



City Clerk

## CITY OF SAN JOSÉ, CALIFORNIA

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STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA  
CITY OF SAN JOSÉ

I, Toni J. Taber, City Clerk & Ex-Officio Clerk of the Council of and for the City of San José, in said County of Santa Clara, and State of California, do hereby certify that **Ordinance No. 29523**, the original copy of which is attached hereto, was passed for publication of title on the **9th day of December 2014**, was published in accordance with the provisions of the Charter of the City of San José, and was given final reading and adopted on the **December 16, 2014**, by the following vote:

AYES: CAMPOS, CONSTANT, HERRERA, KALRA, KHAMIS,  
LICCARDO, NGUYEN, OLIVERIO, ROCHA; REED.

NOES: NONE.

ABSENT: NONE.

ABSTAINED: NONE.

VACANT: DISTRICT 4.

Said ordinance is effective as of **January 16, 2015**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San José, this **19th day of December 2014**.

(SEAL)

TONI J. TABER, CMC  
CITY CLERK & EX-OFFICIO  
CLERK OF THE CITY COUNCIL

**ORDINANCE NO. 29523**

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 20.30.110 OF CHAPTER 20.30, 20.60.030 OF CHAPTER 20.60 AND 20.200.470 OF CHAPTER 20.200, ADDING NEW SECTIONS 20.40.115 OF CHAPTER 20.40, 20.70.130 OF CHAPTER 20.70 AND 20.75.230 OF CHAPTER 20.75, AMENDING PART 2 OF CHAPTER 20.80, AND ADDING A NEW PART 2.5 TO CHAPTER 20.80, ALL OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, TO ALLOW AND REGULATE TRANSIENT OCCUPANCY AS AN INCIDENTAL USE OF RESIDENCES AND TO MODIFY PERMITTING REQUIREMENTS AND OCCUPANCY LIMITATIONS FOR BED AND BREAKFAST INNS, TO AMEND AND ADD LONG-TERM ROOM RENTAL LIMITATIONS AND TO MAKE OTHER NON SUBSTANTIVE OR FORMATTING CHANGES WITHIN THESE SECTIONS OF TITLE 20**

**WHEREAS**, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the City has certified that certain Final Program Environmental Impact Report ("FEIR") for the Envision San José 2040 General Plan and the City Council adopted its related Resolution No. 76041 in connection therewith; and

**WHEREAS**, pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that no new effects would occur from and no new mitigation measures would be required for the adoption of this Ordinance and that adoption of this Ordinance is within the scope of and in furtherance of the Envision San José 2040 General Plan FEIR, for which findings were adopted by City Council through its Resolution No. 76041 on November 1, 2011; and

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

**WHEREAS**, this Council has reviewed and considered the Final EIR and related City Council Resolution No. 76041 prior to taking any approval actions on this Ordinance.

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

SECTION 1. Section 20.30.110 of Chapter 20.30 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

**20.30.110 Incidental Uses**

In addition to the occupancy of a dwelling as a residence, the following incidental uses are permitted:

- A. The rental of rooms in a One-Family Dwelling to up to three (3) Guests; in a Two-Family Dwelling to up to two (2) Guests, by each Family; and in a Multiple Dwelling Unit to up to two (2) Guests per unit, if such use is clearly incidental to the occupancy of the dwelling unit by said Family as its own residence, and such rental is for a period of time longer than thirty (30) days and there are no more than six (6) persons living in the dwelling.
- B. Use of the dwelling, including a permitted Secondary Dwelling or permitted Guesthouse, for Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80.
- C. State-licensed Family Day Care Home
- D. The following non-commercial activities:

1. A garage sale consisting of the occupants' personal property;
2. Sale of goods hand-produced by the occupants;
3. Sales parties held for the purpose of selling goods to invited Guests. Such parties shall be held inside a permanent structure or in the rear yard of the dwelling unit.

E. To qualify as a non-commercial activity:

1. No more than two (2) such sales are allowed in any calendar year;
2. No such sale can be conducted for more than four (4) consecutive days;
3. Such sales shall only be conducted between the hours of 9:00 a.m. and 9:00 p.m.

SECTION 2. Chapter 20.40 of Title 20 of the San José Municipal Code is hereby amended to add a new Section 20.40.115 to be entitled and read as follows:

**20.40.115 Incidental Use, Residential**

Where residential use has been permitted pursuant to a Conditional Use Permit, Special Use Permit or Administrative Permit, Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80 is a permitted incidental use of the permitted dwelling.

SECTION 3. Section 20.60.030 of Chapter 20.60 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

**20.60.030 Uses**

The use regulations for territory situated in a Planned Development District shall be as follows:

- A. Unless and until a Planned Development Permit has been issued and been effectuated, property in such territory may be used only as if it were in its base district alone.
- B. If a Planned Development Permit is effective, any use or combination of uses provided for in said permit is allowed in accordance with and in strict compliance with all terms, provisions and conditions of said permit. Each permitted use shall be confined and limited to the particular location designated therefore in said permit. No use, other than the particular uses specified in the permit, shall be permitted, except as set forth elsewhere in this Title 20.
- C. If a Planned Development Permit permits a residential use, Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80 is a permitted use of the permitted dwelling.
- D. If a Planned Development Permit has been issued, the Planned Development District may nevertheless be disregarded and property in such territory used as if it were in its base district alone if such use is confined to part of the subject territory not covered by the permit and a requirement to make such use of such part is not a condition of such permit.

**SECTION 4.** Chapter 20.70 of the San José Municipal Code is hereby amended by adding a Section to be numbered and entitled and read as follows:

**20.70.130 Incidental Use, Residential**

Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80 of a Live/Work Unit or Multiple Dwelling is a permitted incidental use of the dwelling.

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**SECTION 5.** Chapter 20.75 of the San José Municipal Code is hereby amended by adding a Section to be numbered and entitled and read as follows:

**20.75.230 Incidental Use, Residential**

Where residential use has been permitted pursuant to a Conditional Use Permit, Special Use Permit or Administrative Permit, Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80 is a permitted use of the permitted dwelling.

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**SECTION 6.** Part 2 of Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

**Part 2**

**Bed and Breakfast Inns**

**20.80.110 Bed and Breakfast Inns - Criteria for Approval**

- A. No Development Permit may be issued for a Bed and Breakfast Inn unless the following criteria are met:
1. The inn is owner-occupied.
  2. The Building is of historical and/or architectural significance and was designed for residential occupancy.
  3. No separate cooking facilities for Guests are provided.
  4. No more than one daily meal, breakfast, is served to Guests.
  5. No more than one Guest Room has an external entryway.

6. No Guest may occupy accommodations in the inn for a period of more than thirty (30) calendar days, counting portions of calendar days as a full calendar day.
  7. A certificate of occupancy for Group R occupancy is obtained from the City Building Division, and all applicable Building and Fire regulations are met.
  8. Any loan funds provided by the City of San José or the redevelopment agency for rehabilitation and/or repair of the subject Building as a residential Building have been repaired in full.
- B. The criteria set forth in subsection A, above, shall be deemed to be conditions of any development permit for a Bed and Breakfast Inn, and failure to adhere to said criteria shall be a violation of this Title.
- C. All Development Permits for a Bed and Breakfast Inn shall set forth the maximum number of Guest Rooms or Guests that may occupy the premises, at any given time, for overnight lodging.

SECTION 7. Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended to by adding a Part to be numbered and entitled and read as follows:

### **Part 2.5**

#### **Transient Occupancy as an Incidental Use to a Residence**

##### **20.80.150 Definitions**

The definitions set forth in the Section shall govern the interpretation of this Part:

- A. "Adjacent Properties" means the dwelling units located to the sides, rear, front, including across the street, above and below, the dwelling unit in which the Incidental Transient Occupancy is located.

- B. "Host" means any Person, as defined in Title 1 of this Code, who is the owner of record of residential real property, or any Person who is a lessee of residential real property pursuant to a written agreement for the lease of such real property, who offers a dwelling unit, or portion thereof, for Incidental Transient Occupancy.
- C. "Host Present" means the Host is present on the premises of the dwelling unit that is being used for Incidental Transient Occupancy during the term of the Transient Occupancy at all times between the hours of 10:00 p.m. and 6:00 a.m.
- D. "Hosting Platform" means a Person that provides a means through which a host may offer a dwelling unit, or portion thereof, for Incidental Transient Occupancy. This service is usually, though not necessarily, provided through an internet based platform and generally allows an owner or tenant to advertise the dwelling unit through a website provided by the Hosting Platform and provides a means for potential Incidental Transient Users to arrange Incidental Transient Occupancy and payment therefor, whether the Transient User pays rent directly to the Host or to the Hosting Platform.
- E. "Incidental Transient Occupancy" means the use or possession or the right to the use or possession of any room or rooms, or portions thereof for dwelling, sleeping or lodging purposes in any One-Family Dwelling, Two Family Dwelling, Multiple Dwelling, Mobilehome, Live/Work Unit, or Secondary Dwelling, by a Transient User.
- F. "Local Contact Person" means a person designated by the Host who shall be available at all twenty-four (24) hours per day, seven (7) days per week during the term of any Transient Occupancy for the purpose of (i.) responding within sixty (60) minutes to complaints regarding condition or operation of the dwelling unit or portion thereof used for Incidental Transient Occupancy, or the conduct of Transient Users; and (ii) taking remedial action to resolve such complaints.



- G. "Primary Residence" means a permanent resident's usual place of return for housing as documented by motor vehicle registration, driver's license, voter registration or other such evidence.
- H. "Transient User" means a person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full calendar days.

