

From: [Zenk, Jessica](#)
To: [Downtown West Project](#)
Subject: FW: Agenda and Documents for today's meeting
Date: Friday, April 9, 2021 8:05:31 AM
Attachments: [ANNOTATED Exhibit K - Google Development Agreement \(4-6-21 draft\) \(10602592xD701E\).docx](#)
[SAP Center Structured Parking Design Guidelines \(4-8-21\) \(10602590xD701E\).doc](#)
[Exhibit L \(List of Approvals\) Google Development Agreement \(4-6-21 draft\) \(10602515xD701E\).pdf](#)
[Cahill Street Improvements overlay with ALTA Survey \(10602593xD701E\).pdf](#)
[Requests for Modifications to Protect SAP Center \(4-2-21\) \(10602346xD701E\).pdf](#)
[Municipal Codes 20.150 Nonconforming Uses \(10602594xD701E\).docx](#)
Importance: High

From: Lucy Lofrumento <lal@lmallp.com>
Sent: Thursday, April 8, 2021 1:55 PM
To: Klein, Nanci <Nanci.Klein@sanjoseca.gov>
Cc: Hughey, Rosalynn <Rosalynn.Hughey@sanjoseca.gov>; Phan, Johnny <Johnny.Phan@sanjoseca.gov>; Zenk, Jessica <Jessica.Zenk@sanjoseca.gov>; Day, Cameron <Cameron.Day@sanjoseca.gov>; Jonathan Becher <jbecher@sjsharks.com>; Jim Goddard <jgoddard@sapcenter.com> <jgoddard@sapcenter.com>; Jon Gustafson <jgustafson@sharksice.com>; Ken Caveney <KCaveney@SJSharks.com>; Morley, Sean <sean@morleybros.com>; Scott Emmert <semmert@sjsharks.com>; Mike McCarroll <MMcCarroll@sapcenter.com> <MMcCarroll@sapcenter.com>; paul pkrupkaconsulting.com <paul@pkrupkaconsulting.com>; Michelle Wendler <MWendler@watrydesign.com> <MWendler@watrydesign.com>; Mike Moretto <MMoretto@watrydesign.com>
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[External Email]

Nanci,

See below for a list of proposed topics for our meeting this afternoon. I've also attached documents related to these items, for your reference.

I'm sure we won't be able to get through all of these issues, so we should try to schedule another meeting early next week to continue the conversation.

Please keep in mind that the comments we've provided thus far are not comprehensive. As you know the Development Agreement was just released this week, and we are still working our way through it along with the numerous other documents related to this project. Therefore, all comments are subject to being revised and/or supplemented.

Topics for Discussion:

1. Comments to Exhibit K
2. Structured Parking Design Guidelines (this is essentially the same information as we've previously provided to the City, with the addition of Figure 2)
3. Conformance review process, and in particular the scope of Focused LTA's for future projects*
4. Requests for Modifications delivered to City on April 2
5. Exhibit L – List of Approvals (discuss procedures, timing, exclusion of Lots ABC, etc.)
6. Nonconforming Use issues
7. Cahill Street Improvements and Arena integration concerns

*The Conformance Review Implementation Guide includes this provision:

5. Focused Local Transportation Analysis (Focused LTAs). The project sponsor shall prepare and submit one or more Focused LTAs to provide additional building-specific analysis. The Focused LTA **scope will be limited to** ensuring that the following topics, which were not previously analyzed in the LTA and Project-wide Focused LTA dated __, are consistent with City requirements and standards: **bicycle and pedestrian access; ADA compliance; sight distance; driveway operations; traffic gap analysis; and driveway operations**. The limited scope of Focused LTAs described in this section will be analyzed pursuant to the City of San Jose's Transportation Analysis Handbook (April 2020). The Director of PBCE shall review a Focused LTA concurrently with other plans, documents, and information submitted with the associated Vertical Conformance Review Application in the time frames specified under Section IV.B.

Thanks
Lucy



Lucy Lofrumento

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Exhibit K

Downtown West Parking Requirement

Downtown West Parking Requirements

Developer and the City anticipate the replacement of approximately 2,850 existing available surface parking spaces on property that will be redeveloped as part of the Downtown West project, and the development of at least 1,150 additional spaces (for a total of at least 4,000 publicly-available parking spaces) at full buildout of office space within the Downtown West project to ensure the long-term sustainability of the SAP Center. This does not include up to 2,360 residential parking spaces. Terms that are used but not defined in this Exhibit shall have the meanings given such terms in the body of the Development Agreement to which this Exhibit is attached. For purposes of this Exhibit K, a publicly accessible parking space is "Available" if it is unoccupied and accessible to SAP Center customers on weekends and after 6:30 PM on weekdays, on SAP Center event days.

- Are Lots ABC included in the 2,850 existing surface spaces? What other "existing available surface parking spaces" are included? How many of those are owned or controlled by Google vs. third parties?
 - For comparison, the AMA provides for the following:
 - 3,175 Available spaces within 1/3 mile (reduced to 2,850 until 2025)
 - 1,422 spaces on Lots ABC and 228 spaces on Lot D (total 1,650)
 - Total 4,825 Available for Arena guests (4,500 through 2025); using 85% availability rate, this would equate to a total of 5,676 publicly-available parking spaces that are needed to meet AMA requirements, in addition to parking for Arena employees
 - Does the word "accessible" above and below mean "available"?
 - How often is an available space inventory and an Available space survey performed, and by whom?
1. Overall Requirements: Over the course of the development of the Project, Developer shall be required to provide publicly accessible off-street parking spaces serving new office development at a cumulative ratio between 0.5 and 0.645 spaces for each 1,000 square feet of Floor Area (which shall mean eighty-five percent (85%) of the total gross floor area) of such office buildings (the "**Required Parking Ratio**"). At the point of full build out of office space within the Downtown West project, the **Required Parking Ratio** shall be 0.645 spaces.
- Does the word "provide" above mean that Google will be required to construct new parking facilities vs. make arrangements for the use of third party facilities?

- For avoidance of doubt, please clarify how many spaces Google will be required to construct and of those spaces, how many will be required to be “Available”
 - Note that as defined, the “Required Parking Ratio” could be as low as 0.5
 - To confirm the math, a ratio of 0.634 would be 4,000 parking spaces for about 7,300,000 gross square feet of office space. At an assumed 85% “Availability” rate this would provide about 3,400 parking spaces to serve Arena customers.
 - A ratio of .5% would equate to 3,102 parking spaces, 85% of which would be about 2,637 “Available” spaces to serve arena customers – a drop of 763 spaces (22.4% decrease).
 - It appears that there may be circumstances where, under the AMA, more parking spaces are required than are “provided” by Google. Is there any plan/analysis as to where those spaces would be provided?
- a. Once 4,000 publicly **available** parking spaces are operational and in compliance with these terms, the **Required Parking Ratio** will no longer apply provided that the 4,000 publicly **available** spaces shall be maintained as described herein.
- Will Google be obligated to ensure that at least 85% of those available parking spaces will be “Available” for Arena guests throughout the entire term of the Development Agreement (so long as the AMA is in place, including any extension)?
 - What are the consequences if they don’t achieve this result?
 - Also see comments under Paragraph d below regarding 85% “Availability”
- b. Developer may construct up to 4,800 publicly **available** parking spaces at its discretion; this parking would be reviewed as part of the Conformance Review process.
- SSE has requested that the 4,800 be a mandatory minimum
 - What is the rationale for making this a maximum, and for selecting 4,800 spaces as the maximum?
- c. The **Required Parking Ratio** represents a reduction from standard City parking requirements, which would require as many as 15,500 spaces at Downtown Commercial parking ratios (2.5 spaces per 1,000 square feet of Floor Area), or 6,600 spaces with application of available standard parking reductions (1.06 spaces per 1,000 square feet of Floor Area). The **Required Parking Ratio** of 0.645 spaces per 1,000 square feet of Floor Area is warranted given the area's rich transit and mixed-use environment, sustainability and air quality imperatives, traffic reduction and City's multimodal goals, the fact that this parking is available to the public, and transportation demand management requirements.

