

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING VARIOUS SECTIONS OF THE SAN JOSE MUNICIPAL CODE TO: AMEND PART 12 (SIDEWALK CAFE) IN CHAPTER 20.100 TO REPEAL THE PROVISIONS FOR A SIDEWALK CAFE PERMIT ISSUED BY THE DIRECTOR OF PLANNING AND ADD A REFERENCE TO THE MINOR ENCROACHMENT PERMIT PROCESS SET FORTH IN CHAPTER 13.37; AMEND SECTION 20.100.140 (CONCURRENT REVIEW) IN CHAPTER 20.100 (ADMINISTRATION AND PERMITS) TO REMOVE SIDEWALK CAFE AND ADD MAJOR ENCROACHMENT PERMITS REGULATED BY CHAPTER 13.37, DEVELOPMENT AGREEMENTS REGULATED BY CHAPTER 18.02, AND STREET AND EASEMENT VACATIONS GOVERNED BY THE GOVERNMENT CODE AND STREETS AND HIGHWAYS CODE; AMEND SECTION 20.100.220 IN CHAPTER 20.100 (ADMINISTRATION AND PERMITS) TO REMOVE SIDEWALK CAFE PERMIT FROM THE APPEAL HEARING BODY LIST; AMEND SECTION 20.200.270 TO NO LONGER INCLUDE SIDEWALK CAFE PERMIT IN THE DEFINITION OF DEVELOPMENT PERMIT; AMEND SECTION 9.44.019 OF CHAPTER 9.44 (REGULATION OF SMOKING) TO ADD A REFERENCE TO SIDEWALK SEATING AUTHORIZED THROUGH A MINOR ENCROACHMENT PERMIT; AND, AMEND SECTION 10.10.030 OF CHAPTER 10.10 (PEDESTRIAN FACILITATION ORDINANCE) TO ADD A REFERENCE TO SIDEWALK SEATING AUTHORIZED THROUGH A MINOR ENCROACHMENT PERMIT

WHEREAS, pursuant to Section 15168(c)(2) of the CEQA Guidelines, the City of San José has determined that this Ordinance is pursuant to, in furtherance of and within the scope of the previously approved program evaluated in the Final Program Environmental Impact Report for the Envision San José 2040 General Plan (the “FEIR”), for which findings were adopted by City Council through its Resolution No. 76041 on November 1, 2011, and Supplemental Environmental Impact Report (the “SEIR”), through Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto, and does not involve new significant effects beyond those analyzed in the FEIR and SEIR; and

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

WHEREAS, this Council of the City of San José has considered and approves the information contained in the FEIR, as supplemented and addenda thereto, and related City Council Resolution Nos. 76041 and 77617 and the determination of consistency therewith 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. Section 20.100.140 of Chapter 20.100 of Title 20 of the San José Municipal Code is amended to read as follows:

20.100.140 Concurrent Review

A. Whenever applications for the same site have been filed for one or more development permits or approvals required by this title, such development permit or approvals may be reviewed and acted on in a unified process.

B. The following actions, where required to implement a project that requires approval of a development permit, may be reviewed and acted on in a unified process:

1. Determinations of public convenience or necessity governed by Chapter 6.84 of Title 6 of the San José Municipal Code may be included in the unified process Code.

2. Tree removal permits governed by Chapter 13.32 of Title 13 of the San José Municipal Code may be included in the unified process.

3. Major Encroachment Permits governed by Chapter 13.37 of the San Jose Municipal Code.

4. Development Agreements governed by Chapter 18.02 of Title 18 of the San Jose Municipal Code.

5. Subdivision approvals governed by Title 19 of the San José Municipal Code may be included in the unified process.

6. Street and Easement Vacations governed by the Government Code or the Streets and Highways Code.

- B. The unified process shall use the public hearing procedures required for the highest level permit or approval. Permits and approvals are ranked as follows with the highest level permit or approval listed first: Development Agreement; rezoning, Major Encroachment Permit; Street or Easement Vacation; conditional use permit; subdivisions; determination of public convenience or necessity; planned development permit; special use permit; site development permit; single-family house permit-director's decision; development exception; development variance; ~~sidewalk café permit~~; tree removal permit-director's decision; single-family house permit-administrative decision; and tree removal permit-administrative decision.
- C. The hearing body shall make the findings, if any, applicable to each permit or approval.

