

SPECIAL USE PERMIT

FILE NO.	SP09-036
LOCATION OF PROPERTY	78 S. First Street
ZONING DISTRICT	DC Downtown Commercial
GENERAL PLAN DESIGNATION	Core Area
PROPOSED USE	Special Use Permit for late night use of an existing eating establishment, approximately 1,718 square feet in size.
ENVIRONMENTAL STATUS	Exempt
APPLICANT / ADDRESS	Nathan Shugan 78 S. First Street San Jose, CA 95113

FACTS

The Director of Planning finds that the following are the relevant facts regarding this proposed project:

1. This Special Use Permit is for the late night use of an existing restaurant.
2. Per Title 20 of the San Jose Municipal Code, the current restaurant hours of operation are limited to 6:00 a.m. and 12:00 midnight. The restaurant is proposing to extend its operating hours past midnight until 3:00 a.m. daily.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.
4. The subject site is designated Core Area on the San José 2020 General Plan Land Use/Transportation Diagram. The intent of the designation is to support a vibrant '24-hour' activity center for the city of San José that serves both as an employment center and as a focal point for cultural and recreational activities. The Core Area designation allows office, commercial, residential and mixed uses. The proposed use is consistent with the Core Area designation in that commercial uses, such as eating establishments, are intended uses.
5. The proposed use furthers the General Plan Downtown Revitalization Major Strategy. The strategy encourages new investment in, and around, the Downtown to create a prominent and attractive place with a vibrant mix of uses.
6. The subject site is located in the DC Downtown Commercial Zoning District.
7. Under the provisions of Section 20.79.510 A of the San José Municipal Code, no commercial establishment shall be open between the hours of 12:00 midnight and 6:00 a.m. in the DC and DC-NT1 districts, except with a special use permit as provided in Title 20 of the Municipal Code.

8. The subject eating establishment is approximately 1,718 square feet in size.
9. The primary policy applicable for the review and analysis of this project is City Council Policy 6-27 for the Evaluation of 24-Hour Uses. Planning staff has reviewed this proposal for consistency with the relevant sections of these policies.
10. The proposed late night use is generally compatible with the surrounding commercial uses.
11. The Zoning Ordinance requires no parking for an eating establishment in the DC Downtown Commercial District and the project provides no parking on site.

FINDINGS

The Director of Planning concludes and finds, based on the analysis of the above facts, that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project conforms in all respects to the provisions of Title 20 of the San José Municipal Code.
3. The proposed project is in conformance with the California Environmental Quality Act.

Further, the Director of Planning concludes and finds, based on the analysis of the above facts, that:

1. The proposed use at the location requested will not:
2.
 - a. adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. be detrimental to public health, safety, or general welfare; in that:

the proposed late night use will facilitate a project that is compatible with the surrounding area.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Director of Planning approves the late night use of the subject establishment.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Special Use Permit shall automatically expire four years from and

after the date of issuance hereof by said Director, if within such time period, the construction of buildings has not commenced, pursuant to and in accordance with the provision of this Special Use Permit. The date of issuance is the date this Permit is approved by the Director of Planning.

However, the Director of Planning may approve a Permit Adjustment/ Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.

3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval, may be imposed by the approval authority.
4. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
5. **Conformance with Plans.** Construction and development shall conform to approved plans entitled, SP09-036, dated June 17, 2009 on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
6. **Revocation.** This Special Use Permit is subject to revocation for violation of any of its provisions or conditions.
7. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
8. **Hours of Operation.** Hours of operation of this establishment are limited to between 6:00 a.m. and 3:00 a.m. daily.
9. **Alcohol Service.** Any incidental alcohol service shall be in compliance with the requirements of a valid ABC License.
10. **Maximum Occupancy.** The project operator shall comply at all times with the occupancy limit provided by the San José Fire Department.
11. **Patron Parking.** The project operator shall identify and publicize to its patrons the location and availability of parking facilities within the vicinity of the project site.
12. **Community Relations Manager.** The permittee shall implement the following:
 - a. Provide an on-site community relations manager during all hours of operation;

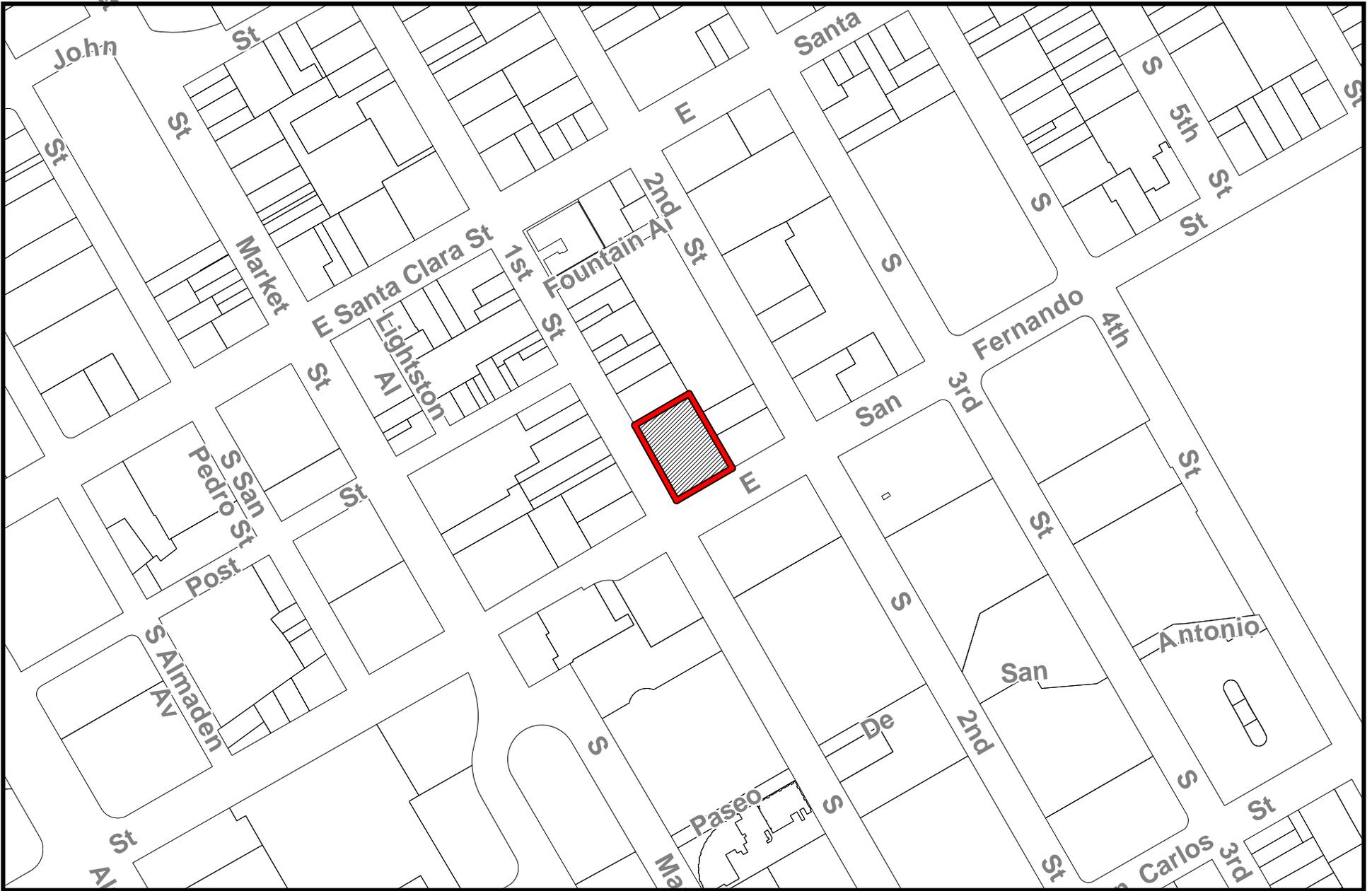
- b. Post contact information for the community relations manager in a prominent location within the establishment near the primary entrance;
- c. Maintain a complaint log including the time and content of all complaints and a summary of the time and nature of the establishment's response to each complaint.
- d. Ensure that the log is kept current and is available on the project site for inspection by City staff.

APPROVED and issued on this **19th day of March, 2010.**

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Deputy

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Approx. Scale: 1"= 300'
Map Created On: 06/17/2009
Noticing Radius: 500 feet

File No: SP09-036

District: 3

Quad No: 83