



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** March 1, 2010

**COUNCIL DISTRICT:** 3  
**SNI AREA:** N/A

**SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING PROVISIONS OF CHAPTER 20.70 AND 20.100 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO ESTABLISH THE CITY COUNCIL AS THE DECISION MAKING BODY FOR CONDITIONAL USE PERMITS FOR DRINKING ESTABLISHMENTS THAT OPERATE AFTER MIDNIGHT AND HAVE AN OCCUPANCY GREATER THAN 250 PERSONS WITHIN THE DC DOWNTOWN PRIMARY COMMERCIAL ZONING DISTRICT, AND FURTHER DIRECTION TO AMEND CITY COUNCIL POLICY 6-23 (GUIDELINES FOR EVOLUTION OF NIGHTCLUBS AND BARS).**

## RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council approve the following:

- A. Approve an ordinance amending the provisions of Chapters 20.70 and 20.100 of the Municipal Code that will:
  1. Establish the City Council as the decision making body for Conditional Use Permits for drinking establishments that operate after midnight and have an occupancy greater than 250 persons within the DC Downtown Primary Commercial zoning district (Attachment A); and,
- B. Direct the City Manager to continue the review of Council Policy 6-23 (Guidelines for Evolution of Nightclubs and Bars) and bring forward recommendations to include language that would mandate that Public Drinking Establishments with a proposed, or existing, occupancy load of over 250 persons must have a "Management Plan" that is developed with guidelines set forth in a "San Jose Nightlife Business Best Practices Guidelines" policy document prior to approval of a new or renewed Conditional Use Permit.

## **OUTCOME**

Approval of the proposed ordinances and direction on the proposed City Council Policy revisions are intended to encourage the development of diverse nightlife venues consistent with Downtown's housing development, the City's General Plan, the Downtown Strategy for Development and the Hospitality Zone Assessment.

## **BACKGROUND**

On December 18, 2007 the City Council and Redevelopment Agency Board directed staff to study the implications of developing new zoning regulations, including a potential zoning overlay and/or zoning guidelines which identify areas for entertainment uses and drinking establishments, as well as appropriate development and operational standards for such uses. Additionally, the Council/Agency Board directed staff to:

1. Immediately implement Council Policy 6-23 (*Guidelines for Evaluation of Nightclubs and Bars*) for the review of new Conditional Use Permits (CUPs) for entertainment uses.
2. Consider revising the permitting process to strengthen the City's ability to regulate entertainment uses.
3. Review and recommend revisions to Policy 6-23.

For nearly a decade a number of San Jose City Councils have adopted or approved policy documents to guide Downtown development including the Urban Land Use Institute Study (2000), Strategy 2000-San Jose Greater Strategy for Development (2001), and the City of San Jose Economic Development Strategy. More recently, a number of Downtown stakeholder groups have been formed to address issues related to Downtown nightlife. These groups include the Urgency Ordinance Task Force (2005), the Downtown Working Group (2006), the Hospitality Zone Assessment (2007), and most recently the City Manager's Downtown Advisory Committee (2009). The community-based groups have worked on various elements of the Downtown nightlife to promote a safe and vibrant environment for residents, employees and visitors. These groups have championed a number of initiatives to improve Downtown's nightlife, including the Summary Suspension Ordinance (the Urgency Ordinance), improvements to the Police Department's cruising and curfew enforcement, the Soft Closing Pilot Program, licensing of promoters, the Hospitality Zone Assessment (HZA), and a new Entertainment Zone Policing Model.

The HZA Report, approved by the City Council in April 2008, identified "Diversity of Music and Entertainment—Transitioning from Nightclubs to Nightlife" as one of the key priorities of the work plan and cited that San Jose's current market only caters to one group, stating "the current over concentration of large nightclubs, is geared to a younger demographic." This transition relies on four important factors to achieve the nightlife environment:

1. Police Presence
2. City Ordinances & Regulations
3. Venues
4. Positive Branding of Downtown

Downtown stakeholders who helped shape the HZA report suggested that the City take steps to diversify its late-night activity by shifting focus from bars and nightclubs to the creation of a thriving overall nightlife environment and developing a mix of uses. Before and during this process, the Council expressed value in having a diversity of nightlife venues as they do in San Diego, Austin, and Chicago. Entertainment zones in these cities have been successful due to early planning and a city's clear vision as to what they want their entertainment zone to be.

The HZA report stated that by creating multiple types of nightlife activities, Downtown San Jose will better position itself to attract a broad range of patrons and visitors, from young professionals, to parents, to older adults and continue its transformation from nightclubs to nightlife. Currently a number of cities, who have unplanned emerging entertainment zones, are suddenly suffering from the same over concentration of larger occupancy venues. These cities are currently studying various zoning restrictions, regulations and moratoriums to limit the number of these venues.

Research has shown that when entertainment zones incorporate a variety of nightlife uses that accommodate the entertainment interests of diverse demographic and age groups in the same concentrated area, it often leads to social controls for patron behavior and can reduce some of the impacts resulting from a saturation of alcohol-related uses in a discrete area.

### **Community Outreach**

In addition to the HZA outreach process, the Office of Economic Development, Planning Building and Code Enforcement (PBCE) and the Redevelopment Agency have developed an outreach process to engage stakeholders in a discussion of the vision for entertainment uses and drinking establishments in the Downtown Core. During March and April of 2008, staff held five community focus group meetings with key stakeholder contingencies – entertainment businesses, residents, commercial developers/brokers, property owners and the general downtown community.