SECTION 2. Section 20.100.220 of Chapter 20.100 of Title 20 of the San José Municipal Code is amended to read 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 1	Appeal Decision Making Body 2
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	Director of Planning	
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
Special use permit - for schools that are elementary or secondary (public or private), post secondary, trade and vocational, or driving (class C & M license) in the PQP public/quasi-public zoning district	Director of Planning	City Council
Special use permit - for church/religious assembly in the PQP public/quasi-public zoning district	Director of Planning	City Council
Special use permit - for privately-operated museums, libraries, parks, playgrounds, or community centers in the PQP public/quasi-public zoning district	Director of Planning	City Council
Conditional use permit	Planning Commission	City Council
Conditional use permit - stadium, more than 2,000 seats including incidental support uses	City Council	No Appeal
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.	City Council	No Appeal
Conditional use permit involving off-premises sale of alcoholic beverages requiring a determination under Chapter 6.84 where findings required by planning commission under Section 6.84.030.B.1. through 4. cannot be made	City Council	No Appeal
Conditional use permit or planned development permit for mobilehome park conversion of use	City Council	No Appeal
Variance	Director of Planning	Planning Commission
Exception	Director of Planning	Planning Commission
Sidewalk café permit	Director of Planning	City Council
Tree removal permit	Director of Planning	

Administrative decision	Director of Planning	No Appeal
Director's hearing	Director of Planning	Planning Commission
Zoning code verification certificate	Director of Planning	No Appeal

1. The City Council is the initial decision making body for a project that requires certification of an environmental impact report for environmental clearance unless the project as proposed includes all mitigation measures identified in the draft environmental impact report for the project as necessary to reduce the impacts of the project to a less than significant level.
2. The City Council is the appeal decision making body for all projects in which appeals have been filed for both approval of the project under this chapter and environmental clearance for the project under Title 21 of this Code.

SECTION 3. Part 12 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

Part 12

Sidewalk Café Sidewalk Seating and Parklets

20.100.1400 Sidewalk Seating and ParkletsPurpose

For sidewalk seating or parklets in the public right-of-way refer to the procedures for encroachment permits set forth in Chapter 13.37 of Title 13 of this Code.

~~The sidewalk café regulations established in this part are intended to encourage sidewalk cafés in the City of San José, to provide for the creation of a more urban pedestrian environment, and to promote and protect the public health, safety, and general welfare. These general goals include among others the following specific purposes:~~

- ~~A. To encourage and promote sidewalk cafés as visual amenities which in turn intensify pedestrian activity and make street life more attractive; and~~
- ~~B. To preserve and enhance the character of the City of San José; and~~

~~C.— To ensure adequate space for pedestrians on the sidewalks adjacent to sidewalk cafés.~~

20.100.1410 Definitions

~~The definitions set forth in this section shall have the following meanings for the purposes of this part.~~

~~A.— "Director" means the director of planning, building and code enforcement or such other person that the city manager may designate to administer the provisions of this part.~~

~~B.— "Permittee" means the person to whom a sidewalk café permit has been issued pursuant to the provisions of this part.~~

~~C.— "Premises" shall mean the public eating establishment, as defined in Section 20.200.940 of this Code, or the retail sales establishment, together with the appurtenant outdoor sidewalk café authorized for that establishment by this part.~~

~~D.— "Retail sales establishment" shall mean a "retail sales, goods and merchandise" use as described in this title.~~

~~E.— "Sidewalk" shall mean that part of the public right-of-way dedicated to pedestrian circulation, including without limitation a public sidewalk or a public pedestrian mall.~~

20.100.1420 Permit required

~~A.— No owner or operator of a business establishment shall occupy any portion of a public sidewalk or mall with umbrellas, tables, and chairs or portable appurtenances for the convenience of customers, or occupy any portion of a street for such uses subject to a street permit issued pursuant to Chapter 13.36 of this Code, unless such owner or operator has obtained a permit approved by the director.~~

~~B.— No owner, operator or patron of any portion of a sidewalk café may do, and it shall be unlawful for any owner or operator to do, allow or suffer, any of the following activities in connection with the use, maintenance or operation of a sidewalk café:~~

- ~~1.— Use the sidewalk café for any activity other than dining, drinking (in conjunction with dining), and the circulation associated with that activity therein; or~~