- d. The **Required Parking Ratio** is critical to serve the needs of the Project, as well as to replace parking currently utilized by transit riders and SAP Center patrons. With this in mind, the commercial parking spaces will be publicly **available** and priced to allow for maximum efficiency to support the SAP Center, as well as the multimodal goals of the City and Project.
- What pricing strategies are being contemplated? Will pricing strategies (and other measures) be designed to encourage/require daily parkers to vacate the parking facility prior to 6:30 on weekdays?
 - Agreements with the City (First Amendment to AMA and Trammell Crow Settlement) require the following with respect to the Block E and Milligan sites, which we recommend be included in this Agreement as well:
 - SSE will operate the parking facilities “at cost”
 - Arena event parking will have priority over daily or monthly parking
- i. At 4,000 publicly **available** commercial parking spaces, the project targets 85% of such spaces to be **Available** for SAP Center event use.
- How was 85% determined? What pricing and other strategies will be used to achieve this result?
 - Does Google need to provide the Director with annual reports regarding how this is going?
 - Does the 85% take into account the 10% that will be allocated to “specialty vehicle parking” including car share services, car pool, expectant mothers and ADA?
- e. If, over the course of the Development Agreement, some parking is found to be no longer warranted, the Director of PBCE may, in its sole discretion, reduce the **Required Parking Ratio** and/or overall amount without requiring an amendment to the Development Agreement or to this Exhibit.
- We object to this provision
 - Sole discretion is much too broad – there should be some objective parameters around this, with findings and a public hearing.
 - For example, see AMA Section 20.2.2 regarding adjustments based on change in utilization rates.
 - Does this mean the Director can allow less than 0.5 on a temporary basis?
- f. The parking requirement must be satisfied in part through at least 2,850 publicly **available** commercial spaces within the Project Site; **including existing parking spaces**, 2,850 publicly **available** commercial parking spaces must be maintained within the Project Site at all times and through all phases of Project development.

- [Are Lots ABC included in the 2,850 spaces?](#)
 - [Is this paragraph intended to be different than Paragraph 2.b below? Two different standards are confusing.](#)
- g. As an option to satisfy the requirement for the 2,851 to 4,000 publicly available parking spaces set forth above [?], Developer may deliver this parking either within the 1/3-mile radius of the SAP Center or through an Alternative Parking Arrangement.
- i. Alternative Parking Arrangement: If Developer determines that it will not provide any number of the remaining required parking spaces within the Project Site, then, in order to meet the **Required Parking Ratio**, the City shall have the right to designate additional land owned by the City and within 1/3 of a mile of the SAP Center (the "Additional Parking Property") for Developer to build additional parking spaces; Developer would then be required to build additional spaces on the Additional Parking Property, subject to obtaining appropriate environmental clearance and any discretionary approvals; provided, however, in no event would Developer be required to build parking spaces on the Additional Parking Property that, when aggregated with the publicly available spaces located within the Project boundary, would exceed the **Required Parking Ratio** or 4,000 total spaces, as described above.
- [Under what circumstances does Google have the right to determine that "it will not provide any number of the remaining required parking spaces within the Project Site"?](#)
 - [What happens if City is not able to acquire the parcels needed for the Lot E garage?](#)
- h. The City's Department of Transportation will review the design of parking facilities as part of a Vertical Conformance Review Application and may require one or more future Focused Local Transportation Analysis (Focused LTAs) to provide building-specific analysis as defined in the Conformance Review Implementation Guide.
- [Parking functionality requirements should be incorporated into the design requirements. See attached SAP Center Structured Parking Design Guidelines.](#)
 - [Pursuant to Section II.B.5 \(on page 5\) of the Conformance Review Implementation Guide, the future focused LTA's are limited to specified topics. Our position is that the City's standard requirements for Focused LTA's should be required without exception.](#)
 - [Parking facilities should be evaluated in terms of \(i\) ingress/egress at peak times for Arena events and \(ii\) measures to ensure at least 85% "Availability"](#)
 - [Focused LTA's should also be required to study LOS effects on impacted intersections](#)

2. Phasing: The requirements below are to ensure that sufficient parking exists, at any given specific time, for the continued operational needs of the SAP Center, as well as the multimodal goals of the City and Project.

➤ [Agreements with the City require priority for Arena customers if there is a conflict with transit parkers or other daily/monthly parkers](#)

- a. Compliance with this requirement shall be evaluated during the Conformance Review process for each office Building, and verified prior to issuance of Building Permits for each office Building.
- i. Proposed parking spaces included as part of a previously approved Conformance Determination shall be counted to determine whether the **Required Parking Ratio** will be satisfied upon construction of the office building that is the subject of a Conformance Review. Surface parking spaces in the Project also shall be counted during the Conformance Review process to determine whether the **Required Parking Ratio** will be satisfied.

➤ [See above notes re need to determine how many spaces are “Available” for Arena customers.](#)

For clarity, this means that, to determine whether the **Required Parking Ratio** will be satisfied, each Conformance Review for an office building shall account for (i) surface parking spaces in the Project, (ii) proposed parking spaces included in a previously approved Conformance Determination that have not yet been constructed, (iii) parking spaces already constructed as part of the Project, and (iv) the parking spaces included in the subject Conformance Review application. In the event a proposed office building or buildings would result in the elimination of existing surface parking spaces, the Conformance Review Application for that building shall not be denied for the temporary failure to satisfy the **Required Parking Ratio [of 0.645]** during construction of the building or buildings if the Project would continue to provide a ratio of 0.5 spaces for each 1,000 square feet of Floor Area, and so long as the **Required Parking Ratio [of 0.645]** is satisfied upon issuance of a Certificate of Occupancy for that office building or buildings.

➤ [Is this “failure to satisfy” period in addition to the 5-year period described in Paragraph 2.b below?](#)

- ii. During the Conformance Review process, the Project will be required to confirm that at least 2,850 Available parking spaces will be maintained in aggregate within the Project boundary and within one-third (⅓)-mile radius of the SAP Center.

➤ [See note under Paragraph 1.f above.](#)

- b. If the Project will result in a temporary failure to satisfy the **Required Parking Ratio**, [of 0.645] as described in Section 2.a.i, for a single period that will exceed five (5) years, Developer shall develop and obtain agreement from the City for one or more interim **parking management strategies** as part of the **Parking Delivery Plan** during construction.
- Where is the Parking Delivery Plan defined?
 - How many “single periods” of 5 years could there be? Cumulative for 20 years?
 - Does this assume that the 0.5 ratio must still be met during this time?
 - Under Section 19.3.1 of the AMA, the “Long Term Temporary Condition” is for a maximum of 3 years
 - Please describe some parking management strategies that might be considered
- c. To the extent the Option Agreement for Lots A/B/C is exercised prior to 2040, the Developer must be in compliance with the **Required Parking Ratio**, subject to Section 2(a)(i), prior to beginning vertical development on Lots A/B/C. To the extent the existing Second Amended and Restated Arena Management Agreement between the City and San José Arena Management, LLC is terminated earlier than 2040 or at its scheduled expiration in 2040, Section 1d.i. and Section 2a.ii shall no longer apply.

