



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Planning Commission

**SUBJECT:** SEE BELOW

**DATE:** September 26, 2019

---

**SUBJECT: FILE NO. PP17- 081. AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING VARIOUS SECTIONS OF THE SAN JOSE MUNICIPAL CODE TO: AMEND PART 12 (SIDEWALK CAFÉ) IN CHAPTER 20.100 TO REPEAL THE PROVISIONS FOR A SIDEWALK CAFÉ PERMIT ISSUED BY THE DIRECTOR OF PLANNING AND ADD A REFERENCE TO THE 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 CAFÉ 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 CAFÉ PERMIT FROM THE APPEAL - HEARING BODY LIST, AMEND SECTION 20.200.270 TO NO LONGER INCLUDE SIDEWALK CAFÉ 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 AN ENCROACHMENT PERMIT; AND, AMEND SECTION 10.10.030 OF CHAPTER 10.10 (PEDESTRIAN FACILITATION ORDINANCE) TO ADD A REFERENCE TO SIDEWALK SEATING AUTHORIZED THROUGH AN ENCROACHMENT PERMIT.**

## **RECOMMENDATION**

The Planning Commission voted 5-1-0 (Yesney opposed) to recommend that the City Council:

1. Consider the Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), adopted through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto. Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope

of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs; and

2. Approve an ordinance to:

- a. Amend Part 12 (Sidewalk Café) in Chapter 20.100 to repeal the provisions for a sidewalk café permit issued by the Director of Planning and add a reference to the Encroachment Permit process set forth in Chapter 13.37;
- b. Amend Section 20.100.140 (Concurrent review) in Chapter 20.100 (Administration and Permits) to remove Sidewalk Café 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 the Streets and Highways Code;
- c. Amend Section 20.100.220 in Chapter 20.100 (Administration and Permits) to remove Sidewalk Café Permit from the Appeal - Hearing Body list,
- d. Amend Section 20.200.270 to no longer include Sidewalk Café Permit in the definition of Development Permit;
- e. Amend Section 9.44.019 of Chapter 9.44 (Regulation of Smoking) to add a reference to sidewalk seating authorized through an Encroachment Permit; and,
- f. Amend Section 10.10.030 of Chapter 10.10 (Pedestrian Facilitation Ordinance) to add a reference to sidewalk seating authorized through an Encroachment Permit.

## **OUTCOME**

Approval of this ordinance will:

- Remove the permitting authority for Sidewalk Seating (formerly Sidewalk Cafés) from the Planning, Building, and Code Enforcement (PBCE) Department so that it may be permitted by the Department of Public Works through the Minor Encroachment Permit Process pursuant to Chapter 13.37 of the San Jose Municipal Code; and
- Remove or update references to the Sidewalk Café Permit throughout the Municipal Code; and
- Amend the Concurrent Review process to allow development permits to be heard concurrently by the City Council if another City approval related to the project requires City Council action;

Approval of this ordinance will also allow the Department of Public Works to:

- Change the name from Sidewalk Café to Sidewalk Seating; and
- Adopt administrative guidelines for outdoor seating in the public right-of-way which are not in conflict with Part 12 of Chapter 20.100 (Sidewalk Café) of the San Jose Municipal Code; and

- Streamline the Parklet Program permitting process by eliminating the additional requirement for a Sidewalk Café permit; and
- Replace the Sidewalk Café regulations with Sidewalk Seating regulations through the *Parklet Program and Sidewalk Seating in the Public Right-of-Way Regulations* that will be adopted prior to the effective date of this ordinance.

## **BACKGROUND**

On September 11, 2019, the Planning Commission held a public hearing where this item was presented. Staff provided an overview of the proposed changes to remove the Sidewalk Café permit from the Zoning Ordinance so that it can be approved through the Department of Public Works Minor Encroachment Permit, and proposed revisions to the Concurrent Review process to allow additional actions to be considered through a unified hearing process. The full scope of the proposed changes is explained in further detail in the Planning Commission staff report, attached to this memorandum.

Planning commission asked several clarifying questions and provided some feedback.

### **Sidewalk Seating:**

Commissioner Leyba asked whether there was an estimate of the typical fees an applicant might be charged. In addition, he asked to clarify whether the administrative guidelines for sidewalk seating could be changed by the Director of Public Works at any time.

- Public Works staff responded that they regularly coordinate with Fire and Planning and they are trying to streamline the process to create one fee, however, it may vary depending on the location of the proposed outdoor seating use which would determine whether Fire needs to be involved in the review.
- Regarding the regulations, Public Works staff confirmed that the Director can change the regulations for sidewalk seating without having to bring them to a public hearing. The draft regulations were created with input from multiple stakeholders including property owners and business owners who currently operate sites with outdoor seating uses.

Commissioner Oliverio asked to clarify the cost of the annual fee and whether the property or business owner was responsible for maintaining the site.

- Public Works staff explained that there is an initial fee for the project to be reviewed and then a separate fee for annual review which is meant to help address any ongoing issues like maintenance or insurance. The annual fee has not been determined but it will be a lower amount than the initial project review fee. Additionally, staff confirmed that property or business owners are responsible for maintaining the outdoor seating areas as part of their permit conditions.

Commissioner Griswold asked to clarify the difference between Sidewalk Seating and Incidental Sidewalk Seating, and whether there is a fee for Incidental Sidewalk Seating. Additionally, Commissioner Griswold asked to revise the proposed language for the sentence in Section 20.100.1400, instead of using “pursuant to” she asked to revise it to say, “set forth under”.

- Staff responded that the Incidental Sidewalk Seating is meant to provide an option for a more expedited review for projects with minimal seating and other features because they would not require as much time for staff review. For example, if a project involves erecting a barrier for an alcohol service they would not qualify as incidental. Public Works has not yet established a fee but estimates that the review would likely not require more than an hour which would cost between \$100-\$150.

### **Concurrent Review:**

Commissioner Yesney asked to clarify whether this was part of City Council direction. She stated that a Site Development Permit is a use that is allowed by right and it is entirely a design review process in which the council does not have a high level of expertise. She also expressed concern with adding additional items to City Council agendas which are already lengthy. She further shared that something that should be a staff level function should not be considered by the City Council, essentially politicizing the project. She also commented that it will result in saving staff time from streamlining the approval process because staff would have to write a memo to the City Council for a Site Development Permit, where if it remains as Director’s Hearing approval staff would only need to prepare a draft permit.

- Staff responded that the proposed change was based on staff input and experience working on projects that involve multiple hearing bodies.
- Senior Deputy City Attorney, Vera Todorov, provided additional background to explain that this can be a timing issue for some projects when there is one or more approvals or permits contingent upon additional review. It is often confusing to applicants and many would prefer to go through one hearing. There is also concern if one element of the project gets approved and the other does not.

Commissioner Oliverio asked whether the Director’s Hearing could act as the final hearing body for some of these combined actions.

- Senior Deputy City Attorney, Vera Todorov, explained that Development Agreements must be approved by the City Council.
- Public Works staff also clarified that only City Council can approve Major Encroachments.
- Planning staff also explained that applicants would not be required to use the concurrent review process. Applicants would have the option to go to multiple hearings if that was their preference. This proposed change is offering another option for applicants who would prefer only one hearing for the project to be reviewed in its entirety.

Commissioner Allen asked staff to clarify what if any additional time would be required for staff review of projects based on the proposed changes.

- Planning staff explained that it will basically be the same amount of time. There would be more analysis in the staff report, requiring slightly longer staff reports.
- Public Works staff expressed that it would be more efficient for staff to only have to go through one hearing process.

Commissioner Griswold asked if it would be possible for the fees to reflect additional staff time that would be required for projects that elect to use the concurrent review process, and if staff typically has to attend multiple hearings. In addition, she commented that since the concurrent review process is not mandated and applicants have the option to go to separate hearings, it would be beneficial to provide an option which might provide more certainty to the development process.

- Planning staff confirmed that the City Council could adopt new fees for projects that undergo concurrent review if the workload justified an increased fee. Staff also explained that Project Managers typically will attend a Director's Hearing; however, the Director or Deputy Director would attend the City Council Meeting.
- Public Works staff explained that their staff would have to attend multiple hearings and would prefer a unified hearing process.

Commissioner Yesney asked whether Encroachment Permits or Vacation of Easements would ever be included on the Consent Calendar and also asked to clarify who decides if the project goes through the concurrent review process. In addition, Commissioner Yesney expressed that Development Agreements should be able to be approved through concurrent review by City Council; however, a site development permit going to City Council essentially exposes the project to a politicized process.

- Public Works staff confirmed that Encroachment Permits and Vacation of Easements are not placed on Consent Calendar.
- Planning staff explained that the applicant requests to use the concurrent review process and typically staff is supportive because it is more efficient.

Commissioner Leyba made a motion to approve staff recommendation with the modification to the language in 20.100.1400 recommended by Commissioner Griswold, seconded by Commissioner Allen.

The Planning Commission voted 5-1-0 (Yesney opposed) to recommend that the Council approve the proposed ordinance pursuant to the recommendation by staff, with a modification to use the term "set forth under" instead of "pursuant to" in Section 20.100.1400.

### **ANALYSIS**

For a complete analysis, please see the Planning Commission staff report (attached).

### **EVALUATION AND FOLLOW UP**

If the Zoning Ordinance update is approved, Title 20 (the Zoning Ordinance) will be modified to reflect the revisions detailed in the Planning Commission staff report.