Focus group meetings also included representatives from cultural venues, the Chamber of Commerce, 1<sup>st</sup>ACT Silicon Valley, San Jose Downtown Association, and the Convention and Visitors Bureau. Stakeholders that were unable to attend their designated focus group were invited to attend a general community meeting on the subject. In addition to these community meetings an on-line survey was conducted soliciting Downtown residents' feedback. Seventy-seven people responded to the on-line survey:

- 76% - residents
- 14% - business owners
- 4% - downtown employees
- 1% - developers or brokers.

### *Key Findings*

At the conclusion of the stakeholder input process, staff identified three goals:

1. Promote a vibrant Downtown with a welcoming environment that includes nightlife & Downtown residents;

2. Minimize negative impacts from nightlife Downtown venues
3. Encourage positive and more diverse types of nightlife venues.

Generally, participants felt that a “variety” of entertainment and activities, a welcoming environment, and accessibility and parking were key elements of a vibrant Downtown. Participants perceived new development, the new residents and businesses, the special events, restaurants and cultural venues as positive aspects of Downtown San Jose. “Variety” or “diversity” of entertainment options resonated across the board with all of the focus groups. Participants stated that they wanted to see more variety of entertainment and activities, including a variety of restaurants, retail outdoor venues, and live music of all kinds.

Participants felt the current limited nightlife options, mostly large occupancy nightclubs, were geared towards only young persons and that few other nightlife options existed in the Downtown and that adding such additional opportunities might pull other young and older adults away from nearby nightlife destinations such as Los Gatos, Campbell and Palo Alto. The feedback received by the participants for more variety of nightlife venues is consistent with the HZA report and goals already articulated by Council.

In addition to the limited variety of nightlife options, participants felt the strong police presence, the limited parking and the restrictive and inconsistent permit process options needed improvement.

City staff also brought this proposal to the City Manager’s Downtown Advisory Committee for additional community input. Based on the Committee discussion, staff held several follow-up meetings with downtown stakeholders to discuss the direction and final proposal.

In order to promote the ongoing development of an active, attractive and vibrant Downtown, it is important to have a set of policies and regulations that match the Council’s and community’s goals for the Downtown and that provide adequate flexibility for a broad range of nightlife activities while also addressing and preventing potential related problems. While the global recession has slowed down new business development in the downtown, it is vital to have policies in place before development starts again.

The City has made important strides with respect to the police presence with a large collaborative effort between the City Manager’s Office, Police Department and nightlife stakeholders. The partnership between Police and nightlife business owners has resulted in a reduction of incidents in the downtown. With this initial success it is important the City turn its attention to planning for the mix of uses and nightlife options that Council and residents want to see in the Downtown.

Nightlife options are a key component of the urban energy and part of the cultural fabric that can influence where people choose to live, work and play. Nightlife venues contribute to the vitality of urban centers and it is essential the City continue to plan for nightlife options and express what the community wants to see downtown.

## ANALYSIS

Currently most nightlife uses in the Downtown are regulated through the provisions of Title 6 and Title 20 of the San Jose Municipal Code (“Code”). The City’s zoning regulations specific to the Downtown, requires a Conditional Use Permit (CUP) for any use that is classified as a “drinking establishment” that operates after midnight. The provisions of Title 20 address the regulation of *land use* concerns and appropriate locations for activities. Upon a detailed review and examination of the issues and City regulations pertaining to entertainment establishments, staff identified that the public interest is adequately served by the review and permitting procedures for entertainment establishments set forth in Title 6 of the Code. The land use issues related to entertainment establishments can be addressed through existing development permit requirements for alcoholic beverage drinking establishments, noise regulations, and after-midnight use regulations. Since conditional use permits already are required to operate past midnight or for drinking establishments, staff identified no reason or need to separately regulate (from a land use perspective) only the entertainment at those businesses. In addition, preliminary discussions with stakeholders have indicated the City’s overlap of regulations between Title 6 (Public Entertainment Permit) & 20 (Conditional Use Permit) are duplicative and often confusing since both attempt to regulate the same thing.

For these reasons, staff saw an opportunity to streamline City review and processing of entertainment establishment issues by consolidating them within the provisions of Title 6 of the Code as and recommended deleting the entertainment use category from the City’s Zoning Code. The City Council adopted this change on January 26, 2010.

Title 6 “Business License and Regulations” regulates entertainment venues with an occupancy over 100 throughout the City, and staff felt it properly addressed business operations. Simply, a bar serving alcohol and operating after midnight would require a CUP. A bar offering alcohol and entertainment, with an occupancy over 100, would require a CUP and Public Entertainment Permit.

The CUP process involves an application submitted to the Department of Planning, Building and Code Enforcement. The Council’s Policy on Public Outreach, Policy 6-30, has identified this process as one requiring a community meeting as well as a mailing to parties within 1,000 foot radius of the site. In addition to the community meeting, a sign is posted on the site informing the public of the application of file giving them basic information as well as contact information for City staff. Furthermore, all CUP’s are heard at a public hearing before the Planning Commission which is the initial decision-making body for such permits.

In addition to the CUP process, nightlife venues, with an occupancy over 100, who wish to offer entertainment are required to obtain a Public Entertainment Permit, which is administered by the Police Department. While the CUP is a land-use mechanism which is focused upon appropriate uses of land and land use impacts, the Public Entertainment Permit is tied to the operations of a business and the operators of the business.