Document comparison by Workshare 9 on Thursday, April 8, 2021 12:43:38 PM

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Format changed	0
Total changes	97

SAP CENTER STRUCTURED PARKING DESIGN GUIDELINES

For Parking Structures Providing Shared Use Parking for Arena Events

Updated April 8, 2021

1. Use 8.5' x 17' standard stall size, with a 26' wide drive aisle, to achieve a minimum 60' bay width for double loaded parking and 90-degree circulation. If one-way circulation is provided, use industry standard bay width for selected angle of parking. Align parking bays in the predominate direction of pedestrian travel.
2. Provide safe and efficient traffic operation both within the garage and at the entrances and exits during both the arrival and departure peak hours for SAP Center events. For the arrival peak period, ensure that there is adequate queuing space and that entering traffic is not disrupted or delayed by vehicles exiting during this period. For the departure peak period, ensure that motorists can exit within a 30 minute window after the end of an event. All the above operational provisions should be demonstrated through calculations using industry standard methodologies. Design facilities for pay upon entry and free flow for exit.
3. If the garage has a capacity of more than 500 spaces the ability to connect to more than one street or have two different entrance/exit locations should be considered if at all possible, in order to provide redundancy.
4. The number of lanes at a driveway entry/exit should take into consideration the movements on the street it connects to. Lanes into and out of a facility should provide access to more than one path to parking stalls upon entry to facilitate redundancy of flow. Preferably drive entry and exits shall be part of an intersection with the street to enhance visibility and the ability to control traffic.
5. Exits should be designed with appropriate sight distance triangles that allow drivers approaching the exit to see pedestrians on the sidewalk and vehicles on the street. Entries and exits should be designed to minimize curvatures, merges and weaving, all of which reduce the capacity of traffic flow. The width of entry and exit lanes should not be constrained to where flow will be reduced. Visibility to other vehicles and to the path of travel shall be prioritized.
6. Provide ramping systems that efficiently accommodate peak traffic flows, including no parking on ramps and minimizing the number of turns and parked vehicles that a car must pass by to get to other floors. Ramps connecting a maximum of 3 levels in one path is assumed to be the best for accommodating high peak flows. Redundant ramps to facilitate flow should be considered in any facility that exceeds 500 spaces. Ramps that exit to the street should be designed per the City of San Jose Department of Public Works typical driveway profiles for below grade parking at a minimum (**see attached Figure 1**) or meet an approved solution that flattens out the ramp at the top to provide views of pedestrians crossing on the sidewalk for cars exiting the ramp. This may

include a flat section at the top of approximately 25 ft. before using an internal ramp slope, which design has been approved by the City on other projects (see attached Figure 2). Internal ramps should be designed with an 18% maximum slope with 9-10% blends at the top and bottom.

This may include a flat section at the top of approximately 25 ft. before using an internal ramp slope(see attached Figure 2). Internal ramps should be designed with an 18% maximum slope with 9-10% blends at the top and bottom. (previously approved by the City on other projects)

7. Provide high level of safety and security, including use of security cameras. If a stand alone structure utilize glass back elevators and open stairs for safety.
8. Utilize materials that meet a standard for high quality façade, high durability and ease of maintenance.
9. Provide high quality interior ambience, e.g. enhanced lighting, painted interiors, and satisfactory floor to floor height.
10. Provide restrooms, which are open and monitored during events.
11. Provide number and size of elevators and stairs to effectively accommodate peak pedestrian flows. Vehicles coming to an event typically have an average of 3 people per vehicle.
12. Locate pedestrian entries, lobbies, elevators and stairs to conveniently accommodate pedestrian movements between parking facility and SAP Center, and avoid conflicts between major pedestrian movements and major vehicle movements at intersections and driveways.
13. Use long span design if parking is in a stand-alone parking garage. If under a building and using a short span design add 1'-0" to stall width adjacent to columns to make it easier for cars to pull in and out, speeding up the flow.
14. Use moment frames if parking is in a stand-alone parking garage. Avoid moment frame columns at locations where cars need to turn. If under a building and shearwalls are used, avoid walls within 30 ft. of the end of drive aisle or where it would block a driver's view at a turn. Avoid columns that impact turning maneuvers.
15. Provide concrete slab on grade.

