

Ordinance No. 2009-03

**AN ORDINANCE OF THE CITY OF SAN JUAN BAUTISTA
RESCINDING CHAPTER 10-4 OF THE SAN JUAN BAUTISTA
MUNICIPAL CODE (“GROWTH MANAGEMENT ORDINANCE”),
AND ADOPTING A NEW GROWTH MANAGEMENT
ORDINANCE AS CHAPTER 10-4 OF THE MUNICIPAL CODE**

WHEREAS, by order and judgment of the Superior Court filed on January 12, 2009, all of the current Chapter 10-4, an initiative-based regulation of the San Juan Bautista Municipal Code, titled “Growth Management Ordinance,” was determined to be invalid, unlawful, and unenforceable in an action entitled *McAlpine v. City of San Juan Bautista*, San Benito County Superior Court Case Number CU-08-00040; and

WHEREAS, this Council has determined by adoption of its General Plan that it is desirable to maintain reasonable growth limits, and therefore it is in the City’s interests to adopt a growth management ordinance that is reasonable, valid and enforceable; and

WHEREAS, based on a duly prepared initial study that showed no substantial evidence that the adoption of the Growth Management Ordinance set out below may have a significant effect on the environment, City has caused a Notice of Intent to Adopt a Negative Declaration to be posted and distributed as required by law, and no comments have been received regarding said Notice of Intent;

NOW, THEREFORE, the City Council of the City of San Juan Bautista does hereby ORDAIN as follows:

Section 1. Based on the record before this Council, including without limitation the Initial Study, Notice of Intent, and proposed Negative Declaration, finds that there is no substantial evidence that the adoption of the ordinance set out below will have a significant effect on the environment. This Council further finds that the Negative Declaration reflects the agency’s independent judgment and analysis. Therefore and on the basis of these findings, this Council hereby adopts the Negative Declaration.

Section 2. Chapter 10-4 of the San Juan Bautista Municipal Code hereby is rescinded in its entirety.

Section 3. A new Chapter 10-4, to be entitled “Growth Management Ordinance,” hereby is added to the San Juan Bautista Municipal Code, to read as follows:

10-4-100 Intent.

It is the intent of this Chapter to implement growth management provisions of the San Juan Bautista General Plan and to assure that residential development remains within the limits established by the General Plan (1998-2015) as amended from time to time. This Ordinance ensures that residential development will not outpace the City’s ability to provide, upgrade and expand essential public facilities and services.

10-4-105 Definitions.

A. Allocation Program. The right to make application to create a residential lot or build a residential unit. Any residential development project of three or more units or lots shall obtain allocations pursuant to this Chapter prior to application for any discretionary approval of the project, or if no discretionary project approval is required, prior to application for building or other construction permits. The allocation program is intended to provide some certainty to developers that allocations will be available for subsequent phases of a project. An allocation is not a guarantee of approval for the requested number of lots or units proposed by a related residential development application. The Planning Commission and/or City Council shall determine the actual number of lots or units approved through the development review process.

B. Low Income Housing. Low income housing shall have the same meaning as in the General Plan Housing Element.

C. Lower Income Housing. Lower income housing refers to low income and/or very low income housing as each is defined in the General Plan Housing Element.

D. Senior Housing. Any multiple-family attached housing units for rent with the City approved restrictions that limit tenancy such that at least one member of the household is fifty-five years of age or older.

E. Unit. A residential lot created in accordance with the Subdivision Map Act, or otherwise legally created, or, a residential unit in a non-subdivision project.

F. Very Low Income Housing. Very low-income housing shall have the same meaning as in the General Plan Housing Element.

10-4-110 Findings.

When enacting a growth limitation ordinance, Government Code 65863.6 requires findings be made as to the public health, safety, and welfare of the city to be promoted by the adoption of the ordinance, which justify reducing the housing opportunities in the region.

(A) The residential allocation program provided for in the 1998-2015 San Juan Bautista General Plan and incorporated in this Ordinance reflects an average 3% growth rate (POLICY L-9. Program L-9) and provides flexibility to modulate residential growth over time and prevent overburdening local services, while accommodating future residential development.

(B) The Growth Management Ordinance serves the public interest and protects the public health, safety, and welfare by managing and pacing residential growth upon which future planning for land use and major City facilities such as sewer and water systems is based. As set forth in the General Plan, its certified EIR, and as further set forth below, current infrastructure constraints exist. Through the Growth Management Ordinance new development will not outpace the improvement and construction of adequate infrastructure.