Currently a Public Entertainment Permit is required for any business with an occupancy greater than 100, open to the public where alcohol is sold on the premises and where one or more of the following activities available:

1. Dancing
2. Singing
3. Audience participation
4. Live Music

Currently staff is working with stakeholders on further revisions to the Public Entertainment Permit that better match the goals and strategies Council has already adopted. Council recently adopted urgency changes to the Public Entertainment Ordinance which streamlined and provided clear guidance over permits.

Council Policy 6-23 *Guidelines for Evaluation of Nightclubs and Bars* and City Council Policy 6-27 *Evaluation of 24-Hour Uses* is used by staff to evaluate proposed new entertainment, drinking establishment and late night land uses as appropriate. Staff has begun the review of the Council Policy, together with outreach on future amendments to the Policy, and will bring forward recommendations to Council later this year, as described in more detail below.

For uses that require a Conditional Use Permit, staff has developed a standardized set of permit conditions that are typically included (Table 1), along with any project specific conditions, as part of the recommended permits brought to the Planning Commission, or City Council on appeal, for consideration.

**Table 1 - Sample of Standardized Permit Conditions**

<b>Issue</b>	<b>How Staff Handles</b>	<b>Enforcement</b>
Nuisance	All CUPs require the use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City. Doors and windows are required to be closed to reduce potential noise impacts on adjacent uses.	PBCE
Anti Graffiti	Applicants are required to remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.	PBCE & PD
Anti Litter	Operators are required to maintain the surrounding area free of litter, refuse, and debris. Depending on the location, additional conditions may be added to the CUP.	PBCE & PD

Public Right-a-Way & Queues	Neither patrons waiting in the queue, nor ropes to control the queue are allowed to impede pedestrian travel in the public right-of-way. A minimum of five feet of clear space shall be provided between queuing locations and any obstructions in the public right-of-way.	PBCE & PD
Security	A minimum of two security officers shall be on duty for every 100 patrons using the facility during its hours of operations. CUP will defer to Entertainment Permit, when one exists, for security requirements.	PD
Fire Safety	Operators are required to meet all requirements of the Fire Department at the Building Permit stage, including but not limited to the maximum occupancy of the facility.	PBCE/Fire

Many of these conditions also are included in the Public Entertainment Permit. Recent urgency changes to Title 20 will now allow staff to streamline this process since a majority of the business operations above are also regulated through Title 6 and hence will not need all of the duplicative regulations above in a CUP.

**Staff Recommendation**

If the City is to be successful with its transition from nightclubs to nightlife, the Administration recommends that the City create a new path for larger occupancy venues and require additional review for staff and Council to ensure the proposed venue will operate in a manner that meets the goals of downtown and protects residents and visitors. That action, clearly expresses an the importance of having smaller venues, which as shown in cities such as San Diego, Chicago, and Austin, will, over time, lead to greater nightlife options.

At the same time, if the City is to truly transition and expand our nightlife options, we must be more customer service friendly and attempt to better communicate to existing and future owners of nightlife businesses the overall goals and strategies for enhancing and expanding Downtown nightlife options.

Therefore, staff is recommending that the City Council:

- 1. Amend the Title 20 of the Municipal Code (the Zoning Code) to provide that the City Council, rather than the Planning Commission, shall be the initial decision-maker on Conditional Use Permits for new public drinking establishments operating after midnight with an occupancy greater than 250 patrons, in the DC Downtown Core Zoning District.**

Staff recommends approval of a new Conditional Use Permit process for public drinking establishments operating after midnight with a maximum occupancy of 250 patrons or larger would go to the City Council for approval rather than the Planning Commission. The application would

still go to Planning Commission for their report and recommendation to City Council. Because City Council has expressed a desire for smaller nightlife venues, and since the Council is most familiar with their strategy documents for the Downtown, it makes sense that Council be the final decision-maker for venues over 250 to ensure they meet the goals and strategies for the Downtown and will contribute to a variety of Downtown nightlife options and activities.

While the current concentration of large nightclubs in the Downtown core is generally not what Council or community members envision as the only nightlife available for the future of Downtown, these venues still add to the overall diversity of nightlife options depending upon the mix of activities proposed in the future. With that in mind, staff feels it is not beneficial to forbid all nightlife venues with an occupancy of over 250 patrons in the Downtown. By amending the CUP process to designate the City Council as the decision-maker on these large venues in the Downtown, the City Council will have greater oversight of the Downtown and better position itself to continue to implement the strategies for Downtown. Creating an enhanced level of initial review will better aid the City in regulating larger nightclubs and clearly articulate a value for physically smaller venues.

Staff's proposed change to the Zoning Ordinance for Downtown Entertainment uses is summarized in Table 2.