- ~~2.— Use the sidewalk café in any manner that would violate any term, condition or restriction of the sidewalk café permit or this part.~~
- ~~C.— A sidewalk café permit grants nothing more than a license to use the public sidewalk, which license is revocable at will and may be revoked by city, for or without any cause whatsoever, at any time. A sidewalk café permit does not grant any party any estate or other property right in the sidewalk. The ability to occupy the sidewalk under a sidewalk café permit is a privilege that is nontransferable and non-assignable.~~
- ~~D.— The director has the authority to revoke a sidewalk café permit. The director shall provide a permittee with prior written notice of the revocation of that permittee's sidewalk café permit, which notice shall include the effective date of such revocation.~~

20.100.1430 Application

- ~~A.— The provisions of Section 20.100.110 subsection B. shall not apply to applications for a sidewalk café permit. The owner or operator of the public eating establishment or the retail sales establishment desiring to extend its business operations into a sidewalk café, or the owner of the real property on which the public eating establishment or retail sales establishment is located, may file an application for a sidewalk café permit.~~
- ~~B.— The application for a sidewalk café permit shall contain the following information and any additional information that the director may reasonably require to process or reach a determination on the sidewalk café permit application:~~
 - ~~1.— The name and signature of the applicant; and~~
 - ~~2.— The name and address of the public eating establishment or the retail sales establishment desiring to extend its operations into a sidewalk café and to which the sidewalk café would be appurtenant; and~~
 - ~~3.— The hours that a sidewalk area is proposed to be used as a sidewalk café; and~~
 - ~~4.— A plan, drawn to scale, showing the locations, the number, and the arrangement of umbrellas, tables, chairs, and other portable appurtenances proposed to be located on a sidewalk adjacent or near to a public eating establishment or a retail sales establishment, together with the proposed location(s) of the sidewalk café; and~~

5. ~~The width of the sidewalk where the sidewalk café is proposed to be located, both before and after the proposed establishment of the sidewalk café.~~

20.100.1440 Review of application

~~The director shall consider the following factors in the review of the sidewalk café permit application:~~

- A. ~~The convenience and safety of pedestrians, property owners, occupants, customers, residents, or tenants of offices, stores, shops or dwellings in the vicinity of the premises; and~~
- B. ~~Traffic and parking safety in the vicinity of the premises; and~~
- C. ~~The dimensions of the sidewalks and streets affected by the sidewalk café permit application; and~~
- D. ~~The location of nearby fire hydrants, utility poles, sign poles, light rail tracks and stations, street trees and other structures within the public right-of-way; and~~
- E. ~~Whether the applicant has obtained all other permits that are required for the intended use; and~~
- F. ~~Other factors that may be relevant to the safety, efficacy or efficiency of allowing a sidewalk café at a particular location.~~

20.100.1450 Findings

~~The director may issue a sidewalk café permit only upon first finding that issuance of the sidewalk café permit:~~

- A. ~~Would not create a nuisance; and~~
- B. ~~Would preserve or enhance the character of the surrounding area; and~~
- C. ~~Would adequately preserve and protect the convenience and safety of pedestrians, property owners, occupants, customers, residents or tenants of offices, stores, shops or dwellings in the vicinity of the premises; and~~
- D. ~~Would not adversely impact traffic and parking safety in the vicinity of the premises; and~~
- E. ~~Would not result in any significant adverse land use impacts; and~~

~~F. The applicant has obtained all other permits that are required for the intended use; and~~

~~G. The applicant would comply with the conditions and restrictions set forth in this part.~~

20.100.1460 Amendment of existing permits for service of alcohol

~~A. Existing sidewalk café permits may be amended to authorize the service of alcoholic beverages in accordance with and when allowed by the provisions of this part.~~

~~B. The application process for a new sidewalk café permit set forth in this part shall be followed for an amended sidewalk café permit.~~

20.100.1470 Special findings - Service of alcohol

~~The service of alcoholic beverages within and as a part of a sidewalk café permit may be allowed only if the director first makes all of the following findings:~~

~~A. the use located on the premises does not function solely as a drinking establishment as that use is defined in Section 20.200.300 of this title; and~~

