volume or more of any material regulated pursuant to Part II of this chapter.

E. "Officer" means the employee assigned by the city to administer this chapter or any designee of such employee.

F. "Permit" means any hazardous materials storage permit issued pursuant to this chapter as well as any additional approvals thereto.

G. "Permit quantity limit" means the maximum amount of hazardous material that can be stored in a storage facility. Separate permit quantity limits will be set for each storage facility for which a permit is obtained in accordance with the requirements of this chapter.

H. "Permittee" means any person, firm, or corporation to whom a permit is issued pursuant to this chapter and any authorized representative, agent or designee of such person, firm, or corporation.

I. "Pipes" means pipeline systems which are used in connection with the storage of hazardous materials exclusively within the confines of a facility and which are not intended to transport hazardous materials in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

J. "Primary containment" means the first level of containment, i.e., the inside portion of that container which comes into immediate contact on its inner surface with the hazardous material being contained.

K. "Product-tight" means impervious to the hazardous material which is contained, or is to be contained, so as to prevent the seepage of the hazardous material from the primary containment. To be product-tight, the container shall be made of a material that is not subject to physical or chemical deterioration by the hazardous material being contained.

L. "Secondary containment" means the level of containment external to and separate from the primary containment.

M. "Single-walled" means construction with walls made of but one thickness of material. Laminated, coated, or clad materials shall be considered as single-walled.

N. "Storage system" means any one or combination of tanks, sumps, wet floors, waste-treatment facilities, pipes, vaults or other portable or fixed containers, used, or designed to be used, for the storage of hazardous materials at a facility.

O. "Sump" means a pit or well in which liquids collect.

P. "Unauthorized discharge" means any release or threatened release or emission of materials in a manner which does not conform to the provisions of this code or applicable public health and safety regulations

Q. "Wet floor" means a floor which is used to routinely collect, contain or maintain standing liquids or to transmit standing liquids on a more or less continuous basis.

R. "Storage facility" means any building, structure, installation, or area consisting of one or more storage systems.

(Ords. 21334, 22555, 30836.)

17.68.050 Professional assistance for city determinations.

Whenever the approval or satisfaction of city may be required in this chapter for a design, monitoring, testing other technical submittal by and applicant or permittee, city may, in its discretion, require such applicant or permittee, at such applicant's or permittee's sole cost and expense, to retain a suitably qualified independent engineer, or chemist, or other appropriate professional consultant, acceptable to city, for the purpose of evaluating and rendering a professional opinion respecting the adequacy of such submittal to achieve the purposes of this chapter. City shall be entitled to rely on such evaluation and/or opinion of such engineer, chemist or professional consultant in making the relevant determinations provided for in this chapter.

(Ord. 21334.)

### Part 2 MATERIALS REGULATED

17.68.100 Materials regulated.

The materials regulated by this chapter shall consist of the following.

A. Any material listed as a hazardous and/or extremely hazardous material or hazardous and/or extremely hazardous waste in Sections 66680 and 66685 of Title 22 of the California Administrative Code, as amended, whether such material is stored or handled in waste or nonwaste form; or

B. Any material which is listed on the list of Environmental Protection Agency (EPA) pollutants, 40 Code of Federal Regulations, Section 401.15, as amended; or

C. Any material which is classified by the National Fire Protection Association (NFPA) as either a flammable liquid, a class II combustible liquid or a class IIIA combustible liquid; or

D. Any material which is listed by the director of the department of industrial relations in Title 8, California Administrative Code, Section 339, as amended, excluding all footnotes thereto and subject to the exclusions specified in this subsection. Such exclusions shall apply only to materials which are not otherwise regulated pursuant to this Section 17.68.100. These exclusions shall be as follows.

1. Materials recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them if such materials are intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; hormones; enzymes; and aflatoxins.

2. Aluminum salts; asphalt fumes; atrazine; benomyl; bis (dimethylthiocarbamoyl) disulfide; boron oxide; 4-tert-butyl-2-chlorophyl-methyl methylphosphoramidate; camphor; carbon black; 2-chloro-6 (trichloromethyl) pyridine; clopidol; coal tar pitch volatiles; cotton dust, dibenzoyl peroxide (benzoyl peroxide); dicyclopentadienyl iron; 3,5-dinitro-o-toluamide; 2,6di-tert-butyl-p-cresol; ferbram, fumaric acid; glass, fibrous or dust, graphite, helium; iron oxide; iron salts; magnesium oxide; mica; mineral wool fiber; oil mist; phenothiazine; phenyl ether; phenyl ether-diphenyl (eutectic mixture), vapor; phthalic anhydride; m-phthalodinitrile; polytetrafluoreoethylene decomposition products; rhodium salts; ronnel; rosin core solder; rotenone, commercial; silica, soapstone, talc; tantalum oxide; terphenyls; and 4,4'-thiobis (6-tert-butyl-m-cresol).

E. Any material which has been determined to be hazardous based upon any appraisal or assessment by or on behalf of the party storing this material in compliance with the requirements of the EPA or the California Department of Health Services, or which should have been, but was not, determined to be hazardous due to the deliberate failure of the party storing the material to comply with the requirements of the EPA and/or the department of health services; or

F. Any material which has been determined by the party storing it, through testing or other objective means, to be likely to create a significant potential or actual hazard to public health, safety or welfare. This subsection shall not establish a requirement to test for the purposes of this chapter.

(Ord. 21334.)

17.68.110 Exclusions.

This chapter does not apply to the following:

A. Certain Elemental Metals. The following elemental metals included within the purview of Section 17.68.100 shall not be considered hazardous materials for purposes of this chapter unless they are stored in a friable, powdered or finely divided state: Aluminum, beryllium, cadmium, chromium, copper, lead, manganese, molybdenum, nickel, rhodium, silver, tellurium, tin, and zinc. Furthermore, tantalum, titanium, tungsten, and uranium shall be excluded from regulation under this chapter.

B. Retail Products. Hazardous materials when contained solely in consumer products packaged for distribution to, and use by, the general public or commercial products used at the facility solely for janitorial or minor maintenance purposes such as paint thinner or wax strippers.

C. Feed. Hazardous materials when contained in a substance intended for use as animal feed.

D. Work Station. Hazardous materials located at a work station in a quantity reasonably required for use as determined by city under the circumstances.

E. Exemption. The city shall exempt any material from the requirements of this chapter where it has been demonstrated to the satisfaction of city that the material in the quantity and/or solution stored does not present a significant actual or potential hazard to the public health, safety or welfare.

(Ord. 21334.)

17.68.120 Underground tanks.

Notwithstanding Section 17.68.110 above and in addition to those materials regulated pursuant to Section 17.68.100 above, a permit shall be required for the storage in an underground storage tank as defined by California Health and Safety Code 25281(r), of any material defined as a hazardous substance, in accordance with California Health and Safety Code Section 25281(d).

(Ords. 21508, 21841.)

### Part 3 CONTAINMENT STANDARDS

17.68.150 Containment of hazardous materials.

No person, firm or corporation shall store any hazardous materials regulated by this chapter until a permit or approval has been issued pursuant to this chapter. No permit or approval shall be granted pursuant to this chapter unless permit applicant demonstrates to the satisfaction of city, by the submission of appropriate plans and other information, that the design and construction of the storage facility or storage system will result in a suitable manner of storage for the hazardous material or materials to be contained therein.

All installation, construction, repair or modification, closure, and removal shall be to the satisfaction of city. City shall have the discretion to exempt an applicant from any specific requirement, other than the requirement of secondary containment in underground storage facilities or storage systems except as provided in Section 17.68.160C.4, or to impose reasonable additional or different requirements in order to better secure the purpose and general obligation of this chapter for protection of public health, safety, and welfare.

The guidelines approved pursuant to Section 17.68.1110 shall serve as an advisory interpretation of the provisions of this part addressed in such guidelines.

(Ords. 21334, 21508, 22555.)

17.68.160 New storage facilities and storage systems.

A. No person, firm or corporation shall construct or install any new storage facility or new storage system until a permit or approval has been issued pursuant to this chapter.

B. Monitoring Capability. All new storage facilities or storage systems intended for the storage of hazardous materials which are liquids or solids at standard temperature and pressure (STP) shall be designed and constructed with a monitoring system capable of detecting that the hazardous material stored in the primary containment has entered the secondary containment.

Visual inspection of the primary containment is the preferred method; however, other means of monitoring may be required by the city. Where secondary containment may be subject to the intrusion of water, a means of monitoring for such water shall be provided.

Whenever monitoring devices are provided, they shall, where applicable, be connected to attention-getting visual and/or audible alarms.

C. Containment Requirements. Primary and secondary levels of containment shall be required for all new storage facilities or storage systems intended for the storage of hazardous materials which are liquids or solids at standard temperature and pressure (STP), unless specifically herein exempted by the city.

1. All primary containment shall be product-tight;

2. Secondary containment;

a. All secondary containment shall be constructed of materials of sufficient thickness, density, and composition so as not to be structurally weakened as a result of contact with the discharged hazardous materials and so as to be capable of containing hazardous materials discharged from a primary container for a period of time equal to or longer than the maximum anticipated time sufficient to allow recovery of the discharged hazardous material.

b. In the case of an installation with one primary container, the secondary containment shall be large enough to contain at least one hundred ten percent of the volume of the primary container.

c. In the case of a storage facility or storage system with multiple primary containers, the secondary container shall be large enough to contain one hundred fifty percent of the volume of the largest primary container placed in it, or ten percent of the aggregate internal volume of all primary containers in the storage facility, whichever is greater.

d. If the storage facility or storage system is open to rainfall, then the secondary containment must be able to additionally accommodate the volume of a twenty-four-hour rainfall as determined by a twenty-five-year storm history.

3. Laminated, coated, or clad materials shall be considered single-walled and shall not be construed to fulfill the requirements of both primary and secondary containment.

4. Variance-Secondary containment:

a. A variance from the requirement for secondary containment in an underground storage facility or storage system may be granted upon a written finding by the officer issuing the permit, which has been reviewed and approved by the officer that based on the special circumstances applicable to the specific storage facility or storage system only, and not a class or category of storage facilities or storage systems:

i. The requirement of secondary containment creates an unusual and particular hardship; and

ii. An equivalent degree of protection is provided by the proposed alternative; and

iii. The proposed alternative has been appropriately certified as providing an equivalent degree of protection, by an independent consultant retained in accordance with Section 17.68.050, or has been specified as potentially appropriate for a variance in the guidelines approved pursuant to Section 17.68.1110.

b. The city council shall consider the variance, at a public meeting, at which oral or written presentation on the matter may be made. A notice which includes a statement that a variance from secondary containment for hazardous materials will be considered, and which specifies the address of the facility seeking the variance, and the time and place of the meeting shall be given in the following manner:

i. The city clerk shall cause a copy of the notice to be published once in a newspaper of general circulation in the city, not less than ten days prior to the meeting; and

ii. The city clerk shall cause a copy of the notice to be mailed at least ten days prior to the meeting to any party who files a written request with the city clerk, for mailed notice of meeting at which such variance is to be considered. Such written request for notice shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal request for such mailed notices shall be filed on or before April 1st of each year.

5. Variance-Construction and monitoring requirements. Underground storage tanks may be granted a variance from the standards for construction and monitoring set forth in this part, other than from the requirement for double containment, only upon written finding by the officer issuing the permit that the applicant has demonstrated by clear and convincing evidence:

a. That because of special circumstances not generally applicable to other property or facilities, including size, shape, design, topography, location, or surroundings, the strict application of the standards of this chapter would be unnecessary to adequately protect and beneficial uses of the waters of the state from an unauthorized release; or

b. That strict application of the standards of this chapter would create practical difficulties not generally applicable to other facilities or property; and that the proposed alternative will adequately protect the soil and beneficial uses of the waters of the state from an unauthorized release.

D. Overall Protection. Means of overfill protection may be required for any primary container. This may be an overfill prevention device and/or an attention-getting high level alarm.

E. Separation of Materials. Materials that in combination may cause a fire or explosion, or the production of a flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container shall be separated in both the primary and secondary containment so as to avoid intermixing.

F. Drainage System. Drainage of precipitation from within a storage facility or storage system containing hazardous materials which are liquids or solids at STP shall be controlled in a manner approved by the city so as to prevent hazardous materials from being discharged. No drainage system will be approved unless the flow of the drain can be controlled. The facility shall contain a means of removing the water by the owner or operator. This removal system shall also provide for a means of analyzing the removed water for hazardous substance contamination and a means of disposing of the water, if so contaminated, at an authorized disposal facility.

(Ords. 21334, 21508, 21841, 22555.)

17.68.170 Existing storage facilities and storage systems.

Except for facilities regulated pursuant to Chapter 17.78 of this title, any storage facility or storage system in existence as of the effective date of this chapter, or any storage facility or storage system for which a building permit was issued prior to the effective date of this chapter, which does not meet the standards of Section 17.68.160 may be permitted pursuant to this chapter as long as it is providing suitable storage for hazardous materials. In addition, storage facilities with storage systems which contain hazardous materials which are liquids or solids at standard temperature and pressure (STP) must be monitored in accordance with a plan approved by city as set forth herein.

A. A monitoring plan for each such storage system containing hazardous materials which are liquids or solids at STP, shall be submitted to city as part of the hazardous materials management plan.

B. Monitoring under such plan shall include visual inspection of the primary containment wherever practical; however, if the visual inspection is not practical, an alternative method of monitoring each storage system on a semiannual or more frequent basis may be approved by city.

C. Alternative method(s) of monitoring may include but are not limited to: pressure testing of piping systems, groundwater monitoring well(s) which are downgradient and adjacent to the storage facility; vapor analysis within the well(s) where appropriate; and analysis of the soil boring(s) at the time of initial installation of the well(s). The number of well(s), depth of well(s), and sampling frequency shall be approved by the city.

D. Such monitoring devices and methods, as approved by city shall be installed and operating within six months of the issuance of a provisional permit in accordance with Section 17.68.640 and Section 2.B.1 of the uncodified portion of this ordinance. City may grant an extension of this compliance date; however, such extension shall not exceed one additional year. The full term permit may be issued when compliance with this subsection has been achieved. No monitoring systems required by this section shall be installed later than January 1, 1985, or the date specified in Section 25284.1 of Chapter 6.7 of Division 20 of the Health and Safety Code, whichever date is later.

E. The continued use of, and permit approval for, existing storage facilities or storage systems is subject to review and modification or termination by city whenever there has been any unauthorized discharge. It shall also be reviewed by the city each time the permit is renewed. In determining whether continued storage in such storage facility is suitable, city shall consider the age of the storage facility, the methods of containment, the methods of monitoring, the feasibility of the required retrofit, the concentration of the hazardous materials contained, the severity of potential unauthorized discharge, and the suitability of other long-term preventive measures which meet the intent of this chapter.

F. Existing storage facilities or storage systems which are not approved in accordance with this section must be upgraded to comply with this chapter or be closed in accordance with Section 17.68.180 below within one year of a decision not to issue a full term permit. An extension of time for compliance with this subsection, not to exceed one additional year may be granted by city.

(Ords. 21334, 21508, 22555, 23450.)

17.68.180 Out-of-service storage facilities or storage systems.

A. No storage facility or storage system shall be abandoned.

B. Storage facilities or storage systems which are temporarily out of service, and are intended to be returned to use, must continue to be monitored and inspected.

C. Any storage facility or storage system which is not being monitored and in accordance with this chapter must be closed or removed in a manner approved by city in accordance with Section 17.68.670.

D. Any person, firm or corporation having an interest, including a leasehold interest, in real property and having reason to believe that an abandoned storage facility or storage system is located upon such property shall make a reasonable effort to locate such storage facility within six months of the effective date of this chapter.

E. Whenever an abandoned storage facility or storage system is located, a plan for the closing or removing or the upgrading and permitting of such storage facility or storage system shall be filed within ninety days of its discovery. A closure plan shall conform to the standards specified in Section 17.68.670.

(Ords. 21334, 22555.)

17.68.190 Monitoring.

A. Monitoring Methods. Monitoring methods shall include at least one system for detecting leakage from the primary container. A monitoring system capable of detecting that the hazardous material stored in the primary containment has entered the secondary containment shall be provided. Visual inspection of the primary containment is the preferred method; however, other means of monitoring may be required by city. Where secondary containment may be subject to the intrusion of water, a means of monitoring for such water shall be provided.

Whenever monitoring devices are provided, they shall, where applicable, be connected to attention-getting visual and/or audible alarms.

B. Monitoring, Testing and Inspection. Every permittee under this chapter shall provide testing, monitoring (if applicable), and inspections in compliance with the hazardous materials management plan and shall maintain records adequate to demonstrate compliance therewith.

(Ord. 21334.)

17.68.200 Maintenance, repair or replacement.

A. Permittee shall carry out maintenance, ordinary upkeep, and minor repairs in a careful and safe manner. No permit or other approval will be required for such maintenance and upkeep.

B. Any substantial modification or repair of a storage facility or storage system other than minor repairs or emergency repairs shall be in accordance with plans to be submitted to the city and approved in accordance with Section 17.68.670 prior to the initiation of such work.

C. Permittee may make emergency repairs to a storage facility or storage system in advance of seeking an additional permit approval whenever an immediate repair is required to prevent or contain an unauthorized discharge or to protect the integrity of the containment. However, within five working days after such emergency repairs have been started, permittee shall seek approval pursuant to Section 17.68.670 by submitting drawings or other information adequate to describe the repairs to city.

D. Replacement of any storage facility or storage system for hazardous materials which are liquids or solids at STP, must be in accordance with the new installation standards of Section 17.68.160.

(Ords. 21334, 22555.)

17.68.210 Handling.

A. Dispensing and mixing of hazardous materials must not be done in such a manner as substantially to increase the risk of an unauthorized discharge.

B. When hazardous materials are moved into or out of a storage facility, they shall remain in the travel path only for the time reasonably necessary to transport the hazardous material and such movement shall be in a manner which will not result in an unauthorized discharge.

(Ord. 21334.)

17.68.220 Secured facilities.

Access to the storage facilities shall be secured by means of fences and/or locks. The access to the storage facilities shall be kept securely locked when unattended.

(Ord. 21334.)

17.68.230 Emergency equipment.

Emergency equipment shall be provided which is reasonable and appropriate for potential emergencies presented by the stored hazardous materials. Such equipment shall be regularly tested and adequately maintained.

(Ord. 21334.)

17.68.240 Posting of emergency procedures.

Simplified emergency procedures shall be posted conspicuously in locations where hazardous materials are stored.

(Ord. 21334.)

### Part 4 HAZARDOUS MATERIALS MANAGEMENT PLAN

17.68.300 Hazardous materials management plan.

Each applicant for a permit pursuant to this chapter shall file a written plan, for city's approval, to be known as a hazardous materials management plan (HMMP), which shall demonstrate the safe storage and handling of hazardous materials. The HMMP may be amended at any time with the consent of city. The HMMP shall be a public record except as otherwise specified. Approval of the HMMP shall mean that the HMMP has provided adequate information for the purposes of evaluating the permit approval. Such approval shall not be understood to mean that the city has made an independent determination of the adequacy of that which is described in the HMMP.

(Ord. 21334.)

17.68.310 Standard form HMMP.

The standard form hazardous materials management plan must be submitted unless the facility qualifies as a minimal storage site under Section 17.68.320 below. The HMMP shall include the following:

A. Facility Description.

1. General information. The HMMP shall contain the name and address of the facility and business phone number of applicant, the name and titles and emergency phone numbers of the primary response person and an alternate, the number of employees, number of shifts, hours of operation, and principal business activity.

2. General facility description. The HMMP shall contain a map drawn at a legible scale and in a format and detail determined by city. It shall show the location of all buildings and structures, chemical loading areas, parking lots, internal roads, storm and sewer drains, and shall specify the uses of adjacent properties. The city may also require information as to the location of wells, floodplains, earthquake faults, surface water bodies, and/or general land uses (schools, hospitals, institutions, residential areas) within one mile of the facility boundaries.

3. Facility storage map.

a. The HMMP shall contain a facility storage map at a legible scale for licensing and enforcement purposes. The information in this section is provided for purposes of ensuring the suitable and secure storage of hazardous materials and for the protection and safety of emergency response personnel of city. City shall take reasonable precautions to ensure the confidentiality of the information provided pursuant to this subsection. The facilities storage map shall indicate the location of each hazardous materials storage facility, including all interior, exterior, and underground storage systems, and access to such storage systems. In addition, the map shall indicate the location of emergency equipment related to each storage facility, and the general purpose of the other areas within each facility.

For each storage facility, the map shall contain information as prescribed below; except that where the hazardous material being stored is a trade secret, it shall be identified in a coded manner (together with its key) and not in a manner which would reveal trade secret information:

(i) A floor plan to scale and the permit quantity limit;

(ii) For each nonwaste hazardous material which is stored in a quantity greater than the quantities specified in Section 17.68.360A, the general chemical name, common/trade name, major constituents for mixtures, United Nations (UN) or North America (NA) number, if available, and physical state. For each waste hazardous material stored in any quantity within the storage facility, the presence of wastes shall also be indicated;

(iii) For all hazardous materials, including wastes, stored in each storage facility, the hazard class or classes and the quantity range for each such class, aggregated within each storage facility, in the following ranges:

|  |  |
| --- | --- |
| ***Quantity*** ***Range*** ***Number*** | ***Range Amounts*** |
| 1 | Less than 500 pounds of solids,  less than 55 gallons for liquids,  and less than 200 cubic feet at  STP for compressed gases; |
| 2 | Between 500 and 4,999 pounds  for solids, between 55 and 549  gallons for liquids, and between  200 and 1,999 cubic feet at STP  for compressed gases; |
| 3 | Between 5,000 and 24,999  pounds for solids, between 550  to 2,749 gallons for liquids, and  between 2,000 and 9,999 cubic  feet at STP for compressed  gases; |
| 4 | Between 25,000 and 49,999  pounds for solids, between  2,750 and 5,499 gallons for  liquids, and between 10,000  and 19,999 cubic feet at STP  for compressed gases; |
| 5 | 50,000 pounds or more for  solids, 5,500 gallons or more  for solids, 5,500 gallons or  more for liquids, and 20,000  cubic feet or more at STP for  compressed gases; |

(iv) For materials not regulated under this chapter, but regulated under the Uniform Fire Code, such as radioactives or cryogens, or for materials stored in storage facilities exempted by Sections 17.68.1130A and 17.68.1130B, the city may require that the hazard class or classes and the quantity range of each such hazard class, using the quantity ranges listed in subsection (iii) above, be provided;

(v) For tanks, the capacity limit of each tank, and the hazardous material contained in each tank by general chemical name, common/trade name, major constituents for mixtures, United Nations (UN) or North America (NA) number, if available, and physical state.

b. Due to the threat to the security of the facility posed by the disclosure of the information in the facility storage map, this information shall be maintained by city for law enforcement purposes only and shall not be made public. Public disclosure of this information could endanger the security of the facility or present a clear danger to public health and safety. City shall not disclose this information to the public without the consent of the permittee or permit applicant unless ordered to do so by a court of competent jurisdiction. Permittee or permit applicant shall be deemed a real party in interest in any such action. Prompt notice of a lawsuit to compel disclosure shall be given by city to permittee or permit applicant. However, city shall be under no duty to prevent disclosures where there has been any unauthorized discharge of hazardous materials stored in storage facility(ies) shown on such map or where such disclosure arises out of any official emergency response relating to the storage facility(ies).

c. The facility storage map shall be updated annually or whenever an additional approval is required for the facility or whenever the hazardous materials inventory statement is required to be amended pursuant to Section 17.68.350.

B. Hazardous Materials Inventory Statement. A hazardous materials inventory statement shall be filed in accordance with Part 5 of this chapter.

C. Separation of Materials. The HMMP shall contain a description of the methods to be utilized to ensure separation and protection of stored hazardous materials from factors which may cause a fire or explosion, or the production of a flammable, toxic, or poisonous gas, or the deterioration of the primary or secondary containment.

D. Monitoring Program. The HMMP shall contain a description of the location, type, manufacturer specifications (if applicable), and suitability of monitoring methods to be used in each storage facility storing hazardous materials which are liquids or solids at STP. It shall also specify the frequency of inspections of storage facilities which will be conducted by the permittee.

E. Recordkeeping Forms. The HMMP shall contain an inspection check sheet or log designed to be used in conjunction with routine inspections. The check sheet or log shall provide for the recording of the date and time of inspection and, for monitoring activity, the date and time of any corrective action taken, the name of the inspector, and the countersignature of the designated safety manager for the facility or the responsible official as designated in the HMMP.

F. Emergency Equipment. The HMMP shall describe emergency equipment availability, testing, and maintenance.

G. Variation in Information.

1. Additional information may be required for the HMMP where such information is reasonably necessary to meet the intent of this chapter.

2. Whenever permittee has submitted a plan which includes substantially the same information as is required for any component(s) of the HMMP to any other public agency regulating hazardous materials, such plan may be submitted to city in lieu of such component(s). The city may give deference to any approval of such plan by the other public agency.

(Ords. 21334, 22379, 22555.)

17.68.320 Short form HMMP - Minimal storage site.

A. A facility shall qualify as a minimal storage site if the quantity of each hazardous material stored in one or more storage facilities in an aggregate quantity for the facility is five hundred pounds or less for solids, fifty-five gallons or less for liquids, or two hundred cubic feet or less at STP for compressed gases.

B. The applicant for a permit for a facility which qualifies as a minimal storage site may opt to file the short form hazardous material management plan. Such plan shall include the following components:

1. General application information;

2. A simple line drawing of the facility showing the location of the storage facilities and indicating the hazard class or classes and physical state of the hazardous materials being stored and whether any of the material is a waste;

3. The short form HMMP shall also include a carcinogen identification form which shall indicate the storage of any quantity of any carcinogen listed in Sections 5208 - 5215 and Section 5219 of Title 8 of the California Administrative Code, as amended. This provision will be satisfied by the submittal to city of a copy of the carcinogen registration form submitted to the California Department of Industrial Relations in accordance with the above cited sections of Title 8 of the California Administrative Code, as amended.

4. Information describing that the hazardous materials will be stored in a suitable manner and will be appropriately contained separated and monitored;

5. Description of emergency equipment to be maintained;

6. Assurance that the disposal of any hazardous materials will be in an appropriate manner.

C. Where a claim for trade secret protection pursuant to Section 17.68.380 is made for any carcinogen listed in Sections 5208 - 5215 and Section 5219 of Title 8 of the California Administrative Code, as amended, pursuant to subsection B.3. above, the carcinogen identification form to be publicly disclosed shall identify all carcinogens not claimed to be trade secrets and it shall indicate the number of carcinogens claimed to be trade secrets.

(Ord. 21334.)

17.68.330 Report to the state water resources control board.

The city will require its permit applicants and permittees to fill out, in addition to forms required for city's own purposes under this chapter, standardized forms based on the application form and annual report form prepared by the state water resources control board as specified by California Health and Safety Code Section 25283.2, and city will forward these forms to the state water resources control board.

However, where any of the information required on such standardized forms is claimed by the permit applicant or permittee to be a trade secret, the permit applicant or permittee shall leave that portion of the form submitted to city blank, except to indicate the words "trade secret," and the permit applicant or permittee shall thereafter, within ten days of submitting the incomplete form to city, submit the completed form including the trade secret information directly to the state water resources control board. City shall have no obligation to protect as a trade secret any information which is furnished to it for forwarding to the state water resources control board on these standardized forms.

(Ord. 21508.)

17.68.340 Supplemental requirements for emergency response plans.

A. In addition to the HMMP requirements set forth in this part, any person, firm or corporation which handles a hazardous material or a mixture containing a hazardous material which has a quantity at any one time during the reporting year equal to, or greater than, a total weight of five hundred pounds, or a total volume of fifty-five gallons, or two hundred cubic feet at standard temperature and pressure for compressed gas, shall establish and implement a plan for emergency response to a release or threatened release of a hazardous material pursuant to this section. Said plan, including the hazardous materials inventory statement (HMIS) described in Part 5 of this chapter, shall comprise the "business plan" for purposes of Chapter 6.95 of Title 20 of the Health and Safety Code. Filing of such plans shall be pursuant to the provisions of Section 25505 of the Health and Safety Code.

B. For purposes of this section, in addition to the materials regulated in Part 2, the term "hazardous material" shall include those things specified in Section 25501(j), (k), and (l), and Section 25501.1 of the Health and Safety Code.

C. Unless the facility qualifies as a minimal storage site under Section 17.68.320, or is otherwise exempt pursuant to [Section] 17.68.110, the following information shall be provided:

1. Emergency response plans and procedures in the event of a reportable release or threatened release of a hazardous material which shall include, but not be limited to, the following:

a. Immediate notification to city, to the city fire department, and to the state office of emergency services.

2. Procedures for the mitigation of a release or threatened release to minimize any potential harm or damage to persons, property, or the environment.

3. Evacuation plans and procedures for the business site, including immediate audible notice and warning to all persons on the site.

D. Training shall be provided for all new employees, and annual training, including refresher courses, shall be provided for all employees in safety procedures to be utilized in the event of a release or threatened release of a hazardous material. Such training shall include, but not be limited to, familiarity with the plans and procedures specified above. These training programs may take into consideration the technical and managerial responsibilities of each employee.

E. Any business required to file a pipeline operations contingency plan in accordance with the California Pipeline Safety Act of 1981 (Chapter 5.5 (commencing with Section 51010) of Part 3 of Division 1 of Title 5 of the Government Code) and the regulations of the Department of Transportation, found in Part 195 of Title 49 of the Code of Federal Regulations, may file a copy of those plans with the city instead of filing the emergency response plan specified in subdivision A. of this Section.

F. Any business operating a farm exempted by paragraph (5) of subdivision (b) of Section 25503.5 of the Health and Safety Code from filing the information specified in subdivisions C. and D. of this section shall, notwithstanding this exemption, provide the training programs specified in subdivision D.

G. The city shall maintain records of all emergency response plans and procedures received and shall index them by street address and company name. Such plans and revisions thereto shall be available for public inspection during regular working hours, except for those portions of such plan, including any maps of the facility, as described in [Section] 17.68.320A3, specifying the precise location where hazardous materials are stored and handled on-site. The city is required by Health and Safety Code Section 25506 to transmit copies of the entire emergency response plan or any information contained therein to any requesting state or local agency.

(Ord. 22379.)

### Part 5 HAZARDOUS MATERIALS INVENTORY

17.68.350 Hazardous materials inventory statement.

A. A hazardous materials inventory statement (HMIS) shall be filed annually with city in accordance with this part. Any person, firm, or corporation which stores or handles any hazardous material in an amount which is equal to or greater than the quantities specified in Section 17.68.360A is required to file an HMIS.

B. For purposes of this part, in addition to the materials regulated in Part 2, the term "hazardous material" shall include those things specified in Section 25501(j), (k), and (l) and Section 25501.1 of the Health and Safety Code.

C. Such person, firm or corporation shall amend the HMIS within thirty days of the storage or handling of any hazardous material not listed thereon but required to be listed by Section 17.68.360A, or of an increase of one hundred per cent or more in the quantity of a previously disclosed material, or an increase in the quantity range, or of a change in business address, ownership, or business name.

(Ords. 21334, 22379.)

17.68.360 Information required.

A. Information shall be included in the HMIS for each hazardous material or mixture containing a hazardous material stored or handled in a facility (aggregated over all such material stored in one or more storage facilities) where the aggregate quantity throughout the facility at any one time during the reporting year is equal to or greater than five hundred pounds in weight for solids, fifty-five gallons for liquids, or two hundred cubic feet at standard temperature and pressure (STP) for compressed gases.

B. The information in the (HMIS) shall include:

1. For nonwastes: The general chemical name, common/trade name, major constituents for mixtures, the manufacturer, United Nations (UN) or North America (NA) number, if available, and the hazard class or classes and the safety data sheet (SDS) or equivalent information as required by city.

2. For wastes: The department of health services manifest for wastes or equivalent information, including the general chemical and mineral composition of the waste listed by probable maximum and minimum concentration, and the hazard class or classes.

3. A listing of the chemical name and common names of every other hazardous material or mixture containing a hazardous material handled by the business which is not otherwise listed pursuant to paragraph 1 or 2.

4. The maximum amount of each hazardous material or mixture containing a hazardous material disclosed in paragraph 1, 2 or 3 which is handled at any one time by the business over the course of the year.

5. Sufficient information on how and where the hazardous materials disclosed in paragraph 1, 2 or 3 are handled by the business to allow fire, safety, health and other appropriate personnel to prepare adequate emergency responses to potential releases of the hazardous materials.

6. The Standard Industrial Classification (SIC) code number of the business if applicable.

7. The name and twenty-four-hour phone number(s) of the person representing the business who is able to assist emergency personnel in the event of an emergency involving the business during nonbusiness hours.

C. The HMIS may report the amount of hazardous material under this section by ranges, rather than a specific amount, pursuant to Section 17.68.310A3a(iii), as long as those ranges provide the information necessary to meet the needs of emergency rescue personnel, to determine the potential hazard from a release of the materials, and meets the purposes of this ordinance.

(Ords. 21334, 22379, 30836.)

17.68.370 Public records.

The HMIS is a public record; however, the information contained therein is subject to trade secrets protection pursuant to Health and Safety Code Section 25511.

(Ords. 21334, 22379.)

### Part 6 RESPONSIBILITY

17.68.450 Reporting unauthorized discharge.

A. Liquids and Solids at STP. As soon as any person in charge of a storage facility or responsible for emergency response for a facility has knowledge of any confirmed or unconfirmed unauthorized discharge of a hazardous material which is liquid or solid at STP, such person shall take all necessary steps to ensure the discovery and containment and cleanup of such discharge and shall notify city of the occurrence as required by this subsection.

1. Confirmed Unauthorized Discharge.

a. Recordable Unauthorized Discharge. Any recordable unauthorized discharge shall be contained and safely disposed of in an appropriate manner by permittee and such occurrence and the response thereto shall be recorded in the permittee's monitoring records. A recordable unauthorized discharge is any unauthorized discharge of a hazardous material which meets all of the following criteria:

i. The discharge is from a primary containment to a secondary containment or to a rigid aboveground surface covering capable of containing the discharge until cleanup of the hazardous material is completed; and

ii. The permittee is able adequately to clean up the discharge before it escapes from such secondary containment or such aboveground surface, but if the cleanup requires more than eight hours, it becomes a reportable discharge in accordance with Section 17.68.450A1b below; and

iii. There is no increase in the hazard of fire or explosion, nor is there any production of a flammable or poisonous gas, nor is there any deterioration of such secondary containment or such rigid aboveground surface.

iv. An otherwise recordable unauthorized discharge does not need to be recorded if the discharge is not the result of the deterioration or failure of the primary container and the quantity discharged is less than one ounce by weight and can be cleaned up within fifteen minutes.

b. Reportable Unauthorized Discharge. Any unauthorized discharge which is not determined to be recordable under subsection 17.68.450A1a, above, must be reported to city immediately. The reporting party shall provide information to city relating to the ability of permittee to contain and dispose of the hazardous material, the estimated time it will take to complete containment and disposal, and the degree of hazard created. City may verify that the hazardous material is being contained and appropriately disposed. City, at any time upon a determination that permittee is not adequately containing and disposing of such hazardous material, shall have the power and authority to undertake and direct an emergency response in order to protect the public health and safety.

2. Unconfirmed Unauthorized Discharge.

a. Indication of Loss in Inventory Records. Whenever a material balance or other inventory record, employed as a monitoring technique under the HMMP, indicates a loss of hazardous material, and no unauthorized discharge has been confirmed by other means, permittee shall have five working days to determine whether or not there has been unauthorized discharge. lf before the end of such period it is determined that there has been no unauthorized discharge, an entry explaining the occurrence shall be made in permittee's monitoring records. Where permittee has not been able, within such period, to determine that there has been no unauthorized discharge, an unauthorized discharge is deemed confirmed and permittee shall proceed in accordance with subsection 17.68.45OA1b above.

b. Test Results. Whenever any test results suggest a possible unauthorized discharge, and no unauthorized discharge has been confirmed by other means, the permittee shall have five working days to retest. If second test results obtained within that period establish that there has been no unauthorized discharge, the results of both tests shall recorded in permittee's monitoring records. If it has not been established within such period that there has been no unauthorized discharge, an unauthorized discharge is deemed confirmed and permittee shall proceed in accordance with subsection 17.68.450A1b above.

B. Gases at STP. Any person in charge of a storage facility or responsible for emergency response for a storage facility who has knowledge of any unauthorized discharge of a hazardous material which is a gas at STP must immediately report such discharge to the city if such discharge presents a threat of imminent danger to public health and safety.

C. Office of Emergency Services. The city shall submit a written report to the office of emergency services within ten working days from the date that the city is notified of an unauthorized discharge from an underground storage tank.

(Ords. 21334, 21508.)

17.68.460 Cleanup responsibility.

Any person, firm or corporation responsible for storing the hazardous material shall institute and complete all actions necessary to remedy the effects of any unauthorized discharge, whether sudden or gradual. City shall undertake actions to remedy the effects of such unauthorized discharge itself, only if it determines that it is reasonably necessary under the circumstances for the city to do so. The responsible party shall be liable to reimburse city for all costs incurred by city in remedying the effects of such unauthorized discharge, including the costs of fighting fires to the extent allowed by law. This responsibility is not conditioned upon evidence of wilfulness or negligence of the party storing the hazardous material(s) in causing or allowing such discharge. Any responsible party who undertakes action to remedy the effects of unauthorized discharge(s) shall not be barred by this chapter from seeking to recover appropriate costs and expenditures from other responsible parties except as provided by Section 17.68.470.

(Ord. 21334.)

17.68.470 Indemnification.

The permittee shall indemnify, hold harmless and defend the city against any claim, cause of action, disability, loss, liability, damage, cost or expense, howsoever arising, which occurs by reason of an unauthorized discharge in connection with permittee's operations under this permit, except as arises from city's sole wilful act or sole active negligence.

(Ord. 21334.)

### Part 7 INSPECTIONS AND RECORDS

17.68.500 Inspections by city.

City may conduct inspections, at its discretion, for the purpose of ascertaining compliance with this chapter and causing to be corrected any conditions which would constitute any violation of this chapter or of any other statute, code, rule or regulation affecting the storage of hazardous materials.

A. Right of Entry. Whenever necessary for the purpose of investigating or enforcing the provisions of this chapter, or whenever any enforcement officer has reasonable cause to believe that there exists in any structure or upon any premises, any condition which constitutes a violation of this chapter, said officers may enter such structure or premises at all reasonable times to inspect the same, or to perform any duty imposed upon any of said respective officers by law; provided that if such structure or premises be occupied, the officer shall first present proper credentials and request entry, and farther provided, that if such structure or premises is unoccupied, the officer shall first make a reasonable attempt to contact a responsible person from such firm or corporation and request entry, except in emergency circumstances. If such entry is refused, the officer seeking entry shall have recourse to every remedy provided by law to secure entry.

B. Inspections by City-Discretionary. All inspections specified herein shall be at the discretion of the city and nothing in this chapter shall be construed as requiring the city to conduct any such inspection nor shall any actual inspection made imply a duty to conduct any other inspection. Furthermore, nothing in this chapter shall be construed to hold the city or any officer, employee or representative of the city responsible for any damage to persons or property by reason of making an inadequate or negligent inspection or by reason of any failure to make an inspection or reinspection.

(Ords. 21334, 23450.)

17.68.510 Inspections by permittee.

The permittee shall conduct regular inspections of its own facilities to assure compliance with this chapter and shall maintain logs or file reports in accordance with its hazardous materials management plan. The inspector conducting such inspections shall be qualified to conduct such inspections.

(Ord. 21334.)

17.68.520 Special inspections.

In addition to the inspections specified above, city may require the periodic employment of special inspectors to conduct an audit or assessment of permittee's facility to make a hazardous material safety evaluation and to determine compliance with the provisions of this chapter.

A. The special inspector shall be a qualified person or firm who shall demonstrate expertise to the satisfaction of the city.

B. The special inspection report shall include an evaluation of the facilities and recommendations consistent with the provisions of this chapter where appropriate. A copy of the report shall be filed with city at the same time that it is submitted to permittee.

C. Permittee shall, within thirty days of said report, file with city a plan to implement all recommendations or shall demonstrate to the satisfaction of city why such recommendations shall not be implemented.

(Ord. 21334.)

17.68.530 Substituted inspections.

An inspection by an employee of any other public agency may be deemed by the city as a substitute for any requirement above.

(Ord. 21334.)

17.68.540 Maintenance of records.

All records required by this chapter shall be maintained by the permittee for a period of not less than three years. Said records shall be made available to city during normal working hours and upon reasonable notice.

(Ord. 21334.)

### Part 8 APPLICATION FOR PERMIT

17.68.600 Permit.

Any person, firm, or corporation which stores any hazardous material shall obtain and keep current a hazardous materials storage permit or permits issued pursuant to this chapter. A separate permit may be required for each storage facility at a single location or site. The fire marshal shall determine the number of permits required at a facility based on enforcement and emergency response considerations. Additional approvals shall be obtained for any storage system thereafter connected, installed, constructed, repaired as required by Section 17.68.600 or Section l7.78.270 of Chapter 17.78 of this title, substantially modified, replaced, closed, or removed, or for any change or addition in hazardous materials stored, not in accordance with the prior approval. Notwithstanding the above, permittee shall have thirty days to apply for an additional approval for the storing of a new or different hazardous material with the same hazard class as stated on the existing permit approvals where such storage does not increase the hazard of fire or explosion or the hazard of the production of flammable or poisonous gas. Storage of new or different hazardous materials, not meeting all of these criteria, shall require the prior additional approval.

(Ords. 21334, 22555, 23450.)

17.68.610 Application for permit.

Application for a new, amended, or renewed permit or an additional approval shall be made to the fire marshal on the form provided by city. In addition to the information required by such form, applicant shall submit the hazardous materials management plan required by Section 17.68.300 and construction plans, if any, in conformity with Section 17.68.150. Applicant shall specify the permit quantity limit requested to be permitted for each storage facility. No application shall be accepted unless and until the required application fee has been paid.

(Ords. 21334, 22555.)

17.68.620 Investigation.

Upon receipt of an application for a new or renewed permit, the fire marshal may make such investigation of the applicant and the proposed facility or activity as such officer deems necessary to carry out the purposes of this chapter.

(Ord. 21334.)

17.68.630 Approval of permit.

A permit shall not be approved until the fire marshal is satisfied that the storage approved adequately conforms to the provisions of this chapter.

(Ord. 21334.)

17.68.640 Provisional permit.

If the fire marshal finds that the proposal does not completely conform to the provisions of this chapter, the fire marshal may approve a provisional permit, subject to conditions to be imposed by the fire marshal, when provisional permit is feasible and does not appear to be detrimental to the public interest. Such permit shall not be issued unless the applicable minimum requirements of Section 25284 or Section 25284.1 of Chapter 6.7 of Division 20 of the Health and Safety Code have been complied with. The applicant must be informed in writing of the reasons why a full term permit was not issued.

(Ords. 21334, 21508.)

17.68.650 Temporary permit.

A temporary permit for storage may be issued where storage exceeds thirty days but does not exceed one hundred eighty days and occurs no more frequently than every six months. The containment standards of Part 3, the hazardous materials management plan of Part 4 and the inspection and records requirements of Part 7 may be modified as appropriate under these circumstances for the storage of hazardous materials on a nonregular temporary basis.