**Table 2. Proposed Ordinance Changes for Downtown Core Area**

<b>Permit Process Based on Occupancy</b>		
<b>Use or Development Regulation</b>	<b>Existing Requirements</b>	<b>Proposed Requirements</b>
Public Drinking Establishment operating after midnight and allowed occupancy of more than 250 Patrons	<ul style="list-style-type: none"> <li>▪ Conditional Use Permit decided by Planning Commission with an appeal decided by City Council</li> </ul>	<ul style="list-style-type: none"> <li>▪ Conditional Use Permit decided by City Council with recommendation from the Planning Commission.</li> </ul>
Public Drinking Establishment operating after midnight and allowed occupancy of 250 Patrons or less	<ul style="list-style-type: none"> <li>▪ Conditional Use Permit decided by Planning Commission with an appeal decided by City Council</li> </ul>	<ul style="list-style-type: none"> <li>▪ No Change</li> </ul>

Additionally, staff is recommending that the City Council:

2. **Direct staff to perform outreach on and develop a recommendation on amendments to Council Policy 6-23 (Guidelines for Evolution of Nightclubs and Bars) to include language that would mandate Public Drinking Establishments with a proposed, or existing, occupancy over 250 must have a "Management Plan" that is developed in partnership with the "San Jose Nightlife Business Best Practices Guidelines" policy document prior to approval of a new or renewed Conditional Use Permit and to bring those proposed amendments back to City Council for consideration.**

The above recommendation regarding a management plan is currently not a requirement of the CUP application process, however, staff is proposing Council Policy 6-23 be amended so nightclubs and bars with an occupancy over 250 be required to work with the City Manager's Office to prepare a "Management Plan", using the guidelines set forth in the "San Jose Nightlife Business Best Practices Guidelines", prior to City Council consideration of a Conditional Use Permit.

A suitable Management Plan should include operational guidelines aimed at Title 6 and Title 20 compliance, security, parking, noise, litter, queue lines and hours of operations. The City Manager's Office will work with the applicant, PBCE, SJPd, and Fire in a way similar to how the Office of Cultural Affairs works with special events producers to help streamline the review process which will include the development of the CUP, Public Entertainment Permit and Management Plan. This coordination will also lend to a better streamlined approach and one centralized communication hub. According to the HZA report, hospitality business owners report difficulty in opening nightlife establishments. Providing assistance to help businesses not only open but remain in compliance can provide an asset to the City and downtown business owners.

Currently, the City Manager's Office, PBCE, SJPd and SJRA are working with the San Jose Downtown Association, San Jose Restaurant and Entertainment Association, current nightlife businesses and other cities with sound management plans to create a "best practices" plan that will be used by nightlife businesses to develop management plans. Joint development of "best practices" guidelines in other cities, such as Seattle and New York, have proved to be helpful tools for the City and nightlife industry. When staff returns to Council with further revisions to Title 6, staff will also recommend that Council formally accept the Best Practices guidelines as official guidelines for nightlife businesses and will ask Council to consider amendments to City Council Policy 6-23 to incorporate recognition of those Best Practices guidelines into the Policy.

It should be noted that when incidents occur in nightclubs they are usually exacerbated by misinformed management practices. By working with local nightlife business leaders and industry leaders on a "Best Practices" document to help educate owners and management, City staff is hopeful overall incidents in the Entertainment Zone are minimized. Many of our nightlife business owners have a wealth of knowledge that can be shared with others to support consistent management practices that benefit both management and patrons.

### **POLICY ALTERNATIVES**

**Alternative #1:** Retain existing Zoning Ordinance provisions.

**Pros:** Would not limit or provide additional review for any nightlife venue and allow large scale nightclubs to locate in the downtown.

**Cons:** Retaining current requirements would not achieve or express the vision to have more nightlife options.

**Reason for not recommending:** The community and the Council have called for change in the downtown and doing nothing does not bring us closer to transitioning from nightclub destination to nightlife destination.

**Alternative #2:** Prohibit public drinking establishment with an occupancy of 250 patrons or more.

**Pros:** Would eliminate possibility of future nightlife with an occupancy over 250, thus not adding to the current over concentration.

**Cons:** The proposed measures are intended to target the concentration large scale nightlife activities in the downtown and start the transition from only nightclubs to overall nightlife. Creating zoning restrictions that would not allow entertainment venues over 250 overtime would distract the City from diversifying entertainment options.

**Reason for not recommending:** This alternative is too broad and encompasses various categories which were not intended to be regulated by the Downtown Zoning Overlay.

### **PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

Public Outreach consisted of series of public meetings and a web-based survey. Staff conducted five Focus Group meetings in March and April of 2008, targeting specific Downtown interest groups (entertainment business operators, residents, developers, community organizations and property owners). Additionally, staff conducted three general community meetings: one in April, one in May and one in September of 2008. Several stakeholders attended more than one meeting, with roughly 50 people attending each meeting. Seventy-seven people also responded to an on-line survey conducted in April of 2008. The majority of survey respondents (76%) identified themselves as residents of the Downtown, 14% identified themselves as Downtown business owners, 4% as Downtown employees, 1% as a Downtown developer/broker and 5% as "other".

A notice of the public hearing was posted on the City website, published in the Mercury News and emailed to a citywide list of development interests, neighborhood associations and interested individuals. Staff has been available to discuss the proposal with interested members of the community.

City staff brought this recommendation to the City Manager's Downtown Advisory Committee on August 26<sup>th</sup>, 2009 for community input.

### **COORDINATION**

This project was coordinated with the City Manager's Office, San Jose Redevelopment Agency, the Police Department, the Fire Department and the City Attorney's Office.