~~B. The owner or operator of the public eating establishment desiring to extend its business operations into a sidewalk café holds a current and valid liquor license issued by the California Department of Alcoholic Beverage Control allowing its public eating establishment to operate as a bona fide public eating place under state law; and~~

~~C. The licensee under the liquor license issued by the California Department of Alcoholic Beverage Control is in full compliance with all conditions and restrictions of his or her liquor license; and~~

~~D. The public eating establishment has not been issued a dance hall permit, as defined in Chapter 6.58 of this Code; and~~

~~E. The public eating establishment has not been issued a public entertainment permit, as defined in Chapter 6.60 of this Code, if the establishment is located outside of the downtown core area, as that area is described in the city's general plan, as amended from time to time; provided, however, that a public entertainment permit may be issued to a public eating establishment within said downtown core area; and~~

- ~~F.— The applicant for the sidewalk café permit or the public eating establishment to which the proposed sidewalk café would be appurtenant, and the site upon which the public eating establishment is located are all in full compliance with all provisions of this Code and would continue to be in full compliance if and after a sidewalk café permit is issued; and~~
- ~~G.— The issuance of the sidewalk café permit would not result in any significant adverse land use impacts based upon all of the information known by and/or submitted to the director related to the sidewalk café permit.~~

20.100.1480 Conditions and restrictions

~~The issuance of a sidewalk café permit, and the operation of any sidewalk café, shall be subject to all of the following additional conditions and restrictions, together with such other conditions as may be deemed necessary by the director in order to secure the general purposes of this title. The director may, in issuing a sidewalk café permit, increase the restrictiveness of any or all of the following conditions and restrictions. The permittee, and/or anyone operating a sidewalk café without having first obtained the requisite sidewalk café permit pursuant to the provisions of this part, shall comply or cause the compliance with all of the following conditions and restrictions:~~

- ~~A.— Umbrellas, tables, chairs, and other portable appurtenances shall be confined to the area shown on the approved sidewalk café permit plan set; and~~
- ~~B.— Equipment for the service of customers, including but not limited to trays or carts, eating or drinking utensils, linens, and cooking appliances shall not be placed or maintained on any portion of the sidewalk unless the sidewalk café is adequately separated from pedestrian traffic; and~~
- ~~C.— All umbrellas, tables, chairs and other portable appurtenances shall be removed from the area at the end of each business day at the hour specified in the sidewalk café permit; and~~
- ~~D.— At least one (1) covered outdoor trash container shall be provided in the sidewalk café area during the hours of operation of the sidewalk café and shall be maintained in a clean and sanitary condition; and~~
- ~~E.— The premises shall be maintained in a clean and sanitary condition at all times; and~~
- ~~F.— The portion of the sidewalk area not permitted to be occupied by umbrellas, tables, chairs, and other portable appurtenances shall be kept free of obstructions at all times; and~~

- ~~G. The sidewalk café area shall contain tables and chairs and shall operate as a café and shall not operate in a "standing only" manner in any way or in any portion of the sidewalk café area.~~
- ~~H. The hours of operation of a sidewalk café shall be limited, at a maximum, to the hours of operation of the associated public eating establishment or retail sales establishment; provided, however, that a sidewalk café appurtenant to a public eating establishment with an entertainment permit and located within the downtown core area shall not operate between the hours of 2:00 a.m. and 6:00 a.m.; and~~
- ~~I. No amplified sound shall be used within a sidewalk café, and at no time shall any music originating from any part of the premises create a nuisance; and~~
- ~~J. Dancing shall not be permitted or allowed in the sidewalk café; and~~
- ~~K. The permittee must at all times comply or cause the compliance with all federal, state and local laws regarding the sale, service and consumption of alcoholic beverages and the operation of the premises; and~~
- ~~L. The permittee shall submit to the city's risk manager a signed agreement to defend, indemnify, save, and hold harmless the city and all of its officers, agents, or employees from any liability for damages resulting from any and all operations under a sidewalk café permit granted pursuant to this chapter; and~~
- ~~M. Each permittee shall, at his or her own cost and expense, obtain and maintain in full force and effect all of the necessary insurance coverage for the full term of the sidewalk café permit or any renewal thereof. The level of coverage shall be in the amount to be determined by the city's risk manager or the city manager's designee assigned to perform the functions of the risk manager; and~~
- ~~N. No sidewalk café permit signed and issued under this chapter may be transferred or assigned; and~~
- ~~O. The sidewalk area shall not be painted, landscaped or altered in any way without prior written approval of the city's director of transportation; and~~
- ~~P. The sidewalk café permit does not constitute a deed or grant of an easement by the city and is revocable at any time.~~

