

.CITY OF SAN JOSÉ, CALIFORNIA  
Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, California 95110-1795

## STAFF REPORT

Hearing Date/Agenda Number  
P.C 5/11/05      Item:

File Number  
CP05-015

Application Type  
Conditional Use Permit

Council District  
3

Planning Area  
Central

Assessor's Parcel Number(s)  
259-06-018, -054, -055, -056

### PROJECT DESCRIPTION

Completed by: Ron Eddow

Location: West side of North San Pedro Street between Taylor and Mission Streets

Gross Acreage: 4.85

Net Acreage: 4.85

Net Density: n/a

Existing Zoning: CO Commercial  
Office District

Existing Use: Surface parking lot

Proposed Zoning: No change

Proposed Use: Temporary outdoor use of public property; Theatrical circus (Cirque du Soleil) for the period from December 5, 2005 to March 10, 2006

### GENERAL PLAN

Completed by: RE

Land Use/Transportation Diagram Designation  
Office

Project Conformance:  
 Yes    No  
 See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: RE

North: Police Administration Building

R-1-8 Residence

East: Public Defender, Credit Union,  
Single-family detached and attached residential

CO Commercial Office, A (PD) Planned Development  
R-2 Two-Family Residence

South: Office

CO Commercial Office

West: Route 87

CO Commercial Office/Caltrans right-of-way

### ENVIRONMENTAL STATUS

Completed by: RE

Environmental Impact Report adopted  
 Negative Declaration circulated on  
 Negative Declaration adopted on

Exempt  
 Environmental Review Incomplete

### FILE HISTORY

Completed by: RE

Annexation Title: Original City

Date: March 27, 1850

### PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval  
 Approval with Conditions  
 Denial  
 Uphold Director's Decision

Date: \_\_\_\_\_

Approved by: \_\_\_\_\_  
 Action  
 Recommendation

CONTACT	APPLICANT	OWNER
Yvan Dumouchel Cirque du Soleil 8400, 2e Avenue Montreal, Quebec, H1Z 4M6 Canada	City of San Jose James Helmer 4 N. Second Street, Suite 1000 San José, CA 95113	City of San Jose Mark Linder, Deputy City Manager 801 N. First Street, Room 430 San José, CA 95110

## PUBLIC AGENCY COMMENTS RECEIVED

Completed by: RE

## Department of Public Works

- See Attached

## Other Departments and Agencies

- Airport, Police, Fire, and Environmental Services Departments (See Attached)

## GENERAL CORRESPONDENCE

- None.

## ANALYSIS AND RECOMMENDATIONS

## BACKGROUND

The applicant, the City of San Jose on behalf of Cirque du Soleil, is requesting a Conditional Use Permit (CUP) to operate a theatrical circus show from January 18, 2006 to March 5, 2006 including (1) the preparation and installation of equipment such as tents, signs, fences, generators, and lighting equipment beginning on December 5, 2005; (2) the operation of concession stands for the sale of merchandise and food, and/or restaurants for the sale and consumption of food and nonalcoholic and alcoholic beverages; (3) the holding of promotional events; (4) the operation of a ticket box office for the sale of show tickets; (5) the installation of sanitary vans, an office trailer and kitchen facilities for the use by staff; and (6) related off-site parking.

The subject site is located on the west side of N. San Pedro Street between Taylor and Mission Street. The site, commonly known as the “E” parking lot, is currently used as a paved, surface parking lot for City employees containing approximately 309 parking spaces.

Surrounding land uses consist of (1) the Police Administration building to the north; (2) pocket park, Public Defenders office, San Jose Credit Union, and single-family detached and attached residential to the east; (3) Taylor Street overpass and office uses to the south; and (4) Highway 87/Caltrans right-of-way to the west.