(Ords. 21334, 30836.)

17.68.660 Issuance of permits.

A. Issuance. Upon the approval of a temporary, provisional, or full term permit by the officer and upon the payment of any applicable fee, the officer shall issue and deliver the permit to the applicant. Such permit shall contain the following information:

1. The name and address of the permittee for purposes of notice and service of process;

2. The address of the storage facility or facilities for which the permit is issued;

3. Authorization of the storage system(s) approved under the permit, the permit quantity limit(s) and the approved hazard class or classes for the storage facility or facilities;

4. The date the permit is effective;

5. The date of expiration;

6. When applicable, a designation that the permit is provisional or temporary;

7. Any special conditions of the permit.

B. Records. The officer shall keep a record of all permits issued and all conditions attached thereto.

(Ords. 21334, 22555.)

17.68.670 Additional approvals.

A. When a request for an additional approval is filed as required by Section 17.68.600, the procedures set forth in this chapter for an application for a permit shall also apply to an application for an additional approval. Each application for an additional approval shall be accompanied by an appropriate amendment to the HMMP.

B. If the additional approval request is for closure of a particular storage facility, but not for the closure of all storage facilities, permittee shall apply for approval to close such storage facility not less than thirty days prior to the termination of the storage of hazardous materials at the storage facility. Such closure shall be in accordance with a closure plan which describes procedures for terminating the storage of hazardous materials in each storage facility in a manner that:

1. Minimizes the need for further maintenance; and

2. Controls to the extent that a threat to public health or safety or to the environment from residual hazardous materials in the storage facility is minimized or eliminated; and

3. Demonstrates that hazardous materials that were stored in the storage facility will be removed, disposed of, neutralized, or reused in an appropriate manner.

C. If the additional approval request is for closure of all storage facilities, permittee shall apply for approval to close such facilities not less than ninety days prior to the termination of the storage of hazardous materials at the facility. Closure of such facilities shall be in accordance with a closure plan. The closure plan for such facilities shall be submitted with the application and shall describe procedures for terminating the storage of hazardous materials in each storage facility in a manner that:

1. Demonstrates that hazardous materials that were stored in the storage facilities will be removed, disposed of, or neutralized in an appropriate manner; and

2. The facility is not contaminated as a result of the storage of hazardous materials.

The closure plan shall contain the names and addresses of the parties responsible for the closure application and closure plan. The responsible parties shall notify the fire marshal of any address change which occurs within one year of the effective date of the closure of the facility.

D. Any party may request a courtesy notice of a pending facility closure. Such request shall be in the form of a filed written or electronic request with the fire marshal for notification of closure pursuant to this subsection. Parties who have filed such written or electronic request of any closure shall be notified within ten working days of notification to the fire marshal of such closure. Notification shall be made in writing or electronically. Any such request shall be valid from the date filed with the fire marshal until the next July 1st. A renewal of request for such mailed notice shall be filed in writing on or before July 1st of each year in the manner specified above for such request to remain valid.

(Ords. 21334, 21810, 30836.)

17.68.680 Term.

A permit may be issued for a term of one year, excepting provisional permits which may be issued for any period of time up to six months and temporary permits which may be issued for no less than thirty days but longer than one hundred eighty days.

(Ords. 21334, 22555, 30836.)

17.68.690 Renewal.

Every application for the renewal of a permit or extension of a provisional permit shall be made at least thirty days prior to the expiration date of such permit. If a timely application for renewal has been submitted, the permit shall remain in effect until the city has made its determination pursuant to Section 17.68.700 and any administrative appeal pursuant to Part 9 has been exhausted.

(Ord. 21334.)

17.68.700 Determination.

City shall make a determination with regard to any application for a permit, an additional approval, or a renewal, within ninety days from the date that the application has been completed or compliance with the appropriate provisions of the California Environmental Quality Act (CEQA) has been completed, whichever occurs later. This time limit may be further extended by mutual agreement between city and applicant.

(Ord. 21334.)

17.68.710 Fees.

Fees shall be as set forth in the schedule of fees established by resolution of council and shall be sufficient to recover costs of administering this chapter and no application shall be accepted unless and until the fees have paid.

A. Delinquent Fees. All permit fees delinquent for thirty days or more shall be subject to an additional charge to be determined by city which shall be added to the amount of the fee collected.

B. Refund of Fees. No refund or rebate of a permit fee shall be allowed by reason of the fact that the permit is denied or the permittee discontinues the activity or use of a facility prior to the expiration of the term or that the permit is suspended or revoked prior to the expiration of the term.

(Ords. 21334, 30836.)

17.68.720 Transfer of permit.

The permit may be transferred to new owners of the same business only if the new owners accept responsibility for all obligations under this chapter at the time of the transfer of the business and document such transfer on a form provided by city within thirty days of transfer of ownership of the business. Such transfer shall be subject to the approval of city.

(Ord. 21334.)

17.68.730 Effective date of permit.

No permit shall become effective until the permit has been signed and accepted by the permittee. Where the permittee is a company, firm or corporation, the acceptance must be signed by a person having the legal authority to bind the permittee.

(Ord. 21334.)

### Part 9 DENIAL

17.68.800 Denial of application.

If the fire marshal to whom application has been made has cause to deny the application and determines that it would not be feasible or in the public interest to approve a temporary or provisional permit, then the fire marshal shall deny the application.

(Ord. 21334.)

17.68.810 Grounds for denial.

A permit shall be denied if the applicant fails to demonstrate adequate conformity to the provisions of this chapter. In addition, a permit can be denied for any of the grounds upon which the permit would be subject to revocation pursuant to Part 10.

(Ord. 21334.)

17.68.820 Transmittal of decision.

The decision to deny the application shall be given to the applicant in writing, setting forth the findings upon which the decision is based.

(Ord. 21334.)

17.68.830 Appeal to city manager.

Within thirty days from the date of deposit of the decision in the mail in accordance with Section 17.68.1010, the applicant may appeal, in writing, to the city manager, setting forth with particularity the ground or grounds for the appeal.

(Ord. 21334.)

17.68.840 Hearing on appeal.

The city manager shall set a time and place for the hearing on the appeal and shall notify the applicant, in writing, of such date and time, not later than ten working days from the date the appeal was received by the city manager. The hearing shall be conducted within thirty days from the date the appeal was received by the city manager.

(Ord. 21334.)

17.68.850 Disposition of appeal.

After the hearing on the appeal, the city manager may refer the matter back to the originating officer for a new investigation and decision, may affirm the decision of the originating officer, may approve a provisional permit as provided in Section 17.68.640 or may approve the application with or without conditions. The decision of the city manager shall be the final administrative determination and is subject to judicial review.

(Ord. 21334.)

### Part 10 REMEDIAL ACTION

17.68.900 Grounds for remedial action.

A permit may be subjected to remedial action for any of the following causes, arising from the acts or omissions of the permittee, either before or after a permit is issued:

A. Fraud, wilful misrepresentation, or any wilful inaccurate or false statement in applying for a new or renewed permit;

B. Fraud, wilful misrepresentation, or any wilful inaccurate or false statement in any report required by this chapter;

C. Failure to abate, correct or rectify any noncompliance within the time specified in the notice of noncompliance;

D. Failure to correct conditions constituting an unreasonable risk of an unauthorized discharge of hazardous materials within a reasonable time after notice from a governmental entity other than city;

E. Failure to abide by the remedial action imposed by the city.

(Ord. 21334.)

17.68.910 Notice of noncompliance.

Unless the city manager finds that an immediate suspension under Section 17.68.930 is necessary to protect the public health or safety from imminent danger, the fire marshal shall issue a notice of noncompliance:

1. For failure to comply with the provisions of this chapter, any permit conditions or any provisions of the hazardous materials management plan; or

2. Before instituting remedial action pursuant to Section 17.68.900D, such notice shall be sent by certified mail to permittee.

(Ords. 21334, 21508.)

17.68.920 Notice of hearing.

A notice of hearing shall be given to the permittee by the city manager, in writing, setting forth the time and place of the hearing, the ground or grounds upon which the remedial action is based, the pertinent code section or sections, and a brief statement of the factual matters in support thereof. The notice shall be given at least fifteen days prior to the hearing date.

(Ord. 21334.)

17.68.930 Suspension prior to hearing.

Whenever the city manager finds that suspension of a permit prior to a hearing for remedial action is necessary to protect the public health or safety from imminent danger, the city manager may immediately suspend any permit pending the hearing for remedial action. The city manager shall immediately notify the permittee of such suspension by having a written notice of the suspension personally served on the permittee. Permittee shall have the opportunity for a preliminary hearing with regard to such prehearing suspension within three working days of receiving written notice of such suspension.

(Ord. 21334.)

17.68.940 Remedial action.

If the city manager after the hearing finds that cause exists for remedial action, the city manager shall impose one or more of the following:

A. A warning;

B. An order to correct the particular noncompliance specified in the notice issued pursuant to Section 17.68.910;

C. A revocation of the permit for the facility or for a storage facility and approval of a provisional permit;

D. Suspension of the permit for the facility or for a storage facility for a specified period not to exceed six months;

E. Modification or addition of conditions of the permit;

F. Revocation of the permit with no reapplication permitted for a specified period not to exceed five years.

If the grounds for remedial action are based on Section 17.68.900C, D or E and if such grounds are limited to one storage facility, the remedial action taken shall be limited to that storage facility.

(Ord. 21334.)

17.68.950 Transmittal of decision.

Within ten days of the hearing the city manager shall render a written opinion, stating the findings upon which the decision is based and the action taken, if any. The decision of the city manager shall be the final administrative determination and is subject to judicial review.

(Ord. 21334.)

17.68.960 Authority after suspension, revocation or expiration.

The suspension, revocation or expiration of a permit issued under this chapter shall not prevent any proceedings to investigate such permit, any remedial action against such permittee or any proceeding against such permittee.

(Ord. 21334.)

17.68.970 Return of permit.

In the event that a permit issued under the provisions of this chapter is suspended or revoked, the permittee shall forward it to the issuing officer not later than the end of the third business day after notification of such suspension or revocation.

(Ord. 21334.)

### Part 11 HEARING PROCEDURE

17.68.1000 Hearing rules.

In any hearing under this chapter, all parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing on the issues, to be represented by counsel, and to confront and cross-examine any witnesses them. Any hearing under this chapter may be continued by the person conducting the hearing for a reasonable time for the convenience of a party or a witness.

(Ord. 21334.)

17.68.1010 Hearing notices.

All notices required by this part shall be sent by certified mail, postage prepaid, to the applicant or permittee at the address given for purposes of notice on the application or permit or delivered to the permittee personally.

(Ord. 21334.)

### Part 12 ENFORCEMENT

17.68.1050 Civil penalties.

Any person, firm, or corporation who intentionally or negligently violates any provision of this chapter, except that an unauthorized discharge which is recordable and recorded in compliance with Section 17.68.450 shall not be a violation of this chapter for purposes of this section, or fails to comply with any order issued thereunder, shall be liable for a civil penalty not to exceed five hundred dollars per day for each violation which shall be and recovered in a civil action brought in the name of the people by the city attorney. In determining the penalty, the court shall consider all relevant circumstances, including but not limited to the following:

A. The extent of harm or potential harm caused by the violation;

B. The nature and persistence of the violation;

C. The length of time over which the violation occurred;

D. The frequency of past violations;

E. The permittee's record of maintenance;

F. Corrective action, if any, taken by the permittee.

In any civil action brought pursuant hereto, in which the city prevails, the court shall determine and impose reasonable expenses, including attorneys' fees, incurred by the city in the investigation and prosecution of the action.

(Ord. 21334.)

17.68.1060 Civil action for retaliation.

A civil action may be instituted against any employer by any employee who has been discharged, demoted, suspended, or in any other manner discriminated against in terms or conditions of employment, or threatened with any such retaliation, because such employee has, in good faith, made any oral or written report or complaint related to the enforcement of this chapter to any company official, public official or union official, or has testified in any proceeding in any way related thereto. In addition to any actual damages which may be awarded, damages shall include costs and attorney's fees. The court may award punitive damages in a proper case.

(Ord. 21334.)

17.68.1070 Remedies not exclusive.

Remedies under this section are in addition to and do not supersede or limit any and all other remedies, civil or criminal.

(Ord. 21334.)

### Part 13 MISCELLANEOUS

17.68.1100 Disclaimer of liability.

A. The degree of protection required by this chapter is considered reasonable for regulatory purposes. The standards set forth herein are minimal standards and this chapter does not imply that compliance will ensure that there will be no unauthorized discharge of hazardous material. This chapter shall not create liability on the part of the city, any officer or employee thereof for any damages that result from reliance on this chapter or any administrative decision lawfully made thereunder. All persons handling, storing, using, processing, and disposing of hazardous materials within the city should be and are advised to determine to their own satisfaction the level of protection in addition to that required by this chapter necessary or desirable to ensure that there is no unauthorized discharge of hazardous materials.

B. This chapter is not intended to create any different standard or obligation for the storage of carcinogens than is imposed for the storage of other hazardous materials. Hazardous materials are identified as carcinogens herein for public record purposes only and the identification of a material as a carcinogen shall not require a different or stricter application of the provisions of this chapter, nor notice to any person under any circumstances other than those expressly specified in this chapter, nor shall such identification create any other duty or obligation upon city different from or additional to those duties or obligations applicable to the storage of other hazardous materials.

(Ord. 21334.)

17.68.1110 Guidelines.

Guidelines approved by the city manager shall be maintained in the office of the city clerk. Such guidelines, in the areas addressed therein, shall serve as an interpretation of this chapter.

(Ord. 21334.)

17.68.1120 Duties are discretionary.

Subject to the limitations of due process, notwithstanding any other provision of this Code whenever the words "shall" or "must" are used in establishing a responsibility or duty of the city, its elected or appointed officers, employees, or agents, it is the legislative intent that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion.

(Ord. 21334.)

17.68.1130 Conflict with other laws.

Notwithstanding any other provision of this chapter:

A. A storage facility regulated by any state or federal agency will be exempt from any conflicting provision of this chapter.

B. If the storage facility is required to have a permit from the department of health services under Health and Safety Code Section 25100 et seq., it shall be exempted from any provision of this chapter which is covered by the regulations adopted pursuant to the above cited statute.

C. Whenever any provision of this chapter conflicts with the fire code as adopted by city, the stricter provision shall prevail.

D. Effective January 1, 1991, whenever any provision of this chapter conflicts with any provision set forth in Chapter 6.7 of the Health and Safety Code or any regulation adopted pursuant thereto, the state law or regulation shall control.

(Ords. 21334, 23677.)

## Chapter 17.70 APPLICATION OF STATE HISTORICAL BUILDING CODE TO HISTORIC LANDMARKS

17.70.010 Purpose.

It is the purpose of this chapter to provide alternative building regulations for the rehabilitation, preservation, restoration (including related reconstruction), or relocation of buildings or structures designated as historic buildings. Such alternative building regulations are intended to facilitate the restoration or change of occupancy so as to preserve their original or restored architectural elements and features, to encourage energy conservation and a cost effective approach to preservation, and to provide for the safety of the building occupants.

It is the intent of these regulations to provide means for the preservation of the historical value of designated buildings and, concurrently, to provide reasonable safety from fire, seismic and wind forces, or other hazards, for occupants of such buildings.

It is not the intent of these regulations to allow nonhistorical expansion or addition to an historical building beyond the original construction of such structure unless such expansion or addition conforms to all applicable provisions of Chapter 13.48.

(Ord. 20582.)

17.70.020 Scope.

The provisions of this chapter may be applied for the rehabilitation or relocation of qualified historical buildings as defined in Section 17.70.030. This chapter may be applied when repairs, alterations, reconstruction, and additions necessary for the preservation, restoration, rehabilitation, relocation or continued use of a building or structure are made.

(Ord. 20582.)

17.70.030 Qualified historical building.

For purposes of this chapter, a "qualified historical building" shall mean any structure, collection of structures, and their associated sites, deemed of importance to the history, architecture, or culture of an area by an appropriate local, state or federal governmental jurisdiction, by designation on official national, state or local historical registers or official inventories, such as the National Register of Historic Places, State Historical Landmarks, State Points of Historical Interest as well as by designation as a landmark or as a contributing structure in a historical district under Chapter 13.48 of Title 13 of the San José Municipal Code.

(Ord. 20582.)

17.70.040 Substandard buildings.

Any qualified building that does not comply with the minimum conditions of the State Historic Building Code may be considered substandard and must be corrected as a condition of the use of this chapter.

(Ord. 20582.)

17.70.050 Building official - Powers and duties.

The building official shall enforce the provisions of this chapter.

(Ord. 20582.)

17.70.060 Standards.

A. The building official may apply the standards and regulations as are from time to time adopted by the state historical building code advisory board pursuant to the State Historical Building Code, California Health and Safety Code Section 18953 et seq., as an alternative to Title 17 of this Code in permitting repairs, alterations, and additions necessary for the preservation, restoration, reconstruction, rehabilitation, moving or continued use of a historical building or structure.

B. This section is not intended to prevent the use of any proposed alternative design, material or method of construction not specifically prescribed or allowed by state historical building code standards and regulations, provided that any such alternative will facilitate the preservation of historical buildings or structures and has been approved. The building official may approve any such alternative provided the proposed design, material or method of construction is satisfactory and that the proposed design, material or method of construction or work offered is, for the purpose intended, reasonably equivalent to that prescribed or allowed in this Code in quality, strength, effectiveness, fire resistance, durability and safety.

(Ord. 20582.)

17.70.070 Exceptions.

Irrespective of other provisions of this chapter, for the preservation of a "submerged inlet" in plumbing fixtures, no cross connection shall exist nor possibility of cross-connection shall exist between the nonpotable water and the potable water supply system.

(Ord. 20582.)

17.70.080 Application.

A. Applicant must apply for use of this chapter in writing. The following information must be included:

1. The source of historical designation;

2. The proposed design, material or method of construction to be utilized.

B. The building official may request sufficient evidence or proof be submitted in order to substantiate the compliance with Section 17.70.030 and Section 17.70.060.

(Ord. 20582.)

17.70.090 Denial.

In denying any application under this chapter, building official shall make one or more of the following findings:

1. Subject building or structure is not an historical landmark within the meaning of Section 17.70.030;

2. Subject building or structure is substandard within the meaning of Section 17.70.040;

3. The proposed design, material or method of construction does not comply with the provisions of Section 17.70.060.A.;

4. The restored building will be more hazardous based on considerations of health, safety, fire safety or sanitation than is the existing building.

(Ord. 20582.)

17.70.100 Appeals.

An appeal from a denial based on finding number 1 of Section 17.70.090, above, can be made to the historic landmarks commission by filing a written appeal, including documentation of landmark status with said commission. All other appeals shall be filed with the San José code enforcement appeals commission. Any such appeal shall be filed within thirty days of denial.

(Ord. 20582.)

## Chapter 17.72 COMMUNITY PRESERVATION

### Part 1 GENERAL PROVISIONS

17.72.010 Purpose.

The purpose of this chapter is to promote the public health, safety and welfare by requiring a minimum level of maintenance of private property to protect the livability, appearance and social and economic stability of the city and to protect the public from the health and safety hazards and the impairments of property values that result from the neglect and deterioration of property.

(Ords. 21973, 26443, 26710.)

17.72.020 Public nuisance.

Any property upon which there exists property blight as set forth in the provisions of this chapter is hereby declared and determined to be a public nuisance.

(Ords. 21973, 26443, 26710.)

17.72.030 Prohibition of property blight.

A. No person, whether as owner, agent, manager, operator, lessee, tenant, sublessee, or occupant in possession of a property, shall maintain a blighted property or cause or permit property to be maintained as a blighted property.

B. No person, whether as owner, agent, manager, operator, lessee, sublessee, tenant or occupant of a property, shall take any action or allow any action to be taken at that property in violation of any provision of this chapter or any order issued pursuant to the provisions of this chapter.

(Ords. 21973, 26443, 26710.)

17.72.040 General conditions.

The presence of any one or more of the following conditions on property constitutes property blight:

A. Any condition that is detrimental to the public health, safety or general welfare or that constitutes a public nuisance as defined in California Civil Code Section 3480;

B. Any condition of deterioration or disrepair that creates a substantial adverse impact on neighboring properties.

(Ord. 26710.)

### Part 2 DEFINITIONS

17.72.200 Definitions.

Except as otherwise set forth in this chapter, the definitions set forth in this part shall govern the application and interpretation of this chapter.

(Ord. 26710.)

17.72.205 Boat.

"Boat" means a boat of any kind, whether self-propelled or propelled by any other means, including sailing vessels and all other structures adapted to be navigated on water from place to place for recreational purposes or for the transportation of merchandise or persons.

(Ord. 26710.)

17.72.210 Camper shell.

"Camper Shell" means a vehicle accessory designed to be mounted upon a motor vehicle and to provide facilities for human habitation, camping purposes or storage.

(Ord. 26710.)

17.72.215 Decorative landscaping.

"Decorative Landscaping" means decorative non-live materials used to cover dirt in a garden or yard, such as rocks, gravel, or bark and does not include pavement with asphalt, cement or any other impervious surface.

(Ord. 26710.)

17.72.225 Household item.

"Household Item" means any item, including any part of the item, typically used in the interior of a dwelling. By way of example and not limitation, the term "household item" includes washing machines, sinks, stoves, heaters, boilers, tanks, mattresses, sofas, couches or futons, upholstered chairs, and indoor carpets. The term "household item" excludes furniture expressly designed for outdoor use and refrigerators.

(Ord. 26710.)

17.72.230 Motor vehicle.

"Motor Vehicle" means a passenger vehicle, truck, recreational vehicle, motorcycle, motor scooter, golf cart, or other similar self-propelled vehicle.

"Motor vehicle" does not mean a motorized wheelchair, bicycle, tricycle or quadricycle.

(Ord. 26710.)

17.72.235 Furnishing Zone/Parkstrip.

"Furnishing Zone/Parkstrip" means the area between the curb of a street and the sidewalk.

(Ords. 26710, 30100.)

17.72.240 Passenger vehicle.

"Passenger Vehicle" means any motor vehicle designed, used and maintained primarily for the transportation of persons for noncommercial purposes. A passenger vehicle does not include a motor vehicle designed and equipped for human habitation, excepting a motor vehicle to which a camper shell has been attached.

(Ord. 26710.)

17.72.245 Polluted water.

"Polluted Water" means water that contains any bacterial growth, including algae, remains of rubbish, fecal matter, untreated sewage, refuse, debris, papers, or any other foreign matter or material that, because of its nature or location, constitutes an unhealthy or unsafe condition.

(Ord. 26710.)

17.72.250 Property.

"Property" means any property not owned by the City of San José, the federal or state government or any political subdivision or agency thereof.

(Ord. 26710.)

17.72.255 Recreational vehicle.

"Recreational Vehicle" means a motor vehicle designed and equipped for human habitation.

(Ord. 26710.)

17.72.260 Seventy-two hours.

For purposes of this chapter, an item is unlawfully parked, kept or stored on a piece of property in excess of seventy-two hours, when all of the following conditions have been met:

A. The item is located on the front or side yard of the property or on a street immediately adjacent to that front or side yard; and

B. That item is visible from a street; and

C. That item has not been removed from the visible front or side yard of the property or the street immediately adjacent to that front or side yard to an area that is not visible from a public street for at least twenty-four consecutive hours during a seventy-two consecutive hour period.

(Ord. 26710.)

17.72.265 Special mobile equipment.

"Special mobile equipment" shall be defined as that term is defined in Section 575 of the California Vehicle Code.

(Ord. 26710.)

17.72.270 Storage structure.

"Storage structure" means a prefabricated enclosure that is not required to have a building permit and is not permanently affixed to the ground, but which is not on wheels or mobile.

(Ord. 26710.)

17.72.275 Weed block.

"Weed block" means material that is installed over a dirt surface in order to prevent the growth of weeds and that does not prevent the infiltration or passage of water into the dirt surface.

(Ord. 26710.)

### Part 3 ENFORCEMENT

17.72.300 Enforcement.

A. The city manager is authorized to administer and enforce the provisions of this chapter. All enforcement officers to whom the city manager has delegated enforcement responsibilities are authorized to inspect property and to take any other enforcement actions as may be required or appropriate to administer or enforce the provisions of this chapter.

B. Any person who violates any provision of this chapter shall be subject to enforcement procedures for each violation through any lawful means available to the city, including without limitation, the administrative citation procedures in accordance with Chapter 1.15 of Title 1 of this Code, the Administrative Remedies procedures in accordance with Chapter 1.14 of Title 1 of this Code, or criminal enforcement in accordance with Chapter 1.08 of Title 1 of this Code.

(Ord. 26710.)

17.72.310 Civil actions and penalties.

Nothing in this chapter shall be construed to limit any right or remedy otherwise available in law or equity to any party harmed by a blighted property, nor shall this chapter in any way limit the city's right to enforcement under any other provision of this Code or create a duty or obligation on the part of the city to enforce this chapter.

(Ord. 26710.)

### Part 4 ABATEMENT ACTIONS

17.72.400 Scope.

Whenever the city manager determines that a property is blighted property, the city manager may require or take any necessary abatement or other enforcement actions to cause the property blight to be abated in accordance with the provisions of this Code, or by any other lawful means. The city manager may determine that temporary corrective measures are required prior to the time that permanent abatement or other enforcement actions are instituted.

(Ord. 26710.)

17.72.410 Summary abatement - Imminent danger.

A. Any condition of property blight which is reasonably believed by the city manager to be imminently dangerous to the life, limb, health or safety of the occupants of the property or to the public may be summarily abated by the city manager, in accordance with the procedures of Chapter 17.02 of this title.

B. Actions taken to abate imminently dangerous conditions may include, but are not limited to repair or removal of the condition creating the danger and/or the restriction from use or occupancy of the property on which the dangerous condition exists or any other abatement action determined by the city manager to be necessary.

(Ords. 21973, 26710.)

17.72.420 Restriction from use.

If there exists on a blighted property any condition reasonably believed to be imminently dangerous to life, limb, health, or safety should such property be occupied or used by human beings, the city manager may order the immediate restriction from use or occupancy of the blighted property in accordance with the procedure set forth in Part 5 of Chapter 17.02. In addition to restricting use or occupancy, the order may require other abatement actions be taken.

(Ords. 21973, 26710.)

17.72.430 Abatement procedures.

The city manager may institute procedures for summary abatement or abatement of blighted property. The procedures set forth in Chapter 17.02 of this title shall apply to any such abatement. Costs for any abatement performed by or on behalf of the city shall be recovered by the city pursuant to the provisions of Part 4 of Chapter 17.02.

(Ords. 21973, 26710.)

17.72.440 Procedures of this chapter - Cumulative.

A. Procedures used and actions taken for the abatement of property blight are not limited by this chapter. Procedures and actions under this title may be utilized in conjunction with or in addition to any other procedure applicable to the regulation of buildings or structures or property.

B. All property blight conditions which are required to be abated pursuant to the provisions and permit requirements of this chapter shall be subject to all provisions of this Code including, but not limited to building construction, repair or demolition and to all of property improvement, zoning and fire code provisions.

(Ords. 21973, 26710.)

### Part 5 DESCRIPTIONS OF PROPERTY BLIGHT

17.72.500 Property blight.

The existence of any one or more of the conditions or activities described in this part constitutes property blight.

(Ords. 21973, 22283, 24315, 26443, 26710.)

17.72.505 Unsecured building or structure.

Any building or structure that is unsecured constitutes property blight. A building or structure is unsecured when either of the following conditions exist:

A. The building or structure is inhabited, occupied or used without the consent of the owner or the agent of the owner; or

B. Unauthorized persons can readily gain entry to the building or structure without the consent of the owner or the agent of the owner.

(Ords. 21973, 22283, 24315, 26443, 26710.)

17.72.510 Abandoned construction.

A partially constructed, reconstructed or demolished building or structure upon which work has been abandoned constitutes property blight. Work is deemed abandoned when there is no valid current building or demolition permit for the work or when there has not been any substantial work on the building or structure for a period of six months or more.

(Ords. 21973, 22283, 24315, 26443, 26710.)

17.72.515 Attractive nuisance.

Any property that is unsecured and constitutes an attraction to children or a harbor for vagrants, criminals or other unauthorized persons, or is in a condition such that persons can resort thereto for the purpose of committing a nuisance or unlawful act constitutes property blight.

(Ords. 21973, 22283, 24315, 26443, 26710.)

17.72.520 State of disrepair.

Any building or structure that is in a state of disrepair constitutes property blight. A building or structure is in a state of disrepair when any of the following conditions exist:

A. Exterior walls or roof coverings have become deteriorated, do not provide adequate weather protection, or show evidence of the presence of termite infestation or dry rot; or

B. Broken or missing windows or doors that create a hazardous condition or a potential attraction to trespassers; or

C. Building exteriors, walls, fences, retaining walls, driveways, or walkways that are broken or deteriorated to the extent that the disrepair is visible from a street or neighboring properties.

(Ords. 21973, 22283, 24315, 26443, 26710, 27509.)

17.72.525 Exterior property conditions.

The existence of any one or more of the following exterior property conditions constitutes property blight:

A. The property contains overgrown, diseased, dead or decayed trees, weeds or other vegetation that:

1. Constitutes a fire hazard or other condition that is dangerous to the public health, safety, welfare; or

2. Creates the potential for the harboring of rats, vermin, vector, or other similar nuisances; or

3. Substantially detracts from the aesthetic and property values of neighboring properties; or

4. Is overgrown onto a public right-of-way at least twelve inches; or

5. Is completely dead, over twelve inches in height, and covers more than fifty percent of the front or side yard visible from any street.

B. The property fails to comply with applicable development permit requirements with respect to any landscaping requirements.

(Ord. 26710.)

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. A single-family dwelling with new and rehabilitated landscaping subject to Chapter 15.11 of this Code shall be landscaped and maintained in accordance with the water efficiency landscaping requirements of that Chapter.

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 or the landscaping water efficiency requirements of Chapter 15.11 of this Code shall meet all of the following requirements:

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.

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 storm water 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:

1. Direct roof runoff to a rainwater harvesting system (rain barrels or cisterns) for on-site non-potable use; or

2. Direct stormwater runoff from driveways, walkways, patios, and/or uncovered parking areas to on-site landscaped areas; or

3. Construct driveways, walkways, patios, and/or uncovered parking areas with permeable surfaces.

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

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

(Ords. 26710, 29169, 30765.)

17.72.535 Multi-family dwelling landscaping requirements.

A. A multi-family dwelling subject to a Development Permit shall be landscaped in accordance with the requirements of the Development Permit. A multi-family dwelling with new and rehabilitated landscaping subject to Chapter 15.11 of this Code shall be landscaped and maintained in accordance with the water efficiency landscaping requirements of Chapter 15.11.

B. Subject to the paved surface limitations contained in Section 20.30.440 of Title 20 of this Code, a multi-family dwelling, not subject to a Development Permit or the requirements of Chapter 15.11 of this Code, shall have landscaping installed in the nonpaved portions of the front and side yards that are visible from any street. For purpose of this subsection only, "landscaping" means that:

1. At least fifty percent (50%) of the nonpaved portions of the front and side yards that are visible from any street shall be covered with live trees, shrubs, lawns, or other live plant materials; and

2. The remaining portion of the nonpaved portions of the front and side yards that are visible from any street shall be covered with live trees, shrubs, lawns, or other live plant materials or shall have Decorative Landscaping installed.

C. If Decorative Landscaping is used to meet the requirements of this Section, Weed Block shall also be used.

D. Failure to meet the landscaping requirements of this Section constitutes property blight.

(Ords. 26710, 30765.)

17.72.540 Parkstrips.

A. Any property subject to a development permit that imposes parkstrip landscaping requirements shall have landscaping installed in the parkstrip in compliance with the development permit.

B. Any property not subject to a development permit shall have landscaping installed in the nonpaved portions of the parkstrip. For purposes of this subsection, "landscaping" means live trees, shrubs, lawns, other live plant materials or decorative landscaping, have been installed.

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

D. Failure to meet the landscaping requirements of this section constitutes property blight.

(Ord. 26710.)

17.72.545 Inadequate solid waste management.

A. The accumulation of solid waste, as defined in Section 9.10.280, constitutes property blight in the following situations:

1. The accumulation of solid waste is visible from a street or neighboring property and is present for more than seventy-two consecutive hours; or

2. The accumulation of solid waste is being stored or disposed of in a manner that would allow the material to be transported by wind or otherwise onto or upon any street, or neighboring property, unless the method of storage or disposal is specifically allowed by this Code.

B. The accumulation of dirt, litter, or debris in vestibules or doorways of buildings constitutes property blight if it is visible from any street or neighboring properties and is present for more than seventy-two consecutive hours.

(Ord. 26710.)

17.72.550 Hazardous conditions.

Any property upon which there exists a hazardous condition constitutes property blight. A property is considered to have a hazardous condition prohibited by this chapter if any one or more of the following conditions exists on the property:

A. Land having a topography, geology, or configuration that, as a result of grading operations or improvements to the land, causes erosion, subsidence, unstable soil conditions, or surface or subsurface drainage problems that pose a threat of injury or are injurious to any neighboring property.

B. Any condition or object, including without limitation landscaping, motor vehicles, fencing or signs, that obscures the visibility of traffic, pedestrians, or street intersections in a manner that constitutes a hazard.

C. Items are present that are inadequately secured or protected and, due to their accessibility to the public, may prove hazardous including, without limitation:

1. Unused or broken equipment or machinery;

2. Abandoned wells, shafts, or basements;

3. Unprotected pools, ponds, or excavations;

4. Structurally unsound fences or structures;

5. Lumber, or accumulations of lumber or other construction materials; or

6. Chemicals, motor oil, or other hazardous materials.

D. Any swimming pool, pond or other body of water that is abandoned, unattended, unfiltered, or not otherwise maintained, so that the water has become or is becoming polluted water.

(Ord. 26710.)

17.72.555 Parking, storing or maintaining certain items on property designed or used as a residence prohibited.

The parking, storing or maintaining of any one or more of the following items on property designed or used as a residence constitutes property blight:

A. Any airplane or other aircraft, or any parts thereof in the front or side yard.

B. Any construction or commercial equipment, machinery, vehicle having a manufacturer's gross vehicle weight rating of ten thousand pounds or more, or construction materials, except that the construction equipment, machinery, vehicle or materials may be temporarily kept within or upon the property for and during the time that the equipment, machinery, vehicle, or materials are required in connection with the delivery, pick-up, construction, installation, repair, or alteration of improvements or facilities on the property, unless the activity is otherwise prohibited by this Code, by any permit issued pursuant to this Code, or by other applicable law.

C. Any unmounted camper shell, in an area visible from any street.

D. Any refrigerator in an area visible from any street or in an area accessible to the public, except when the refrigerator is set out for bulky goods collection in accordance with Chapter 9.10 of this Code.

(Ords. 26710, 27509.)

17.72.560 Parking, storing, or maintaining special mobile equipment.

A. No Special Mobile Equipment shall be parked, stored, or maintained in an area visible from any street for a period of time in excess of seventy-two (72) consecutive hours.

B. The parking, storage, or maintenance of Special Mobile Equipment in a side or Rear Yard shall either be:

1. In an accessory building constructed in accordance with the provisions of this Code; or

2. In an area that provides for a five-foot (5') setback from any property line and which is not visible from any street. In addition to the setback requirement, at least one thousand five hundred (1,500) square feet, or at least sixty percent (60%) of the remaining Rear Yard area, whichever is less, must be maintained as usable outdoor recreational space or as required by Chapter 15.11.

C. No Special Mobile Equipment shall be parked, stored, or kept within five feet (5') of any required building exit, including exit windows.

(Ords. 26710, 30765.)

17.72.565 Parking, storing, or maintaining motor vehicles and boats.

A. No motor vehicle or boat that has been wrecked, dismantled or disassembled, or any part thereof, or any motor vehicle that is disabled or may not be operated because of the need of repairs or for any other reason shall be parked, stored, or maintained in an area visible from any street for a period of time in excess of seventy-two consecutive hours.

B. Any parking, storage, or maintenance of either a motor vehicle or a boat in a side or rear yard shall either be:

1. In an accessory building constructed in accordance with the provisions of this Code; or

2. In an area that provides for a five-foot setback from any property line and is not visible from any street. In addition to the setback requirement, at least one thousand five hundred square feet or sixty percent of the remaining rear yard area, whichever is less, must be maintained as useable outdoor recreational space.

(Ord. 26710.)

17.72.570 Storing or maintaining household items.

A. No household item shall be stored or maintained in an area visible from any street for a period of time in excess of seventy-two consecutive hours.

B. The storage or maintenance of a household item in a side or rear yard shall either be:

1. In an accessory building constructed in accordance with the provisions of this Code; or

2. In an area that provides for a five-foot setback from any property line and, which is not visible from any street. In addition to the setback requirement, at least one thousand five hundred square feet, or at least sixty percent of the remaining rear yard area, whichever is less, must be maintained as usable outdoor recreational space.

C. No household item shall be stored, or maintained within five feet of any required building exit, including exit windows.

D. This section does not prohibit the storage, or maintenance of any of the following:

1. Machinery installed in accordance with the provisions of this Code in the rear or side yard setback areas for household or recreational use, or

2. Furniture designed and used for outdoor activities, or

3. Any item stored or kept within an enclosed storage structure.

(Ord. 26710.)

17.72.575 Storing or maintenance of boxes, lumber, dirt, and other debris.

A. No boxes, lumber, dirt, or other debris shall be stored or maintained in an area visible from any street for a period of time in excess of seventy-two consecutive hours.

B. The storage or maintenance of boxes, lumber, dirt, or other debris in a side or rear yard shall either be:

1. In an accessory building constructed in accordance with the provisions of this Code; or

2. In an area that provides for a five-foot setback from any property line, and which is not visible from any street. In addition to the setback requirement, at least one thousand five hundred square feet, or at least sixty percent of the remaining rear yard area, whichever is less, must be maintained as usable outdoor recreational space.

C. No boxes, lumber, dirt, or other debris shall be stored or maintained within five feet of any required exit, including exit windows.

(Ord. 26710.)

17.72.580 Activities prohibited on property designed or used as a residence.

Subject to Section 17.72.585, the following activities on any property designed or used as a residence constitute property blight:

A. Wrecking, dismantling, disassembling, manufacturing, fabricating, building, remodeling, assembling, repairing, painting, or servicing, in any setback area, of any airplane, aircraft, motor vehicle, special mobile equipment, boat, trailer, machinery, equipment, appliance or appliances, furniture or other personal property.

B. The use of any motor vehicle for living or sleeping quarters in any place in the city, except in a location lawfully operated as a mobilehome park or travel trailer park, subject to the following:

1. Nothing contained in this section shall be deemed to prohibit bona fide guests of a city resident from occupying a recreational vehicle upon residential premises with the consent of the resident for a period not to exceed seventy-two hours; and

2. Any recreational vehicle so used shall not discharge any waste or sewage into the city's sewer system except through the residential discharge connection of the residential premises on which the recreational vehicle is parked.

(Ord. 26710.)

17.72.585 Exclusions.

This chapter shall not prohibit the following:

A. An owner, lessee, or occupant of the property from repairing, washing, cleaning, or servicing personal property that is owned, leased, or rented by the owner, lessee, or occupant of the property so long as any repairing or servicing performed shall be completed within a seventy-two consecutive hour period; or

B. Repairing or servicing of a motor vehicle or part thereof within a completely enclosed building in a lawful manner where it is not visible from the street or other public or private property.

(Ords. 21973, 22283, 24315, 26443, 26710.)

### Part 6 RESIDENTIAL PARKING RESTRICTION

17.72.600 Parking on unpaved surfaces prohibited.

A. No person shall keep, store or park any trailer, boat or motor vehicle on any portion of a front yard or corner lot side yard facing a street of a property designed or used as a residence, except on an area that is paved.

B. No owner, tenant, manager, or occupant of property used as a residence shall allow or suffer another person to keep, store or park any trailer, boat or motor vehicle on any portion of a front yard or corner lot side yard facing a street, except on an area that is paved.

(Ords. 25014, 26710.)

17.72.610 Recreational vehicle parking and storage limitations.

A. No person shall park or store any recreational vehicle in the front yard of property designed or used as a residence unless the recreational vehicle is parked or stored perpendicular to the street.

B. An owner or operator of a recreational vehicle parked or stored on property designed or used as a residence shall be an occupant of the property upon which the recreational vehicle is parked or stored, except as set forth in Section 17.72.580 of this chapter.

C. No property owner or tenant shall allow or suffer another person to park or store a recreational vehicle on property designed or used as a residence in a manner prohibited by any provision of this Code.

(Ord. 26710.)

17.72.620 Other parking restrictions.

Nothing contained in this part is intended to nor shall be construed or interpreted to allow parking that is prohibited or restricted by any other provision of this Code or by any other provision of law.

(Ords. 25014, 26710.)

## Chapter 17.74 IDENTIFICATION OF POTENTIALLY HAZARDOUS BUILDINGS

17.74.010 Purpose.

The purpose of this chapter is to promote public safety and welfare by identifying potentially hazardous buildings constructed of unreinforced masonry wall construction, as required by Chapter 12.2 of Division 1 of Title 2 of the Government Code.

(Ord. 23190.)

17.74.020 Potentially hazardous buildings.

A. Any building constructed of unreinforced masonry wall construction is hereby deemed to be a potentially hazardous building.

B. All potentially hazardous buildings are subject to the requirements of this chapter except:

1. Warehouses or similar structures not used for human habitation, unless such warehouses or structures house emergency services equipment or supplies.

2. Buildings having five dwelling units or less.

(Ord. 23190.)

17.74.030 Unreinforced masonry wall construction.

For the purpose of this chapter, "unreinforced masonry wall construction" means masonry bearing and infill walls that are not reinforced by metal rods, bars or strands.

(Ord. 23190.)

17.74.040 Identification procedure.

A. The department of neighborhood preservation shall identify all potentially hazardous buildings within the City of San José, except for qualified historical buildings, as defined in subsection D. of Section 17.70.020.

B. The department of neighborhood preservation shall notify the owner of each such building that the building has been deemed to be potentially hazardous. The notice shall be in writing and shall be served either personally or by mail upon the owner as shown on the last equalized assessment roll.

C. The notice shall specify that the building has been determined to be potentially hazardous and that the owner shall cause an engineering report to be made by a civil or structural engineer or architect licensed by the state of California to determine the existence, nature and extent of structural deficiencies that could cause a collapse or partial collapse of the building during earthquakes of various magnitudes. The notice shall specify that the engineering report shall be submitted to the department of neighborhood preservation by the date specified in the notice, which shall be not less than thirty days from the date of the notice. The date for submitting the report may be extended by the director of neighborhood preservation in cases where the director determines that additional time may be needed.

D. The notice also may specify and require the building owner to submit to the department of neighborhood preservation a letter describing the progress that has been made in preparing the engineering report required by this chapter. The notice shall specify the date on which the letter, if required, shall be due.

E. If the owner of the building fails to submit an engineering report which conforms to the provisions of this chapter within the specified time, or if the owner fails to submit the letter described in subsection D. of this section within the specified time, the director of neighborhood preservation may order the restriction from use or occupancy of the building until an engineering report which conforms to the provisions of this chapter or the letter has been prepared and submitted to the department of neighborhood preservation. The remedy provided by this subsection E. is in addition to any other remedies provided at law or in equity.

(Ord. 23190.)

17.74.050 Appeals.

A. The owner of any building determined to be potentially hazardous may appeal this determination by filing an appeal with the director of neighborhood preservation on forms provided by the director within thirty days from the service date of the notice specified in subsection B. of Section 17.74.040. Failure to submit an appeal within this time period shall render the determination that the building is potentially hazardous as final and not subject to appeal.

B. The appeal shall set forth in a clear and concise manner the grounds for the appeal. The appeal shall be accompanied by a filing fee as set forth in subsection B. of Section 17.74.080.

C. The director shall set the appeal for hearing and shall notify the building owner in writing of the time and place for the hearing. The hearing shall be held not less than ten days from the date of receipt of the hearing notice by the building owner. The director shall conduct the hearing and shall permit the building owner an opportunity to present evidence at the hearing in support of the appeal.

D. The director shall render a written decision on the appeal within thirty days after the hearing and shall cause a copy of the decision to be delivered to the building owner by personal service or mail.

E. If the director upholds the determination that the building is potentially hazardous, the director shall notify the building owner in writing of the time in which the engineering report required by this chapter shall be submitted to the department of neighborhood preservation.

(Ord. 23190.)

17.74.060 Engineering report.

A. The engineering report required by this chapter shall be prepared by a civil or structural engineer or architect licensed by the state of California.

B. The report shall investigate, in a thorough and unambiguous fashion, the structural systems of the building that resist the forces imposed by earthquakes of various magnitudes and determine if any individual portion or combination of these systems is adequate or inadequate to prevent a structural failure or collapse of the building.

C. The report shall include the following information:

1. The street address of the building.

2. The current use or uses of the building.

3. A plan of the building showing the location of each use within the building and the total square footage and occupancy level of each such use.

4. Elevations and plans showing the location, type and extent of horizontal and lateral resisting systems in the building.

5. Description of the materials used in construction of the structural systems of the building and the current condition of such systems.

6. Date of original construction of the building, if known, and of any subsequent additions or major structural alterations, if known.

7. Name and address of the original building designer and contractor, if known, and of the designer and contractor of any subsequent additions or major structural alterations to the building, if known.

8. Field and laboratory test results used to determine the adequacy or inadequacy of the building's structural systems.

9. An evaluation of the above test results, as they pertain to the adequacy or inadequacy of the building's structural systems.

10. Conclusions with respect to the overall structural soundness of the building and of each structural system in the building and its resistance to earthquakes of varying magnitudes.

11. Recommended actions that can be taken by the building owner to minimize, reduce or eliminate the potential for collapse or partial collapse of the building during earthquakes of varying magnitudes.

(Ord. 23190.)

17.74.070 Submission and review of reports.

A. The report shall be submitted in duplicate to the department of neighborhood preservation within the time specified in the notice issued pursuant to subsection B. of Section 17.74.040, or, in the case of an appeal that has been denied by the director, the time specified by the director. The report shall be accompanied by the fee specified in subsection A. of Section 17.74.080.

B. The report shall be reviewed by the department of neighborhood preservation to determine if it conforms to the provisions of this chapter.

(Ord. 23190.)

17.74.080 Fees.

A. Review Fee. Before accepting for review the engineering report required by this chapter, the department of neighborhood preservation shall collect a review fee from the person submitting the report. The amount of the review fee shall be as set forth in the schedule of fees established by resolution of council. No report shall be accepted by the department of neighborhood preservation until the fee has been paid.

B. Appeal fee. Before accepting any appeal that is submitted in accordance with Section 17.74.050, the department of neighborhood preservation shall collect an appeal fee from the person submitting the appeal. The amount of the appeal fee shall be as set forth in the schedule of fees established by resolution of council. No appeal shall be accepted until the fee has been paid.

(Ord. 23190.)

17.74.090 Submission of reports to seismic safety commission.

The department of neighborhood preservation shall submit a summary of the engineering reports prepared in accordance with this chapter together with a copy of this chapter to the state seismic safety commission by January 1, 1990, in accordance with Section 8877 of the California Government Code.

(Ord. 23190.)

17.74.100 Dangerous buildings - Abatement.

If, in its review of the engineering report, the department of neighborhood preservation determines that the building structure or any structural component thereof has less than twenty-five percent of the resistance to wind or earthquake forces which was required of new buildings by the 1973 Edition of the Uniform Building Code, the city manager may, pursuant to Section 17.40.040, take abatement actions or commence proceedings to cause the building to be repaired, restricted from use or occupancy, demolished or otherwise abated, in accordance with the provisions of Chapters 17.02 and 17.40 of this Code.

(Ord. 23190.)

17.74.110 Effective date.

This ordinance [chapter] shall become effective on August 1, 1989.

(Ord. 23190.)

## Chapter 17.76 COMMON INTEREST DEVELOPMENTS

17.76.100 Common interest development - Defined.

As used in this chapter, "common interest development" shall have the same meaning as set forth in California Civil Code Section 1351 as amended.

(Ords. 23069, 23924.)

17.76.110 Common area - Defined.

As used in this chapter, the "common area" of a common interest development shall have the same meaning as that set forth in California Civil Code Section 1351 as amended.

(Ords. 23069, 23924.)

17.76.115 Residential common interest development project.

As used in this chapter:

A. "Residential common interest development project" or "project" means a proposed improvement to real property for which a final map for a common interest development for residential use has been approved.

B. "New residential common interest development project" or "new project" means a residential common interest development project for which no building permit has been issued.

C. "Phased residential common interest development project" or "phased project" means a residential common interest development project for which construction of common area improvements is to be conducted in phases.

(Ord. 23924.)

17.76.117 Director.

For purposes of this chapter, unless otherwise indicated the term "director" means the director of public works.

(Ord. 24621.)

17.76.120 Plan check and inspection.

A. No building permit for a new project shall be issued unless all of the plans required to be approved have been approved by the director in accordance with all applicable city standards and the provisions of this section.

B. The director shall review the construction plans and inspect the project improvements for:

1. Private streets, circulation drives, access roads, parking bays, and parking lots with respect to the following:

a. Street layout and geometry;

b. Pavement structure;

c. Curbs, gutters, attached sidewalks, and detached sidewalks which run parallel with and are separated from a street or parking area by a narrow landscaped strip;

d. Driveway approaches;

e. Stress pads for garbage trucks;

f. Face-of-curb drains;

g. Backfill of utility trenches; and

h. Monumentation.

2. The entire storm and sanitary systems which are outside the buildings including, but not limited to, mains and laterals located within residential common interest development projects.

C. The inspections required under this section are in addition to other inspections required pursuant to this Code in connection with the issuance of building, plumbing, mechanical, electrical and/or grading permits.

D. In the case of a phased project, the building permits for the first phase or phases to be constructed may be issued upon construction plan approval for the phase to which the permit(s) pertains. No building permit shall be issued and no work shall be commenced on common area improvements pertaining to other subsequent phases until construction plans pertaining to those phases have been reviewed and approved.

E. It shall be the duty of the person doing the work required to be inspected under this section to notify the director that the work is ready for inspection and to cause the work to be accessible and exposed, as necessary, for inspection purposes.

F. Prior to the issuance of any certificate of occupancy or release for occupancy, the applicant shall provide a self-certified statement to the satisfaction of the chief building official that the project as constructed meets the City of San José common interest development standards.

(Ords. 23069, 23924, 24621.)

17.76.130 Fees.

A. The fees charged to defray the city's costs and the expenses of conducting the inspections and plan reviews required under this chapter shall be as set forth in the schedule of fees established by resolution of the city council.

B. Fees charged for inspections and plan review conducted pursuant to this chapter shall be due and payable as follows:

1. Fifty-five percent of the fees applicable to a project are due and payable at the time private street plans are submitted to the department for review;

2. The remainder of the fees are due and payable prior to approval of the final map or parcel map.

(Ords. 23069, 23924, 24621.)

17.76.150 Refunds.

Fees paid to the city pursuant to this chapter may be refunded in whole or in part, upon a determination by the director of the department to whom the fee was paid that:

A. The fee or a portion thereof was collected in error; or

B. Approval of the development expired or was revoked, and no development thereunder commenced prior to said expiration or revocation.

(Ord. 23069.)

## Chapter 17.78 RESERVED[[23]](#footnote-23)

## Chapter 17.80 PUBLIC SAFETY NUISANCE ABATEMENT

17.80.010 Purpose.

The purpose of this chapter is to promote the health, safety and general welfare of the public by requiring a level of maintenance of private property which will protect the public from health and safety hazards, alleviate crime, and provide police, fire, ambulance and other public emergency services adequate access to private property within the City of San José.

(Ords. 23832, 24109.)

17.80.020 Definitions.

A. Unsafe Property: For purposes of this chapter, "unsafe property" means:

1. Access roads to any portion of the property or to other property are not maintained in a manner which allows ready, unhindered and safe access to police, fire, ambulance and other emergency vehicles; or

2. Lighting on the property is inadequate to discourage illegal conduct, to enable proper public safety enforcement, and to create a safe environment for persons using the property.

B. Access Road. For purposes of this chapter, "access road" shall include, but shall not be limited to, any privately owned or controlled alley, street, road, driveway, easement, right-of-way or off-street parking facility adjoining or connected to an access road that provides vehicular access to private property.

C. Private Property. "Private property" means any property not owned by the City of San José, the federal or state government or any political subdivision or agency thereof.

(Ords. 23832, 24109.)

17.80.030 Unsafe property - Nuisance.

Any private property which the city manager determines to be unsafe property under this chapter is hereby declared and determined to be a public nuisance.

(Ords. 23832, 24109.)

17.80.040 General obligation.

A. No person, whether as owner, agent or manager of the property, or as lessee, sublessee, or occupant in possession of the property, shall maintain any private property in an unsafe condition or cause or permit the property to be unsafe.

B. No person shall take any action or allow any action to be taken in violation of any provisions of this chapter or any order issued pursuant to this chapter.

(Ords. 23832, 24109.)

17.80.050 Enforcement responsibility.

The city manager is charged with the responsibility for the enforcement of this chapter. All city employees with enforcement responsibilities are authorized to make such inspections and take any actions on behalf of the city manager as may be required to enforce the provisions of this chapter.

(Ords. 23832, 24109.)

17.80.060 Unsafe property - Abatement.

A. Whenever the city manager determines that a property is unsafe, the city manager may cause the unsafe property condition to be abated in accordance with the provisions of Chapter 17.02 and this chapter.

B. The city manager may require immediate temporary corrective measures to be taken prior to the time permanent abatement actions are instituted.

(Ords. 23832, 24109.)

17.80.070 Immediate restriction from use.

If there exists on an unsafe property any condition which the city manager determines to be imminently dangerous to life, limb, health, or safety should such property be occupied or used by human beings, the city manager may order the immediate restriction from use and occupancy of the unsafe property in accordance with the procedures set forth in Part 5 of Chapter 17.02.

(Ords. 23832, 24109.)

17.80.080 Abatement procedures.

A. The city manager may institute procedures for summary abatement or abatement of unsafe property. The procedures set forth in Chapter 17.02 of this title shall apply to any such abatement.

B. Costs of any abatement performed by or on behalf of the city shall be recovered by the city pursuant to the provisions of Part 4 of Chapter 17.02.

(Ords. 23832, 24109.)

17.80.090 Cumulative nature of procedures.

A. Procedures used in actions taken for the abatement of unsafe property are not limited by this chapter. Procedures and actions under this chapter may be utilized in conjunction with or in addition to any other procedure applicable to the regulation of buildings or structures or property.

B. All unsafe property conditions which are required to be abated pursuant to the provisions of this chapter shall be subject to all provisions of the San José Municipal Code including, but not limited to, building, construction, repair or demolition and to all of the property improvements, zoning and fire code provisions of the San José Municipal Code.

(Ords. 23832, 24109.)

## Chapter 17.82 FIRE SAFETY DURING CONSTRUCTION

### Part 1 GENERAL PROVISIONS

17.82.100 Purpose.

The purpose of this chapter is to minimize the potential for the occurrence and spread of fires, and to facilitate firefighting efforts, during construction of wood frame buildings.

(Ord. 27025.)

17.82.110 General requirements.

A. The provisions of this chapter shall apply only to activities occurring during the construction of certain wood frame buildings as specified herein.

Nothing contained in this chapter shall be construed to alter such building occupancy standards or fire protection measures for wood frame or other construction methods as may otherwise be set forth in this Code.

B. No person shall engage in any aspect of construction on a large or major wood frame building project, or permit or authorize any such construction to occur, except in full compliance with this chapter.

C. The property owner, as identified on the application for a building permit for a large or major wood frame building project, shall be liable for full compliance with this chapter.

(Ord. 27025.)

17.82.120 Administrative regulations.

The fire chief and the chief building official are authorized to, from time to time, as necessary to implement this chapter, issue, review and revise administrative regulations to implement the provisions of this chapter, including but not limited to regulations concerning the required content of construction fire protection plans and the manner in which fire safety officer duties are to be performed.

(Ord. 27025.)

### Part 2 DEFINITIONS

17.82.200 Definitions.

The definitions contained in this part shall govern the interpretation of this chapter. Where terms are not specifically defined in this chapter, the definitions contained in Chapters 17.04, 17.12 and Title 24 of this Code shall control.

(Ord. 27025.)

17.82.210 Building height.

"Building height" for the purpose of this Chapter 17.82 only, shall mean the vertical distance above a reference datum, measured to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the average height of the highest gable of a pitched or hipped roof. The reference datum shall be selected by either of the following, whichever yields the greatest height of building: (1) The elevation of the highest natural ground surface within a five-foot horizontal distance of the exterior wall of the building when the highest such natural ground surface is not more than ten feet above the lowest grade; or (2) An elevation ten feet higher than the lowest grade when the natural ground surface described in (1) is more than ten feet above the lowest grade.

(Ord. 27025.)

17.82.220 Construction fire protection plan.

"Construction fire protection plan" means a document which specifies measures and practices to be incorporated into the construction process to minimize the potential for the occurrence and spread of fires, and to facilitate firefighting efforts during building construction.

(Ord. 27025.)

17.82.230 Exposed wood framing.

"Exposed wood framing" means the area of a large or major wood frame building project that is enclosed, in whole or in part, by wood stud framing and decking of the floor or roof above. Attics not designated for occupancy, balconies open to the sky and other similar open space are not included in this square footage calculation. For the purpose of measuring total square footage of wood framing, any adjacent ongoing wood frame construction is considered to be within the project when adjacent structures are separated by less than sixty feet of open air.

(Ord. 27025.)

17.82.240 Fire safety officer.

"Fire safety officer" means an individual employed on a construction job site whose job function is to minimize the potential for the occurrence and spread of fires in accordance with the requirements of this Chapter 17.82 and the approved construction fire protection plan. The duties of a fire safety officer shall be in addition to, and do not supercede, the duties of any contractor or individual engaging in activities which have the potential to cause the occurrence or spread of fire, including but not limited to the duties specified in Chapter 33 of the 2016 California Fire Code, as adopted in Chapter 17.12 of this Code, or such other fire safety code as may be adopted by the city from time to time.

(Ords. 27025, 29808.)

17.82.250 Hot work.

"Hot work" means construction activities including, but not limited to, cutting, welding, use of open torch, brazing, and glass blowing, which are regulated by Chapter 33 of the 2016 California Fire Code, as adopted in Chapter 17.12 of this San José Municipal Code, or by any similar fire safety code or provision as may be adopted by the city from time to time.

(Ords. 27025, 29808.)

17.82.260 Large wood frame building project.

"Large wood frame building project" means a building project utilizing exposed wood framing in the construction of fifteen or more attached dwelling units, or construction exceeding a total of fifty thousand square feet.

(Ord. 27025.)

17.82.270 Major wood frame building project.

"Major wood frame building project" is large wood frame building project which will either:

A. Exceed three hundred fifty thousand square feet; or

B. Exceed two hundred thousand square feet if the project exceeds fifty feet in height as defined in Section 17.82.210.

(Ord. 27025.)

17.82.280 Maximum allowable exposed wood framing limit.

"Maximum allowable exposed wood framing limit" means:

A. Three hundred fifty thousand square feet; or

B. Two hundred thousand square feet for a large wood frame building project which exceeds fifty feet in height as defined in Section 17.82.210.

(Ord. 27025.)

17.82.290 Mitigating fire protection barriers.

"Mitigating fire protection barrier" means at least one layer of 5/8-inch gypsum board or other fire resistive blocking located at the end of a fire resistive area or separation wall or party wall, and installed such that the mitigating fire protection barrier(s) and fire resistive wall(s) enclose area(s) of not less than ten thousand square feet and not more than fifty thousand square feet.

(Ord. 27025.)

### Part 3 SPECIFIC REQUIREMENTS

17.82.300 Construction fire protection plan requirements.

A. No building permit shall be issued which allows the commencement of wood frame construction on a large or major wood frame building project, unless the fire chief has provided written approval of a construction fire protection plan for the project.

B. Construction fire protection plans for a large or major wood frame building project shall state how the requirements of this chapter and all other fire safety requirements shall be met during construction of the project. Construction fire protection plans for major wood frame building projects shall, in addition, state how off-hours security will be addressed, and how construction sequencing, including the installation of mitigating fire protection barriers, will be utilized to minimize the potential for the occurrence and spread of fire.

C. No person shall engage in, permit, authorize or allow any aspect of construction on any project for which a construction fire protection plan has been approved unless the fire chief has provided written approval of a fire protection plan for the project.

D. No person shall engage in, permit, authorize or allow any aspect of construction on any project for which a construction fire protection plan has been approved except in full compliance with the approved construction fire protection plan for the project.

E. The approved construction fire protection plan shall be a condition of the building permit and a copy of the plan shall be maintained on site at all times during construction of the project.

(Ord. 27025.)

17.82.310 Fire safety officer requirements.

A. No person shall perform, permit, authorize or allow any hot work on any large or major wood frame building project, after wood framing has commenced, unless a fire safety officer is present on the project site at all times while hot work is being performed.

B. A fire safety officer shall monitor, confirm and document the following:

1. That a fire watch as required by Chapter 33 of the California Fire Code, as adopted in Chapter 17.12 of this Code, or by any similar fire safety code or provision as may be adopted by the city from time to time has been provided during all hot work operations;

2. That storage, use and handling of flammable liquids conforms to all federal, state and local, legal and administrative requirements;

3. That construction debris is promptly removed from the project site;

4. That fire protection equipment, including fire extinguishers, fire hydrants, standpipes, and other fire service connections, are in place and operational, as required by law or specified in the approved construction fire protection plan;

5. That mitigating fire protection barriers are in place on any major wood frame building project, in accordance with this chapter and the construction sequencing requirements of the approved construction fire protection plan;

6. That such other requirements relating to fire safety have been met, as may be specified in this Code, in the regulations adopted pursuant to this chapter, or in the approved construction fire protection plan.

(Ords. 27025, 29808.)

17.82.320 Basic fire protection facilities.

A. No person shall commence, permit, authorize or allow wood framing or engage in any construction activity after the commencement of wood frame construction, on a large or major wood frame building project unless an all weather access road is in place meeting the requirements of Section 17.12.810 of this Code, or such other fire apparatus access requirements as may be specified in the construction fire protection plan for the project, or in any development or building permit for the project, are in place and functional.

B. No person shall commence, permit, authorize or allow wood framing or engage in, permit, authorize or allow any construction activity after the commencement of wood frame construction, on a large or major wood frame building project, unless all fire protection equipment, including fire extinguishers, fire hydrants, standpipes, and other fire service connections, are in place and operational, as required by law or specified in the approved construction fire protection plan.

(Ords. 27025, 29808.)

17.82.330 Mitigating fire protection barriers.

No person shall continue, permit, authorize or allow any construction activity on any major wood frame building project, unless mitigating fire protection barriers are in place and operational, in accordance with the approved construction fire protection plan, to maintain the project at or below the applicable maximum allowable exposed wood framing limit.

(Ord. 27025.)

## Chapter 17.84 GREEN BUILDING REGULATIONS FOR PRIVATE DEVELOPMENT

### Part 1 FINDINGS AND PURPOSE

17.84.010 Purpose.

This chapter is intended to enhance the public health, safety and welfare of San José residents, workers, and visitors by fostering practices in the design, construction, and maintenance of buildings that will minimize the use and waste of energy, water and other resources in the City of San José. The green building standards required by this chapter are intended to advance greenhouse gas reduction and other sustainability strategies outlined in the city's Green Vision. Green building reduces per capita energy use, provides energy from renewable sources, diverts waste from landfills, uses less water and encourages the use of recycled wastewater. Green building also encourages buildings to be located close to public transportation and services and provide amenities that encourage walking and bicycling and therefore offer further potential to achieve a healthy, environmentally sustainable city.

(Ord. 28622.)

17.84.020 Findings.

The City Council finds that:

A. According to the U.S. Department of Energy's Center for Sustainable Development, buildings consume 40% of the world's total energy, 25% of its wood harvest and 16% of its water. The building industry is the nation's largest manufacturing activity, representing more than 50% of the nation's wealth and 13% of its Gross Domestic Product. Energy and material consumption in buildings can contribute significantly to global climate change.

B. Green building design, construction, and operation can have a significant positive effect on energy and resource efficiency, waste and pollution generation, and the health of a building's occupants over the life of the building. Green building benefits are spread throughout the systems and features of the building. Green buildings may use recycled-content building materials, consume less energy and water, have better indoor air quality, and use less wood fiber than conventional buildings. Construction waste is often recycled and remanufactured into other building products.

C. The City Environmental Services Department estimates that construction and demolition debris comprises up to 15% of materials from San José disposed in Santa Clara County landfills, and opportunities exist for reducing the generation of this waste.

D. In recent years, green building design, construction and operational techniques have become increasingly widespread. Many homeowners, businesses, and building professionals have voluntarily sought to incorporate green building techniques into their projects. A number of local and national systems have been developed to serve as guides to green building practices. At the national level, the U.S. Green Building Council, developer of the Leadership in Energy and Environmental Design (LEED™) Commercial Green Building Rating System and LEED™ Reference Guide, has become a leader in promoting and guiding green building. Build It Green, developer of the GreenPoint Rated program, serves a similar function in California.

E. Requiring certain commercial, residential and City-sponsored projects to incorporate LEED™ green building measures or meet GreenPoint Rating thresholds is necessary and appropriate to achieve the benefits of green building.

F. California Health and Safety Code Sections 18938 and 17958 provide that the California Building Standards Code establish building standards for all occupancies throughout the state.

G. California Health and Safety Code Section 18941.5 provide that the city may establish more restrictive building standards if they are reasonably necessary due to local climatic, geological or topographical conditions.

H. Because the design, restoration, construction, and maintenance of buildings and structures within the city can have a significant impact on the city's environment, greenhouse gas emissions, resource usage, energy efficiency, waste management and the health and productivity of residents, workers and visitors over the life of the building, requiring commercial and residential projects to incorporate green building measures is necessary and appropriate to achieve the public health and welfare benefits of green building.

I. The provisions of California Assembly Bill 32 (Global Warming Solutions Act) require actions on the part of State and local governments to significantly reduce greenhouse gas (GHG) emissions such that statewide GHG emissions are lowered to 1990 levels in 2020 and 80% below 1990 levels in 2050.

J. Local government, by itself, cannot fully address all of the challenges posed by climate change and comply with the mandates of AB 32.

K. Energy efficiency is a key component in reducing GHG emissions, and construction of more energy efficient buildings can help San José reduce its share of the GHG emissions that contribute to climate change.

L. On October 7, 2008, the City Council adopted a policy establishing minimum green building standards for new construction in private residential and nonresidential development projects, Policy No. 6-32.

M. In February 2009 the City hired Gabel Associates, LLC, an expert in the field of building analysis and Energy Code compliance, to assist the city in preparing a study and proposal for local amendments to the 2008 California Energy Code, and said study demonstrated the cost effectiveness of these local amendments.

N. The study conducted by Gabel Associates, LLC has concluded that the energy efficiency measures contained in this chapter are cost-effective. The City Council hereby adopts the conclusions of the study and authorizes its inclusion in an application for consideration by the California Energy Commission in compliance with Public Resources Code 25402.1(h)(2).

O. The city will include the Gabel Associates study in an application for consideration by the California Energy Commission in compliance with Public Resources Code 25402.1(h)(2).

P. Reduction of total and peak energy use as a result of incremental energy efficiency measures required by this chapter will have local and regional benefits in the cost-effective reduction of energy costs for building owners, additional available system energy capacity, and a reduction in greenhouse gas emissions.

(Ord. 28622.)

### Part 2 DEFINITIONS

17.84.100 Definitions.

The definitions set forth in this part shall govern the application and interpretation of this chapter.

(Ord. 28622.)

17.84.101 Application.

"Application" means any application to the Planning Division of the city's Department of Planning, Building and Code Enforcement for a development permit.

(Ord. 28622.)

17.84.102 Building.

"Building" means any structure used for support or shelter of any use or occupancy, as defined in the California Building Standards Code.

(Ord. 28622.)

17.84.103 City.

"City" means the City of San José.

(Ord. 28622.)

17.84.104 Commercial/industrial building.

"Commercial/industrial building" means all non-residential construction including construction of retail space, office space, and other commercial uses, regardless of the zoning scheme at the project's location.

(Ord. 28622.)

17.84.105 Development permit.

"Development permit" has the same meaning as the definition in Section 20.200.270 of Title 20 of this Code.

(Ord. 28622.)

17.84.106 Director.

"Director" means the Director of Planning or his or her designee.

(Ord. 28622.)

17.84.107 GreenPoint Rated Rating System, GreenPoint Rated and GreenPoint Rated Checklist.

"GreenPoint Rated Rating System," "GreenPoint Rated" and "GreenPoint Rated Checklist" refers to the third-party verification system for the green building measures established by the non-profit organization Build It Green that are referenced in their Green Building Guidelines.

(Ord. 28622.)

17.84.108 Gross floor area.

"Gross floor area" means the total enclosed area of all floors of a building measured to the inside face of the exterior walls including halls, stairways, elevator shafts at each floor level, service and mechanical equipment and mechanical equipment rooms and basement or attic areas having a height of more than seven feet, but excluding area used exclusively for vehicle parking or loading.

(Ord. 28622.)

17.84.109 High-rise building.

"High-rise building" means a building that is a minimum of 75 feet in height.

(Ord. 28622.)

17.84.110 High-rise residential project.

"High-rise residential project" means a high-rise building used primarily for residential purposes.

(Ord. 28622.)

17.84.111 Housing Department in-lieu guarantee.

"Housing Department in-lieu guarantee" means a certificate issued by the Director of Housing guaranteeing that the Housing Department will pay the green building deposit fee on the square footage of the building constructed as affordable housing uses in the event the project does not achieve the minimum green building compliance requirements.

(Ord. 28622.)

17.84.112 Large commercial/industrial building.

"Large commercial building" means a non-residential building having a gross floor area of twenty-five thousand (25,000) square feet or more and is not a high-rise building.

(Ord. 28622.)

17.84.113 Large residential project.

"Large residential project" means a residential project that has ten (10) or more single family or multi-family dwelling units and is not a high-rise building.

(Ord. 28622.)

17.84.114 LEED™ Rating System and LEED™ Checklist.

"LEED™" and "LEED™ Checklist" mean the Leadership in Energy and Environment Design Rating Systems, certification methodology, and checklists of the United States Green Building Council (USGBC), the nationally accepted benchmark for the design, construction and operation of high performance green buildings.

(Ord. 28622.)

17.84.115 Mixed-use project.

"Mixed-use project" means a development that contains uses from two or more of the three major land use categories; residential, commercial, and industrial as defined in Section 20.200.760 of the San José Municipal Code.

(Ord. 28622.)

17.84.116 New construction project.

"New construction project" means a project of any size that creates one or multiple new structures. The addition of square footage to an existing structure does not constitute a new construction project.

(Ord. 28622.)

17.84.117 Single-family detached residence.

"Single-family detached residence" has the same definition as used in Title 20 of this Code.

(Ord. 28622.)

17.84.118 Small commercial/industrial building.

"Small commercial project" means a project involving construction of a new structure of less than twenty-five thousand (25,000) square feet for non-residential uses, and is not a high-rise building.

(Ord. 28622.)

17.84.119 Small residential project.

"Small residential project" means a residential project that has from two (2) to nine (9) single family or multi-family dwelling units and is not a high-rise building and is not one single-family detached residence.

(Ord. 28622.)

17.84.120 Tier one project.

"Tier one project" means a small commercial industrial building or a small residential project or a single family detached residence.

(Ord. 28622.)

17.84.121 Tier two project.

"Tier two project" means a large commercial industrial building or a large residential project.

(Ord. 28622.)

### Part 3 COMPLIANCE AND ENFORCEMENT

17.84.200 Applicability.

A. The provisions of this chapter shall apply to all projects for which a building permit is applied for on or after September 8, 2009, with the following exceptions:

1. The provisions of this chapter shall not apply to any project for which a development permit application was first submitted before January 1, 2009.

2. Projects exempted or modified based on unique circumstances pursuant to the provisions of Section 17.84.210.

B. Nothing in this section is intended to create any vested right in any project.

(Ord. 28622.)

17.84.210 Exemption based on unique circumstances.

A. If an applicant for a new construction project believes that circumstances regarding the type of project or physical site conditions make it a hardship or infeasible to meet the requirements of this chapter, then the applicant may request an exemption or modification from the Director. The burden shall be on the applicant to demonstrate the grounds for hardship or infeasibility.

B. In making a determination in response to an application under Subsection A. above, if the Director determines that the facts offered in support of an application under Subsection A. demonstrate that the purposes of this chapter will have been achieved to the maximum extent reasonably allowed by the circumstances, then the Director may issue a decision requiring compliance with less than the full extent of the requirements of this chapter but to the fullest extent reasonably achievable given the circumstances.

C. The Director's decision shall contain a statement of the facts upon which the decision was based, as well as the reduced compliance level requirements that must be achieved. The Director's decision shall become a condition of the development permit issued for the project.

(Ord. 28622.)

17.84.220 Green building compliance requirements.

A. No building permit shall be issued for a tier one project unless the application for building permit contains a completed GreenPoint Rated Checklist or LEED Checklist.

B. All tier two commercial industrial projects for which this chapter is applicable must receive the minimum green building certification of LEED Silver and tier two residential projects shall receive the minimum green building certification of LEED Certified or GreenPoint Rated.

C. High-rise residential projects for which this chapter is applicable shall receive certification as the minimum green building performance requirement of USGBC LEED™ Certified.

D. Mixed-use new construction projects, for which this chapter is applicable, must submit a checklist and receive the minimum green building new construction certification designation for the portion of the building under the requirements of the applicable subsections of this section above.

(Ord. 28622.)

17.84.300 Green building refundable deposit.

No building permit shall be issued for a tier two project or high-rise residential project unless the permit applicant pays the green building refundable deposit fees in an amount set by resolution of the City Council or submits a Housing Department in-lieu guarantee in order to warrant that the project will meet the green building certification requirements as specified in this chapter.

(Ord. 28622.)

17.84.305 Green building deposit refund administration.

A. In order to obtain a refund of the green building deposit the original building permit applicant or applicant's authorized representative must file a written request for refund and provides documentation satisfactory to the Director in support of the request.

B. The Director may authorize the refund of any green building deposit under the following circumstances:

1. When the Director determines that the deposit was erroneously paid or collected;

2. When the building permit application is withdrawn or cancelled; or

3. When the Director determines that the green building certification standards contained in Section 17.84.220 have been achieved.

C. The Green building deposit shall be considered forfeited if the City does not receive a request for refund together with green building certification evidence demonstrating the compliance provisions of Section 17.84.220 within a year after the building permit expires or becomes final.

D. An extension to the time set forth in Subsection C. above may be requested to the Director before the time has expired. The extension request shall include documentation satisfactory to the Director that the extension is required solely due to the delays resulting from the LEED or GreenPoint Rated certification bodies.

(Ord. 28622.)

17.84.310 Appeal.

Determinations of the Director on requests for exemption (as specified in Section 17.84.210) to this chapter are appealable to the Planning Commission pursuant to the procedures set forth in Sections 20.100.240 and 20.100.270 of the San José Municipal Code.

(Ord. 28622.)

17.84.320 Regulations.

The Director is hereby authorized to promulgate forms, policies and regulations for the implementation of the provisions of this chapter, including but not limited to the requirements for applications for exemptions, modifications of, or equivalency to the requirements of this chapter.

(Ord. 28622.)

## Chapter 17.85 CITY OF SAN JOSÉ ENERGY AND WATER BUILDING PERFORMANCE ORDINANCE

### Part 1 General Provisions

17.85.100 Title.

This Chapter shall be known as the City of San José Energy and Water Building Performance Ordinance.

(Ord. 30197.)

17.85.120 Scope.

A. This Chapter shall apply to all buildings, including existing buildings, that are either:

1. Owned by the City of San José and are fifteen thousand (15,000) square feet or more, provided, however, such buildings may comply with the requirements of Part 4; or

2. Privately-owned Residential or Nonresidential Buildings and which are twenty thousand (20,000) square feet or more.

B. This Chapter shall not apply to single-family, two-family, and four-plex Residential Buildings and related accessory structures; residential hotels as defined by the California Health and Safety Code Section 50519 and San José Municipal Code Section 20.200.1160; utility pumping stations; treatment facilities; and other buildings not meeting the purpose of this Chapter, as determined by the Environmental Services Department.

(Ord. 30197.)

### Part 2 Definitions

17.85.200 Definitions.

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

**A.Audit**

"Audit" means a systematic evaluation process to identify modifications and improvements of the Base Building Systems, including, but not limited to, alterations of such systems and the installation of new equipment, insulation or other generally recognized Energy and water efficiency technologies to optimize Energy and water use performance of the building and achieve Energy and water savings.

**B.Audit Report**

"Audit Report" means the final document produced by a Qualified Auditor including but not limited to:

1. The summary audit report;

2. Functional performance testing reports;

3. An assessment of how the major Energy and water consuming equipment and systems used within tenant spaces impact the Energy and water consumption of the Base Building Systems based on a representative sample of spaces as determined by the Director of the Department; and

4. Narratives, photographs and any additional explanatory information as required to describe the results of the Audit.

**C.Base Building Systems**

"Base Building Systems" means the systems and subsystems of a building that use or distribute Energy or water or impact the Energy or water consumption, including the building envelope; the heating, ventilating and air conditioning (HVAC) systems; air conveying systems; electrical and lighting systems; domestic hot water systems; water distribution systems; plumbing fixtures and other water-using equipment; and landscape irrigation systems and water features. Base Building Systems shall not include:

1. Systems or subsystems owned by a tenant or for which a tenant bears full maintenance responsibility, that are within the tenant's leased space and exclusively serve such leased space, and for which the tenant pays all the Energy and water bills according to usage and demand as measured by a meter or sub-meter;

2. Systems or subsystems owned by a residential unit Owner that exclusively serve the residential unit of that Owner; or

3. Systems or subsystems that operate industrial applications such as manufacturing.

**D.Baseline Year**

"Baseline Year" means a Covered Property's first year submitting a Benchmarking Report, the most recent Performance Verification Report or verification of improvement pathway (as applicable), whichever is later.

**E.Benchmark**

"Benchmark" means to input and submit the total Energy and water consumed for a Property for the previous calendar year and other descriptive information for such Property as required by the Benchmarking Tool. Total Energy and water consumption shall not include separately metered uses, such as separately metered solar panels or electric vehicle charging stations, that are not integral to building operations, as determined by the Director of the Department.

**F.Benchmarking Tool**

"Benchmarking Tool" means the U.S. Environmental Protection Agency's ("US EPA") ENERGY STAR® Portfolio Manager, or any additional or alternative tool adopted by the Director of the Department, used to track and assess the Energy and water use of certain properties relative to similar properties.

**G.** Benchmarking Report

"Benchmarking Report" means a report, generated by ENERGY STAR® Portfolio Manager, summarizing the annual Energy and water performance of a building.

**H.Covered Property**

"Covered Property" means any Property that has (1) no residential utility accounts; or (2) five (5) or more active utility accounts of one (1) utility type, at least one (1) of which is residential.

**I.** Department

"Department" means the City of San José Environmental Services Department.

**J.Energy**

"Energy" means electricity, natural gas, steam, heating oil, or other products sold by a utility to a customer of a building, or renewable on-site electricity generation, for purposes of providing heat, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

**K.Energy Audit**

"Energy Audit" means that part of an Audit that addresses the Energy systems.

**L.Energy Use Intensity**

"Energy Use Intensity" means the Energy consumed per square foot of a building per year, as calculated by ENERGY STAR® Portfolio Manager by dividing the total Energy consumed by the building in one (1) year (measured in kBtu or GJ) by the total gross floor area of the building.

**M.ENERGY STAR® Certified**

"ENERGY STAR® Certified" means a building which has earned an ENERGY STAR® Score of 75 or higher, indicating that it performs better than at least seventy-five percent (75%) of similar buildings nationwide.

**N.ENERGY STAR® Portfolio Manager**

"ENERGY STAR® Portfolio Manager" means the US EPA's online tool for measuring, tracking, and managing a building's Energy, water and greenhouse gas emission data and to Benchmark the performance of a building.

**O.ENERGY STAR® Score**

"ENERGY STAR® Score" means a number ranging from 1 to 100 assigned by the US EPA's ENERGY STAR® Portfolio Manager as a measurement of a building's Energy efficiency, normalized for a building's characteristics, operations, and weather, according to methods established by US EPA's ENERGY STAR® Portfolio Manager.

**P.Financial Distress**

"Financial Distress" means that a Property:

1. Had arrears of property taxes or water or wastewater charges that resulted in the Property's inclusion, within the prior two (2) years, on the City's annual tax lien sale list; or

2. Has a court appointed receiver in control of the asset due to Financial Distress; or

3. Is owned by a financial institution through default by the borrower; or

4. Has been acquired by a deed in lieu of foreclosure; or

5. Has a senior mortgage subject to a notice of default.

**Q.Nonresidential Building**

"Nonresidential Building" means a building with a land use zoning designation other than Residential, or any legal non-conforming non-Residential use, with at least twenty thousand (20,000) square feet of gross area, or a group of buildings as designated by Department as an appropriate reporting unit. A Property with a land use zoning designation that is exclusively industrial is excluded from this Chapter.

**R.Owner**

"Owner" means any of the following:

1. An individual or entity possessing title to a Property;

2. The board of directors, in the case of a cooperative apartment corporation; or

3. An agent authorized to act on behalf of any of the above.

**S.Property**

"Property" means any of the following:

1. A single building, or a portion of a building which is separately owned and metered;

2. A campus of two (2) or more buildings which are owned and operated by the same party, have a single shared primary function, and are:

a. Behind a common utility meter or served by a common mechanical/electrical system (such as a chilled water loop) which would prevent the Owner from being able to easily determine the Energy use attributable to each of the individual buildings; or

b. Used primarily for one (1) of the following functions:

i. Privately-owned hospital;

ii. Hotel;

iii. Multifamily housing; or

iv. Senior care community.

**T.Qualified Auditor**

"Qualified Auditor" means an individual whose job duties do not regularly occur at the Property and who possesses such qualifications as determined by the Director of the Department to perform or directly supervise individuals performing Audits, and to certify Audit Reports required by this Ordinance. The Qualified Auditor can be an employee or contractor hired by the reporting entity, an employee of a utility, or a third-party service provider and must have two (2) or more years of auditing experience and possesses one (1) or more of the following certifications:

1. An accredited certification that has been designated a "Better Buildings Recognized Program" by the U.S. Department of Energy ("DOE") meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Energy Auditors or Energy Managers;

2. A Professional Engineer (PE) registered in the State of California;

3. Certified Energy Auditor (CEA) or Certified Energy Manager (CEM), issued by the Association of Energy Engineers (AEE);

4. Certified Facilities Manager (CFM), issued by the International Facility Management Association (IFMA);

5. System Maintenance Administrator (SMA) or System Maintenance Technician (SMT), issued by Building Owners and Managers Institute (BOMI) International;

6. High Performance Building Design Professional (HBPD) or Building Energy Assessment Professional (BEAP), issued by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);

7. For Audits of multifamily residential buildings only, a Multifamily Building Analyst (MFBA), issued by the Building Performance Institute (BPI); or

8. Additional qualified certifications as the Director of the Department deems appropriate.

After the establishment of a DOE-recognized standard for a water auditor, the Director of the Department may adopt the qualifications of the DOE-recognized standard with modifications as the Director of the Department deems to be appropriate.

**U.Qualified Retro-Commissioning Professional**

"Qualified Retro-Commissioning Professional" means an individual whose job duties do not regularly occur at the Property and who possesses such qualifications as determined by the Director of the Department to perform or directly supervise individuals performing the retuning work required by this Ordinance. The Qualified Retro-Commissioning Professional can be an employee or contractor hired by the reporting entity, an employee of a utility, or a third-party service provider who has two (2) or more years of commissioning or retuning experience and possesses one (1) or more of the following certifications:

1. An accredited certification that has been designated a "Better Buildings Recognized Program" by the Department of Energy meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Commissioning Professionals;

2. A Professional Engineer (PE) registered in the State of California;

3. Certified Commissioning Professional (CCP), issued by the Building Commissioning Association (BCA);

4. Certified Commissioning Authority (CxA) or Certified Commissioning Technician (CxT), issued by the AABC Commissioning Group (ACG);

5. Certified Building Commissioning Professional (CBCP) or Existing Building Commissioning Professional (EBCP), issued by the Association of Energy Engineers (AEE);

6. Certified Professional certified by the National Environmental Balancing Bureau (NEBB);

7. Commissioning Process Management Professional (CPMP), issued by American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);

8. Accredited Commissioning Process Authority Professional (ACPAP) approved by the University of Wisconsin; or

9. Additional qualified certifications as the Director of the Department deems appropriate.

**V.Residential Building**

"Residential Building" means a building with a land use zoning designation of Residential under San José Municipal Code Chapter 20.30, legal non-conforming Residential, where Residential use is permitted under San José Municipal Code Section 20.40.115, where Residential use is permitted under a Planned Development Permit, or any other zoning designation where the actual use is fully or partially residential in nature.

**W.Retro-Commissioning**

"Retro-Commissioning" means a systematic process for optimizing existing systems relating to building performance through the identification and correction of deficiencies in such systems.

**X.Retro-Commissioning Measures**

"Retro-Commissioning Measures" means work relating to Retro-Commissioning such as repairs, maintenance, adjustments, changes to controls or related software, or operational improvements that optimize a building's Energy or water performance.

**Y.Retro-Commissioning Report**

"Retro-Commissioning Report" means the report for any unmet standard that is prepared by a Qualified Retro-Commissioning Professional and provided to the Owner which includes, at a minimum, the following:

1. Summary of the work performed and overall results;

2. Energy or water end use breakdown;

3. Functional performance testing reports; and

4. Description of operational training.

**Z.Retrofit Measures**

"Retrofit Measures" means upgrades or alterations of building systems involving the installation of Energy or water efficiency technologies that reduce Energy or water consumption and improve the efficiency of such systems.

**AA.US EPA**

"US EPA" means the United States Environmental Protection Agency.

**BB.US EPA Water Score**

"US EPA Water Score" means a number ranging from 1 to 100 assigned by the US EPA's ENERGY STAR® Portfolio Manager, and available to existing multifamily properties with twenty (20) or more units, as a measurement of a whole Property's water use, normalized for that Property's characteristics, operations, and weather, according to methods established by US EPA's ENERGY STAR® Portfolio Manager.

**CC.Water Audit**

"Water Audit" means that part of an Audit that addresses the water systems.

**DD.Water Use Intensity**

"Water Use Intensity" means the water consumed per square foot of a building per year, as calculated by EPA's ENERGY STAR® Portfolio Manager by dividing all water sources by the building's net square feet excluding parking and irrigated area.

(Ords. 30197, 30550.)

### Part 3 BENCHMARKING AND SELF-REPORTING

17.85.300 Annual energy and water benchmarking and reporting.

A. For every Property subject to this Chapter, the Owner shall annually collect data related to the building's Energy and water usage according to the latest guidance under Building Energy Use Data Access, Benchmarking, and Public Disclosure Regulations, California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1680, and following, including, but not limited to, those related to obtaining customer consent.

B. The Owner shall annually submit to the Department an Energy and Water Benchmarking Report according to the schedule set forth in Part 5 together with the fees as established by resolution of the Council. The Energy and Water Benchmarking Report shall be based on an assessment in the ENERGY STAR® Portfolio Manager of the total Energy and water consumed by the whole building for the entire calendar year being reported. The Energy and Water Benchmarking Report shall, at minimum, include the following:

1. Descriptive Information. Basic descriptive information to track and report a building's compliance with this Chapter, including, but not limited to, the building address, facility gross square footage, property type, and the individual or entity responsible for the Benchmarking Report.

2. Energy and Water Benchmarking Information. Information necessary to Benchmark Energy and water usage shall be determined by the Department and shall include, at a minimum, the following data:

a. The ENERGY STAR® Portfolio Manager ENERGY STAR® Score for the building, where available;

b. The weather-normalized site and source Energy Use Intensity (EUI) per unit area per year (kBTU per square foot per year) for the building;

c. The site and source Energy Use Intensity (EUI) per unit area per year (kBTU per square foot per year) for the building;

d. The annual carbon dioxide equivalent emissions due to Energy use for the building as estimated by ENERGY STAR® Portfolio Manager;

e. The US EPA Water Score for the building, where available;

f. Indoor water use, indoor water intensity, outdoor water use (when available), and total water use; and

g. Number of years the building has been ENERGY STAR® Certified and the last approval date, if applicable.

C. Nothing in this Chapter permits an Owner to use tenant utility usage data for purposes other than compliance with Benchmarking Report requirements. The reporting requirements of this Chapter are in addition to any federal or state laws governing direct access to, and publication of, tenant utility data.

(Ords. 30197, 30550.)

17.85.310 Quality check of benchmarking report submission.

The Owner shall run all automated data quality checker functions available within ENERGY STAR® Portfolio Manager and shall correct all missing or incorrect information as identified by ENERGY STAR® Portfolio Manager prior to submitting the Benchmarking Report to the Department.

(Ord. 30197.)

17.85.320 Exemptions from benchmarking report submission.

A. The Owner may receive an exemption from filing a Benchmarking Report for a reporting year if any of the following conditions apply:

1. The Property did not have a Certificate of Occupancy or Temporary Certificate of Occupancy for the entire calendar year required to be Benchmarked;

2. The entire Property was not occupied, due to renovation, for the entire calendar year required to be Benchmarked;

3. The demolition permit for the entire Property has been issued and demolition work has commenced on or before the date the Benchmarking Report is due for that calendar year;

4. The Property did not receive Energy or water services for the entire calendar year required to be Benchmarked;

5. The Property is in Financial Distress; or

6. The disclosure of the Property Energy or water use data would result in the release of proprietary information that can be characterized as a trade secret or would otherwise violate a customer's right to privacy under the California Constitution or other applicable law.

B. Any Owner requesting an exemption under this Section shall, by April 1 in the year for which the exemption is being requested, submit to the Director of the Department any documentation reasonably necessary to substantiate the request or otherwise assist the Director of the Department in the exemption determination. Any exemption granted will be limited to the Benchmarking submission for which the request was made and does not extend to past or future submittals.

C. For each reporting cycle, the Department shall determine whether an exemption under this Section applies to a building. Appeal of a determination that a building is not exempt shall be made according to the procedures set forth in Part 6.

(Ord. 30197.)

17.85.330 Publication of limited summary data.

The Department shall make at least the following information available to the public on the internet, as reported by Owners, and update the information at least annually:

A. Summary statistics on overall compliance with this Chapter;

B. Summary statistics on overall Energy and water consumption of Properties subject to this Chapter derived from aggregation of annual Benchmarking Reports; and

C. For each Property subject to this Chapter:

1. Property address and property use type;

2. Annual summary statistics for the whole Property derived from the submitted Benchmarking Report, including all information required under Section 17.85.300, except for Subsection B.2.g.; and

3. The status of compliance with the requirements of this Chapter.

(Ord. 30197.)

### Part 4 BEYOND BENCHMARKING: PATHWAYS FOR DEMONSTRATING AND INCREASING ENERGY AND WATER PERFORMANCE

17.85.400 Performance standards for energy and water efficiency.

A. An Owner shall establish a Property's satisfactory Energy and water efficiency by either providing verification of satisfactory Property performance under Section 17.85.410, or, if a Property does not meet such performance standards, through either performing an Energy or Water Audit, Retro-Commissioning, or completing Energy and water efficiency improvement measures and providing verification of such under Section 17.85.420, et seq.

B. An Owner of a Covered Property shall provide verification of compliance with this Chapter within the time schedule as listed in Part 5.

(Ord. 30197.)

17.85.410 Performance path: Properties which are highly efficient or have demonstrated increased efficiency.

An Owner may establish satisfactory Energy and water efficiency by providing a Performance Verification Report to the Department in such a form as required by the Director of the Department that demonstrates the following:

A. The Property is new and has been occupied for less than five (5) years from its first compliance due date, based on its Temporary Certificate of Occupancy or Certificate of Occupancy; or

B. The Property has achieved one (1) or more of the Energy standards and one (1) or more of the water standards as set forth below for at least two (2) of the three (3) calendar years preceding the Property's compliance due date in Part 5:

1. Energy Standards: The Property has a current Leadership in Energy and Environmental Design (LEED™) Existing Buildings Operations and Maintenance v4 Certification; or a California licensed engineer or architect, or Qualified Auditor or Retro-Commissioning Professional certified at least at least one (1) of the following:

a. The Property has received an ENERGY STAR® Score of 75 or greater from the US EPA; or

b. The Property has improved its ENERGY STAR® Score by fifteen (15) points or more relative to its performance during the baseline year; or

c. The Property has a weather normalized site Energy Use Intensity as calculated by the Benchmarking Tool that is twenty-five percent (25%) below the calculated mean for that property type; or

d. The Property has reduced its weather normalized site Energy Use Intensity by at least fifteen percent (15%) relative to its performance during the baseline year.

2. Water Standards: A California licensed engineer or architect, or Qualified Auditor or Retro-Commissioning Professional certified at least one (1) of the following:

a. The building has received a US EPA Water Score of 75 from the US EPA;

b. The Property has improved its US EPA Water Score by fifteen (15) points or more relative to its performance during the baseline year;

c. The Property has a Water Use Intensity as calculated by the Benchmarking Tool that is twenty-five percent (25%) below the locally calculated mean for that property type; or

d. The Property has reduced its Water Use Intensity by at least fifteen percent (15%) relative to its performance during the baseline year.

C. If a Property has achieved both Energy and water standards, the Owner is only required to submit a Performance Verification Report for that reporting year. If the Property only meets one (1) of the standards, the Owner shall submit a Performance Verification Report for the satisfactory standard and shall comply with this Chapter by completing one (1) of three (3) improvement pathway options for the unmet standard.

(Ords. 30197, 30550.)

17.85.420 Improvement pathways: Properties requiring additional energy or water efficiency.

If a Property does not meet performance standards set forth in Section 17.85.400 above, an Owner shall meet the requirements of this Chapter through one (1) of three (3) alternative means:

(1) Conducting an Audit;

(2) Performing Retro-Commissioning; or

(3) Adopting Efficiency Improvement Measures.

**A.Improvement Pathway 1: Audit**

An Owner may comply with the requirements of this Chapter by conducting an Audit by a Qualified Auditor for any unmet Energy or water standard and submitting an Audit Report within the time set forth in Part 5.

1. Audit Requirements: An Owner may comply with the requirements of this Chapter by performing an Audit by a Qualified Auditor as verified in an Audit Report. Such Audit shall comply with the following:

a. Energy Audit: The Energy Audit required by this Chapter shall meet or exceed the following:

i. Level 2 Audit standards in conformance with the American Society of Heating Refrigerating and Air-Conditioning Engineers ("ASHRAE") *Standard 211-2018: Standard for Commercial Building Energy Audits* (latest edition at the time the Audit is initiated); or

ii. An Energy assessment or Audit offered by the utilities serving the Property, provided that the potential savings opportunities related to all Energy sources are evaluated.

b. Water Audit: The Water Audit required by this Chapter shall be performed in accordance with industry standard practices. Until such time as a third party verifiable water auditing process is developed and endorsed by a professional building association, governmental entity, or academic institution, and as approved by the Director of the Department, Water Audit of the Base Building Systems shall include, at a minimum, the following:

i. Potable water distribution systems;

ii. Landscape irrigation systems;

iii. Water reuse systems; and

iv. Water features.

2. Audit Report: A report of the Audit, completed and signed by Qualified Auditor, shall be submitted to the City and maintained by the Owner as required in Section 17.85.500. The report shall meet the requirements of Section 17.85.410 and shall include, at a minimum, the following:

a. The date(s) that the Audit was performed;

b. Identifying information on the auditor;

c. Information on the Base Building Systems and equipment;

d. A list of all Retrofit Measures that can reduce Energy or Water use, or cost of operating the Property, costs of each measure, and an estimate of the Energy and/or Water savings associated with each measure;

e. Functional performance testing reports;

f. Operational training conducted;

g. Acknowledgment that an ASHRAE Level 2, or alternate approved assessment or audit was conducted; and

h. Identification of existing electric vehicle charging stations, equipment, and infrastructure, as defined in Article 625 of the California Electric Code, including:

i. Number of existing electrical charging stations; and

ii. Number of "EV Capable" parking spaces as defined in California Green Building Standards (CalGreen) Sections 5.106.5.3.3 (Non-residential) and 4.106.4.2 (Residential) or as thereafter amended; or if no "EV Capable" parking spaces are present, number of 40-ampere minimum branch circuit capacity within the nearest circuit panel to existing parking spaces.

**B.Improvement Pathway 2: Retro-Commissioning**

An Owner may comply with the requirements of this Chapter by performing Retro-Commissioning under the direct supervision of a Qualified Retro-Commissioning Professional for any unmet Energy or water standard and submitting a Retro-Commissioning Report within the time set forth in Part 5. Such Retro-Commissioning shall comply with the following:

1. Energy Retro-Commissioning. Energy Retro-Commissioning shall be performed in accordance with industry standard practices, including ASHRAE Guideline 0.2, Commissioning Process for Existing Systems and Assemblies, and other standards as may be defined by the Director of the Department.

a. The Retro-Commissioning of the Base Building Systems shall ensure that all systems are maintained, cleaned and repaired, HVAC temperature and humidity set points and setbacks are appropriate, operating schedules reflect major space occupancy patterns and the current facility requirements, and that all operating parameters are adjusted to achieve efficient operations; and

b. The Retro-Commissioning shall include, at minimum, the following:

i. Heating, ventilation, air conditioning (HVAC) systems and controls;

ii. Indoor lighting systems and controls;

iii. Water heating systems; and

iv. Renewable Energy systems.

2. Water Retro-Commissioning: Water Retro-Commissioning shall be performed in accordance with industry standard practices, such as ASHRAE Guideline 0.2, Commissioning Process for Existing Systems and Assemblies, or other standards as may be defined by the Director of the Department. The Retro-Commissioning of the Base Building Systems shall include, at minimum, the following:

a. Potable water distribution systems;

b. Landscape Irrigation Systems;

c. Water Reuse Systems; and

d. Water Features.

3. Retro-Commissioning Report: A Retro-Commissioning Report, completed and signed by a Qualified Retro-Commissioning Professional, shall be submitted to the Department and maintained by the Owner as required in Section 17.85.500. The report shall meet the requirements of this Chapter, and shall include, at a minimum, the following:

a. The date(s) that the Retro-Commissioning was performed;

b. Identifying information for the Retro-Commissioning provider;

c. Information on the Base Building Systems and equipment both before and after the Retro-Commissioning; and

d. All the Retro-Commissioning process activities undertaken, and Retro-Commissioning Measures completed.

**C.Improvement Pathway 3: Efficiency Improvement Measures**

An Owner of a Property which does not have a central cooling system may comply with the requirements of this Chapter for any unmet standard by demonstrating two (2) of the following corresponding efficiency improvement measures listed below were completed and submitting an Efficiency Improvement Measures Report within the time set forth in Part 5.

1. Energy Efficiency Improvement Measures:

a. Installation of common area and exterior lighting fixtures in accordance with California Building Standards Code (California Code of Regulations, Title 24) requirements in effect at the time of the compliance cycle;

b. Installation of domestic hot water heater in accordance with California Building Standards Code (California Code of Regulations, Title 24) requirements in effect at the time of the compliance cycle;

c. Replacement of all refrigerators on the Property to ENERGY STAR® Certified models;

d. Replacement of all gas stoves on the Property to electric induction stoves;

e. Replacement of all gas water heaters on the Property to electric heat pump or tankless water heaters;

f. Installation of a smart thermostat;

g. Installation of a solar thermal heating/cooling system;

h. Enrollment in a Department-approved utility demand response program;

i. Installation of insulation on all hot water pipes in accessible Property locations; or

j. Participation in a Department-approved Energy utility retrofit program (e.g., taken advantage of rebate or incentive programs for upgrades).

2. Water Efficiency Improvement Measures

a. Installation of plumbing such that all systems on the Property are in compliance with California Building Standards Code (California Code of Regulations, Title 24) requirements in effect at the time of the compliance cycle;

b. Installation of outdoor landscaping and irrigation such that all systems on the Property are in compliance with San José Municipal Code Chapter 15.11, Water Efficient Landscape Standards for New and Rehabilitated Landscaping in effect at the time of the compliance cycle;

c. Installation of a greywater system in accordance with California Code of Regulations, Title 24, Sections 1502.6, 1502.10.3, or as amended;

d. Installation of insulation on all hot water pipes in accessible Property locations; or

e. Participation in approved water utility retrofit program (e.g., taken advantage of rebate or incentive programs for upgrades).

3. Efficiency Improvement Measures Report: A report of the Efficiency Improvement Measures implemented shall be submitted to the City and maintained by the Owner as required in Section 17.85.500. The report shall be submitted with sufficient supporting data including receipts or other proof of compliance and shall include, at a minimum, the following:

a. Descriptions of the measures including the date(s) that the Efficiency Improvement Measures were implemented;

b. Identifying information on the person implementing the Efficiency Improvement Measures;

c. Information on the Base Building Systems and equipment; and

d. A list of all Efficiency Improvement Measures that can reduce Energy or Water use and the cost of operating the Property, and the costs of each measure.

(Ords. 30197, 30550.)

17.85.430 Exemption from beyond benchmarking pathway for water efficiency.

A. The Owner of a Residential Property that is less than fifty thousand (50,000) square feet is exempt from the Performance Improvement Pathway for water efficiency in Section 17.85.420 if the Property is not sub-metered for water use.

B. Any Owner requesting an exemption under this Section shall, by April 1 in the year for which the exemption is being requested, submit to the Director of the Department any documentation reasonably necessary to substantiate the request or otherwise assist the Director of the Department in the exemption determination. Any exemption granted will be limited to the Water Improvement Pathway for which the request was made and does not extend to past or future submittals.

C. For each reporting cycle, the Department shall determine whether an exemption under this Section applies to a Property. Appeal of a determination that a Property is not exempt shall be made according to the procedures set forth in Part 6.

(Ord. 30197(Revised).)

### Part 5 GENERAL PROVISIONS

17.85.500 Record maintenance.

The Owner shall maintain records related to Benchmarking, Audits and Retro-Commissioning, and Efficiency Improvement Measures including, but not limited to, the Energy and water bills and reports or forms received from tenants and/or utilities. Such records shall be preserved for a period of five (5) years. When the Property is sold, copies of the records shall be given to the new Owner.

(Ord. 30197.)

17.85.510 Schedule for benchmarking report compliance.

An annual Benchmarking Report in compliance with Part 3 together with the fees as established by resolution of Council shall be submitted to the Department according to the following schedule:

A. For Properties owned by the City with gross floor area of fifteen thousand (15,000) square feet or more, the Owner must complete and submit the initial Benchmarking Report on or before May 1, 2019, and annually no later than May 1 thereafter.

B. For a privately-owned Property with gross floor area of fifty thousand (50,000) square feet or more, the Owner must complete and submit the initial Benchmarking Report on or before May 1, 2019, and annually no later than May 1 thereafter.

C. For a privately-owned Property with gross floor area equal to or greater than twenty thousand (20,000) square feet but less than fifty thousand (50,000) square feet, the Owner must complete and submit the initial Benchmarking Report on or before May 1, 2020, and annually no later than May 1 thereafter.

(Ords. 30197, 30550.)

17.85.520 Schedule for performance, audit, retro-commissioning, or efficiency improvement measures report compliance.

Compliance with Part 4 shall be due once every five (5) years, as set forth below based on the last number of the Santa Clara County Tax Assessor's Parcel Number for each Property subject to this Chapter under Section 17.85.120.

Properties ≥ 50,000 square feet

|  |  |  |
| --- | --- | --- |
| Last digit of APN | First compliance due date | Subsequent compliance due dates |
| 0 | May 1, 2023 | Every five years thereafter |
| 1 | May 1, 2023 | Every five years thereafter |
| 2 | May 1, 2024 | Every five years thereafter |
| 3 | May 1, 2024 | Every five years thereafter |
| 4 | May 1, 2025 | Every five years thereafter |
| 5 | May 1, 2025 | Every five years thereafter |
| 6 | May 1, 2026 | Every five years thereafter |
| 7 | May 1, 2026 | Every five years thereafter |
| 8 | May 1, 2027 | Every five years thereafter |
| 9 | May 1, 2027 | Every five years thereafter |

Properties 20,000 square feet - 49,999 square feet

|  |  |  |
| --- | --- | --- |
| Last digit of APN | First compliance due date | Subsequent compliance due dates |
| 0 | May 1, 2024 | Every five years thereafter |
| 1 | May 1, 2024 | Every five years thereafter |
| 2 | May 1, 2025 | Every five years thereafter |
| 3 | May 1, 2025 | Every five years thereafter |
| 4 | May 1, 2026 | Every five years thereafter |
| 5 | May 1, 2026 | Every five years thereafter |
| 6 | May 1, 2027 | Every five years thereafter |
| 7 | May 1, 2027 | Every five years thereafter |
| 8 | May 1, 2028 | Every five years thereafter |
| 9 | May 1, 2028 | Every five years thereafter |

(Ords. 30197, 30550.)

17.85.530 Timing of Audit, Retro-Commissioning, and Efficiency Improvement Measures.

Except as otherwise provided in Section 17.85.540, the Audits and Retro-Commissioning and Efficiency Improvement Measures shall be completed no earlier than five (5) years prior to a Property's compliance due date.

(Ord. 30197.)

17.85.540 Time Extensions.

The Director of the Department may grant an extension of time of up to sixty (60) days to file any submittal required by this Chapter. The Director of the Department may grant an additional extension up to one hundred eighty (180) days upon an application based upon a showing of substantial hardship. The Director of the Department may grant additional time extensions under exceptional circumstances including that the use or occupancy of the Property has been impacted by local, state, or federal regulation or order without fault of the Property owner.

(Ords. 30197, 30550.)

17.85.550 Non-compliance Unlawful; Penalty for Violations.

It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Chapter, and each and every violation shall constitute a separate violation each day for ongoing violations and shall be subject to the remedies and enforcement measures authorized by this Code.

(Ord. 30197.)

### Part 6 APPEAL

17.85.600 Appeal of decisions under this chapter.

Decisions under this Chapter, including, but not limited to, rulings on exemptions or time extensions, shall be made by the Director of the Department or his or her designee.

(Ord. 30197.)

17.85.610 Notice of decision.

Decisions shall be given to the applicant in writing and describe the reasons upon which the decision is based.

(Ord. 30197.)

17.85.620 Appeal to city manager.

Within twenty (20) days from the date of deposit of the decision in the mail, the applicant may appeal, in writing, to the City Manager, setting forth with particularity the ground or grounds for the appeal.

(Ord. 30197.)

17.85.630 Hearing on appeal.

The City Manager shall set a time and place for the hearing on the appeal and shall notify the applicant, in writing, of such date and time. The hearing shall be conducted informally and within a reasonable time from the date the appeal was received by the City Manager.

(Ord. 30197.)

17.85.640 Disposition of appeal.

After the hearing on the appeal, the City Manager may refer the matter back to the Director of the Department for a new investigation and decision, may affirm the decision of the Director of the Department, or may approve the application with or without conditions. The decision of the City Manager shall be the final administrative determination and is subject to judicial review under the Code of Civil Procedure Section 1094.6.

(Ord. 30197.)

## Chapter 17.86 SOLAR ENERGY SYSTEM REQUIREMENTS AND EXPEDITED BUILDING PERMIT PROCESS FOR SMALL RESIDENTIAL ROOFTOP SOLAR ENERGY SYSTEMS

### Part 1 PURPOSE

17.86.010 Purpose.

The purpose of the chapter is to provide an expedited, streamlined building permit process that complies with state law in order to achieve timely and cost-effective installations of small residential rooftop solar energy systems.

(Ord. 29601.)

### Part 2 DEFINITIONS

17.86.200 Definitions.

The definitions set forth in this part shall govern the application and interpretation of this chapter.

(Ord. 29601.)

