

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE TO PROVIDE FOR THE DESIGNATION OF SPECIFIED AREAS OF THE CITY OF SAN JOSE AS A SPECIAL EVENT ZONE TO PROHIBIT CERTAIN ACTIVITIES ON PUBLIC PROPERTY INCLUDING PEDDLING, DISTRIBUTION OF MERCHANDISE, GOODS OR COUPONS FOR A COMMERCIAL PURPOSE, THE SALE OF COUNTERFEIT MERCHANDISE, AND THE FLYING OF UNMANNED AIRCRAFT SYSTEMS WITHIN THE SPECIAL EVENT ZONE AND TO PROVIDE FOR THE TEMPORARY SUSPENSION OF THE AUTHORITY OF THE DIRECTOR OF THE OFFICE OF CULTURAL AFFAIRS UNDER PART 16 OF CHAPTER 20.80 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO ISSUE PERMITS FOR TEMPORARY OUTDOOR USES OF PRIVATE PROPERTY WITHIN THE SPECIAL EVENT ZONE DURING THE TIME PERIOD BEGINNING AT SIX O'CLOCK (6:00) A.M. ON FRIDAY, DECEMBER, 28, 2018 AND ENDING AT SIX O'CLOCK (6:00) P.M. ON TUESDAY, JANUARY 8, 2019, RELATIVE TO THE USE OF THESE AREAS IN CONJUNCTION WITH THE 2019 COLLEGE FOOTBALL PLAYOFF'S NATIONAL CHAMPIONSHIP RELATED ACTIVITIES AND EVENTS

WHEREAS, the College Football Playoff ("CFP") will be conducting activities related to College Football Playoff's National Championship game in the City of San José ("City"); and

WHEREAS, the dates of the 2019 National Championship game and related events have been established as Friday, December 28, 2018 through Tuesday, January 8, 2019; and

WHEREAS, the National Championship game and related events will attract thousands of visitors to the City and provide the City with national exposure; and

WHEREAS, the National Championship game and related events are anticipated to have a positive economic impact on the City and the State of California; and

WHEREAS, given the thousands of visitors, dignitaries, and media personnel who are anticipated to be in attendance, it is necessary that commercial activities within certain areas in and around events related to the 2019 College Football Playoff's National Championship within the City be regulated and controlled to provide for the public health, safety, and welfare of the participants and the general public so that the maximum benefits of all that 2019 College Football Playoff's National Championship and related events have to offer may be enjoyed by all; and

WHEREAS, one of the teams competing in the College Football Playoff's National Championship will be practicing at San José State University's Spartan Stadium; and

WHEREAS, in conjunction with the National Championship game, CFP will be conducting concerts, media day, fan festival and related activities with the two college teams in San José; and

WHEREAS, commercial activities conducted in proximity to the National Championship related events would create congestion and unnecessarily increase the number of vehicles and pedestrians in the vicinity of Downtown San José and San José State University's Spartan Stadium, obstruct lines of sight, hinder security operations and interfere with emergency vehicle access; and

WHEREAS, City officials who have familiarity with traffic and public safety issues have similar concerns that Downtown San José and adjacent areas where the National Championship related events are scheduled to occur could become overly congested by attracting congregations of temporary structures, outdoor sales, and distribution of merchandise; and

WHEREAS, drones are unmanned aircraft or unmanned aircraft systems (UAS) that can fly under the control of a remote pilot, first person view (FPV), or via a global positioning system (GPS) guided autopilot mode; and can fly at altitudes below the navigable airspace (generally set at 400 feet) which currently are not subject to Federal Aviation Administration (FAA) regulations; and

WHEREAS, there is a concern about the public safety as, per statistics maintained by the U.S. Customs and Border Protection, drones have a higher incidence of accidents than manned aircraft and drones may become a hazard to the safe operations of the Special Event Zone creating an unnecessary risk of accident, terror attack, opportunity for counter surveillance or for the delivery of harmful substances in a densely populated area; and

WHEREAS, the City Council desires to promote and protect good order, a pleasing aesthetic environment and the safety and convenience of drivers and pedestrians in and around the facilities relating to the National Championship related events; and

WHEREAS, to that end, it is necessary to establish a Special Event Zone in areas within the City where 2019 College Football Playoff's National Championship related events are scheduled to occur for the temporary time period and within the specified boundaries designated in this ordinance;

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP10-068c (Municipal Code or Policy amendments that involve no changes in the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance.

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

SECTION 1. That there is hereby established a Special Event Zone as follows:

- A. BEGINNING at the place where Interstate 280 passes over California Route 87, thence running:
1. east by northeast along the southern edge of Interstate 280 to the place where Interstate 280 passes over South 6th Street; thence
 2. north, along the eastern edge of South 6th Street to the intersection of the centerlines of South 6th Street and East San Salvador Street, thence
 3. west, along the northern edge of East San Salvador Street to the centerlines of East San Salvador Street and South 4th Street, thence
 4. east, along the southern edge of East San Fernando Street to the centerlines of East San Fernando Street and South 6th Street, thence
 5. north by northwest along the eastern edge of South 6th Street to the intersection of the centerlines of North 6th Street and East St. James Street, thence
 6. west by southwest along the northern edge of East St. James Street, and continuing west by southwest along the northern edge of West Julian Street, to the intersection of the centerlines of West Julian Street and Stockton Avenue; thence
 7. south along the western edge of Stockton Avenue, continuing south along the western edge of White Street and further continuing south along the Caltrain tracks to the intersection of the centerlines of the Caltrain tracks and Park Avenue; thence

8. east, and continuing northeast, along the southern edge of Park Avenue to the intersection of the centerlines of Park Avenue and Delmas Avenue; thence
9. south, and continuing southwest, along the western edge of Delmas Avenue to the place where Delmas Avenue ends at the entrance onto California Route 87; thence
10. south by southeast along the western edge of California Route 87 to the place where California Route 87 passes under Interstate 280 at the point and place of beginning.

B. BEGINNING at the intersection of the centerlines South 7th Street and East Humboldt Street, thence running:

1. south along the western edge of South 7th Street to the intersection of the centerlines of South 7th Street and East Alma Avenue; thence
2. east, and continuing northeast, along the southern edge of East Alma Avenue to the intersection of the centerlines of East Alma Avenue and South 10th Street; thence
3. north, and continuing northwest, along the eastern edge of South 10th Street to the intersection of the centerlines of South 10th Street and East Humboldt Street; thence
4. west, and continuing southwest, along the northern edge of East Humboldt Street to centerlines of East Humboldt Street and South 7th Street at the point and place of beginning.

C. A map of the Special Event Zone is attached hereto as Exhibit A and available on file in the office of the City Clerk.

SECTION 2. The Special Event Zone defined in Section 1 shall have a duration beginning at six o'clock (6:00) A.M. on Friday, December 28, 2018, and ending at six o'clock (6:00) P.M. on Tuesday, January 8, 2019.

SECTION 3. Application and interpretation of this ordinance shall be governed by the general provisions and definitions set forth in Chapter 1.04 of Title 1, Sections 6.55.020 – 6.55.030, 6.55.060 and 6.55.220 of Chapter 6.55 of Title 6, Section 13.20.010 of Chapter 13.20 of Title 13, Chapters 20.80 and 20.200 of Part 16 of Title 20, and Chapters 23.02 and 23.04 of Part 2 of Title 23 of the San José Municipal Code, which are incorporated by reference as if fully set forth herein.

SECTION 4.

- A. All approved location permits issued pursuant to Chapter 6.54 of the San José Municipal Code for approved locations within the Special Event Zone designated in Section 1 of this ordinance shall be suspended during the time period designated in Section 2 of this ordinance.
- B. If any such permit holder peddles at the alternative approved location designated in the permit, the permit shall only be suspended in part, as applied to the primary approved location, and shall remain in full force and effect as applied to the alternative approved location, subject to Section 5 of this ordinance.

SECTION 5. Any person holding an approved location permit issued pursuant to Chapter 6.54 of the San José Municipal Code within the Special Event Zone designated by Section 1 of this ordinance may peddle at any alternative approved location designated in his or her approved location permit in compliance with all terms and conditions of the permit, only if the alternative approved location is not also within the Special Event Zone or within a special event boundary designated pursuant to Chapter 6.55 of the San José Municipal Code.

SECTION 6. It shall be unlawful for any person, including persons holding a peddler's permit issued pursuant to Chapter 6.54 of the San José Municipal Code, to peddle within the Special Event Zone designated by Section 1 of this ordinance during the time period designated in Section 2 of this ordinance.

SECTION 7. It shall be unlawful for a person to place any booth, table, chair, stool, object, structure, vehicle, or piece of equipment in any public area located within a Special Event Zone designated by Section 1 of this ordinance during the time period designated in Section 2 of this ordinance without the consent of the City.

SECTION 8. The authority of the Director of the Office of Cultural Affairs to issue permits pursuant to Part 16 of Chapter 20.80 of Title 20 of the San José Municipal Code regarding "Temporary Outdoor Uses of Private Property" is hereby suspended for any outdoor private property special event within the Special Event Zone defined in Section 1 within the duration specified in Section 2.

SECTION 9. It shall be unlawful for any person, firm, association or corporation, directly or indirectly, to distribute upon any street, sidewalk or public right-of-way within the Special Event Zone, defined in Section 1, any free merchandise, free sample goods or coupons for the purpose of advertising any commodity, article, merchandise, business, meeting, entertainment or activity for a commercial purpose.

SECTION 10. It shall be unlawful for any person to intentionally sell, knowingly possess for sale, or distribute any illegal or counterfeit merchandise within the City of San José.

SECTION 11. Temporary Prohibition of Unmanned Aircraft Systems

- A. “Drone” shall mean an unmanned aircraft or unmanned aircraft system (UAS) that can fly under the control of a remote pilot or by a global positioning system (GPS) guided autopilot mechanism.
- B. Prohibition. Unless otherwise exempt under this Section 11, it shall be unlawful for any person to deploy, launch or fly a drone in any airspace within or over the Special Event Zone designated in Section 1.
- C. Exemptions. This Section shall not prohibit the use of Drones by any law enforcement agency for lawful purposes and in a lawful manner.

SECTION 12. Supergraphic Signs

The authority of the Director of the Planning, Building and Code Enforcement to issue permits pursuant to Part 4 of Chapter 23.02 of Title 23 of the San José Municipal Code regarding “Supergraphic signs” is hereby limited to allowing five (5) Supergraphic sign permits to be displayed within the Special Event Zone defined in Section 1 within the duration specified in Section 2.

- A. Supergraphic sign permit applications must contain all information and fees as required by the director pursuant to Chapters 23.02 and 23.04 of Title 23 and will be accepted by the director on a first-come, first-served basis.
- B. The director shall time-stamp the supergraphic permit application as they are submitted. The director shall establish a list which shall identify the order in which permitted applications were received. The order in which registration forms were received shall be the order in which they shall be reviewed and processed by the director.

SECTION 13. Violation of this Ordinance shall be a misdemeanor. All remedies for violation of the San José Municipal Code set forth in Title 1 of said code shall apply to violations of this Ordinance, including, but not limited to the administrative citation provisions of Section 1.15.030. The amount of the administrative citation fine imposed for violation of this Ordinance shall be set forth in this Ordinance, not the amount set forth in the schedule of fines established by resolution of this Council adopted pursuant to Section 1.15.040A. For purposes of enforcement of Chapter 1.15 of Title 1 of the San José Municipal Code. The administrative citation fine amount for a violation of this Ordinance shall be as follows:

- A. Violations of Sections 6:
 - 1. First Violation: \$100.00
 - 2. Second Violation (within 12 month period from date of first violation): \$200.00
 - 3. Third Violation (within 12 month period from date of first violation): \$500.00
- B. Violations of Sections 7 and 9:
 - 1. First Violation: \$1,000.00
 - 2. Second Violation (within 12 month period from date of first violation): \$1,500.00
 - 3. Third Violation (within 12 month period from date of first violation): \$2,000.00
- C. Violations of Section 10 and 11 of this Ordinance:
 - 1. First Violation: \$1,250.00
 - 2. Second Violation (within 12 month period from date of first violation): \$2,500.00
 - 3. Third Violation (within 12 month period from date of first violation): \$5,000.00

SECTION 14. The amount of the administrative citation fine imposed for a Supergraphic sign erected or altered without a permit within the Special Event Zone designated by Section 1 of this ordinance during the time period designated in Section 2 of this Ordinance, shall be set forth as follows, not the amount set forth in the schedule of fines established by resolution of this Council adopted pursuant to Section 1.15.040A:

- | | |
|---|-------------|
| 1. First Violation: | \$10,000.00 |
| 2. Second Violation (within 12 month period
from date of first violation): | \$25,000.00 |
| 3. Third Violation (within 12 month period
from date of first violation): | \$50,000.00 |

SECTION 15. This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of San José, and this ordinance shall not operate to repeal or affect any of such other ordinances, however, insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, the provisions and requirements in this ordinance control and apply over such conflicting provisions to the extent necessary to fulfill the requirements and purposes of this ordinance.

SECTION 16. If any section, subsection, sentence, clause, or phrase of this ordinance adopted by the City Council of the City of San José is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of such ordinance. Each and every section, subsection, sentence, clause or phrase of any ordinance is severable from all other sections, subsections, sentences, clauses or phrases unless such ordinance contains a provision which states that the council would not have passed the remainder of such ordinance if it had known that any section, subsection, sentence, clause or phrase of the ordinance would subsequently be declared invalid or unconstitutional.

SECTION 17. The provisions of this ordinance shall expire at 6:00 p.m. on January 8, 2019.

PASSED FOR PUBLICATION of title this _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT A

Special Event Zone