1. Sewer. Aging collection lines allow water from saturated ground to seep into the sewer system. Replacement of sewer mains in a number of locations will be necessary before substantial new growth can occur.

2. Water. Water distribution lines are old and deteriorating. The lines are too small to handle peak flow requirements, increasing the potential for loss of units due to fire. Correcting the inadequacies in the water distribution system is necessary before substantial new growth should occur.

3. Transportation. Many city roads are deteriorated and need substantial rebuilding in some areas .

4. Drainage. Numerous areas in the City are prone to flooding. Increased impervious surface area through residential construction could increase the risks of flooding.

(C) The residential allocation program is a key implementation measure of the 1998-2015 General Plan and essential to the following General Plan goals and related implementation programs and policies:

1. Maintain San Juan Bautista as a small, compact town surrounded by open space and agriculture (Goal L-1: Small Town Character).

2. Ensure that future development occurs in a balanced, orderly manner and at a rate, which does not exceed the City's ability to provide services (Goal L-2: Growth Management).

3. Preserve the positive qualities of San Juan Bautista's residential areas and extend these qualities into new housing areas (Goal L-3: Residential Areas).

4. Provide adequate housing opportunities for persons with special needs, including seniors, disabled persons, farmworkers, and families with young children (Goal H-4: Special Needs).

5. Remove constraints to the production of affordable housing without compromising the quality of life in San Juan Bautista (Goal H-5, Constraints).

6. Provide water and sewer services in the most efficient, cost-effective, and environmentally sound manner possible (Goal P-1: Water and Sewer).

(D) The Growth Management Ordinance will not prevent the City from attaining its regional fair share of housing needs as determined by the Association of Monterey Bay Governments (AMBAG). The allocation program specifies that housing for seniors, disabled, and very low/low income may be counted as 50% of the actual number of units for the purposes of the growth management ordinance.

10-4-115 Applicability.

Any residential development project of three or more units or lots shall obtain allocations pursuant to this Chapter ordinance prior to application for any discretionary approval of the project, or if no discretionary project approval is required, prior to application for building or other construction permits.

(A) Units restricted to senior, disabled, or lower income housing shall count as 1/2 of a unit for the purposes of determining how many allocations are required. For example, an 8-unit senior housing project would require 4 allocations. Fractional results shall not be rounded up or down.

(B) If the units designated as senior, disabled or lower income housing units at the time of award of the allocations are not subsequently approved by the City with such restrictions, such units shall count as full units rather than half units. The developer shall be required to apply for and receive additional allocations prior to issuance of building permits for such units. Approval of the project without such restrictions does not exempt the project from the requirement to obtain allocations under this ordinance.

10-4-120 Exemptions.

The following residential development projects shall be exempt from the requirement to obtain allocations as otherwise required in Section 10-4-115 above.

(A) Projects of one or two residential units on a legal lot existing as of the effective date of this ordinance.

(B) Second Dwelling Units as defined in Section 11-04-050 of Code.

(C) Statutory density bonus projects.

10-4-125. Number of Allocations Available.

(A) Within the City Limits. Based on the base year number of 712 units (as of January 1, 2009) and a three percent annual allocation, a total of 161 allocations shall be available from January 1, 2009, through December 31, 2015, provided that this total may be subject to change by the City Manager if unit and lot counts completed prior to December 31, 2009, reveal a number higher than that established by the City Manager as of January 1, 2009. This total represents anticipated new development at a 3% average annual growth rate. This allocation level shall be utilized for calendar year 2009 through 2015. Allocations for previous years were governed by regulations superceded by this Chapter.

(B) Outside the City Limits. The total and annual number of allocations for residential development projects outside the City limits shall be determined by the City Council in connection with annexation proceedings for the project site. The total and annual number of allocations determined by the City Council shall be consistent with the General Plan.

10-4-130 Award of Allocations.

(A) Developers shall apply for allocations on forms developed by and available at the Planning Department. At the time of application, the developer shall provide the following information:

1. Location of project.
2. Number of residential units.
3. Number of units to be designated as senior, disabled, or lower income Units.
4. Year(s) for which allocations are being sought.
5. Such other information as the City Planner deems necessary.