### Lease Agreement

On April 12, 2005, the City Council approved a lease agreement between the City of San Jose and Cirque du Soleil America, Inc. (Cirque) for a touring show in San Jose in 2006. Council authorized the City Manager to negotiate and execute the lease agreement with Cirque du Soleil for the purpose of leasing portions of the City’s “E” parking lot to Cirque du Soleil from December 5, 2005 to March 10, 2006 so Cirque may present its touring show to the public.

Council required a public process including public outreach, City employee and public parking plans, and a public hearing for a Conditional Use Permit. Council also appropriated \$60,000 in the 2005-2006 Capital Budget to be used by the City for its share of site preparation, utility connections, and site restoration.

## **Project Description**

### ***Timeline***

On December 5, 2005, Cirque would begin site preparations for the touring show. Site preparation work is described in Attachment A-22. It includes the removal of 13 Ginko and Raywood Ash trees in the parking lot. On January 19, 2006, the premiere show entitled, Corteo, would be held. On March 5, 2006, the last show would be held and site tear down would commence. The site would be released to the City of San Jose on March 10, 2006.

### ***Event Description***

The touring show is a temporary theatrical circus involving performance arts under a big top tent. No animals are used in the production. Other tents are used for (1) entrances/concessions for food, beverage, and merchandise sales; (2) artists' practice area, dressing rooms, and wardrobe/backstage; and (3) VIP lounge area, complimentary food service, and merchandise sales.

The surface area used for the show is approximately 600 feet by 400 feet. Cirque du Soleil anticipates approximately 2,550 patrons per show. Show times would begin between 1:00 and 8:00 p.m. and end by 11:30 p.m. as shown on Attachment A-18. There will be a maximum of two performances per day, six days per week. Approximately 160 employees are touring with the show, and nearly 150 local persons will be hired to assist with daily operations.

### ***Site Plan***

The big top tent, known as the theater or house, is located in the center of the subject site. It measures approximately 167 feet in diameter and 57 feet in height. It contains 22,000 square feet of area that can accommodate a total of 2,795 persons. The artistic tent, measuring approximately 100 by 56 feet and 59 feet in height, is connected to the big top tent to the south. It can accommodate 64 persons. The VIP tent, measuring approximately 90 by 68 feet and 59 feet in height, is located at the southwest corner of Mission and San Pedro Streets. It has a maximum occupancy of 220 people. Two entrance/concessions tents with a diameter of about 62 feet and 3,050 square feet are located on the south side of Mission Street. The entrance/concessions tents each have a maximum occupancy load of 80 persons.

Trailers will be used for the box office, public toilets, show workshop, catering kitchen, offices, show workshops, staff physical therapy, and staff bathrooms. Small tents and structures will be used throughout the site for temporary staff, security staff, and miscellaneous storage.

### ***Electrical System***

Cirque du Soleil plans to use four, 450-KW diesel generators, and one 210-KW generator and switchgear contained in three 48-foot trailers. The electrical power supply network would have voltages ranging from 120 to 480 volts. The electrical system includes transformers, load centers, and

distribution cables. Power would be used to supply indoor and outdoor lighting. The big top tent mast lights are powered by the primary 480 volt/3-phase light source. All other lights are powered by 120-208 volt secondary power.

### ***Plumbing System***

A total of 36 toilets and hand washing stations would be provided for public use. Both public and staff bathrooms would be connected to an onsite manhole and sanitary sewer system by flexible lines with pumps and backflow preventers. Potable water would be supplied by flexible hoses connected to a fire hydrant.

### ***Hazardous Materials***

Propane would be stored in one 500-gallon tank for cooking in the staff kitchen trailer, and water heating. Up to 20 propane tanks would be used for forklifts. Propane deliveries would occur every 15 days. Diesel up to 4,500 gallons would be stored in double-lined tanks for the diesel generators. Diesel fuel would be delivered three times per week. Welding and cutting gas such as compressed oxygen, dissolved acetylene, and pure argon would be stored for minor maintenance. Deliveries would occur in the morning before patrons were on site.