**20.80.160 General**

Incidental Transient Occupancy meeting the criteria of this Part is an allowed use in any One-Family Dwelling, Two-Family Dwelling, Multiple Family Dwelling, Mobilehome, Live/Work Unit, Secondary Dwelling or Guest House.

**20.80.170 Performance Criteria**

Incidental Transient Occupancy of a residential dwelling is only allowed as an incidental use of such dwelling if the Incidental Transient Occupancy conforms to each of the performance criteria set forth in Table 20-165 below.

Table 20-165 Performance Criteria	
Number of Occupants One-Family Dwelling or Mobilehome - Host Present	Incidental Transient Occupancy by up to three (3) Transient Users in a One-Family Dwelling or Mobilehome with the Host present.
Number of Occupants in each Dwelling Unit in Two-Family or Multiple Family Dwelling - Host Present	Incidental Transient Occupancy by up to two (2) Transient Users in each dwelling unit in a Two-Family Dwelling or Multiple Family Dwelling with the Host Present.

Number of Occupants - Host Not Present	Incidental Transient Occupancy where the Host is not present shall be limited to the two (2) people in a studio unit, three (3) people in a one bedroom unit and two (2) people per bedroom for each bedroom in excess of one bedroom, but not to exceed ten (10) persons total.
Contact Information - Host Not Present	For Incidental Transient Occupancy where the Host is not present on the premises during the term of the Transient Occupancy, the Host shall provide written notice of the name and telephone number of the Local Contact Person to all Transient Users and to all occupants of all Adjacent Properties.
Annual Limit on Number of Days for Incidental Transient Occupancy	One hundred eighty (180) days per calendar year, no Host Present. Three hundred sixty-five (365) days per calendar year with Host Present.
Parking Requirements for Incidental Transient Occupancy	For Incidental Transient Occupancies with the Host Present, the dwelling unit has the required number of parking spaces for the dwelling type as set forth in Section 20.90.060.
Limitation in Dwellings Subject to Parts 1-6 of Chapter 17.23 of this Code	Incidental Transient Occupancy is only a permitted use in a dwelling that is subject to Parts 1-6 of Chapter 17.23 of this Code, if the Host is a Person who occupies the unit that is being used for Incidental Transient Occupancy for at least sixty (60) consecutive days, with the intent to establish that dwelling as the Host's Primary Residence.
Payment of Transient Occupancy Tax	Transient Occupancy taxes are collected and paid to the City pursuant to Chapter 4.72 and 4.74 of this Code. Transient Occupancy taxes are the responsibility of the Host, but may be paid by a Hosting Platform on behalf of a Host by a Hosting Platform if the Incidental Transient Occupancy is created through a Hosting Platform that has an agreement with the City for collection and payment of such Transient Occupancy taxes.
Compliance with All Requirements of the Housing Code for Dwellings	Any building or portion thereof used for Incidental Transient Occupancy shall comply with the requirements of the Housing Code (Chapter 17.20.)
Recordkeeping Requirements	The Host shall retain records documenting the compliance with these Performance Criteria for a period of three (3) years after each period of Incidental Transient

	Occupancy. The Host shall provide copies of records documenting the compliance with these Performance Criteria, including but not limited to records showing payment of transient occupancy taxes by a Hosting Platform on behalf of a Host, upon request to City Manager, City Attorney, City Auditor or any designee of City Manager, City Attorney or City Auditor.
Review of Incidental Transient Occupancy Use and Criteria	City Council may terminate Incidental Transient Occupancy as a permitted use or modify the criteria for such use at any time. City Council specifically directs that a review of Sections 20.30.110.B, 20.40.115, 20.60.030.C, 20.70.130, 20.75.230 and Part 2.5 of Chapter 20.80 be placed on a City Council agenda no later than eighteen (18) months after the effective date of Ordinance 29523.

SECTION 8. Section 20.200.470 of Chapter 20.200 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

**20.200.470 Guesthouse**

“Guesthouse” means a building which is designed or used to accommodate a maximum of ten (10) Guests, where Guest Rooms are provided (1) for a fixed period of at least thirty (30) consecutive calendar days, in exchange for an agreed payment of a fixed amount of money or other compensation based on the period of occupancy; or (2) for Incidental Transient Occupancy in compliance with Part 2.5 of Chapter 20.80.

PASSED FOR PUBLICATION of title this 9th day of December, 2014, by the following vote:

AYES:                    CONSTANT,    HERRERA,    KHAMIS,    LICCARDO,  
                              NGUYEN, OLIVERIO; REED.

NOES:                    CAMPOS, KALRA, ROCHA.

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ABSENT:                NONE.

DISQUALIFIED:        NONE.

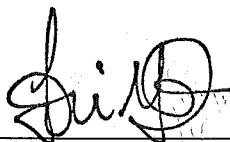
VACANT:                DISTRICT 4.



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CHUCK REED  
Mayor

ATTEST:



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TONI J. TABER, CMC  
City Clerk