Figure 1

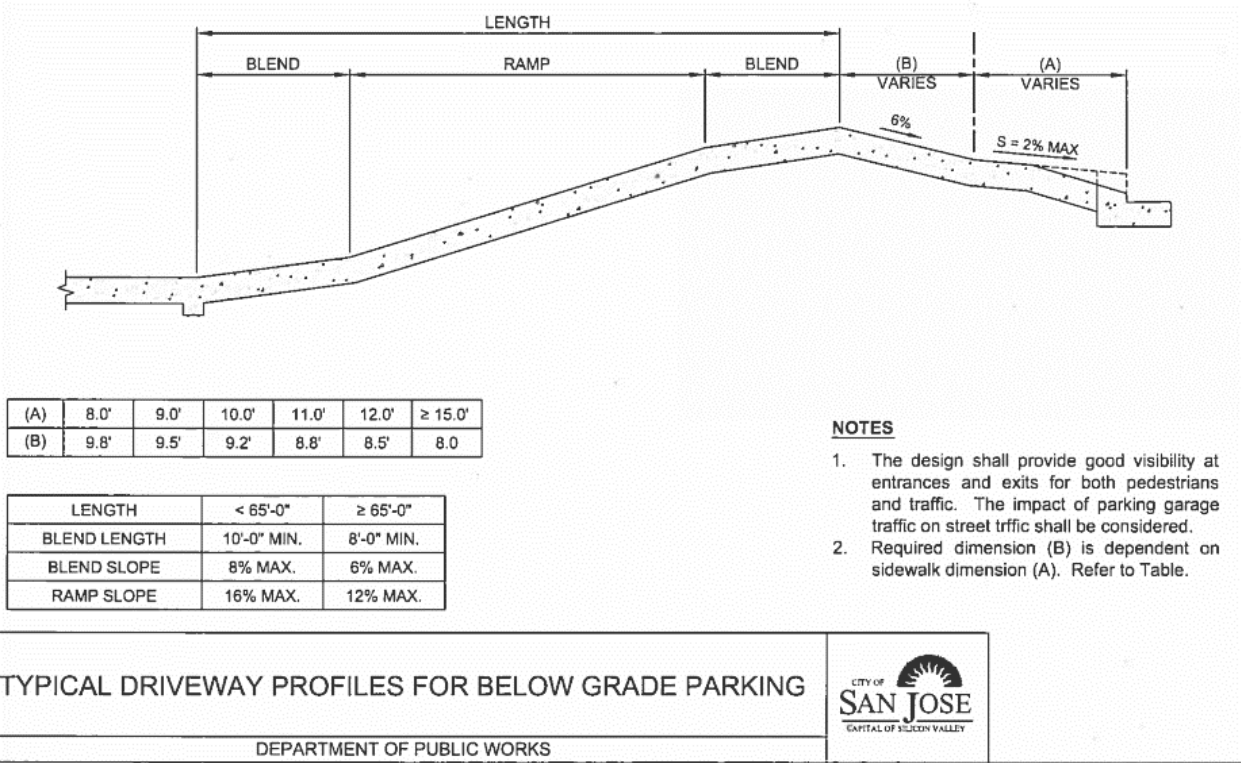


Figure 2

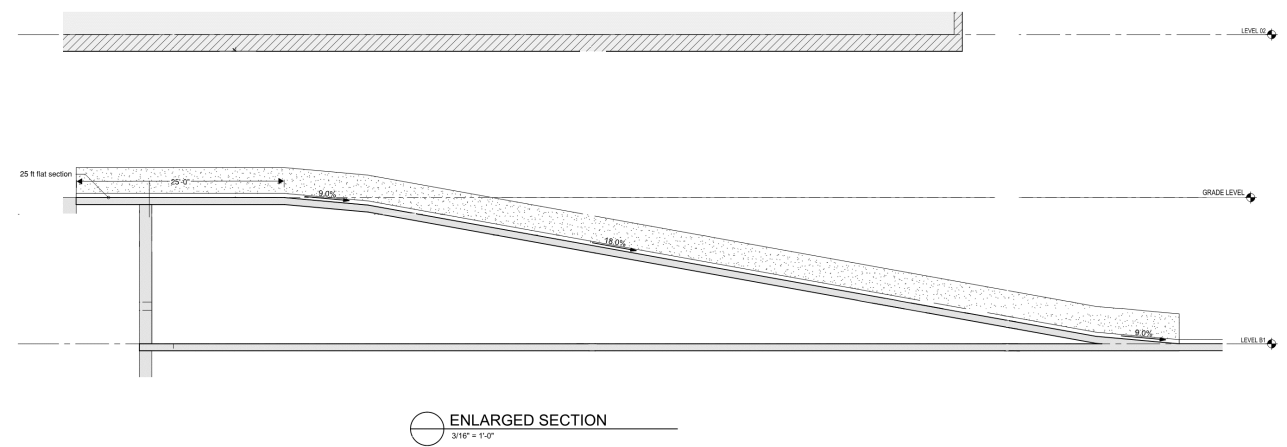


Exhibit L

List of Approvals

1. Certification of Environmental Impact Report for Downtown West Mixed-Use Project (City Council Resolution No. ____) (includes Adoption of Mitigation Monitoring and Reporting Program, and CEQA Findings and Statement of Overriding Considerations)
2. Adopting Overriding Findings Regarding Santa Clara County Airport Land Use Commission's Determination of Inconsistency for the Project (City Council Resolution No. ____)
3. Amendment to Envision San Jose 2040 General Plan (City Council Resolution No. ____)
4. Amendment to Diridon Station Area Plan (City Council Resolution No. ____)
5. Rezone to Planned Development Zoning District and approval of Downtown West General Development Plan (City Council Ordinance No. ____)
6. Amendment to Title 20 of the City of San Jose Municipal Code (City Council Ordinance No. ____)
7. Approval of Downtown West Planned Development Permit, including the Downtown West Design Standards and Guidelines, the Downtown West Infrastructure Standards, the Conceptual Civil Infrastructure Plan Sheets, and Conformance Review Implementation Guide (City Council Resolution No. ____)
8. Development Agreement for Downtown West Mixed-Use Plan (City Council Ordinance No. ____)
9. Vesting Tentative Map for Downtown West (City Council Resolution No. ____)
10. Approval of Major Encroachment Permit(s) (City Council Resolution No. ____)
11. Construction Impact Mitigation Plan (City Council Resolution No. ____)

12. Amendment of Historic Preservation Permit (City Council Resolution No. ____)
13. Landmark Designation Approval for Adjustment to San Jose Water Building (City Council Resolution No. ____)
14. Landmark Designation Approval for Adjustment to Southern Pacific Depot (City Council Resolution No. ____)
15. Street Vacation for Portions of North Montgomery Street, Delmas Avenue, Park Avenue, Cinnabar Street, Cottage Lane, and Barack Obama Boulevard (South Montgomery Street) (City Council Resolution No. ____)
16. Any Subsequent Approval (as defined in Section ____ of the Development Agreement)

SHARKS SPORTS & ENTERTAINMENT LLC

Downtown West Mixed-Use Plan

Requests for Modifications to Protect the SAP Center

April 2, 2021

SSE requests that the City and Google make the following modifications to the draft land use entitlements applications proposed by Google for the Downtown West Mixed Use Plan, in order to ensure the City-owned arena is properly protected and that the primary objective of the current Diridon Station Area Plan, adopted in 2014, is fulfilled:

Ensure the continued vitality of the San José Arena, recognizing that the San José Arena is a major anchor for both Downtown San José and the Diridon Station area, and that sufficient parking and efficient access for San José Arena customers, consistent with the provisions of the Arena Management Agreement, are critical for the San José Arena's on-going success.

At a minimum, the City and Google are required to ensure that the proposed land use entitlements are consistent with SSE's rights under the Arena Management Agreement. In many instances, the land use entitlement documents directly conflict with the AMA, and require modification in order to conform.

Request #1: Expressly incorporate the current DSAP objective to protect the arena in each of the project approvals requested by Google, and require each future development within the mixed-use plan to fulfill this obligation prior to receiving final city approval.

Comment: Both Google and the City have assured SSE that the Downtown West project will benefit the arena and that future development of the project will not impact the facility's operations or the safety of its patrons, consistent with the DSAP arena objective above. However, this objective is not included anywhere in the goals of the project, nor is it incorporated into any of the specific application documents. This objective must be embedded in the project approvals to ensure the requirement will be achieved.

The land use approvals Google seeks are unprecedented in terms of the breadth of flexibility provided and lack of discretionary review the City will retain going forward. However, the applications remain completely silent about the future operations of the arena. Unless specific language to protect the arena is included now, the City may not be able to prevent future developments that will likely imperil the operations of SAP Center.

Request # 2: Maintain the current General Plan and Zoning District designations on the arena parking lots as “Public/Quasi Public” and maintain the current parcel lines for the arena land (including the adjacent parking lots) without new mapping; remove these parcels from the Downtown West project entitlement approval documents.

Comment: Neither the City nor Google has made a formal request for SSE to consent to the transfer of the arena parking lots (Lots A, B and C) for inclusion in the project, nor have the issues SSE identified more than two years ago to support potential transfer been addressed in any material way. In order for the arena to remain a thriving part of the downtown and continue to serve as a long-term home for the Sharks, arena parking lots should not be included in the Google project until their development is reasonably foreseeable.

More important, the City is precluded under the Arena Management Agreement from creating new burdens on title to the property leased by SSE under the agreement, including the arena parking lots A, B and C. Rezoning of these specific parking lots adjacent to the arena as part of the Google project and approving the PD Permit and Tentative Map with these parcels included will create a burden on title to the arena property and so cannot be undertaken by the applicant or the City without SSE’s consent. Google has already excluded properties owned by Caltrain and the VTA, and so can easily accomplish this modification.

Request # 3: Clarify that, even if and when SSE approves of changes to the zoning for arena parking lots A, B and C, the interim use of that property shall remain an existing permitted use pursuant to current zoning district designation without a requirement to obtain a Downtown West Use Certificate or Use Permit or any other conditions of approval. Further, clarify existing non-conforming uses to expressly state that these arena parking lots will remain a conforming use rather than become legal non-conforming one as provided for in the applications.

Comment: The City has obligations to its residents (who approved and paid for the arena), to not shorten or diminish the usefulness of the arena facilities, and has made similar agreements with SSE in the AMA. The A, B and C parking lots are integral to the success of the SAP Center and must remain permanent, at least so long as the current AMA remains in place, especially with the elimination of adequate parking supply in the area. Changing the allowed uses on these lots prior to imminent development, and making existing permitted uses legally non-compliant, will limit the arena operator’s ability to maximize the economic use of the facilities as currently allowed by the AMA.