PLANNING COMMISSION

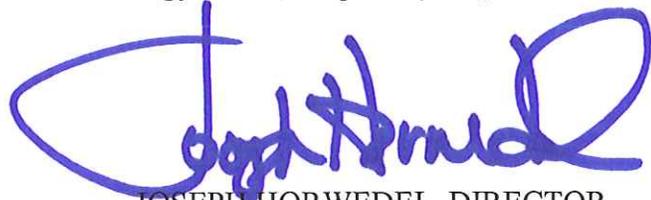
March 1, 2010

**SUBJECT: Title 20 Amendment Establishing the City Council as the Decision Making Body for Drinking Establishments with Occupancy over 250 and After Midnight Operation in the DC Zoning District**

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**CEQA**

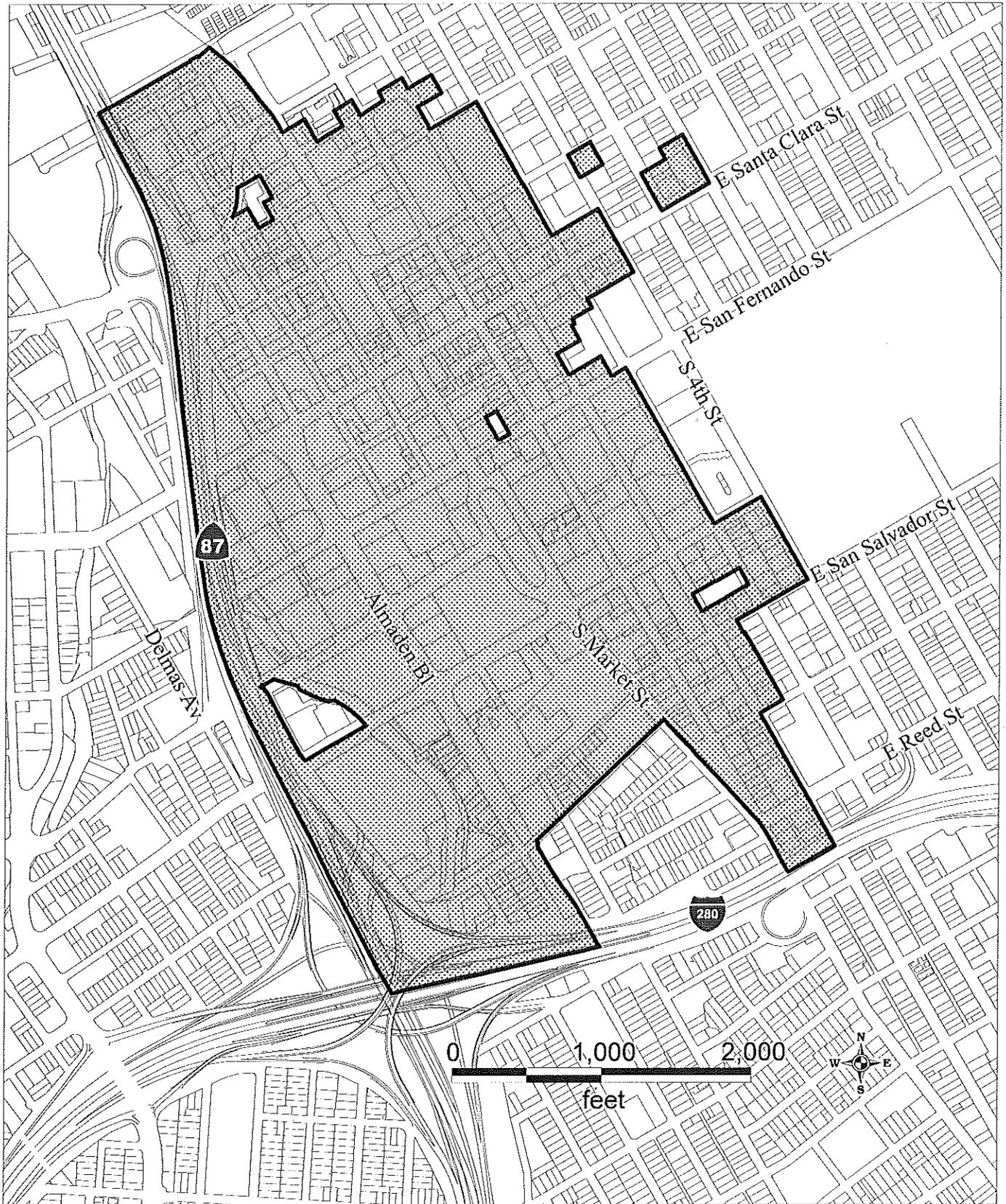
Use of a Final EIR for the "San Jose Downtown Strategy 2000", adopted by City Council Resolution No. 72767 on June 21, 2005.



JOSEPH HORWEDEL, DIRECTOR  
Planning, Building, and Code Enforcement

For questions please contact Lee Wilcox, Downtown Coordinator at 408-535-8172.

**Attachments – Attachment A: DC Downtown Core Zoning District Map  
Attachment B: Draft Ordinance**



## Downtown Commercial (DC) Zoning District

Map Created On:  
3/1/2010

Prepared by the Department of Planning, Building, and Code Enforcement  
City of San Jose, California  
Joseph Horwedel, Director



**ORDINANCE NO.**

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING VARIOUS SECTIONS OF CHAPTER 20.70 AND CHAPTER 20.100 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO ESTABLISH A NEW CONDITIONAL USE PERMIT PROCESS FOR LARGE DRINKING ESTABLISHMENTS THAT OPERATE AFTER MIDNIGHT AND HAVE A MAXIMUM OCCUPANCY LOAD OF MORE THAN 250 PERSONS WHEREUNDER THE CITY COUNCIL WOULD BE THE INITIAL DECISION-MAKING BODY**

**WHEREAS**, the Director of Planning, Building and Code Enforcement has prepared a Mitigated Negative Declaration for this proposed project pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with guidelines promulgated thereunder, all as amended to date and in accordance with the provisions of Title 21 of the San Jose Municipal Code, under File No. \_\_\_\_\_, which Mitigated Negative Declaration and has not been challenged, protested or appealed; and

**WHEREAS**, the City Council of the City of San Jose is the decision-making body for this proposed ordinance; and

**WHEREAS**, this Council of the City of San José has considered, approves and adopts said Mitigated Negative Declaration prior to taking any approval actions on this proposed ordinance.