### ***Safety Measures***

The entire site would be fenced with 24-hour security personnel onsite consisting of two full-time safety and security coordinators, up to 12 security guards during performances, 75 ushers, 65 concessions employees, and 25 trained VIP hosts. The touring show has an extensive emergency plan, crisis communication plan, and 150 touring technicians and employees trained in the security plan.

## **GENERAL PLAN CONFORMANCE**

The subject site is designated Office on the San Jose 2020 General Plan Land Use/Transportation Diagram. The Downtown Revitalization Major Strategy states “While Downtown economic development is certainly important, Downtown’s perceived identity and image as the heart of San Jose is equally important. Further, “Located near the geographic center of the City, Downtown is a uniquely accessible area at the hub of transit systems, freeways, and arterial streets. The diversity of land uses and architecture in Downtown establishes it as the most urban of the City’s neighborhoods. Downtown is the site of civic events, parades, and public celebrations.”

The proposed project furthers the Downtown Revitalization Major Strategy in that the subject site is owned by the City of San Jose, and is currently used as a surface parking lot for City employees. It is located adjacent to Taylor Street that is the northern boundary of the Downtown Frame Area. The site is located two blocks from the Civic Center LRT station and major bus routes 180, 66, and 62, and is adjacent to the Highway 87/Taylor Street interchange. It is an urban site that can physically accommodate a temporary event.

## **ENVIRONMENTAL REVIEW**

Section 15304 (e) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) exempts minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural

purposes. Examples include temporary use of land having negligible or no permanent effects on the environment including carnivals, sales of Christmas trees, etc.

On March 28, 2005, the Director of Planning, Building and Code Enforcement determined the proposed project to be exempt from environmental review under CEQA Guidelines 15304 (e) in that the proposed theatrical circus on the subject site during the period from December 5, 2005 to March 10, 2006 would be a minor, temporary use that would not involve the removal of healthy, mature, scenic trees.

## **PUBLIC OUTREACH**

A community meeting was held on April 28, 2005. Parking and traffic associated with the show/operations were the primary issues of neighborhood concern. The community meeting synopsis is attached to the staff report on Attachment A-19.

Public hearing notices for this project were mailed to all property owners and occupants within 1,000 feet of the subject site. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report.

## **ANALYSIS**

The primary issues analyzed below are parking and neighborhood compatibility.

### ***Parking***

According to the lease agreement, the City of San Jose is responsible for off-site parking in “regular parking facilities” and “VIP parking facilities” as well as traffic control management for the show in the vicinity of the site. Regular parking facilities containing 197 spaces will be located in the “C” lot to the west of City Hall off N. San Pedro Street. VIP parking facilities containing 102 spaces will be located on the parking circle at the front of City Hall, 801 N. First Street facing Mission Street.

In addition, the City Department of Transportation (DOT) has identified 339 (223 metered and 116 non-metered) marked, on-street parking spaces in the immediate area bounded by Taylor Street, N. First Street, Hedding Street, and Route 87. A DOT survey determined the vast majority of the on-street parking spaces would be available during evenings and weekends. Other public parking facilities, such as the County garage on Hedding Street, and private parking lots on Mission and Taylor Streets, could provide additional parking if the property owners chose to make them available.

Cirque du Soleil estimates 650 vehicles per performance. The City will provide 197 regular parking spaces and 102 VIP parking spaces for a total of 398 off-street parking spaces. A total of 339 on-street parking spaces would be available as described above.

In Attachment A-6, the Police Department expresses concern that the show will eliminate 630 parking spaces in the “E” Lot for up 200 to 500 police employee vehicles, depending on the shift. At the April 28<sup>th</sup> community meeting, neighbors expressed concern that patrons would park in the Vendome neighborhood. They recommended closing N. San Pedro Street south of Taylor Street before, during, and after the show and directing vehicles to use Taylor Street, N. First Street, and Route 87. Neighbors also recommended the use of shuttles from Downtown and Japantown.

As required by the lease agreement, and prior to occupancy of the site, the Department of Transportation should develop, and disseminate to the community, City employees, and Cirque du Soleil a parking management plan to direct people to desired parking locations, and to discourage parking in the Vendome neighborhood. The plan should include, but not be limited to, (1) the location of available parking facilities including their costs and restrictions, (2) parking way-finding signage directing drivers from Taylor Street, N. First Street, N. San Pedro Street, and Route 87 to available parking facilities, (3) planned street closures and times, (4) transit and shuttle alternatives, and (5) parking control management techniques to the satisfaction of the Director of Transportation and the Director of Planning, Building and Code Enforcement.

### ***Neighborhood Compatibility***

The show could have noise impacts to adjacent residents from live, amplified music and patrons before, during, and after the show. Staff believes the impacts would be negligible given that the show times would begin between 1:00 p.m. and 8:00 p.m., and end by 11:30 p.m. six days per week over a 46 day period. Live music from the show could not be attenuated. It could either be turned down in volume, or the show times could be shifted to an earlier time each day.

### **Conclusion**

The primary issues raised by the community and Police Department are parking and related traffic. According to the lease agreement, the City of San Jose is responsible for parking facilities and parking control management. Staff recommends the Planning Commission resolution include a condition requiring the Department of Transportation to develop, and disseminate to the community and City employees, a parking management plan to direct people to desired parking locations, and to discourage parking in the Vendome neighborhood prior to occupancy of the site by Cirque du Soleil.

### **RECOMMENDATION**

Planning staff recommends the Planning Commission approve the requested Conditional Use Permit and include the following facts, findings, and conditions in its resolution:

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

1. The applicant, the City of San Jose on behalf of Cirque du Soleil, is requesting a Conditional Use Permit (CUP) to operate a theatrical circus show from January 18, 2006 to March 5, 2006 including (1) the preparation and installation of equipment such as tents, signs, fences, generators, and lighting equipment beginning on December 5, 2005; (2) the operation of concession stands for the sale of merchandise and food, and/or restaurants for the sale and consumption of food and nonalcoholic and alcoholic beverages; (3) the holding of promotional events; (4) the operation of a ticket box office for the sale of show tickets; (5) the installation of sanitary vans, an office trailer and kitchen facilities for the use by staff; and (6) related off-site parking.
2. The subject site is located on the west side of N. San Pedro Street between Taylor and Mission Street. The site, commonly known as the "E" parking lot, is currently used as a

- paved, surface parking lot for City employees containing approximately 309 parking spaces.
3. Surrounding land uses consist of (1) the Police Administration building to the north; (2) pocket park, Public Defenders office, San Jose Credit Union, and single-family detached and attached residential to the east; (3) Taylor Street overpass and office uses to the south; and (4) Highway 87/Caltrans right-of-way to the west.
  4. On April 12, 2005, the City Council approved a lease agreement between the City of San Jose and Cirque du Soleil America, Inc. (Cirque) for a touring show in San Jose in 2006. Council authorized the City Manager to negotiate and execute the lease agreement with Cirque du Soleil for the purpose of leasing portions of the City's "E" parking lot to Cirque du Soleil from December 5, 2005 to March 10, 2006 so Cirque may present its touring show to the public. Council required a public process including public outreach, City employee and public parking plans, and a public hearing for a Conditional Use Permit. Council also appropriated \$60,000 in the 2005-2006 Capital Budget to be used by the City for its share of site preparation, utility connections, and site restoration.
  5. On December 5, 2005, Cirque would begin site preparations for the touring show. Site preparation work is described in Attachment A-22. It includes the removal of 13 Ginko and Raywood Ash trees in the parking lot. On January 19, 2006, the premiere show entitled, Corteo, would be held. On March 5, 2006, the last show would be held and site tear down would commence. The site would be released to the City of San Jose on March 10, 2006.
  6. The touring show is a temporary theatrical circus involving performance arts under a big top tent. No animals are used in the production. Other tents are used for (1) entrances/concessions for food, beverage, and merchandise sales; (2) artists' practice area, dressing rooms, and wardrobe/backstage; and (3) VIP lounge area, complimentary food service, and merchandise sales.
  7. The surface area used for the show is approximately 600 feet by 400 feet. Cirque du Soleil anticipates approximately 2,550 patrons per show. Show times would begin between 1:00 and 8:00 p.m. and end by 11:30 p.m. as shown on Attachment A-18. There will be a maximum of two performances per day, six days per week. Approximately 160 employees are touring with the show, and nearly 150 local persons will be hired to assist with daily operations.
  8. The big top tent, known as the theater or house, is located in the center of the subject site. It measures approximately 167 feet in diameter and 57 feet in height. It contains 22,000 square feet of area that can accommodate a total of 2,795 persons. The artistic tent, measuring approximately 100 by 56 feet and 59 feet in height, is connected to the big top tent to the south. It can accommodate 64 persons. The VIP tent, measuring approximately 90 by 68 feet and 59 feet in height, is located at the southwest corner of Mission and San Pedro Streets. It has a maximum occupancy of 220 people. Two entrance/concessions tents with a diameter of about 62 feet and 3,050 square feet are located on the south side of Mission Street. The entrance/concessions tents each have a maximum occupancy load of 80 persons.

9. Trailers will be used for the box office, public toilets, show workshop, catering kitchen, offices, show workshops, staff physical therapy, and staff bathrooms. Small tents and structures will be used throughout the site for temporary staff, security staff, and miscellaneous storage.
10. Cirque du Soleil plans to use four, 450-KW diesel generators, and one 210-KW generator and switchgear contained in three 48-foot trailers. The electrical power supply network would have voltages ranging from 120 to 480 volts. The electrical system includes transformers, load centers, and distribution cables. Power would be used to supply indoor and outdoor lighting. The big top tent mast lights are powered by the primary 480 volt/3-phase light source. All other lights are powered by 120-208 volt secondary power.
11. A total of 36 toilets and hand washing stations would be provided for public use. Both public and staff bathrooms would be connected to an onsite manhole and sanitary sewer system by flexible lines with pumps and backflow preventers. Flexible hoses connected to a fire hydrant would supply potable water.
12. Propane would be stored in one 500-gallon tank for cooking in the staff kitchen trailer, and water heating. Up to 20 propane tanks would be used for forklifts. Propane deliveries would occur every 15 days. Diesel up to 4,500 gallons would be stored in double-lined tanks for the diesel generators. Diesel fuel would be delivered three times per week. Welding and cutting gas such as compressed oxygen, dissolved acetylene, and pure argon would be stored for minor maintenance. Deliveries would occur in the morning before patrons were on site.
13. The entire site would be fenced with 24-hour security personnel onsite consisting of two full-time safety and security coordinators, up to 12 security guards during performances, 75 ushers, 65 concessions employees, and 25 trained VIP hosts. The touring show has an extensive emergency plan, crisis communication plan, and 150 touring technicians and employees trained in the security plan.
14. The proposed project furthers the Downtown Revitalization Major Strategy in that the subject site is owned by the City of San Jose, and is currently used as a surface parking lot for City employees. It is located adjacent to Taylor Street that is the northern boundary of the Downtown Frame Area. The site is located two blocks from the Civic Center LRT station and major bus routes 180, 66, and 62, and is adjacent to the Highway 87/Taylor Street interchange. It is an urban site that can physically accommodate a temporary event.
15. On March 28, 2005, the Director of Planning, Building and Code Enforcement determined the proposed project to be exempt from environmental review under CEQA Guidelines 15304 (e) in that the proposed theatrical circus on the subject site during the period from December 5, 2005 to March 10, 2006 would be a minor, temporary use that would not involve the removal of healthy, mature, scenic trees.
16. A community meeting was held on April 28, 2005. Parking and traffic associated with the show/operations were the primary issues of neighborhood concern.
17. According to the lease agreement, the City of San Jose is responsible for off-site parking in “regular parking facilities” and “VIP parking facilities” as well as traffic control

management for the show in the vicinity of the site. Regular parking facilities containing 197 spaces will be located in the “C” lot to the west of City Hall off N. San Pedro Street. VIP parking facilities containing 102 spaces will be located on the parking circle at the front of City Hall, 801 N. First Street facing Mission Street.