Request # 4: Modify the circulation plan and mobility requirements to provide the following street network changes:

- a) Delete all references to the Cahill Street extension north of Santa Clara Street across arena parking lots until such time as the properties are available for development, and after SSE consents to a transfer of the property.

- b) Provide two through lanes and a left turn lane in each direction on Barack Obama Blvd. (Autumn Street) between Santa Clara Street and Park Avenue in accordance with currently adopted City plans for Autumn Street.
- c) On Santa Clara Street, maintain two general traffic through lanes in each direction and one or two left turn lanes, as needed, between Stockton Avenue and Almaden Blvd.
- d) Maintain level of service D or better during the arrival peak hour for SAP Center events on principal traffic routes used by SAP Center customers (Autumn corridor, W. Santa Clara corridor, and Julian corridor), except that no traffic lanes would need to be added beyond the existing lanes at any intersection to achieve level of service D. This exception would not apply to Barack Obama Blvd. (Autumn St.), because that street is planned to be converted from one-way to two-way operation (see point b) above).

Comment: SSE has repeatedly advised the City and Google that proposed reduction in street network capacity by eliminating roads and lanes on remaining ones, while increasing daytime population in the area by a factor of 20, will create gridlock for residents, workers, and visitors, including arena patrons. SSE continues to share information with the City and Google which confirms this patently obvious conclusion. Studies produced by the City and Google rely on unrealistic trip reduction assumptions, a system of road management (including dynamic lanes and conversion of streets to one-way operation during event peak periods), and other expensive traffic control operations to justify the project. Unfortunately, these and other possible measures will not be able to overcome the fundamental problems caused by reduced roadway capacity, which would make arrival for patrons to the arena during the peak hour before an event incredibly problematic at best, and at worst result in a local transportation system failure. Once the project is approved, the City will have no recourse to make any future modifications when the inevitable problems arise. Therefore, the City should not give up this critical roadway capacity.

Request # 5: Require that on each occasion when specific development plans are presented to the City for approval, and prior to approving changes to the current street network, the City will include the following as part of the approval process:

- Develop detailed preliminary plans for any proposed street changes desired along principal traffic routes used by SAP Center customers, and provide to SSE for review and comment prior to completion of the LTA discussed below. Any modifications based on results of the LTA or other considerations must also be submitted to SSE for review and comment.
- Conduct a focused Local Transportation Analysis (LTA) for the proposed development, which will address the development's impact on level of service at all nearby impacted intersections during the 6 to 7 pm peak arrival hour for events at SAP Center.

Comment: Section 21.2.3 of the AMA provides that the City must coordinate with SSE “regarding any material changes to the design, configuration or operation of the major streets and intersections in the vicinity of the Arena to the extent that they may have a direct impact on the safe and efficient flow of vehicular, bicycle, and pedestrian traffic to and from the Arena, including Autumn Street and the intersection at Autumn Street and Park Avenue.” It goes on to state that the parties “shall work together in good faith with the goal of achieving the best overall function of the streets and intersections for the benefit of both the Arena and all other development in the Diridon Area.

The City’s obligations under the AMA will continue following approval of the land use entitlement documents for the Downtown West project. However, the minimized process for approval of future development within Downtown West may make it difficult, if not impossible, for the City to fulfill such obligations unless the above suggested procedures are required in the entitlement documents.

Request # 6: Modify the project documents to provide that Delmas Street will remain open between Santa Clara and San Fernando streets. As a less desirable alternative, ensure that Google will be required to provide a driveway (entrance/exit) to the Delmas development parking that is accessible from both the east and west on Santa Clara Street.

Comment: It is SSE’s understanding, based on discussions with Google representatives and recent presentations by Google’s consultants, that Google plans to provide a driveway at Santa Clara Street to/from the Delmas development parking. Although this was not SSE’s preferred alternative, SSE has determined that it is a satisfactory resolution subject to the final design of the driveway and parking, including all the parking being accessible from this driveway. However, SSE cannot find this requirement in the project approval documents, and it is important to ensure that this parking facility will be easily accessible to arena patrons as represented.

If access to this parking facility is not provided directly from Santa Clara Street, then the convenience and efficacy of this critical supply of “Available Parking Spaces” will be severely curtailed, thus diminishing the value of such parking as mitigation for the impacts on the arena caused by the loss of parking resulting from the project. It would also be contrary to the purpose of the Transportation and Parking Management Plan (TPMP) for the arena, as incorporated into the AMA. Such purpose is stated “to establish event traffic and parking management strategies” that promote efficient and effective vehicular and pedestrian traffic circulation; provide convenient and easy access to and from area parking facilities, and minimize traffic congestion on surrounding roadway facilities, among other things.

Request # 7: Include a requirement that expressly mandates Google will be solely responsible to fund any additional traffic operation expenses needed to implement the requested proposed street circulation management plan for events at the arena.

Comment: Google must mitigate every impact it creates, including additional costs to support its massive development plan. With respect to traffic operation costs which will amount to millions of dollars a year, the community -- including the arena operator -- must not bear responsibility for funding them, which would essentially serve as a subsidy for Google. SSE and/or its customers certainly should not be asked to mitigate Google's project by covering such costs, as the current approvals likely would require.

Request # 8: Modify the approval documents to require the consent of the arena operator prior to any improvement along the arena frontage, including Santa Clara Street and sidewalks

Comment: The project approval documents include significant planned modifications along Santa Clara Street. These modifications are conceptual at this point so it is not possible to determine what, if any, modifications would be made to the arena frontage between the existing structure and face of the curb. The City has a requirement to not modify lands leased by SSE without its consent, and to make best efforts to coordinate future changes to the road network with SSE to preserve arena operations. Providing consent rights to street frontage improvements proposed by the project is a simple way to ensure the arena operations and SSE's leasehold rights can be protected, in compliance with the AMA.

Request # 9: Modify the infrastructure plan and other application approval documents to reflect that the utilidor route will not pass through or under the arena parking lots until such time in the future that the parcels may be transferred to Google and included in the General Development Plan.

Comment: It is not clear why Google has proposed a private utility system as a basic part of its development plan that relies on its ability to traverse property leased and controlled by a third party on a long-term basis without obtaining that party's prior consent, regardless of underlying City ownership. Even without the extension of Cahill Street, installation of the utilidor would create major disruption to arena operations, and granting Google the right to construct it is not a property right the City retains under the AMA.

Request # 10: Make the potential 4,800 commercial parking spaces allowed in the project applications a minimum requirement, not an "up to" maximum.

Comment: Google's applications and the associated technical studies make clear that even under best case scenarios for transportation mode shift improvements, more than 7,000 of the 25,000+ workers will still drive to work in a single occupant vehicle and many more will carpool. More realistic scenarios show that the number of workers who will need to park in the area will likely be thousands higher. This does not account for parking demands that may be created by additional development, including the proposed DSAP expansion, BART, Caltrain or High Speed Rail projects. The proposed parking requirement for Google of only 2,800 spaces will create significant parking deficiencies in the area, along with associated traffic circulation and safety issues for residents and visitors to the area, including arena

patrons. While a 4,800-parking space requirement will not solve the challenge, it will certainly help reduce parking deficiencies. Google should be required to fund and build the parking supply its demand will create, not simply have the option to provide it in the future, or rely on a future city district parking plan which may or may not ever be established or achieve the intended results.

Request # 11: Conform Google’s phasing plan for the Delmas property to comply with the agreement between the City, Google and SSE that parking available on Delmas West must remain available until such time as Block E parking or a suitable alternative is created.