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

**SECTION 1.** Section 20.70.100 of Chapter 20.70 of Title 20 of the San Jose Municipal Code is hereby amended to read in its entirety as follows:

**20.70.100 Allowed Uses and Permit Requirements**

- A. "Permitted" land uses are indicated by a "P" on Table 20-140.
- B. "Conditional" uses requiring Planning Commission approval as the initial decision-making body are indicated by a "C" on Table 20-140. These uses may

be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a conditional use permit approved by the Planning Commission, or City Council on appeal, as set forth in Chapter 20.100.

**C.** “Conditional” uses requiring City Council approval as the initial decision-making body are indicated by a “CC” on Table 20-140. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a conditional use permit approved by the City Council as set forth in Chapter 20.100. **D.** “Special” uses are indicated by a “S” on Table 20-140. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a special use permit as set forth in Chapter 20.100.

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**E.** “Administrative” uses are indicated by an “A” on Table 20-140. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with an administrative permit as set forth in Chapter 20.100.

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**F.** Land uses not permitted are indicated by a “-” on Table 20-140. Land uses not listed on Table 20-140 are not permitted.

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**G.** The column of Table 20-140, under the heading Additional Use Regulations for the DG Area, identifies further regulations on the uses of ground-floor building space within a portion of the DC Zoning District. The portion of the DC District included in the DG Area is described in Section 20.70.520. These regulations apply to ground-floor building space, defined as Downtown Ground-Floor Space (“DG Area”), in Section 20.70.520 of this Chapter. If there are no additional regulations on properties located in the DG Area noted in this column, the use regulations for the DG Area remain those regulations of the DC Zoning District.

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**H.** The “Parking” column of Table 20-140 establishes the required parking. The amount of parking may not be increased or decreased unless modified by the Director as set forth in Sections 20.70.320 and 20.70.330 of this Chapter.

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**I.** When the right column of Table 20-140 includes a reference to a section number or a footnote, the regulations cited in the section number or footnote apply to the use. In addition, all uses are subject to any other applicable provision of this Title 20 and any other title of the San José Municipal Code.

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Table 20-140 Downtown Districts Land Use Regulations			
Downtown	Land	Use	

Table 20-140 Downtown Districts Land Use Regulations					
	Districts	Regulations			
Use	Zoning Districts	Applicable Notes & Sections			
	DC	DC-NT1	Additional Use Regulations for the DG Area	Parking	Applicable to All Downtown Districts
<b>Offices and Financial Services</b>					
Automatic Teller Machine	P	P		No parking	Section 20.80.200
Business Support	P	P	S, Note l	No parking	-
Financial institution	P	P	S, Note i	2.5 per 1,000 sq. ft.*	
Financial Services	P	P	S, Note n	No parking	
Offices, business and administrative	P	P	S, Note j	2.5 per 1,000 sq. ft.*	Section 20.70.110
Research and development	P	P	-	2.5per 1,000 sq. ft.*	Note 1
<b>General Retail</b>					
Alcohol, off-site sales – beer and/or wine only	C	C		No parking	Section 20.80.900
Alcohol, off-site sales – full range of alcoholic beverages	C	C		No parking	Section 20.80.900
Auction	S	-	-	No parking	
Food, beverage, groceries	P	P		No parking	
Open air sales establishments and areas	S	S		No parking	
Outdoor vending	S	S		No parking	Part 10, Chapter 20.80
Pawn Shop, Pawn Broker	C	C	Note b	No parking	
Retail sales, goods and merchandise	P	P	Note a	No parking	
Seasonal sales	P	P		No parking	Part 14, Chapter 20.80
<b>Education and Training</b>					
Day care center	P	P	S, Note c	No parking	
Post-secondary School	P	P	-	1 per 360 sq. ft.	
Trade School	P	P	-	1 per 360 sq. ft.	

Table 20-140 Downtown Districts Land Use Regulations					
Personal enrichment, Instructional Art	P	P	-; Note d	1 per 360 sq. ft.	
School, elementary (grades K-8)	C	C	-	1 per teacher and employee	
High School (grades 9-12)	C	C	-	.75 per teacher and employee and 1 per each 10 students	
<b>Entertainment and Recreation Related</b>					
Amusement arcade	C	-	Note e	No parking	
<del>Entertainment establishment</del>	<del>C</del>	<del>-</del>		<del>No parking</del>	
Movie Theater	P	P		No parking	
Recreation Commercial/Indoor	P	P		No parking	
Poolroom	S	-		No parking	
Private club or lodge	P	P	-	1 per 360 sq. ft.	
<b>Food Services</b>					
Banquet facility	P	P	Note f	No parking required	
Caterer	P	P	C, Note f	No parking	
Drinking establishments	C	C		No parking	
<u>Drinking establishments with an approved maximum occupancy load of over 250 persons and that operate between 12:00 midnight and 6:00 a.m.</u>	<u>CC</u>	<u>-</u>			<u>Note 7</u>
<del>Entertainment as an incidental use to any General Retail or Food Services Use permitted in the Downtown Zoning Districts</del>	<del>P</del>	<del>P</del>		<del>No parking</del>	<del>Note 6</del>
Public eating establishments	P	P		No parking	
Wineries, Breweries	C	C		No parking	
<b>Health and Veterinary Services</b>					
Animal grooming	P	P	-	No parking	
Animal Boarding, indoor	P	P	-	No parking	
Emergency ambulance service	C	-	-	No parking	

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<b>Table 20-140 Downtown Districts Land Use Regulations</b>					
Hospital/ in-patient medical facility	C	-	-	1.5 per doctor	
Medical or Dental Clinic/Out-patient facility	P	P	-	1.5 per doctor	
Veterinarian	P	P	-	1.5 per doctor	
<b>General Services</b>					
Bed and breakfast	P	P	S, Note m	.35 per room	Part 2, Chapter 20.80
Hotel/motel	P	P	-, Note m	.35 per room	
Maintenance and repair of household appliances	P	P	-	No parking	
Mortuary and funeral services	C	C	-	.75 per employee and vehicle	
Personal Services	P	P	Note g	No parking	-
Printing and Publishing	P	P	Note h	No parking	
<b>Public, Quasi-Public and Assembly Uses</b>					
Auditorium	C	-	-	No parking	
Cemetery	C	C	-	No parking	
Church/religious assembly	P	P		No parking	
Information Center	P	P		No parking	
Museums, libraries	P	-	P	No parking	
Parks, playgrounds, or community centers	P	P	Note k	No parking	
<b>Residential</b>					
Residential Shelter	C	-	-	1 per 4 beds, 2.5 per 1,000 sq.ft.*	
Live/work	P	S		1.5 per unit	Section 20.70.120
Residential multiple dwelling	P	P	-	1 per unit	
Residential Care Facility for 7 or more persons	C	C	-	.75 per employee	
Residential Services Facility for 7 or more persons	C	C	-	.75 per employee	
Single room occupancy living unit	S	S	-	.6 per room	Part 15, Chapter 20.80
Single room occupancy hotel	S	S	-	.6 per room	Park 15, Chapter 20.80
<b>Residential Accessory Uses</b>					
Accessory buildings and structures	P	P	-	No parking	Note 2

<b>Table 20-140 Downtown Districts Land Use Regulations</b>					
Reverse vending	S	S	-	No parking	Note 3
Small collection facility	S	S	-	No parking	Note 3
<b>Transportation and Communication</b>					
Community television antenna systems	C	-	-	No parking	
Off-site and alternating use parking arrangements	P	P	-	N/A	Section 20.90.200
Parking establishment, off-street	P	P	-	N/A	
Private Electrical Power Generation Facility	C	C	-	1 for each vehicle used in the operation of such facility	
Standby Generators that do not exceed noise or air standards	A	A	-	N/A	
Temporary Stand-by/Backup generators	P	P	-	N/A	
Short term parking lot for uses or events other than on-site	S	S		N/A	
Radio & Television Studios	S	-	C	No parking	
Wireless communication antenna	S	-	-	No parking	Section 20.80.1900
Wireless communication antenna, building mounted	P	-	-	No parking	Section 20.80.1900
<b>Electric Power Generation</b>					
Solar Photovoltaic System	P	P	-	No parking	Section 20.100.610(C) (7)
<b>Vehicle Related Use</b>					
Accessory installation for cars and passenger trucks	P	-	-	No parking	
Car wash, detailing	P	-	-	No parking	
Gas or charge station	P	-	-	No parking	Note 3
Gas or charge station with incidental service and repair	P	-	-	No parking	Note 3
Sale and lease, vehicles and equipment (less than one ton)	P	-	-	1.5 per employee	Note 4
Tires, batteries, accessories, lube, oil change, smog check station, air conditioning	P	-	-	2 per bay or .75 per employee	Note 5
Sale, vehicle parts, new	P	-	-	No parking required	

**Notes:**Notes applicable to the DG Area only:

- (a) Excluding second-hand stores not dealing primarily in antiques, artworks, or vintage clothing.
- (b) Only as a use incidental to a retail jewelry store, otherwise, not permitted.
- (c) Only as a use incidental to existing on-site office use, otherwise not permitted.
- (d) Culinary/Art School with public classes and public demonstrations allowed, includes such areas as dance, music, martial arts, and fine arts.
- (e) Allowed only as an incidental use to other allowed recreation uses.
- (f) Only as a use incidental to restaurant, grocery or bakery uses for primarily on site sales, otherwise not permitted.
- (g) Excludes check-cashing services, photography studios, weight loss centers, interior decorating, and bail bond services.
- (h) Only if dedicated primarily to on-site retail customer copy services, otherwise not permitted.
- (i) Only if dedicated primarily to on-site retail customer services, otherwise not permitted.
- (j) Exception for travel agencies and real estate agencies which are the only permitted uses.
- (k) Community centers are not allowed.
- (l) Exception for copy shops and mail centers which are the only permitted uses.
- (m) Use of ground floor to be primarily dedicated to customer-related public services.
- (n) Includes financial retail services such as payroll advances, foreign currency exchange, debt card services and related financial services products but excludes check cashing except as an ancillary use.