### **PUBLIC OUTREACH**

Staff followed Council Policy 6-30: Public Outreach Policy, in that notices for the public hearings were posted on the City's website and published in the San Jose Post-Record. This staff report and attachments were posted on the City's website. Staff has been available to respond to questions from the public.

Staff initiated outreach efforts to gather public input on the proposed Zoning Ordinance changes. A community meeting was held on April 4, 2019, participants were primarily in attendance to learn more about the cluster ADU zoning which was also being discussed. On July 31, 2019, staff hosted a targeted stakeholder meeting with business owners and property owners who either already have or are interested in having sidewalk seating and Parklets. Eight people attended the meeting and provided feedback on the proposed regulations.

### **COORDINATION**

Preparation of this memorandum was coordinated with the City Attorney's Office and the Department of Public Works.

**CEQA**

Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), for which findings were adopted by City Council through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto. Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs.

/s/  
ROSALYNN HUGHEY, Secretary  
Planning Commission

For questions please contact Michael Brilliot, Deputy Director, at 408-535-7831.

Attachment: Planning Commission Staff Report



# Memorandum

**TO:** PLANNING COMMISSION

**FROM:** Rosalynn Hughey

**SUBJECT:** SIDEWALK SEATING AND  
CONCURRENT REVIEW

**DATE:** September 11, 2019

---

**SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING VARIOUS SECTIONS OF THE SAN JOSE MUNICIPAL CODE TO: AMEND PART 12 (SIDEWALK CAFÉ) IN CHAPTER 20.100 TO REPEAL THE PROVISIONS FOR A SIDEWALK CAFÉ PERMIT ISSUED BY THE DIRECTOR OF PLANNING AND ADD A REFERENCE TO THE 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 CAFÉ 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 CAFÉ PERMIT FROM THE APPEAL - HEARING BODY LIST, AMEND SECTION 20.200.270 TO NO LONGER INCLUDE SIDEWALK CAFÉ 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 AN ENCROACHMENT PERMIT; AND, AMEND SECTION 10.10.030 OF CHAPTER 10.10 (PEDESTRIAN FACILITATION ORDINANCE) TO ADD A REFERENCE TO SIDEWALK SEATING AUTHORIZED THROUGH AN ENCROACHMENT PERMIT.**

## **RECOMMENDATION**

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

1. Consider the Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), for which findings were adopted by City Council through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto. Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved

programs and the Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs; and

2. Adopt an ordinance to:
  - a. Amend Part 12 (Sidewalk Café) in Chapter 20.100 to repeal the provisions for a sidewalk café permit issued by the Director of Planning and add a reference to the Encroachment Permit process set forth in Chapter 13.37;
  - b. Amend Section 20.100.140 (Concurrent review) in Chapter 20.100 (Administration and Permits) to remove Sidewalk Café 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 the Streets and Highways Code;
  - c. Amend Section 20.100.220 in Chapter 20.100 (Administration and Permits) to remove Sidewalk Café Permit from the Appeal - Hearing Body list,
  - d. Amend Section 20.200.270 to no longer include Sidewalk Café Permit in the definition of Development Permit;
  - e. Amend Section 9.44.019 of Chapter 9.44 (Regulation of Smoking) to add a reference to sidewalk seating authorized through an Encroachment Permit; and,
  - f. Amend Section 10.10.030 of Chapter 10.10 (Pedestrian Facilitation Ordinance) to add a reference to sidewalk seating authorized through an Encroachment Permit

## **OUTCOME**

Approval of this ordinance will:

- Remove the permitting authority for Sidewalk Seating (formerly Sidewalk Cafés) from the Planning, Building, and Code Enforcement (PBCE) Department so that it may be permitted by the Department of Public Works through the Minor Encroachment Permit Process pursuant to Chapter 13.37 of the San Jose Municipal Code; and
- Remove or update references to the Sidewalk Café Permit throughout the Municipal Code; and
- Amend the Concurrent Review process to allow development permits to be heard concurrently by the City Council if another City approval related to the project requires City Council action;

Approval of this ordinance will also allow the Department of Public Works to:

- Change the name from Sidewalk Café to Sidewalk Seating; and

- Adopt administrative guidelines for outdoor seating in the public right-of-way which are not in conflict with Part 12 of Chapter 20.100 (Sidewalk Café) of the San Jose Municipal Code; and
- Streamline the Parklet Program permitting process by eliminating the additional requirement for a Sidewalk Café permit; and
- Replace the Sidewalk Café regulations with Sidewalk Seating regulations through the *Parklet Program and Sidewalk Seating in the Public Right-of-Way Regulations*.

If the ordinance is not approved, Sidewalk Cafes will remain under Title 20 and no changes will be made to the permitting process for Sidewalk Café Permits. Additionally, no changes will be made to the concurrent review procedures under Title 20 so a development permit and various related actions, such as a Major Encroachment Permit or Easement Vacation, would continue to be evaluated and acted upon by different hearing bodies at different public hearings.

## **BACKGROUND**

The City of San Jose has historically offered two different programs that allow businesses to create outdoor seating areas in the public right of way adjacent to their business. Sidewalk Cafes, which are the most common type of outdoor seating, are typically seen at restaurants, where tables and chairs are placed on the sidewalk in a way which still allows adequate space for pedestrians walking down the street. Curb Cafes, also known as Parklets, are platforms constructed within the public right-of-way that replace street parking and may be furnished with tables, chairs, benches, and landscaping to provide a welcoming space for the public.

In December 2016 the Placemaking and Easy Urbanism Initiative kicked off with a community workshop attended by 45 community stakeholders and cross-departmental City staff members. Updating the Sidewalk Café Permit and the Curb Café Pilot Program were identified as priority action items. A smaller group of stakeholders convened again in May 2017 to discuss and provide feedback for ways to amend the municipal code to facilitate the goals of the Placemaking and Easy Urbanism Initiative.

On June 27<sup>th</sup>, 2017, the Council approved an ordinance amending Part 1 of Chapter 13.36 of Title 13 of the San Jose Municipal Code and added a new Chapter 13.37 to Title 13 to govern private encroachments within the City's public right of way and other public easements (Ordinance No. 29966). Chapter 13.37 also authorized the Director of Public Works to adopt administrative guidelines, rules and regulations for Minor Encroachments consistent with Chapter 13.37.

In October 2017, recommendations from the stakeholder discussion were presented to the Community and Economic Development Committee (CED). Based on feedback from CED, a staff report outlining contemplated administrative regulations and a proposal to regulate Parklet regulations pursuant to Chapter 13.37 were presented to and accepted by Council which included: formalizing and renaming the Curb Café Program as the "Parklet Program", expanding the types of businesses that can apply for the permit, expanding hours of operation, locating Parklets within certain areas of the City, and limiting number of displaced meter parking spaces to simplify the review process and lower permit costs. Staff was to

return to Council with proposed amendments to Title 20 of the San Jose Municipal Code to support the above contemplated regulations.

After coordination with the City Attorney's Office and the Department of Public Works, it was determined that Public Works should maintain jurisdiction over both the sidewalk (Sidewalk Seating Permits) and the street space (Parklets) under the Minor Encroachment Permit process pursuant to Chapter 13.37, as both types of seating are located in the public right of way. This would consolidate the permitting authority for all encroachments in the public right of way under the purview of the Department of Public Works.

For a complete history on the evolution of outdoor seating in the public right of way, please refer to: *Attachment 1 - Timeline for Parklets and Sidewalk Seating*.

When drafting this ordinance staff identified that it would be beneficial to consider adding other actions that often accompany development permits into the list of actions that are eligible for concurrent review through a unified hearing process. These proposed changes are described and analyzed in full below.

## **ANALYSIS**

### ***Sidewalk Seating:***

The objective of the proposed modifications to the Zoning Ordinance is to create a streamlined process for applicants to apply for both Parklets and Sidewalk Seating in the Public Right of Way by utilizing Public Works' Minor Encroachment Permit process. Removing the Sidewalk Café provisions from Title 20 will allow the Director of Public Works to implement a consolidated set of guidelines and permit process for both Sidewalk Seating and Parklets pursuant to Municipal Code Section 13.37.500, which grants the Director of Public Works the authority to adopt administrative guidelines, rules and regulations addressing location, construction, form, size, safety, maintenance, repair and any other manner of conduct of minor encroachments in the public right of way. This is expected to streamline review, particularly when permits are submitted for both Sidewalk Seating and a Parklet concurrently. Further, having the guidelines for sidewalk seating be administratively adopted by the Director of Public Works will allow for faster adoption of updates and modifications to the program to address any issues or new ideas around public right of way seating. Should the regulations for sidewalk seating remain in Title 20 an ordinance amending Title 20 would be required any time changes to the guidelines and permitting process are proposed.

The proposed Zoning Code Amendment to Title 20 to facilitate approval of Sidewalk Seating is consistent with the following Envision San Jose 2040 General Plan policies:

1. *Neighborhood Serving Commercial LU-5.8: Encourage outdoor cafes and other outdoor uses in appropriate commercial areas to create a vibrant public realm, maximize pedestrian activity, and capitalize on San José's temperate climate.*
2. *Attractive City Policy CD-1.2: Install and maintain attractive, durable, and fiscally- and environmentally sustainable urban infrastructure to promote the enjoyment of space developed for public use. Include attractive landscaping, public art, lighting, civic landmarks, sidewalk cafés, gateways, water features, interpretive/way-finding signage,*

*farmers markets, festivals, outdoor entertainment, pocket parks, street furniture, plazas, squares, or other amenities in spaces for public use. When resources are available, seek to enliven the public right-of-way with attractive street furniture, art, landscaping and other amenities.*

3. *Attractive City Policy CD-1.9: Give the greatest priority to developing high-quality pedestrian facilities in areas that will most promote transit use and bicycle and pedestrian activity. In pedestrian-oriented areas such as Downtown, Urban Villages, or along Main Streets, place commercial and mixed-use building frontages at or near the street-facing property line with entrances directly to the public sidewalk, provide high-quality pedestrian facilities that promote pedestrian activity, including adequate sidewalk dimensions for both circulation and outdoor activities related to adjacent land uses, a continuous tree canopy, and other pedestrian amenities. In these areas, strongly discourage parking areas located between the front of buildings and the street to promote a safe and attractive street facade and pedestrian access to buildings.*

***Concurrent Review:***

Section 20.100.130 of the Zoning Ordinance contains provisions for concurrent review of development permits that are filed on one site. Whenever applications for the same site have been filed for more than one development permit or approval required by the Zoning Ordinance, this section allows such development permits or approvals to be reviewed and acted on in a unified process that follows the highest level permit or approval. For example, if a single project requires approval of both a Conditional Use Permit, which is acted upon by the Planning Commission, and a Site Development Permit, which is acted upon by the Director of Planning, both the Site Development Permit and Conditional Use Permit may be reviewed and acted upon concurrently by the Planning Commission using the procedures required for a Conditional Use Permit. This section allows certain additional actions required outside of Title 20 to be reviewed through the unified process, such as a Determination of Public Convenience or Necessity for off-sale of alcohol required by Title 6 or a Tree Removal Permit required by Title 13.

This ordinance would add actions that require City Council approval that often are integral to construction of a project that requires a development permit to be included in the concurrent review process. The proposed additional actions are Development Agreements pursuant to Chapter 18.02 of the Municipal Code, Major Encroachment Permits pursuant to Chapter 13.37, Street and Easement Vacations regulated by California Streets and Highways Code. By adding these actions to the list of permits available for concurrent review the City Council would be able to consider the development permit along with their required action on the associated Development Agreement, Major Encroachment, or Street or Easement Vacation project in its entirety. This avoids multiple hearings by different hearing bodies for actions that are integral to construction of a proposed development.

An example of a project that would have benefitted from these changes to the concurrent review procedures is the recent approval of the new Adobe tower at 333 West San Fernando. This project required a Site Development Permit issued by the Director of Planning for construction of the tower on private property and a Major Encroachment Permit for construction of a pedestrian bridge connecting the new tower with the existing Adobe offices over the public right of way. Because Major Encroachment Permits are not listed as a type of permit that can be approved concurrently, the City Council was required to consider approval of the bridge at a Council Hearing and the Director of Planning was required to consider approval of the tower at a separate Director's Hearing, even though both approvals were integral to each other. With the changes proposed in this ordinance the project would have required only a City Council hearing for both of its necessary approvals.

### **PUBLIC OUTREACH/INTEREST**

Staff followed Council Policy 6-30: Public Outreach Policy, in that notices for the public hearings were posted on the City's website and published in the San Jose Post-Record and emailed to a list of interested groups and individuals. This staff report and attachments were posted on the City's website. Staff has been available to respond to questions from the public.

Staff initiated outreach efforts to gather public input on the proposed Zoning Code changes and held a community meeting at City Hall on April 4<sup>th</sup>, 2019. Seven members of the public attended the meeting; however, they were not interested in the proposed changes to outdoor seating because they attended the meeting to learn about the proposed changes to ADUs in cluster zoning districts.

Staff decided that it would be beneficial to host a second meeting with a more targeted audience of business owners, property owners, and developers who are interested in adding outdoor seating or who already operate a site with outdoor seating. The meeting was held on July 31<sup>st</sup>, 2019 and there were eight members of the public who attended. Participants asked clarifying questions and provided general feedback. Overarching feedback was focused on ensuring that the regulations emphasize the need for Parklets and Sidewalk Seating which features "high quality, good design, and low fees".

### **COORDINATION**

The preparation of the proposed ordinance and this staff report were coordinated with the City Attorney's Office and the Department of Public Works.

PLANNING COMMISSION

September 11, 2019

**Subject:** Sidewalk Seating and Concurrent Review of Development Permits

Page 7 of 8

**CEQA**

Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), for which findings were adopted by City Council through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto. Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs.

*Michael Bellini*  
For

ROSALYNN HUGHEY, DIRECTOR  
Planning, Building and Code Enforcement

Attachments:

- 1) Timeline for Parklets and Sidewalk Seating
- 2) Draft ordinance

### **Attachment 1: Timeline for Parklets and Sidewalk Seating**

- In July of 2005 the Sidewalk Café Pilot Program went into effect and was originally slated to last through July 31<sup>st</sup>, 2006 (Ordinance No. 27456). The ordinance established the pilot program allowing Sidewalk Café Permits which allowed restaurants to extend their use into the public sidewalk area adjacent to their business.
- The program was extended in 2006, for an additional three months through October 31<sup>st</sup>, 2006 (Ordinance No. 27791).
- In 2008 the Sidewalk Café program became permanent through the adoption of Ordinance No. 28296, adding Part 12 of Chapter 20.100 of Title 20 of the San Jose Municipal Code.
- On January 8<sup>th</sup>, 2013 City council adopted a resolution (Resolution No. 76532) that allowed a Curb Café Pilot Program and allowed up to five curb cafes within a one year period. The pilot program expired on December 31, 2013.
- Two Curb Cafés were installed through the pilot program; the first was located at Chacho's restaurant in downtown, and the second was located at The Garden Theatre in Willow Glen. Both were supported by their local business associations and have continued to be actively used by patrons of the adjacent businesses.
- Based on feedback from the Community and Economic Development Committee, on October 6<sup>th</sup>, 2015, the City Council reauthorized the pilot program, allowing up to a maximum of twenty-five curb cafes (including the two previously approved cafes) and extending the program through December 31<sup>st</sup>, 2017.
- Since being reauthorized the program has seen the addition of Curb Cafes at Tac-oh (now Tacomania) in Willow Glen as well as the SoFA Market in downtown's SoFA district.
- In December 2016 the Placemaking and Easy Urbanism Initiative kicked off with a community workshop attended by 45 community stakeholders and cross-departmental City staff members. Updating the Sidewalk Café Permit and the Curb Café Pilot Program were identified as priority action items.
- A smaller group of stakeholders convened again in May 2017 to discuss and provide feedback for ways to amend the municipal code to facilitate the goals of the Placemaking and Easy Urbanism Initiative.
- On June 27<sup>th</sup>, 2017, the Council approved an ordinance amending Part 1 of Chapter 13.36 of Title 13 of the San Jose Municipal Code and added a new Chapter 13.37 to Title 13 to govern private encroachments within the City's public right of way and other public easements (Ordinance No. 29966). Chapter 13.37 also provides the Director of Public Works, or such other person designated by the City Manager, with the authority to adopt administrative guidelines, rules and regulations for Minor Encroachments that are consistent with Chapter 13.37.
- Recommendations from the discussion were presented at the CED committee meeting on October 23<sup>rd</sup>, 2017 and include: formalizing and renaming the Curb Café Program as the "Parklet Program", removing the sidewalk Café permit requirement for Parklets, expanding the types of businesses that can apply for the permit, simplifying the review process, allowing more applications, and lowering permit costs.
- The Curb Café pilot program expired on December 31<sup>st</sup>, 2017, and a permanent Parklet Program took effect on January 1<sup>st</sup>, 2018 for which final draft administrative guidelines have been prepared.

**DRAFT**

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.~~
  - 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
<del>Sidewalk café permit</del>	<del>Director of Planning</del>	<del>City Council</del>

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 Parklets Purpose**

For sidewalk seating or parklets in the public right-of-way refer to the procedures for encroachment permits pursuant to 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

**DETERMINATION OF CONSISTENCY WITH THE  
ENVISION SAN JOSÉ 2040 GENERAL PLAN FINAL ENVIRONMENTAL IMPACT REPORT  
AND SUPPLEMENTAL PROGRAM ENVIRONMENTAL IMPACT REPORT (SCH#  
2009072096) AND ADDENDA THERETO**

Pursuant to Section 15168(c)(2) of the CEQA Guidelines, the City of San José has determined that the project described below is pursuant to or in furtherance of the Final Program Environmental Impact Report (Final Program EIR) and Supplemental Program Environmental Impact Report (Supplemental Program EIR) for the Envision San José 2040 General Plan and addenda thereto and does not involve new significant effects beyond those analyzed in the EIRs. Therefore, the City of San José may take action on the project as being within the scope of both the Final and Supplemental Program EIRs.

**File Number and Project Name: PP17-081, Sidewalk Café and Concurrent Review Text Amendments within Various Sections of the Municipal Code.**

**Project Description:** An ordinance of the City of San José amending various sections of the San José Municipal Code such as Park 12 (sidewalk Café) in Chapter 20.100 to repeal the provision for a sidewalk café permit issued by the Director of Planning, add a reference to the minor encroachment permit process set forth in Chapter 13.37; development agreements regulated by Chapter 18.02; street and easement vacations governed by the government code state of California streets and highways code Section 8300 concurrent review process; amend section 20.100.220 in Chapter 20.100 (administration and permits) to remove Sidewalk Café permit from the Appeal – Hearing Body List; Section 20.200.270 to no longer include sidewalk café permit in the definition of development permit; 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 section 10.10.030 of Chapter 10.10 (Pedestrian Facilitation Ordinance) to add a reference to sidewalk seating authorized through a minor encroachment permit.

**Location:** Public right-of-way within identified growth areas in the Envision San José 2040 General Plan.  
**Council District:** Citywide.

The environmental impacts of this project were addressed by a Final Program EIR entitled, "Envision San José 2040 General Plan Final EIR," adopted by City Council Resolution No. 76041 on November 1, 2011, and addenda thereto; and Supplemental Program EIR entitled, "Envision San José 2040 General Plan Supplemental EIR," adopted by City Council Resolution No. 77617 on December 15, 2015, and addenda thereto. The Final Program EIR and Supplemental Program EIR were prepared for the comprehensive update and revision of all elements of the City of San José General Plan, including an extension of the planning timeframe to the year 2035. The following impacts were reviewed and found to be adequately considered by the EIRs:

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Transportation            | <input checked="" type="checkbox"/> Land Use                        | <input checked="" type="checkbox"/> Noise and Vibration          |
| <input checked="" type="checkbox"/> Air Quality               | <input checked="" type="checkbox"/> Biological Resources            | <input checked="" type="checkbox"/> Geology and Soils            |
| <input checked="" type="checkbox"/> Hydrology & Water Quality | <input checked="" type="checkbox"/> Hazardous Materials and Hazards | <input checked="" type="checkbox"/> Public Facilities & Services |
| <input checked="" type="checkbox"/> Cultural Resources        | <input checked="" type="checkbox"/> Aesthetics                      | <input checked="" type="checkbox"/> Energy                       |
| <input checked="" type="checkbox"/> Population and Housing    | <input checked="" type="checkbox"/> Greenhouse Gas Emissions        | <input checked="" type="checkbox"/> Public Facilities & Services |
| <input checked="" type="checkbox"/> Cumulative Impacts        | <input checked="" type="checkbox"/> Growth Inducing Impacts         | <input checked="" type="checkbox"/> Agriculture                  |
| <input checked="" type="checkbox"/> Mineral Resources         | <input checked="" type="checkbox"/> Hazardous Materials and Hazards | <input checked="" type="checkbox"/> Public Facilities & Services |

## BACKGROUND

The City of San José has historically offered two different programs that allow businesses to create outdoor seating areas in the public right of way adjacent to their business. Sidewalk Café, which are the most common type of outdoor seating, are typically seen at restaurants, where tables and chairs are placed on the sidewalk in a way which still allows adequate space for pedestrians walking down the street. Curb Café are seating areas associated with restaurants or other businesses that displace parking spaces in the public right of way.

The current sidewalk Cafés permits are allowed on public right-of-way sidewalks and pedestrian paseos located citywide and hours are limited, at a maximum, to the hours associated with the public eating establishment in which the sidewalk café is a part of. In December 2016 the Placemaking and Easy Urbanism Initiative kicked off with a community workshop attended by 45 community stakeholders and cross-departmental City staff members. Updating the Sidewalk Café Permit and the Curb Café Pilot Program were identified as priority action items. On June 27th, 2017, the Council approved an ordinance amending Part 1 of Chapter 13.36 of Title 13 of the San José Municipal Code and added a new Chapter 13.37 to Title 13 to govern private encroachments within the City's public right of way and other public easements (Ordinance No. 29966). Chapter 13.37 also provides the Director of Public Works, or such other person designated by the City manager, with the authority to adopt administrative guidelines, rules and regulations for Minor Encroachments that are consistent with Chapter 13.37.

After coordination with the City Attorney's Office and the Department of Public Works, it was determined that Public Works should maintain jurisdiction over both the sidewalk (Sidewalk Seating Permits) and the street space (Parklets) under the Minor Encroachment Permit process pursuant to Chapter 13.37, as both types of seating are located in the public right of way. This will consolidate the permitting authority for all encroachments in the public right of way under the purview of the Department of Public Works.

## PROPOSED PROJECT

The proposed project would:

- Amend Part 12 (Sidewalk Café) in Chapter 20.100 to repeal the provisions for a sidewalk café 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 Café 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 State of California Streets and Highways Code Section 8300 concurrent review process;
- Amend Section 20.100.220 in Chapter 20.100 (Administration and Permits) to remove Sidewalk Café Permit from the Appeal - Hearing Body list,
- Amend Section 20.200.270 to no longer include Sidewalk Café 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

## ANALYSIS

## *Sidewalk Café Amendments*

The proposed project and amendment to the Zoning Ordinance is to create a new streamlined process for applicants to apply for both Parklets and Sidewalk Seating in the Public Right of Way by utilizing Public Works' Minor Encroachment Permit process. The proposed Zoning Code Amendment to Title 20 to facilitate approval of Sidewalk Seating is consistent with the following Envision San Jose 2040 General Plan policies:

1. *Neighborhood Serving Commercial LU-5.8: Encourage outdoor cafes and other outdoor uses in appropriate commercial areas to create a vibrant public realm, maximize pedestrian activity, and capitalize on San José's temperate climate.*
2. *Attractive City Policy CD-1.2: Install and maintain attractive, durable, and fiscally- and environmentally sustainable urban infrastructure to promote the enjoyment of space developed for public use. Include attractive landscaping, public art, lighting, civic landmarks, sidewalk cafés, gateways, water features, interpretive/way-finding signage, farmers markets, festivals, outdoor entertainment, pocket parks, street furniture, plazas, squares, or other amenities in spaces for public use. When resources are available, seek to enliven the public right-of-way with attractive street furniture, art, landscaping and other amenities.*
3. *Attractive City Policy CD-1.9: Give the greatest priority to developing high-quality pedestrian facilities in areas that will most promote transit use and bicycle and pedestrian activity. In pedestrian-oriented areas such as Downtown, Urban Villages, or along Main Streets, place commercial and mixed-use building frontages at or near the street-facing property line with entrances directly to the public sidewalk, provide high-quality pedestrian facilities that promote pedestrian activity, including adequate sidewalk dimensions for both circulation and outdoor activities related to adjacent land uses, a continuous tree canopy, and other pedestrian amenities. In these areas, strongly discourage parking areas located between the front of buildings and the street to promote a safe and attractive street facade and pedestrian access to buildings.*

The project would amend the Municipal Code in various locations to remove the permitting authority for Sidewalk Seating (formerly Sidewalk Cafés) from the Department of Planning, Building and Code Enforcement (PBCE) to be addressed through Public Works' Minor Encroachment Permit Process and references to the Sidewalk Café Permit throughout the Municipal Code. The project would also amend the Concurrent Review process to allow development permits to be heard concurrently by the City Council if another City approval related to the project requires City Council action. Furthermore, the project would grant the Department of Public Works the authority to change the name from Sidewalk Café to Sidewalk Seating, change the name from Curb Café to Parklet, and adopt administrative guidelines to address any and all outdoor seating in the public right of way through the Parklet Program and Sidewalk Seating in the Public Right of Way Regulations.

### *Concurrent Review*

Section 20.100.130 of the Zoning Ordinance contains provisions for concurrent review of development permits that are filed on one site. This section allows that whenever applications for the same site have been filed for one or more development permit(s) or approval(s) required by the Zoning Ordinance, such development permit or approvals may be reviewed and acted on in a unified process that follows the highest level permit or approval.

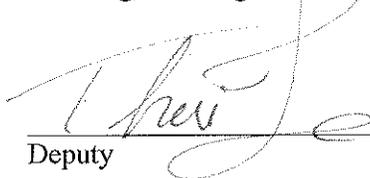
The change to Section 20.100.130 would add actions that require City Council approval to Development Agreements pursuant to Chapter 18.02 of the Municipal Code, Major Encroachment Permits pursuant to Chapter 13.37, Street and Easement Vacations regulated by California Streets and Highways Code

Section 8300. By adding these actions to the list of permits available for concurrent review, the City Council would be able to consider the development permit along with their required action on the associated Development Agreement, Major Encroachment, or Street or Easement Vacation project in its entirety.

*Environmental Impacts and Consistency*

The Municipal Code changes would only result in changes to procedures of project approval and authorities within the City to review and approve future individual projects. No specific development proposal is part of the amendment to Title 20. Future proposals will be subject to further project specific review by the applicable department. The proposed project is to amend the existing Municipal Code to align with goals and policies of the General Plan. For the reasons discussed above, the project is within the scope of the General Plan FEIR, General Plan Supplemental EIR, and addenda thereto pursuant to CEQA, and CEQA Guidelines Section 15168(c)(2), and adoption of the Guidelines does not result in new significant impacts beyond those identified in the General Plan Final and Supplemental EIRs. Any further actions, such as actions to approve individual development projects based on the amended Zoning Code will require additional environmental review at the time such actions are proposed.

Rosalynn Hughey, Director  
Planning, Building and Code Enforcement



Deputy

8/19/19  
Date

Thai-Chau Le  
Environmental Project Manager