Comment: As part of SSE’s agreement to consent to the sale of Lot D to Google, which was critical to the company’s commitment to move forward with its Downtown West project, Google agreed to retain all existing parking spaces on the Delmas West site until either (i) 408 new “Available Parking Spaces” are provided on Block E and Milligan or other approved alternative location; or (ii) BART service commences to Diridon, or (iii) Google has constructed at least 500 “Available Parking Spaces” as part of the development on Delmas East (all subject to the specific terms of the Lot D Lease with Google). The City’s progress on Block E and the Milligan site has stalled, and there is no timeline for those facilities to be available for parking in the future. Google’s project entitlements, including timing of development of the Delmas site, must account for fulfilling this obligation.

Request # 12: Include specific construction mitigation measures in the final entitlement approvals to protect the unique operations of the Arena (Arena Protection Plan).

Comment: For more than two years, SSE has continued to plead with the City to address the obvious construction impact challenges presented by the BART project, without any substantive response to specific requests. It is clear that Google’s project will pose even greater challenges for the arena’s continuing successful operations. Yet, the entitlement approvals remain silent on how to mitigate construction impacts, and once approvals are given, the City’s ability to manage any impacts to the arena will be greatly reduced. In the event that Google cannot propose basic construction impact mitigation program prior to approvals, the City can and should establish basic performance standards and other mitigation measures (an Arena Protection Plan) to ensure the safe and convenient ingress and egress of arena visitors (over 1.5 million annually), arena employees, vendors and contractors.

Request # 13: Modify Google’s permitted uses to ensure that the allowed auditorium and event/conference center uses are adjunct only to the applicant’s corporate business, so that the facility will not create competition for the arena or convention center.

Comment: The applicant has represented to the public that these facilities are intended to support its larger corporate business with occasional use for community events. However, the definition of the uses would allow any property owner within the district to utilize such a facility in the future for commercial events that could easily create competition for both

the arena and convention center. This is likely unintended but clearly a permitted use in the entitlement documents as currently drafted, and this use limitation needs to be added to avoid harm to these important community facilities and their economic development benefits to the City.

Request # 14: Modify the conditions and administrative permits requirements to allow the Director of PBCE to impose reasonable conditions related to the operation of the future specific use/development proposed to ensure it will not create unreasonable operational impacts for the arena.

Comment: Upon approval of the land use entitlement applications, the applicant or future property owners would have the ability to establish a wide range of uses by right with limited ability by the City to make modifications to protect the public's interest, including the continued successful operation of the arena. As continued vitality of the arena is a basic objective of the DSAP, the City can and should preserve its rights to protect the building's ongoing success, particularly since many of the proposed uses will likely conflict at times with the arena's event and daily operations.

Request # 15: Ensure that for any special uses that could create conflicts with arena operations, Google's administrative permit requirements include a procedure whereby the arena operator must be notified of the application for the proposed activity, and before granting any permit for approval the Director must consult with the arena operator and impose reasonable conditions to protect the arena's operations

Comment: The proposed uses described in the Google development plan include live entertainment, auditorium, outdoor vending and other special events that, as currently drafted in the Conditions of Administrative Permit section, will likely create conflicts with arena operations without any recourse by the City to correct them. This relinquishment of land use authority goes well beyond the scope of use or approval process for typical projects. The permit procedures in the entitlements guarantee that Google can schedule a wide-ranging number of large events that could trigger road closures or competition for scarce parking on arena event days, without any oversight by the City or the need for any coordination or deference for events at the arena. Neither Google nor successive owners of parcels covered by the entitlements should be granted unique rights to schedule these types of events without going through the approval procedures imposed on others in the area, and without consideration for potential conflicts with the arena operations.

In addition, use rights granted in the entitlement documents should not conflict with other City ordinances. For instance, the outdoor vending rights appear to conflict with the updated peddler's ordinance adopted by the City less than 2 years ago. At minimum, the specific protections granted to the arena in the ordinance should be included (or incorporated by reference) in the entitlement documents.

Request # 16: The City must ensure that any update to the Diridon Station Area Plan does not preclude the ability to establish a stand-alone parking structure on Block E as long planned for the site.

Comment: Both the Lot E and Milligan sites are anticipated to be interim parking lots and potentially, new parking structures that would serve arena patrons. However, current draft of the proposed DSAP Amendment would modify the zoning designation for these sites. This along with new mixed use design guidelines, would preclude the properties from being developed solely as a stand-alone parking structure in a manner that will protect future arena operations long contemplated by the City and as reflected in the currently adopted DSAP.

Specifically, the proposed zoning designations for these sites are *Downtown Primary Commercial*. We believe that instead these sites should be zoned *Public/Quasi-public* to allow the construction of public parking facilities. We are also concerned that requiring the future structures to be “wrapped with active uses” will diminish parking capacity and ingress/egress functionality for event purposes, and cause access and safety impacts to pedestrians accessing the parking from either the arena or other nearby uses. Also, because there is a potential for both sites to be used for *interim* parking uses, Section 5.4 *Surface Parking Lots* of the *Downtown Design Standards and Guidelines* (DDGs) should not be required.

In addition, because these future required parking facilities must provide for safe and efficient ingress and egress that supports access to the street network, in accordance with the objective of the DSAP to ensure the continued vitality of the Arena consistent with the provisions of the AMA, the future parking lots and structures on these sites must not be required to be consistent with Section 3.5.3 *Parking and Vehicular Access Location* of the *DDGs*. The ability of parking facilities to best serve arena events is tantamount to pedestrian safety and good transportation management.

Chapter 20.150 NONCONFORMING USES

Part 1 GENERAL PROVISIONS

20.150.010 Purpose.

The provisions in this chapter are intended to permit the continued operation of legal nonconforming uses and continued use and replacement of legal nonconforming structures in a manner that does not impair the public peace, health, safety morals or welfare. The provisions are also intended to encourage the eventual elimination of legal nonconforming uses.

(Ord. 26248.)

20.150.020 General provisions.

- A. A legal nonconforming use may be continued indefinitely, but if such use is discontinued or abandoned for a period of six months or more, it shall thereafter conform to the provisions of this title, unless the nonconforming use is reinstated with issuance of a special use permit in accordance with Chapter 20.100.
- B. A legal non-conforming structure may continue to be used or replaced as follows:
 - 1. The restoration and/or replacement of a legal nonconforming structure wholly or partially destroyed by a catastrophic event or sudden cause which is beyond the control of the property owner, and which could not otherwise have been prevented by reasonable care and maintenance of the structure is permitted.
 - 2. Failure to apply for a building permit within nine months of destruction or failure to begin construction within three months of the issuance of a building permit shall be deemed to be discontinuation or abandonment of the use pursuant to subsection A.
 - 3. The building or structure, as restored, shall not occupy any portion of the lot or parcel not occupied by the building or structure when such destruction occurred unless the building or structure as restored will comply with all development regulations prescribed by this title for the district in which the lot or parcel is situate.
 - 4. No building or structure shall be restored pursuant to this section unless all development and building permits required for new conforming uses in the district in which the use is located have been secured.
 - 5. Irrespective of where the building or structure, as restored, is located on the lot or parcel:
 - a. It shall not have a greater floor area than the building or structure contained when such destruction occurred; and
 - b. It shall not exceed the height of nor the number of stories contained in the building or structure at the time of such destruction; and
 - c. The off-street parking spaces and off-street loading spaces situate on the lot or parcel at the time of such destruction shall not be diminished in number or size.
- C. Any legal nonconforming use or structure which is enlarged, altered, converted, or changed, as provided in this chapter, is subject to the parking requirements of Section 20.90.210 regarding any change in use.

(Ords. 26248, 26455.)

20.150.030 PD zoning exception.

- A. Upon the rezoning of land to a (PD) planned development combined district, other than by council initiation, only those uses specified in the general development plan therefore, as either temporary or permanent uses, are permitted in the planned development district.
- B. Any use which becomes legal nonconforming in the base district because of a (PD) planned development rezoning initiated by council may be continued but only until such time as a PD permit pursuant to such rezoning is implemented on the site containing the legal nonconforming use(s).

(Ord. 26248.)

20.150.040 Legal nonconforming use subject to a previously issued conditional use permit.

- A. Whenever an existing use subject to a previously issued valid conditional use permit becomes a legal nonconforming use, it remains subject to all of the provisions and requirements of conditional use permit provisions of this title.
- B. If a conditional use permit for a legal nonconforming use contains a time-limit condition, the owner of the lot or parcel for which the permit was issued may apply to the city for renewal of the conditional use permit, notwithstanding the fact that the existing use is not a permitted or conditional use in the district in which it is located or that it does not conform to the regulations of such district.
- C. The owner of a lot or parcel, subject to a lapsed time-limited conditional use permit, may apply for a new conditional use permit, subject to the subsection B. above, if the use for which the conditional use permit is sought has continued to exist without interruption since the lapse of the conditional use permit. Nothing in this provision shall exempt such owner from the obligation to apply for a new conditional use permit in accordance with Chapter 20.100, and such owner shall be in violation of this title, and subject to all remedies therefore, whenever a time-limited conditional use permit lapses and no new conditional use permit has been issued.

(Ord. 26248.)

20.150.050 Nonconforming use - Expansion and enlargement.

- A. Any legal nonconforming use may be expanded only upon issuance of and in compliance with a special use permit, or conditional use permit for uses which this Code would require a conditional use permit, in accordance with the provisions in Chapter 20.100. Expansion includes, but is not limited to, the intensification of a use with or without an increase in floor area.
- B. Any building or structure which conforms with the development standards of the district, the use of which is a legal nonconforming use, may be enlarged or structurally altered, only upon a finding that such enlargement or structural alteration does not expand or allow for subsequent expansion of the legal nonconforming use, and does not significantly increase any identified impact such as traffic, on-street parking or noise. Such determination shall be made as part of the consideration of any site development permit required for such enlargement or alteration by other provisions of this Code. If no site development permit is required, such enlargement or alteration shall be made only upon the issuance of and in compliance with a special use permit as provided in Chapter 20.100.

(Ord. 26248.)

20.150.060 Nonconforming structure - Expansion and enlargement.

- A. Any legal nonconforming structure, the use of which is not legal nonconforming, may be expanded upon such land only upon issuance of and in compliance with a site development permit in accordance with the applicable development standards of the zoning district said structure is in. Nothing in this provision permits the further diminution of an existing nonconforming development standard except as otherwise provided for in this title.
- B. Structures that do not conform to the current parking requirements are subject to the parking requirements of Section 20.90.210 regarding any change in use.

(Ord. 26248.)

20.150.070 Change of use.

- A. For the purposes of this section, a "change in use" shall be defined as a change from one enumerated use to a different enumerated use as set forth in Tables 20-30, 20-50, 20-90, 20-110 and 20-140.
- B. A legal nonconforming use may be changed to another nonconforming use of a like nature upon issuance of and in compliance with a special use permit, provided such use is not subject to a conditional use permit or special use permit under any other provisions of this title. Any enlargement made in conjunction with such change must conform to the provisions of this chapter.
- C. Two uses are of "like nature" when the director determines that they are treated in essentially the same manner for all purposes under this title and that the new use will not create an increase in such impacts as traffic, parking or noise. The "like nature" determination shall be made as part of the consideration of a special use permit as provided in this title.
- D. Where a lot or parcel which contains a legal nonconforming use also contains a conforming use, the existing conforming use may be changed to another conforming use only upon a finding that such proposed conforming use is compatible with such legal nonconforming use in terms of architecture as well as use. Such determination of compatibility shall be made as part of the consideration of any site development permit, conditional use permit, or special use permit required for such change by other provisions of this Code. If no such permits are required, such change in use shall be made only upon the issuance of and in compliance with a special use permit as provided in this title.

(Ord. 26248.)

20.150.080 Addition of new uses.

- A. No additional nonconforming use may be added to a property which contains a legal nonconforming use.
- B. Additional uses which conform to the provisions of this title may be added to a property which contains a legal nonconforming use only upon a finding that such proposed additional use is compatible with the existing nonconforming use or uses in terms of architecture as well as use. Such determination of compatibility shall be made as part of the consideration of any site development permit or conditional use permit required for such additional use by other provisions of this Code. If no site development permit or conditional use permit is otherwise required, such additional use shall be added only upon the issuance of and in compliance with a special use permit as provided in this title.

(Ords. 26248, 26455.)

20.150.090 Nonconforming residential use regulations.

Where property in a nonresidential district contains a legal nonconforming residence, such use shall continue to maintain the minimal side and front set backs as if it were located in an R-1-8 residence district and shall in addition comply with all other applicable regulations and development standards for lots with a one-family dwelling.

(Ord. 26248.)

20.150.100 Subdivision.

A parcel which contains a legal nonconforming use or structure may be subdivided pursuant to Title 19 of this Code only if such subdivision does not, in any way, increase the degree or extent of the nonconformity.

(Ord. 26248.)

20.150.110 Special use permits - Findings.

- A. The director, or the planning commission, on appeal, shall issue a special use permit for a nonconforming use only if the following findings can be made:
 - 1. In case of an application for a special use permit for reinstatement of a legal nonconforming use:
 - a. No more than eighteen (18) months has elapsed between the date the legal nonconforming use was first discontinued or abandoned and the date the application for the special use permit was filed and found complete; and
 - b. The conversion to a conforming use would create undue hardship under the particular circumstances presented.
 - c. The finding required by subsection a above does not need to be made for reinstatement of residential legal nonconforming uses or the residential mixed use residential/commercial legal nonconforming uses.
 - 2. In case of an application for a special use permit for expansion or enlargement:
 - a. The expansion of the use upon the land, or the alteration or enlargement of the building or structure, does not significantly increase any identified impact such as traffic, on-street parking or noise.
 - 3. In the case of an application for a special use permit for a change in use, it is found that:
 - a. The nonconforming use is being changed to a use of like nature.
 - 4. In case of an application for a special use permit for determination of compatibility of nonconforming and conforming uses when either changing a conforming use to another conforming use or adding a conforming use, it is found that:
 - a. The change or addition of a conforming use on site is compatible with any existing nonconforming use on site in terms of architecture as well as use.
- B. In addition to the findings required by Subsection A, no special use permit shall be issued, pursuant to this part, unless it is found that:
 - 1. The permit will not impair the character and integrity of the neighborhood; and

2. The permit will not impair the utility or value of adjacent property or the general welfare of the neighborhood; and
3. The permit is not detrimental to the public peace, health, safety, morals or welfare.

(Ord. 26248.)

Part 2 ADVERSE PUBLIC IMPACT

20.150.200 Nonconforming uses - Adverse public impact.

- A. Notwithstanding Section 20.150.020, any lawful use rendered nonconforming due to annexation or a change in Title 20 of this Code which resulted in:
 1. A new or changed zoning district classification of the site; or
 2. Prohibition of the use in the existing zoning district; or
 3. The requirement for a conditional use permit for the use;shall be deemed a legal nonconforming use for the purposes of this part only as long as such use does not create an adverse public impact as specified in the following section.
- B. Use of the procedures contained in the following sections shall not be deemed to confer legal nonconforming status on any use which is subsequently determined to have been illegal at the time that the order to show cause was issued.

(Ord. 26248.)

20.150.210 Adverse public impact.

- A. An adverse public impact may be demonstrated by:
 1. Evidence of noncompliance with any condition or any law, ordinance or prior permits; or
 2. Evidence of a substantially changed condition in neighborhood; or
 3. Evidence that the use is creating a nuisance as defined by this title; or
 4. Evidence that the use substantially impairs the public peace, health, safety, morals or welfare.
- B. Evidence of an adverse public impact may include, but not be limited to, impacts such as noise, traffic, parking, crime, or disturbance of the health, safety, peace or welfare of the neighboring public by owners, managers, residents, patrons or guests of the subject property.

(Ord. 26248.)

20.150.220 Order to show cause.

- A. The director of planning may issue an order to show cause why a legal nonconforming status should not be revoked and the use be subject to a conditional use permit or terminated due to adverse public impact.
- B. Such order shall state the basis of the adverse public impact(s), specify the facts and allegations upon which it is based and shall give notice of the time and place of a hearing to be held before the planning commission.

(Ord. 26248.)

20.150.230 Notice.

- A. Notice of the order to show cause and public hearing shall be given in accordance with Section 20.100.190 of this title. A copy of the order shall be included with the notice.
- B. In addition to the notice required by Section 20.100.190, a copy of the order and notice shall be mailed to "Occupant" at the address of the real property subject to the order of show cause.

(Ord. 26248.)

20.150.240 Hearing on order to show cause.

- A. At the time specified in the order to show cause, or at such later time to which the matter is continued, the planning commission shall hold a hearing on the status of the legal nonconforming use.
- B. The planning commission, or the city council on appeal, shall hear and consider all relevant testimony and evidence presented.
- C. The planning commission, or the city council on appeal, shall determine whether or not the legal nonconforming use shall be:
 - 1. Permitted to continue as a legal nonconforming use; or
 - 2. Allowed to continue subject to a conditional use permit and conditions which will prevent the adverse public impact demonstrated pursuant to Section 20.150.250; or
 - 3. Terminated pursuant to Section 20.150.260.
- D. Notice of the decision of the planning commission, or the city council on appeal, shall be sent by certified mail to the owners and appellants, if any, and to any other person who has, in writing, requested a copy of such decision.

(Ord. 26248.)

20.150.250 Findings for requirement of a conditional use permit.

- A. The commission, or the city council on appeal, may allow the use to continue subject to a conditional use permit issued by the commission, if a finding is made that:
 - 1. The use constitutes or results in an adverse public impact; and
 - 2. The conditions contained in the conditional use permit will prevent or make insubstantial the adverse public impact(s).
- B. In such case, the use shall for all purposes be treated as a conditional use subject to the terms of the conditional use permit.
- C. The conditional use permit shall not be effective unless the property owner pays the fees for conversion to a conditional use permit as specified in the schedule of fees adopted by resolution of council.

(Ord. 26248.)

20.150.260 Findings for termination of use.

- A. The commission, or the city council on appeal, may terminate the legal non-conforming use upon finding that:

1. The use constitutes or results in an adverse public impact; and
 2. The adverse public impact(s) cannot be adequately abated, substantially corrected or rectified with a conditional use permit; or
 3. There are uncorrected violations of a city permit, ordinance or state law.
- B. Upon determining that a nonconforming use shall be terminated, the planning commission, or the city council on appeal, shall also determine what, if any, amortization period is necessary to allow the property owner a reasonable period to terminate the use commensurate with the nature and extent of the owner's investment in the property.
- C. In determining the amortization period, the commission, or the city council on appeal, shall consider, among other factors:
1. The length of time the property has been owned by the property owner;
 2. The owner's ability to readily convert the use to a use which is permitted within the zoning district; and
 3. The difference, if any, between the value of the prior use and the value of the permitted uses; and
 4. The impacts of allowing the use to continue.

(Ord. 26248.)

20.150.270 Appeal of commission's decision.

- A. Any action taken by the planning commission, after a hearing on an order to show cause, may be appealed to the city council by filing a written notice of appeal with the director within ten calendar days after a copy of the decision of the planning commission has been placed in the mail to the owners of the subject property.
- B. Any owner or tenant of the subject property or any property within three hundred feet of the subject site may file such an appeal.
- C. The city clerk shall set the date of the public hearing by the council on the appeal which date shall not be less than ten nor more than sixty days after the date on which the appeal was filed. Notice of hearing shall be provided in accordance with Section 20.100.190.
- D. The city council shall hold at least one public hearing on the matter. The hearing of the council shall be de novo.
- E. The decision of the city council shall be final.
- F. The city clerk shall mail a certified copy of the decision of the city council to the owner and tenant(s) of the property and, if different, the appellant.

(Ord. 26248.)

Part 3 AMORTIZATION

20.150.300 Amortization - Public payphones.

- A. Any public pay telephone governed by the provisions of Part 12 of Chapter 20.80 which was a legal use on February 19, 2001 but which did not conform to the provisions of Part 12 of Chapter 20.80 on that date shall be terminated within six months from February 19, 2001.

- B. Any public pay telephone governed by the provisions of Part 12 of Chapter 20.80 that was a legal use on September 28, 2001 but did not conform to the additional provisions of that Part 12 that became effective on that date, regarding location of a public pay telephone on a wall containing a primary entrance and/or regarding a minimum five-foot pedestrian access between the public pay telephone and the private property line, shall be terminated within six months from September 28, 2001.

(Ords. 26248, 26455.)

20.150.310 Extension of time for termination of nonconforming use.

The operator of a nonconforming use as described in Section 20.150.300 may apply under the provisions of this section to the city council for an extension of time within which to terminate the nonconforming use.

- A. Time and manner of application. An application for an extension of time within which to terminate a use made nonconforming by the provisions of Section 20.150.300 may be filed by the owner of the real property upon which such use is operated or by the operator of the use.

Such an application must be filed with the city clerk at least ninety days prior to the time established in Section 20.150.300 for termination of such use.

- B. Content of application; fees. The application shall state the grounds for requesting an extension of time. The filing fee for such application shall be as set forth in the schedule of fees established by resolution of the city council.
- C. Hearing on application. Upon filing of an application for extension, the city clerk shall, subject to the rules of the city council as to the hour and place of public hearings which shall be conducted by it, set a date for a public hearing which shall be held by the city council on said application. Said date of hearing shall be not less than twenty nor more than sixty days from and after the date said application was filed and all filing fees were paid.
- D. Notice of hearing. The city clerk shall cause notice of the time and place of the hearing on the application to be given in accordance with the procedure set forth in Section 20.100.190 of this title.
- E. Approval of extension; findings. Within a reasonable time after the public hearing on an application for extension has been conducted, the city council shall by resolution take action on the request for the extension. Unless the extension is approved by at least a majority of the council, it shall be deemed denied. An extension under the provisions of this section shall be for no more than one year and shall be approved only if the city council makes all of the following findings:
1. The applicant has made a substantial investment (including but not limited to lease obligations) in the property or structure on or in which the nonconforming use is conducted; such property or structure cannot be readily converted to another use; and such investment was made prior to February 19, 2001.
 2. The applicant will be unable to recoup said investment as of the date established for termination of the use; and
 3. The applicant has made good faith efforts to recoup the investment.

(Ord. 26248.)

20.150.320 Amortization - Temporary structures.

Any temporary structure which meets the definition of Section 20.200.1240 which existed on February 19, 2001 and has remained in continuous use and which does not conform to the provisions of this title shall be terminated within six months from February 19, 2001.

(Ord. 26248.)