20.100.1490 Special conditions - Service of alcohol

- ~~A. The permittee shall remain, and shall cause the premises to remain, in full compliance with all provisions of this Code at all times; and~~

- ~~B.- The permittee shall remain, and shall cause permittee's premises to remain, in full compliance with all provisions and conditions of any liquor license or other authorization issued for permittee's premises by the California Department of Alcoholic Beverage Control; and~~
- ~~C.- No person shall serve alcoholic beverages at a sidewalk café unless and until both the sidewalk café permit and the liquor license issued by the California Department of Alcoholic Beverage Control specifically authorize the service of alcoholic beverages, which authorization from California Department of Alcoholic Beverage Control may require a license that includes a sidewalk café or may require a premises expansion authorization; and~~
- ~~D.- Alcoholic beverages may be consumed only on the permittee's premises. The permittee shall not allow patrons to leave the confines of the premises with any alcoholic beverage and shall not allow patrons to give or sell alcoholic beverages to any person outside the premises; and~~
- ~~E.- A sidewalk café appurtenant to a public eating establishment outside of the downtown core area, as that area is described within the city's general plan as may be amended from time to time, shall maintain full food service and shall operate as a bona fide eating place at all times that it is in operation, and a sidewalk café appurtenant to a public eating establishment within said downtown core area shall maintain food service and operate as a public eating establishment, respectively, at all times that it is in operation.~~
- ~~F.- No sidewalk café may function as a drinking establishment as defined in Section 20.200.300 of this title.~~

SECTION 4. Section 20.200.270 of Chapter 20.200 of Title 20 of the San José Municipal Code is amended to read as follows:

20.200.270 Development Permit

"Development permit" means any permit issued pursuant to Chapter 20.100 of this title, ~~with the exception of a sidewalk café permit issued pursuant to Part 12 of Chapter 20.100.~~

SECTION 5. Section 9.44.019 of Chapter 9.44 of Title 9 of the San José Municipal Code is amended to read as follows:

9.44.019 Outdoor Dining Area

"Outdoor dining area" means any privately owned or publicly owned area, including streets, sidewalks, and sidewalk cafes as defined in Section 20.200.1120 of the San José Municipal Code, and sidewalk seating permitted by an encroachment permit issued pursuant to Chapter 13.37 of the Code, which is available or customarily used by the general public and which is designed, established, or regularly used for consuming food or drink.

SECTION 6. Section 10.10.030 of Chapter 10.10 of Title 10 of the San José Municipal Code is amended to read as follows:

10.10.030 Exception to the Prohibition

The prohibition in Section 10.10.010 shall not apply to any person:

- A. Sitting or lying down on a public sidewalk due to a medical emergency.
- B. Who, as a result of a disability, utilizes a wheelchair, walker, or similar device to move about the public sidewalk.
- C. Participating, as an organizer, peddler, or patron, in any event subject to a:
 - 1. Parade permit issued pursuant to Chapter 13.12 of the Code;
 - 2. Street closure permit issued pursuant to Chapter 13.16 of the Code;
 - 3. Paseo/Plaza use permit issued pursuant to Chapter 13.22 of the Code;
 - 4. Park entertainment or special use permit issued pursuant to Chapter 13.44 of the Code.
- D. Participating, as an organizer, peddler, or patron, in an event declared to be a downtown special event pursuant to Chapter 6.55 of the Code.
- E. Operating under a sidewalk café permit issued pursuant to Chapter 20.100 under previously existing provisions of Title 20 of the Code or an encroachment permit issued pursuant to Chapter 13.37 of the Code.
- F. Who sits on a chair on a sidewalk at a business with a sidewalk café permit issued pursuant to Chapter 20.100 under previously existing provisions of Title 20 of the Code or an encroachment permit issued pursuant to Chapter 13.37 of the Code.
- G. Sitting on a bench that is permanently affixed to the sidewalk at a mass transportation stop, plaza, paseo, or city park.

PASSED FOR PUBLICATION of title this _____ day of _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk