



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** February 15, 2012

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

**SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20, AMENDING SECTION 20.70.100 OF CHAPTER 20.70 (DOWNTOWN ZONING DISTRICTS) TO STREAMLINE THE PERMIT PROCESS FOR THE LOCATION OF NONRETAIL USES WITHIN THE DG OVERLAY AREA (DOWNTOWN GROUND-FLOOR SPACE) OF THE DC (DOWNTOWN CORE) AND DC-NT1 (DOWNTOWN CODE – NEIGHBORHOOD TRANSITION 1) ZONING DISTRICTS.**

## **RECOMMENDATION**

Planning staff recommends that the Planning Commission recommend to the City Council the approval of the ordinance changes outlined in this memorandum to amend Title 20 of the San José Municipal Code to provide greater flexibility and a streamlined permit process for specific uses within ground floor locations within the DG Overlay area of the Downtown Area.

## **OUTCOME**

The proposed amendments to the Zoning Ordinance (Title 20) would provide additional flexibility and eliminate or streamline the permit process for the development and operation of specific uses within ground floor locations within the DG Overlay area of the Downtown Area. These amendments are intended to implement direction provided by the San Jose City Council Rules and Open Government Committee on November 30, 2011. (See attached memorandum)

## **BACKGROUND**

Since 2000, the Zoning Code has been amended several times to add or modify restrictions of ground floor uses within the Downtown Area with the goal of preserving ground floor space for active street-level uses, including walk-in, customer oriented retail, restaurants, and entertainment. These uses tend to have windows with interesting displays and/or visibility into the business which add to a lively pedestrian environment in the Downtown. In contrast, office

and financial institutions tend to have covered window or other features that does not always contribute to an active, storefront environment. A clear exception to this more typical office is NextSpace, which does add visual interest to Downtown with its vibrant colors, uncovered windows, and other design elements.

The most recent amendments have generally loosened these restrictions, as the need to fill vacant space has been a more important concern than the need to preserve space for retail uses, and as the City has explored alternative means of maintaining an active and vibrant ground-floor environment within the DG Overlay area. The following is a summary of previous ordinance amendments that have created or modified the Zoning Code regulations of ground floor space in the Downtown Core

- December 2000 – A moratorium was established prohibiting new financial institutions, and business and professional office uses within a portion of the Downtown Core.
- March 2001 – The “DG Overlay Area” (Downtown Ground Floor Space) district was added to the Commercial Districts to preserve ground floor space primarily for walk-in, customer oriented retail, services, restaurant and entertainment uses. Offices and Business Support were prohibited in the DG Area and Financial Institutions were regulated as Conditional Uses (requiring a Conditional Use Permit).
- March 2004 – The Downtown Zoning District section was amended in its entirety to include new use regulations for the DG area. Additional changes included:
  - Financial Institutions were changed from a Conditional Use to a Special Use.
  - Financial Services were changed from a prohibited use to a Special Use.
- May 2005- The DG Overlay Area was reduced in size to focus restriction of ground floor uses to those streets determined to be most amenable to retail activity.
- November 2008 – In accordance with Council Direction (see attached memorandum), the Zoning Ordinance was amended for the DG Area to include:
  - A cap of 20,000 square feet on individual future non-retail uses.
  - The ability to allow Offices (Business and Administrative) and Business Support uses, which were previously prohibited, through a Special Uses Permit.

On November 30, 2011, the Rules and Open Government Committee recommended a one-year suspension of the current Zoning Code provisions requiring a Special Use Permit for certain non-retail uses in the DG area of the Downtown Core (see attached memorandum). Given the recent economic downturn, it was determined that additional flexibility was needed in order to reduce vacancy rates. The memorandum indicates that the requirement to obtain a Special Use Permit has deterred several companies from locating Downtown and has resulted in too many vacant

ground floor storefronts. The following analysis addresses a proposed ordinance to implement this recommendation.

**ANALYSIS**

Consistent with the Rules Committee direction to reduce regulatory barriers to the occupancy of Downtown ground floor spaces in light of current economic conditions, the proposed Zoning Code amendments will support increased occupancy of Downtown floor space by eliminating the requirement for a Special Use Permit for various financial and office uses that meet certain size and location criteria. A Special Use Permit would still be required for new office uses in tenant spaces greater than 20,000 square feet or that occupy a corner space with frontage on two streets.

**Proposed Changes to the Use Regulations for the DG Overlay Area (Table 20-140)**

<b>Use</b>	<b>Existing Requirements</b>	<b>Proposed Requirements</b>
Business Support	Special Use Permit	Permitted (Non-Corner / less than 20,000 Square Feet.)
Financial Institution	Special Use Permit	Permitted (Non-Corner / less than 20,000 Square Feet.)
Financial Services	Special Use Permit	Permitted (Non-Corner / less than 20,000 Square Feet.)
Office, Business and Administrative	Special Use Permit	Permitted (Non-Corner / less than 20,000 Square Feet.)
Day Care Center	Special Use Permit	Permitted (Non-Corner / less than 20,000 Square Feet.)
Radio & Television Studios	Conditional Use Permit	Permitted (Non-Corner / less than 20,000 Square Feet.)

In addition to allowing business support, and business and administrative office uses, staff is also recommending similar deregulation for day care centers and radio and television studios, and the elimination of the requirement that financial institutions be limited to only those that are dedicated to on-site retail customer services. Input from Downtown stakeholders indicates that these regulations are considered to be overly restrictive and inconsistent with efforts to provide more flexibility for leasing vacant ground floor tenant spaces.

The Rules Committee also did not recommend eliminating the corner space restriction upon non-retail uses. Therefore the proposed ordinance does not remove the Special Use Permit requirement for non-retail uses located in a corner tenant space. This way, if an office does want to locate on a corner, the Permit can identify design requirements to ensure that the office does contribute positively to the Downtown environment. This was accomplished with NextSpace. According to the attached survey conducted in January 2012 by the Downtown Association, 36 of the 212 tenant spaces (17%) within the DG Overlay Area were vacant. Of the 36 vacancies, only 6 are corner tenant spaces.

The Rules Committee recommended a temporary, one year suspension of the regulations for Downtown Ground Floor uses. Instead, staff is confident that the proposed ordinance meets the intent and with periodic evaluations of the result of the new ordinance, additional modifications could be enacted as appropriate in the future. An evaluation would determine if the Zoning Code is achieving the City's objectives of promoting the occupancy of Downtown buildings while also continuing to preserve the active, retail character of Downtown streets. The Zoning Code does not typically apply time limits for specific uses. Conducting a review at some point in the future would allow staff to collect data and make an assessment that could support further modifications to the Zoning Code should such modifications be deemed necessary.

The Rules Committee also recommended that as part of the Zoning Code amendment, permitted by-right ground floor office uses be limited to those with specific hours of operation and that meet specific design criteria. While the Special Use Permit process provides an opportunity for the City to review and regulate hours of operation and design treatment for ground floor uses consistent with achieving this objective, their deregulation will remove the opportunity for such review. While standards for hours of operation could be included within the Zoning Code, it is not feasible to review and enforce compliance with those standards without a regulating permit.

#### Conclusion

The proposed regulations will clarify and reduce the regulation of ground floor uses in the Downtown. With adoption of the proposed Zoning Code Amendment, discretionary review for non-retail uses will be limited to projects located in tenant spaces that occupy block corners and or that exceed 20,000 square feet in area. This reduction of regulatory barriers for the occupancy of ground floor uses will support efforts to reduce the number of vacant ground floor spaces in the Downtown while also maintaining an active ground floor street environment.

#### **PUBLIC OUTREACH**

Public outreach for this proposal complies with the City Council's Public Outreach Policy and the Municipal Code. A public hearing notice including the Planning Commission and City Council hearing dates was published in the San Jose Mercury News and Post Record and emailed to a list of interested groups and individuals. Staff discussed the contents of the proposed ordinance with representatives of the San Jose Downtown Association on December 13, 2012 and also in subsequent phone conversations. The proposed ordinance was presented to and discussed with development industry representatives at the January 27, 2012 Developer Roundtable and presented to and discussed with interested community members at a community meeting on February 8, 2012. Staff has posted the hearing notice, staff report and draft ordinance on the Department's website and has been available to discuss the proposal with interested members of the public.

### COORDINATION

The preparation of the proposed ordinance and this staff report has been coordinated with the City Attorney's Office.

### CEQA

The environmental impacts of the proposed project are within the scope of the project analyzed under a Program Environmental Impact Report (PEIR) "Envision San Jose 2040 General Plan" that was certified on September 28, 2011 (EIR Resolution No.76041).

  
JOSEPH HORWEDEL, Director  
Department of Planning, Building and Code Enforcement

For more information please call Laurel Prevetti at (408) 535-7901.

#### Attachments:

- Draft Ordinance
- November 22, 2011 Rules Committee Memorandum
- November 13, 2008 City Council Memorandum
- 2012 Survey of Ground Floor Vacancy in the Downtown
- Downtown Ground-Floor ("DG") Overlay Area Map

**AN ORDINANCE OF THE CITY OF SAN JOSE  
AMENDING SECTION 20.70.100 OF CHAPTER 20.70  
(DOWNTOWN ZONING REGULATIONS) OF TITLE 20  
(ZONING CODE) OF THE CITY OF SAN JOSE TO  
ALLOW CERTAIN USES IN THE DG AREA  
(DOWNTOWN GROUND-FLOOR SPACE) WHEN  
CERTAIN ENUMERATED CRITERIA ARE MET**

**WHEREAS**, the environmental impacts resulting from the provisions of this Ordinance were disclosed and evaluated under and as a part of the Final Program Environmental Impact Report for the Envision San Jose 2040 General Plan (the "EIR"), which EIR was certified on September 28, 2011 and for which EIR Resolution No. 76041 was adopted by City Council on November 1, 2011.

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

**SECTION 1.** Section 20.70.100 of Chapter 20.70 of Title 20 of the San José Municipal Code is amended to read 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. Applications for these uses shall first be considered by the Planning Commission at a public hearing of the Commission for the Commission's report and

recommendation on the application to the City Council pursuant to the processes 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.
- 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.
- F. Land uses not permitted are indicated by a "-" on Table 20-140. Land uses not listed on Table 20-140 are not permitted.
- 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.
- 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.
- 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.

Table 20-140 Downtown Districts Land Use 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, Notes k and n	No parking	
Financial institution	P	P	S, Note n	2.5 per 1,000 sq. ft.*	
Financial Services	P	P	S, Note n	No parking	
Offices, business and administrative	P	P	S, Notes j and n	2.5 per 1,000 sq. ft.*	Section 20.70.110
Research and development	P	P	-	2.5 per 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	

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Table 20-140 Downtown Districts Land Use Regulations					
Use	Zoning Districts		Applicable Notes & Sections		
	DC	DC-NT1	Additional Use Regulations for the DG Area	Parking	Applicable to All Downtown Districts
Seasonal sales	P	P		No parking	Part 14, Chapter 20.80
<b>Education and Training</b>					
Day care center	P	P	S, Notes c and n	No parking	
Post-secondary School	P	P	-	1 per 360 sq. ft.	
Trade School	P	P	-	1 per 360 sq. ft.	
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	
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	

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Table 20-140 Downtown Districts Land Use Regulations					
Use	Zoning Districts		Applicable Notes & Sections		
	DC	DC-NT1	Additional Use Regulations for the DG Area	Parking	Applicable to All Downtown Districts
Drinking establishments with an approved maximum occupancy load of over 250 persons and that operate between 12:00 midnight and 6:00 a.m.	CC	-		No Parking	Note 7
Drinking establishments interior to a full-service hotel/motel with 75 or more guest rooms	P	P		No parking	Section 20.80.475
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	
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 ↓	.35 per room	Part 2, Chapter 20.80
Hotel/motel	P	P	-, Note ↓	.35 per room	
Maintenance and repair of household appliances	P	P	-	No parking	

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Table 20-140 Downtown Districts Land Use Regulations					
Use	Zoning Districts		Applicable Notes & Sections		
	DC	DC-NT1	Additional Use Regulations for the DG Area	Parking	Applicable to All Downtown Districts
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 i	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>					

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Table 20-140 Downtown Districts Land Use Regulations					
Use	Zoning Districts		Applicable Notes & Sections		
	DC	DC-NT1	Additional Use Regulations for the DG Area	Parking	Applicable to All Downtown Districts
Accessory buildings and structures	P	P	-	No parking	Note 2
<b>Recycling Uses</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	<del>P</del>	-	<del>Note n</del>	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>Electrical Power Generation</b>					

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<b>Table 20-140 Downtown Districts Land Use Regulations</b>					
<b>Use</b>	<b>Zoning Districts</b>		<b>Applicable Notes &amp; Sections</b>		
	<b>DC</b>	<b>DC-NT1</b>	<b>Additional Use Regulations for the DG Area</b>	<b>Parking</b>	<b>Applicable to All Downtown Districts</b>
Solar Photovoltaic System	P	P	-	No parking	Section 20.100.610(C)(7)
<b>Vehicle Related Uses</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, Note 8
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	
<b>Historic Reuse</b>					
Historic Landmark Structure Reuse	S	S		Section 20.90.220.E	Part 8.5 Chapter 20.80

**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)(i) Exception for travel agencies and real estate agencies which are the only permitted uses.~~
- ~~(k)(j) Community centers are not allowed.~~
- ~~(l)(k) Exception for copy shops and mail centers which are the only permitted uses.~~
- ~~(m)(l) Use of ground floor to be primarily dedicated to customer-related public services.~~
- ~~(n)(m) 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.~~
- (n) In order to be a permitted use, the size of the space of such use shall be limited in size to a total maximum area of no greater than 20,000 sq.ft., and the space shall not be located within a corner tenant space that is directly adjacent to the intersection of two public streets. Any use that does not meet either of those criteria may be allowed with a Special Use Permit, and a Special Use Permit is required.

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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.
  - (8) Pedestal charging stations that are incidental to a separate primary use, that do not impact on-site or off-site vehicular circulation, and that serve patrons of the primary use on-site are permitted in all downtown zoning districts.
- \* Under the Parking Management Plan, October 2001, the Code may be changed to reduce the parking allotments for these uses. The reduction would be to 2.5 spaces per 1,000 square feet when BART is opened.

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

**PASSED FOR PUBLICATION OF TITLE** this                    day of                    , 2012  
by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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

ATTEST:

\_\_\_\_\_  
DENNIS D. HAWKINS, CMC  
City Clerk



# Memorandum

TO: RULES COMMITTEE

FROM: Mayor Chuck Reed  
Councilmember Sam Liccardo

SUBJECT: GROUND-FLOOR USES IN THE  
DOWNTOWN CORE

DATE: November 22, 2011

APPROVED:

11-22-11

## RECOMMENDATION

1. Suspend Municipal Code § 20.70.100 (F), and the corresponding portions of Table 20-140 (and other any provisions of that sub-section that restrict ground-floor uses in the Downtown core), for a period of twelve months, to allow the specified restricted uses (e.g., financial services, financial institutions, other office uses, and day-care centers) to operate without a special use permit on the ground floor of the Downtown core:

a. in sites other than corner lots;

b. where those businesses are open Monday through Friday, for a minimum of the standard 9am to 5 pm business hours; and

c. with reasonable conditions to ensure that ground-floor activity appears plainly evident from the sidewalk, e.g., provision of adequate night-time lighting on the storefront, limitation of window coverings, etc.

2. Return to the Community and Economic Development Committee prior to the expiration of the 12-month suspension period, to assess the status of the commercial real estate market Downtown, and to evaluate the efficacy of the program.

## BACKGROUND

Despite all of the challenges of the recent downturn, we increasingly hear good news from businesses--particularly financial and professional services--looking for Downtown space. We have seen a host of new and expanding office users Downtown in the past year, including employers as wide-ranging as Oracle, PWC, Pinger, SunWize, ThreatMatrix, Xactly, BCA Architects, the University of San Francisco, and Aedis.

Nonetheless, too many ground-floor storefronts remain vacant Downtown, and with that vacancy comes the familiar urban problems of blight.

Several companies and brokers have expressed interest in Downtown ground-floor spaces, only to find that the current zoning code requires a special use permit for many non-retail uses. While we support the

RULES COMMITTEE :

ITEM:

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intent of such restrictions—to encourage pedestrian-friendly vitality on our sidewalks with active streetscapes—we also recognize that the existing limitations came into being during a different time.

This challenging economy calls for greater flexibility. While we appreciate the need to encourage active ground-floor uses, it becomes imperative for the City to get out of the way of those employers who want to move Downtown. As we seek to support our existing restaurants and retail, increasing the City's flexibility toward office uses will bring the kinds of tenants who will, over time, attract retailers as well.



# Memorandum

TO: Mayor & City Council

FROM: Councilmember  
Sam Liccardo

SUBJECT: SEE BELOW

DATE: November 13, 2008

APPROVED:

DATE: 11-17-08

**SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO ALLOW BUSINESS SUPPORT AND BUSINESS AND ADMINISTRATIVE OFFICE USES AS GROUND FLOOR USES WITH A SPECIAL USE PERMIT IN THE DOWNTOWN GROUND-FLOOR SPACE OVERLAY AREA, TO ALLOW ANIMAL GROOMING AS A PERMITTED USE IN THE DOWNTOWN ZONING DISTRICTS, TO MODIFY PARKING REQUIREMENTS FOR LIVE/WORK UNITS IN DOWNTOWN ZONING DISTRICTS, AND TO MAKE OTHER RELATED CLARIFYING CHANGES AND MODIFICATIONS.**

## RECOMMENDATIONS

Accept staff recommendations with the following modification:

- Restrict to 20,000 Square Feet the aggregate amount of any future non-retail uses granted development permits within the Downtown Ground-Floor Zoning Overlay Area, such that any additional square footage would require a change in Council policy.
- Direct the City Manager to return to Council with a report on all non-retail uses granted development permits within the Downtown Ground-Floor Zoning Overlay Area during the 12-month period following enactment of the proposed Ordinance changes.

## BACKGROUND

The proposed ordinance has raised concern that allowing increased office uses in ground-floor retail space may hinder the long-term development of retail uses downtown. While I support the intent behind this proposed change to allow for increased flexibility for building owners, I share concerns about the proliferation of office uses. "Smart growth" principles call for keeping a mix of uses exists within walking distance of residences, and the dearth of retail downtown has too many residents in high-density developments getting into their cars to shop. More active ground-floor uses promote a more vibrant street life. Current and future downtown residents should have the variety of retail and cultural uses needed to maintain a high quality of life, and prospective high rise condo buyers will expect no less.

The Council-adopted Downtown Strategy 2000 includes retail development as one of its top priorities. The objective of the Downtown Strategy appears clearly stated: "The ground floor of buildings including parking structures should be occupied by retail, entertainment, service retail, cultural or other high intensity pedestrian uses."

For these reasons, I propose placing a cap of 20,000 square feet on future non-retail uses downtown. Without some constraints, a temporarily strong office market and/or a weak retail market can lead to long-term office leases that could permanently choke retail uses from the street level. Should market conditions change or if our perspective evolves, staff can return to Council to lift the 20,000 square foot limit.

This memorandum was coordinated with Redevelopment Agency, Planning, Building and Code Enforcement Department and the City Attorney's Office.

Downtown Ground Floor Space Areas	Total Spaces	Total Vacancies	Vacant Corners	*Net Vacancies	Notes
Both sides of Santa Clara Street between San Pedro Street and Second Street	32	6	2	4	Vacancies: 142 W. Santa Clara, Market and Santa Clara streets, 84 w. santa clara, 35 & 49 E. Santa Clara, 30 E. Sant Clara suite 120
Both sides of Fountain Alley, between First Street and Second Street	5	0	0	0	
Both sides of Post Street, between Lightston Street and First Street	16	2	0	2	Vacancies: 20 and 25 Post Street
Both sides of San Fernando Street, between Market Street and Fourth Street	16	1	1	0	Vacancies: 100 E. San Fernando Street
Both sides of Park Avenue from Market Street, continuing westerly for 500 feet	8	2	1	1	Vacancies: 179 Park Avenue, 220 Almaden Blvd
Both sides of Paseo de San Antonio, between Market Street and Fourth Street	27	5	1	4	Vacancies: 110, 22, 118, 170 S. Market Suite 150 and 120 (corner)
Both sides of San Carlos Street, between Makret street and Fourth Street	14	0	0	0	
Both sides of San Pedro Street, between St. John Street and Santa Clara Street	15	1	1	0	Vacancies: 151 W. Santa Clara + Includes stores open in SPSMarket
Both sides of Market Street between San Fernando and San Carlos street	9	2	0	2	Vacancies 125 S. Market Suite 110/120
Both sides of First Street, between Santa Clara Street and San Carlos Street	39	6	0	6	Vacancies: 66, 78, 200, 204, 206, 150 S. First Street Suite 103, 310 S. First St.
Both sides of Second Street, between Santa Clara and San Carlos Street	21	8	0	8	Vacancies: ?, 2, 14, 18, 40 (divisible), 56, 72 & 84
East side of Third Street, from four hundred sixty-three feet north of San Fernando Street to the north side of San Fernando Street	2	0	0	0	
Both sides of Third Street, from San Fernando Street to 270 feet South of San Fernando Street	2	1	0	1	The 88, parking, apartment buildings
Both sides of Fourth Street, from 463 feet north of San Fernando Street to the north side of San Fernando street	5	2	0	2	Vacancies: City windows gallery, suite 100 next to San Jose Credit Union
West side of Fourth Street, from the south side of San Fernando Street to 270 feet south of San Fernando Street	1	0	0	0	Paseo Villas- County Federal Credit Union
	212	36	6	30	
		0.169811		0.141509	
*Net vacancies excludes corners					