17.86.210 Building official.

"Building official" means the chief building official, or a regularly authorized deputy.

(Ord. 29601.)

17.86.220 Electronic submittal.

"Electronic submittal" means the utilization of electronic e-mail or submittal via the internet.

(Ord. 29601.)

17.86.230 Small residential rooftop solar energy system.

"Small residential rooftop solar energy system" means all of the following:

A. A solar energy system that is no larger than ten kilowatts alternating current nameplate rating or thirty kilowatts thermal.

B. A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the city, and all state and city health and safety standards.

C. A solar energy system that is installed on a single or duplex family dwelling.

D. A solar panel or module array that does not exceed the maximum legal building height as defined by the city.

(Ord. 29601.)

17.86.240 Solar energy system.

"Solar energy system" means either of the following:

A. Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

B. Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

(Ord. 29601.)

### Part 3 REQUIREMENTS FOR SOLAR ENERGY SYSTEMS

17.86.300 Solar energy system requirements.

A. All solar energy systems shall meet applicable health and safety standards and requirements imposed by the state and the city.

B. Solar energy systems for heating water in single-family residences and for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined by the California Plumbing and Mechanical Code.

C. Solar energy systems for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the public utilities commission regarding safety and reliability.

(Ord. 29601.)

### Part 4 EXPEDITED BUILDING PERMIT PROCESS FOR SMALL SOLAR RESIDENTIAL ROOFTOP SOLAR ENERGY SYSTEMS

17.86.400 Applicability.

A. This part applies to the issuance of building permits for small residential rooftop solar energy systems in the city. All requirements of building permit applications in Title 24 for small residential rooftop solar energy systems that are not addressed in this part shall remain in effect.

B. Small residential rooftop solar energy systems legally established or permitted prior to the effective date of the ordinance codified in this chapter are not subject to the requirements of this chapter unless physical modifications or alterations are undertaken that materially change the size, type, or components of a small residential rooftop energy system. Routine operation and maintenance or like-kind replacements for small residential rooftop solar energy systems shall not require a permit.

(Ord. 29601.)

17.86.410 Applications and documents.

A. All documents required for the submission of an expedited small residential rooftop solar energy system building permit application shall be made available on the city website.

B. Electronic submittal of the required building permit application and documents by email, or the Internet when in operation shall be made available to all small residential rooftop solar energy system permit applicants.

C. The building official shall adopt a checklist of all requirements with which small residential rooftop solar energy systems shall comply to be eligible for expedited review.

D. The small residential rooftop solar system permit process and checklist shall substantially conform to recommendations for expedited permitting, including the checklist contained in the most current version of the California Solar Permitting Guidebook adopted by the Governor's Office of Planning and Research.

(Ord. 29601.)

17.86.420 Permit review and inspection requirements.

A. The building official shall issue a building permit, the issuance of which is nondiscretionary, on the same day for complete in person applications or complete online applications that meet the requirements of the approved checklist and Part 3 of this chapter.

B. If an application is deemed incomplete, the building official shall issue a written correction notice to the applicant detailing all deficiencies in the application and any additional information or documentation or payment of fees required to be eligible for expedited permit issuance shall be sent to the applicant for resubmission.

C. Only one inspection shall be required and performed by the building official for small residential rooftop solar energy systems eligible for expedited review.

D. The inspection shall be done in a timely manner and should include consolidated inspections.

E. If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized, however the subsequent inspection need not conform to the requirements of this section.

(Ord. 29601.)

## Chapter 17.88 ELECTRIC VEHICLE CHARGING STATIONS AND EXPEDITED BUILDING PERMIT PROCESS FOR ELECTRIC VEHICLE CHARGING STATIONS

### Part 1 PURPOSE

17.88.010 Purpose.

The purpose of the chapter is to provide an expedited, streamlined building permit process that complies with state law in order to achieve timely and cost-effective installations of electric vehicle charging stations.

(Ord. 29740.)

### Part 2 DEFINITIONS

17.88.200 Definitions.

The definitions set forth in this part shall govern the application and interpretation of this chapter.

(Ord. 29740.)

17.88.210 Building official.

"Building official" means the chief building official, or a regularly authorized deputy.

(Ord. 29740.)

17.88.220 Electric vehicle charging stations.

"Electric vehicle charging station" means any level of electric vehicle supply equipment station that is designed and built in compliance with Article 625 of the California Electric Code, as it reads on the effective date of this section, and delivers electricity from outside an electric vehicle into a plug-in electric vehicle.

(Ord. 29740.)

17.88.230 Electronic submittal.

"Electronic submittal" means the utilization of electronic e-mail or submittal via the internet.

(Ord. 29740.)

17.88.240 Feasible method to satisfactorily mitigate or avoid the specific adverse impact.

A "feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes but is not limited to, any cost effective method, condition or mitigation imposed on another similarly situated application in a prior successful application for a permit.

(Ord. 29740.)

17.88.250 Specific adverse impact.

"Specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies or conditions as they existed on the date the application was deemed complete.

(Ord. 29740.)

### Part 3 REQUIREMENTS FOR ELECTRIC VEHICLE CHARGING STATIONS

17.88.300 Electric vehicle charging station requirements.

A. All electric vehicle charging stations shall meet applicable health and safety standards and requirements imposed by the state and the city.

B. Electric vehicle charging stations shall meet all applicable safety and performance standards established by the California Electrical Code, the Society of Automotive Engineers, the National Electrical Manufacturers Association, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the public utilities commission regarding safety and reliability.

(Ord. 29740.)

### Part 4 EXPEDITED BUILDING PERMIT PROCESS FOR ELECTRIC VEHICLE CHARGING STATIONS

17.88.400 Applicability.

A. This part applies to the issuance of building permits for electric vehicle charging stations in the city. All requirements of building permit applications in Title 24 for electric vehicle charging stations that are not addressed in this part shall remain in effect.

B. Electric vehicle charging stations legally established or permitted prior to the effective date of the ordinance codified in this chapter are not subject to the requirements of this chapter unless physical modifications or alterations are undertaken that materially change the size, type, or components of an electronic vehicle charging station. Routine operation and maintenance or like-kind replacements for electric vehicle charging stations shall not require a permit.

(Ord. 29740.)

17.88.410 Applications and documents.

A. All documents required for the submission of an expedited electric vehicle charging station building permit application shall be made available on the city website.

B. Electronic submittal of the required building permit application and documents by email, or the internet when in operation shall be made available to all electric vehicle charging station permit applicants.

C. The building official shall adopt a checklist of all requirements with which electric vehicle charging stations shall comply to be eligible for expedited review.

D. The electric vehicle charging stations permit process and checklist shall substantially conform to recommendations for expedited permitting, including the checklist contained in the most current version of the Plug-In Electric Vehicle Infrastructure Permitting Checklist of the "Zero-Emission Vehicles in California: Community Readiness Guidebook" adopted by the governor's office of planning and research.

(Ord. 29740.)

17.88.420 Permit review requirements.

A. The building official shall issue a building permit, the issuance of which is nondiscretionary, for complete applications that meet the requirements of the approved checklist and Part 3 of this chapter.

B. If an application is deemed incomplete, the building official shall issue a written correction notice to the applicant detailing all deficiencies in the application and any additional information or documentation or payment of fees required to be eligible for expedited permit issuance shall be sent to the applicant for resubmission.

C. The chief building official may require an applicant to apply for a special use permit if the official finds, based on substantial evidence, that the electric vehicle charging station could have a specific, adverse impact upon the public health and safety. Such decisions may be appealed to the city planning commission.

D. If a use permit is required, the city may deny such application if it makes written findings based upon substantive evidence in the record that the proposed installation would have a specific, adverse impact upon public health or safety and there is no feasible method to satisfactorily mitigate or avoid the adverse impact. Such findings shall include the basis for the rejection of the potential feasible alternative for preventing the adverse impact. Such decisions may be appealed to the city planning commission.

E. Any condition imposed on an application shall be designed to mitigate the specific, adverse impact upon health and safety at the lowest possible cost.

(Ord. 29740.)

## Chapter 17.845 PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEWLY CONSTRUCTED BUILDINGS[[24]](#footnote-24)

17.845.010 Applicability.

A. The requirements of this Chapter shall apply to the entitlement of or the processing of development applications for all Newly Constructed Buildings proposed to be located in whole or in part within the City.

B. The requirements of this Chapter shall not apply to portable propane appliances for outdoor cooking and heating.

C. This Chapter shall in no way be construed as amending Energy Code requirements under Title 24 of the California Code of Regulations, Part 6 or Part 1, nor as requiring the use or installation of any specific appliance or system as a condition of approval.

D. The requirements of this Chapter shall be incorporated into conditions of approval for applications for permits under San José Municipal Code Titles 17 and 20.

E. This Chapter shall be operative at such time as the case law in California Restaurant Association v. City of Berkeley, 89 F.4th 1094 (9th Cir., 2023, as amended) is overturned or disapproved by a court of competent jurisdiction, or modified by the legislature to authorize local control of natural gas infrastructure; or the Energy Policy and Conservation Act (42 USC §6297) or other similar legislation is clarified or modified by the legislature or voters to authorize local control of natural gas infrastructure.

(Ords. 30330, 30502, 31111 eff. 9-27-24.)

17.845.020 Definitions.

A. "Accessory Dwelling Unit" means a detached secondary unit as specified in San José Municipal Code Section 20.200.325.

B. "Cooking Equipment" means equipment intended for commercial use, including ovens, ranges, and cooking appliances for use in a Commercial Kitchen, restaurant, or other business establishment where food is dispensed.

C. "Commercial Kitchen" means a food facility preparation area as defined in San José Municipal Code Section 20.200.205.

D. "Director" means the Director of Planning, Building, Code Enforcement or his or her designee.

E. "Distributed Energy Resource" means an electric generation or storage technology that complies with the emissions standards adopted by the State Air Resources Board pursuant to the distributed generation certification requirements of Section 94203 of Title 17 of the California Code of Regulations, or any successor regulation.

F. "Food Service Establishment" means a building with Commercial Kitchen or Cooking Equipment.

G. "Hospital" means a building as defined the California Building Code, Chapter 2, Section 202.

H. "Low Rise Residential Building" means a building which is three stories or less with a multifamily or single-family residential occupancy and shall not include a hotel or motel.

I. "Manufacturing and Industrial Facility" means a building with the occupancy classification as defined in the California Building Code, Chapter 3, Section 306, Group F.

J. "Natural Gas" means as "Fuel Gas" as defined in California Plumbing Code and Mechanical Code.

K. "Natural Gas Infrastructure" means fuel gas piping, other than service pipe, in or in connection with a building, structure or within the property lines of premises, extending from the point of delivery at the meter, service meter assembly, outlet of the service regulator, service shutoff valve, or final pressure regulator, whichever is applicable, as specified in the California Mechanical Code and Plumbing Code.

L. "Newly Constructed" means a building that has never before been used or occupied for any purpose where an application for a building permit was made on or after January 1, 2020 for Low Rise Residential Buildings and detached Accessory Dwelling Units; and on or after August 1, 2021 for all other buildings.

M. "Process" means an activity or treatment that is not related to the space conditioning, lighting, service water heating, or ventilating of a building as it relates to human occupancy.

N. "Process Load" means an energy load resulting from a Process.

(Ords. 30330, 30502.)

17.845.030 Prohibited natural gas infrastructure in newly constructed buildings.

A. Natural Gas Infrastructure shall be prohibited in Newly Constructed Buildings, and the Director shall not issue permits for mixed-fuel buildings except in compliance with this Chapter.

B. Natural Gas Infrastructure shall not be extended to any system or device within a building for which an equivalent all-electric system or design is available.

C. The requirements of this Section shall be deemed objective planning standards under Government Code Section 65913.4 and objective development standards under Government Code Section 65589.5.

(Ords. 30330, 30502.)

17.845.040 Exception for hospitals, attached accessory dwelling units, and facilities with a distributed energy resource.

A. The requirements of this Chapter shall not apply to either a Hospital or an attached Accessory Dwelling Unit in an existing mixed-fuel building.

B. The requirements of this Chapter shall not apply to a facilities with a physical connection to the electrical grid and a Distributed Energy Resource for necessary operational requirements to protect the public health, safety, or economic welfare in the event of an electric grid outage, until December 31, 2024. The Director will report to Council no later than December 31, 2023 with analysis of the availability of fuel substitutes for natural gas and whether or not to transition this section to a Hardship Exemption, effective January 1, 2025.

(Ords. 30330, 30502.)

17.845.045 Limited exemption for manufacturing and industrial facilities and food service establishments.

A. On or before December 31, 2022, an applicant for a Newly Constructed Manufacturing and Industrial Facility may request a limited exemption under this Section for the area of its building with Process Loads.

B. On or before December 31, 2022, an applicant for a Newly Constructed Food Service Establishment may request a limited exemption under this Section for the area of its building with Cooking Equipment or a Commercial Kitchen.

C. To receive a limited exemption, the applicant must submit a written application to the Director.

D. In making a determination in response to an application for a limited exemption, if the Director determines that the applicant is eligible for an exemption, then the Director may issue a decision requiring compliance with less than the full extent of the requirements of this Chapter, provided such requirements meet or exceed the electrification readiness requirements in San José Municipal Code Chapter 24.12.

E. The Director's decision shall contain a statement verifying the eligibility of the project, as well as the reduced compliance level requirements that must be achieved. The Director's decision shall become a condition of the development or building permit issued for the project.

F. The Director's decision shall be mailed or electronically mailed to the applicant to the address shown on the application.

(Ord. 30502.)

17.845.050 Hardship exemption.

A. If an applicant for a Newly Constructed Building believes that the type of project or physical site conditions, necessary operational requirements, or the public health, safety, or economic welfare in the event of an electric grid outage make it a hardship or infeasible to meet the requirements of this Chapter, or the project meets the City's adopted sustainability and environmental policies, then the applicant may request an exemption or modification from the Director. The burden shall be on the applicant to demonstrate the grounds for any exemption.

B. In making a determination in response to an application under Subsection A above, if the Director determines that the facts offered in support of an application demonstrate that the purposes of this Chapter will have been achieved to the maximum extent reasonably allowed by the circumstances, then the Director may issue a decision requiring compliance with less than the full extent of the requirements of this Chapter but to the fullest extent reasonably achievable given the circumstances, provided such requirements meet or exceed the electrical readiness requirements in San José Municipal Code Chapter 24.12.

C. The Director's decision shall contain a statement of the facts upon which the decision was based, as well as the reduced compliance level requirements that must be achieved. The Director's decision shall become a condition of the development or building permit issued for the project.

D. The Director's decision shall be mailed or electronically mailed to the applicant to the address shown on the application.

(Ords. 30330, 30502.)

17.845.060 Director's decision.

The Director's decision on a request for an exemption as specified in this Chapter is final, conclusive, and appealable under the provisions of California Code of Civil Procedure Section 1094.6.

(Ords. 30330, 30502.)

17.845.070 Annual review.

The City shall review annually the requirements of this ordinance for ongoing consistency with California Energy Commission regulations under California Code of Regulations Title 24, Part 6, and the Commission's code adoption cycle.

(Ord. 30330.)

1. Editor's note(s)—Chapter 17.08 was repealed and re-enacted in its entirety by Ord. 28512, adopted April 7, 2009. [↑](#footnote-ref-1)
2. State law reference(s)—For statutory provisions authorizing the adoption of codes by reference, see Gov. Code § 50022.2. [↑](#footnote-ref-2)
3. Editor's note(s)—Ord. 30836, adopted Nov. 1, 2022, amended Part 2 of Ch. 17.12 in its entirety to read as set out herein. Former Part 2 pertained to the adoption of administrative provisions of the 2019 California Fire Code and derived from Ord. 30327. [↑](#footnote-ref-3)
4. Editor's note(s)—Ord. 30836, adopted Nov. 1, 2022, amended Part 3 of Ch. 17.12 in its entirety to read as set out herein. Former Part 3 pertained to similar subject matter and derived from Ord. 30327. [↑](#footnote-ref-4)
5. Editor's note(s)—Ord. 30836, adopted Nov. 1, 2022, amended Part 4 of Ch. 17.12 in its entirety to read as set out herein. Former Part 4 pertained to similar subject matter and derived from Ord. 30327. [↑](#footnote-ref-5)
6. Editor's note(s)—Ord. 30836, adopted Nov. 1, 2022, amended Part 5 of Ch. 17.12 in its entirety to read as set out herein. Former Part 5 pertained to similar subject matter and derived from Ord. 30327. [↑](#footnote-ref-6)
7. Editor's note(s)—Ord. 30836, adopted Nov. 1, 2022, amended Part 6 of Ch. 17.12 in its entirety to read as set out herein. Former Part 6 pertained to similar subject matter and derived from Ord. 30327. [↑](#footnote-ref-7)
8. Editor's note(s)—Ord. 30836, adopted Nov. 1, 2022, amended Part 7 of Ch. 17.12 in its entirety to read as set out herein. Former Part 7 pertained to similar subject matter and derived from Ord. 30327. [↑](#footnote-ref-8)
9. Editor's note(s)—Ord. 30836, adopted Nov. 1, 2022, amended Part 8 of Ch. 17.12 in its entirety to read as set out herein. Former Part 8 pertained to similar subject matter and derived from Ords. 30327. [↑](#footnote-ref-9)
10. Editor's note(s)—Ord. 30836, adopted Nov. 1, 2022, amended Part 8 of Ch. 17.12 in its entirety to read as set out herein. Former Part 8 pertained to similar subject matter and derived from Ords. 30327. [↑](#footnote-ref-10)
11. Editor's note(s)—Ord. 30836, adopted Nov. 1, 2022, amended Part 8.5 of Ch. 17.12 in its entirety to read as set out herein. Former Part 8.5 pertained to similar subject matter and derived from Ord. 30327. [↑](#footnote-ref-11)
12. Editor's note(s)—Ord. 30836, adopted Nov. 1, 2022, amended Part 9 of Ch. 17.12 in its entirety to read as set out herein. Former Part 9 pertained to similar subject matter and derived from Ord. 30327. [↑](#footnote-ref-12)
13. Editor's note(s)—Ord. 30836, adopted Nov. 1, 2022, amended Part 9.25 of Ch. 17.12 in its entirety to read as set out herein. Former Part 9.25 pertained to similar subject matter and derived from Ord. 30327. [↑](#footnote-ref-13)
14. Editor's note(s)—Ord. 30836, adopted Nov. 1, 2022, amended Part 9.5 of Ch. 17.12 in its entirety to read as set out herein. Former Part 9.5 pertained to similar subject matter and derived from Ord. 30327. [↑](#footnote-ref-14)
15. Editor's note(s)—Ord. 30836, adopted Nov. 1, 2022, amended Part 10 of Ch. 17.12 in its entirety to read as set out herein. Former Part 10 pertained to similar subject matter and derived from Ord. 30327. [↑](#footnote-ref-15)
16. Editor's note(s)—Ord. 30327, § 19, adopted November 5, 2019, repealed Part 11, § 17.12.1100, which pertained to marinas and construction requirements for existing buildings and derived from Ords. 28839, 29349, and 29807. [↑](#footnote-ref-16)
17. Editor's note(s)—Ord. 30327, § 20, adopted November 5, 2019, repealed Part 12, §§ 17.12.1200, which pertained to motion picture and television production studio sound stages, approved production facilities and production locations and requirements for Wildland-Urban Interface fire areas and derived from Ords. 28167, 28839, 29349, and 29807. [↑](#footnote-ref-17)
18. Editor's note(s)—Ord. 30836, adopted Nov. 1, 2022, amended Part 13 of Ch. 17.12 in its entirety to read as set out herein. Former Part 13 pertained to similar subject matter and derived from Ord. 30327. [↑](#footnote-ref-18)
19. Cross reference(s)—For the State Housing Law, see Health and Saf. Code § 17910 et seq. [↑](#footnote-ref-19)
20. Editor's note(s)—Ord. 30032, § 1, adopted Nov. 28, 2017, amended Pts. 1 - 8 of Ch. 17.23 in their entirety to read as herein set out. Former Pts. 1 - 8 pertained to similar subject matter, and derived from Ords. 19696, 19892, 20200, 20605, 20606, 20607, 20608, 20609, 21131, 21132, 21133, 21134, 21162, 21183, 21509, 21575, 21735, 21970, 21999, 22019, 22675, 23028, 23340, 26559, 26649, 26767, 26792, 29730, 29913 and 30020. See the Code Comparative Table for a detailed analysis.   
      Subsequently, § 2 of Ord. 30032 added new Pt. 9, § 17.23.900, as set out herein. [↑](#footnote-ref-20)
21. Editor's note(s)—Urgency Ord. 29912, § 1(Exh. A), adopted and effective May 9, 2017, added Part 12, §§ 17.23.1200 - 17.23.1290. Subsequently, Ord. 29911, adopted May 16, 2017 and effective June 16, 2017, also added Part 12, and has been codified as superseding Ord. 29912, as set out herein. [↑](#footnote-ref-21)
22. State law reference(s)—For statutory provisions authorizing cities to declare and abate nuisances, see Gov. Code § 38771 et seq. [↑](#footnote-ref-22)
23. Editor's note(s)—Ord. 30327, § 22, adopted November 5, 2019, repealed Ch. 17.78, Parts 1 - 10, §§ 17.78.010 - 17.78.850, which pertained to requirements for facilities where materials which are or which may become toxic gases are found and derived from Ords. 23450 and 24911. [↑](#footnote-ref-23)
24. Editor's note(s)—Ord. 30502, § 1, adopted Dec. 15, 2020, changed the title of Ch. 17.845 from "Prohibition of Natural Gas Infrastructure in New Single-Family, Low-Rise Residential Buildings, and Detached Accessory Dwelling Units" to "Prohibition of Natural Gas Infrastructure in Newly Constructed Buildings," as set out herein. [↑](#footnote-ref-24)