18. The City Department of Transportation (DOT) has identified 339 (223 metered and 116 non-metered) marked, on-street parking spaces in the immediate area bounded by Taylor Street, N. First Street, Hedding Street, and Route 87. A DOT survey determined the vast majority of the on-street parking spaces would be available during evenings and weekends. Other public parking facilities, such as the County garage on Hedding Street, and private parking lots on Mission and Taylor Streets, could provide additional parking if the property owners chose to make them available.
19. Cirque du Soleil estimates 650 vehicles per performance. The City will provide 197 regular parking spaces and 102 VIP parking spaces for a total of 398 off-street parking spaces. A total of 339 on-street parking spaces would be available.
20. As required by the lease agreement, and prior to occupancy of the site, the Department of Transportation should develop, and disseminate to the community, City employees, and Cirque du Soleil a parking management plan to direct people to desired parking locations, and to discourage parking in the Vendome neighborhood. The plan should include, but not be limited to, (1) the location of available parking facilities including their costs and restrictions, (2) parking way-finding signage directing drivers from Taylor Street, N. First Street, N. San Pedro Street, and Route 87 to available parking facilities, (3) planned street closures and times, (4) transit and shuttle alternatives, and (5) parking control management techniques to the satisfaction of the Director of Transportation and the Director of Planning, Building and Code Enforcement.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project further the San Jose 2020 General Plan Downtown Revitalization Major Strategy.
2. The proposed project is in compliance with the California Environmental Quality Act.
3. The proposed project is compatible with the surrounding neighborhood.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

The proposed use at the location requested will not:

- 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; and

The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features in this title, or as otherwise required in order to integrate said use with the uses in the surrounding areas; and

The proposed site is adequately served:

- a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
- b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### **CONDITIONS PRECEDENT**

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

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 Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment in accordance with Title 20 to extend the validity of this Permit for a period of up to but not exceeding one (1) year; provided, however, that no more than two (2) such term extensions are approved. The Permit Adjustment must be approved prior to the expiration of this Permit.

## CONCURRNT CONDITIONS

1. **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, or implementation of the use contemplated by 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.
2. **Site Occupancy.** This permit allows Cirque du Soleil America, Inc to occupy the "E" Lot for a theatrical circus during the occupation period from December 5, 2005 to March 10, 2006.
3. **Alcohol Sales.** This permit allows the sale of alcohol for on-site consumption during the occupation period from December 5, 2005 to March 10, 2006 in conformance with the requirements of the State Department of Alcoholic Beverage Control (ABC) Permit.
4. **Days/Hours of Operation.** Cirque du Soleil may operate a theatrical circus on the "E" Lot seven days per week during the occupation period from December 5, 2005 to March 10, 2006. A maximum of two performances per day may occur between the hours of 12:00 noon and 12:00 midnight.
5. **Refuse.** Garbage and refuse shall be maintained so it does not create undesirable odor, and is not visible from adjacent public-rights-of-way.
6. **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.
7. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Corteo Cirque du Soleil" dated April 26, 2005, on file with the Department of Planning, Building and Code Enforcement.
8. **Street Improvements.** Applicant shall remove and replace AC, curb, gutter, and sidewalk damaged during the proposed project. Any alteration to existing Asbury Street should utilize temporary pavement. Asbury shall be restored to its original condition at the conclusion of the event.
9. **Wastewater Discharge.** Wastewater discharge must conform to industrial waste discharge regulations in accordance with San Jose Municipal Code Chapter 15.14. A temporary discharge permit and fees will be required. Contact Joe Denk at (408) 382-8863 or Source Control staff at (408) 945-3000 to obtain the permit and arrange payment of the fees.

10. **Parking Management Plan.** Prior to occupancy of the site, the Department of Transportation shall develop, and disseminate to the community and City employees, a parking management plan to direct people to desired parking locations, and to discourage parking in the Vendome neighborhood. The plan should include, but not be limited to, (1) the location of available parking facilities including their costs and restrictions, (2) parking way-finding signage directing drivers from Taylor Street, N. First Street, N. San Pedro Street, and Route 87 to available parking facilities, (3) planned street closures and times, (4) transit and shuttle alternatives, and (5) parking control management techniques to the satisfaction of the Director of Transportation and the Director of Planning, Building and Code Enforcement.
11. **Fire Safety.** The applicant shall meet all requirements of the Fire Department at the Building Permit stage.
- a. The required fire flow of at minimum 2000 GPM shall be available at the project site. The applicant should immediately contact Jim Bariteau of San Jose Water Company at 408-279-7874 to obtain the water flow information.
  - b. The required fire flow shall be provided through two existing fire hydrants closest to the subject site.
  - c. The applicant shall submit plans to Nadia Naum-Stoian in the Fire Department to provide the following:
    - i) Width, length, and grade of the fire apparatus access roads. Every portion of each building exterior walls shall be within 150 feet of an access road. The fire access shall (1) be at least 20 feet wide; (2) have an unobstructed vertical clearance of not less than 14 feet; (3) be designed and maintained to support the loads of fire apparatus of at least 69,000 pounds; (4) have a minimum inside turning radius of 30 feet and an outside turning radius of 50 feet; (5) be designed with approved provisions for turning around of fire apparatus if it dead ends and is in excess of 150 feet; and (6) have a gradient less than or equal to 15%.
    - ii) Curbs are required to be painted red and marked as "Fire Lane - No Parking" under the following conditions: (1) roads, streets, avenues, and the like that are 20 to less than 26 feet wide measured from face-of-curb to face-of-curb shall have curbs on both sides of the road painted and marked; and (2) roads, streets, avenues, and the like that are 26 to less than 32 feet wide measured from face-of-curb to face-of-curb shall have one curb painted and marked.
    - iii) Location of existing fire hydrants. The average distance between hydrants shall not exceed 500 feet / 250 from street frontage of property.
    - iv) Available Fire Flow. Provide a copy of the letter from the San Jose Water Co. that indicates the water flow available.
    - v) Exiting path for occupants all the way to the street.
  - d. A temporary membrane (tent having an area in excess of 200 sq. ft. and/or canopies in excess of 400 sq. ft.) may be erected by a special permit for limited period of time subject to review by the San Jose Fire Department. All temporary buildings or structures shall be completely removed upon the expiration of the time stated in the special permit. All provisions of the

Building/Fire Codes shall be enforced.

- e. The applicant should contact Captain Steve Padilla at (408) 277-8781 of the Fire Department's Bureau of Fire Prevention, for review and approval. Permits for the installation use and use of hazardous materials are required. The applicant should contact the Hazardous Materials Division at (408) 277-5477 as soon as possible to initiate the process.

12. **Post Construction Stormwater Treatment Measures.** Cirque du Soleil must employ best management practices (BMPs) to minimize sediment and debris that could be washed into City storm drains. BMPs include, but are not limited to, regular removal of garbage and debris from the site as required by the Lease Agreement. The Department of Transportation shall protect storm drains in the public right-of-way.

## CONDITIONS SUBSEQUENT

1. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.
2. **Term.** This Conditional Use Permit expires and has no further force or effect five years from the date of this Permit.
3. **Permit Amendment.** The applicant may submit a Conditional Use Permit Amendment for additional Temporary Outdoor Events on the subject site beyond what is permitted with this permit within the term of this permit.
4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.

C: Yvan Dumouchel  
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Jim Helmer, DOT  
Barry Ng, Public Works