(B) Upon receipt of a completed application, Planning staff shall determine the number of allocations allowed per this Chapter for the related residential development. Allocations shall be awarded on a first-come, first-served basis consistent with the provisions of this Chapter. The City shall provide written notice of the award to developer specifying the number of allocations awarded and the year(s) of the allocations. The notice shall specify allocations that are awarded for restricted units as provided for in Section 10-4-115 above, however, failure to so note shall not relieve the developer of the requirement for additional allocations if the units are not approved as restricted.

(C) A developer may apply for and receive allocations for the year in which the application is submitted and/or for the subsequent two years to the extent that allocations are available. For example, a developer submitting an application in 2010 may request allocations for 2010, 2011 and 2012.

(D) An allocation awarded for any year (or years) may be transferred to a year prior. For example, a 2012 allocation may be applied to the 2011 allocation, but only to the extent the average allocation over the period does not exceed 3%, and subject to a City Council finding that such transfer of allocations does not outpace construction of adequate infrastructure.

(E) For residential units that have received development review approval or units that are in the development review and approval process prior to the effective date of the ordinance adopting this Chapter, and are not exempt under Section 10-4-120, the developer shall submit an application for allocations within thirty (30) business days of the effective date of this ordinance. Allocations shall be awarded pursuant to the provisions of this Chapter.

10-4-135 Effect of Allocations.

(A) An award of allocations under this Chapter is not a project approval, and is not a guarantee of a project approval. Developers must apply for and obtain any other required development and/or construction permits.

(B) Applications for and award of allocations are not a development project and are not subject to the Permit Streamlining Act.

(C) An award of allocations is not a property right.

(D) Allocations are awarded for use by a particular project in a particular location as specified in the developer's application. Allocations are not transferable to other projects, locations, or parcels.

10-4-140 Expiration of Allocations.

(A) Allocations shall be valid for a period of two years from July 1st of the year of the allocation and shall expire if a building permit has not been obtained during this period. For example, a 2010 allocation shall expire no later than July 1, 2012 unless extended as provided for below.

(B) Prior to expiration of the two-year period, a developer may request a one year extension. The City Council may grant the extension request upon developer's showing of reasonable progress toward obtaining a building permit.

(C) Notwithstanding any other provisions of this Chapter, the City shall not accept an application for building permit made by a developer holding allocations if the developer has an outstanding balance owed to City regarding the related residential development project.

10-4-145 Expired and Unused Allocations.

(A) Expired or unused allocations shall not roll over to increase the number of allocations available in subsequent years.

(B) The Planning Department shall monitor the number of awarded, used, expired, and unused allocations.

(C) If sufficient allocations are not available for the year(s) requested in an allocation application, the developer may request that the City Council grant additional allocations, subject to the following limitations.

1. In no case shall the number of additional allocations for any year be greater than the number of unused allocations for the immediately preceding year.

2. Additional allocations may be approved only upon a showing there are unused allocations for the immediately preceding year.

3. Additional allocations may be approved only upon a showing that community infrastructure and services are or will be available to serve the additional units for which the allocations are to be used.

4. Any additional allocations approved pursuant to this section shall be deemed to have been awarded in the year the additional allocations are approved by the Council.

10-4-150 Annual Review.

Annually, no later than the March regular City Council meeting, the City Planner shall report to the City Council on the following:

(A) The number of allocations requested, awarded and expired or otherwise unused in the previous year. Each subsequent annual review shall include such information for the previous year and cumulated for all previous years from the effective date of this Chapter.

(B) The condition of infrastructure and other public services and facilities to ensure that development likely in the following year will be adequately supported by such services and facilities.

(C). The number of existing units and lots.

Section 4. Severability. This ordinance and the various parts hereof are hereby declared to be severable. Should any part of this ordinance be declared by a court to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any other part than the part so declared.

Section 5. Effective Date. This ordinance shall go into effect thirty (30) days after the date of its adoption.

THE FOREGOING ORDINANCE was first read at a regular meeting of the San Juan Bautista City Council on the 21st day of July, 2009, and was adopted at a regular meeting of the San Juan Bautista City Council on the 18th day of August, 2009, by the following vote:

AYES: Edge, Laverone, Hill, Moore, Bilich

NOES: None

ABSENT: None

ABSTAIN: None

Rick Edge, Mayor

ATTEST:

Linda G. McIntyre, City Clerk

APPROVED AS TO FORM:

George Thacher, City Attorney