Notes applicable to Downtown Core (DC) Zoning District including DG Area:

- (1) Excludes manufacturing uses.
- (2) No lot may be used solely for an accessory structure or building.
- (3) Incidental repair includes air conditioning service, carburetor & fuel injection service, electrical service, radiator service, and tune-up, lube, oil change, and smog check, as well as tires, batteries and accessories installation. Does not allow body repair or painting.
- (4) All activity must be conducted indoors.
- (5) Non-engine and exhaust related service and repair allowed as incidental use.
- (6) Limited to instrumental and vocal music and readings. Also, notwithstanding the provisions of Section 20.200.940(2), incidental instrumental and vocal music shall be allowed between the hours of 6:00 a.m. and 12:00 a.m.
- (7) Maximum occupancy load shall be that maximum occupancy load determined by the City Fire Marshall.

\* Under the Parking Management Plan, October 2001, the Code may be changed to reduce the parking allotments for these uses. The reduction would be 2.5 spaces per 1,000 square feet when BART is opened.

Fifteen percent (15%) of total parking requirement must be provided off-site.

**SECTION 2.** Section 20.100.220 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**20.100.220 Appeal - Hearing Body**

Decisions on permits or approvals pursuant to this Chapter are subject to appeal as set forth in Table 20-260 which lists the initial decision maker and the decision making body which will hear any appeal.

Table 20-260 Appeal Hearing Body		
Application	Initial Decision Making Body	Appeal Decision Making Body
Administrative Permit	Director of Planning	No Appeal
Site Development Permit	Director of Planning	Planning Commission
Site Development Permit – Projects within Downtown Districts and exceeding 150 feet and FAR of 6:1	Director of Planning	City Council
Single-Family House Permit Administrative Decision	Director of Planning	No Appeal
Director's Hearing	Director of Planning	Planning Commission
Planned Development Permit	Director of Planning	Planning Commission
Special Use Permit	Director of Planning	Planning Commission
Conditional Use Permit	Planning Commission	City Council
<u>Conditional Use Permit – Drinking Establishments with an approved maximum occupancy load of over 250 persons that operate between 12:00 midnight and 6:00 a.m.</u>	<u>City Council</u>	<u>No Appeal</u>
Variance	Director of Planning	Planning Commission
Exception	Director of Planning	Planning Commission
Sidewalk Café Permit I	Director of Planning	City Council
Tree Removal Permit	Director of Planning	Planning Commission

**SECTION 3.** Section 20.100.330 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**20.100.330 Order to Show Cause**

If the noncompliance is not abated, corrected, or rectified within the time specified by the Director in said notice, the Director may issue an Order to Show Cause why such Permit or approval shall not be revoked, suspended or modified. An Order to Show Cause shall be set for a public hearing before the Planning Commission, except that in the case of a Conditional Use Permit for which the City Council is the initial decision-

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making body, the Order to Show Cause shall be set for a public hearing before the City Council, all pursuant to Section 20.100.340.

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**SECTION 4.** Section 20.100.340 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**20.100.340 Hearing on an 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, or City Council as appropriate, shall hold a hearing to determine if the Permit or approval shall be revoked.
- B. The procedures set forth in this Chapter 20.100 shall equally apply to a hearing on an Order to Show Cause except as hereinafter expressly set forth.
- C. The decision of the Planning Commission shall be final except for Conditional Use Permits and Single-family House Permits-City Council Decision. The decision of the City Council shall be final on Conditional Use Permits for which the City Council is the initial decision-making body.
- D. The decision of the Planning Commission on an Order to Show Cause relating to a Conditional Use Permit may be appealed to the City Council by the owner or tenant of the subject property.

**SECTION 5.** Section 20.100.350 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**20.100.350 Revocation, Suspension, or Modification**

After a hearing on an Order to Show Cause, the Planning Commission, or City Council as appropriate under the processes set forth in this Chapter, at its discretion may revoke, suspend, or modify any Permit or other approval upon finding that:

- 1. A violation of any condition of a Development Permit, Development Variance, Development Exception or other approval was not abated, corrected or rectified within the time specified on the notice of violation; or
- 2. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the Notice of Noncompliance; or

- 3. A use as presently conducted creates a nuisance.

**SECTION 6.** Section 20.100.700 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**20.100.700 Applicability**

- A. The provisions of this Part apply to and govern the issuance of all Permits made subject to the provisions of this Part. All permits governed under this Part shall hereinafter be referred to as Conditional Use Permits, and shall be issued by the Planning Commission or by the City Council [as described in this Chapter 20.100.](#)
- B. Use Exception Permits, Legal Nonconforming Use Enlargement Permits, Permits for Parking Areas or Structures in Residence Districts, Development Permits in the T-M District, Quarry Permits, Cluster Permits and Low Density Cluster Permits issued under previously existing provisions of this Title shall be deemed to be Conditional Use Permits and shall be governed by this Part.

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**SECTION 7.** Section 20.100.710 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**20.100.710 Action by Director**

**DRAFT**

Upon finding an application for a Conditional Use Permit complete pursuant to this Chapter, the Director shall review the application and shall set a public hearing thereon before the Planning Commission or City Council, as appropriate pursuant to the provisions of this Chapter 20.100.

**PASSED FOR PUBLICATION OF TITLE** this                    day of                    ,  
2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

\_\_\_\_\_  
CHUCK REED  
Mayor

ATTEST:

\_\_\_\_\_  
LEE PRICE, MMC  
City Clerk