



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Welsh

SUBJECT: SEE BELOW

DATE: August 7, 2020

Approved

Date

8/7/2020

SUBJECT: ACTIONS RELATED TO DECLARATIONS SUSPENDING ENFORCEMENT OF CERTAIN PROVISIONS IN LAND USE PERMITS AND APPROVALS AND THE SAN JOSE MUNICIPAL CODE

RECOMMENDATION

Adopt a resolution of the City Council confirming and ratifying the Declaration of the Director of Emergency Services of the City of San José Suspending Enforcement of Certain Provisions in Land Use Permits and Approvals and Zoning in the San José Municipal Code and Waiving Compensation for Business Use of City-owned Public Parking Lots issued July 31, 2020 and the Declaration of the Director of Emergency Services of the City of San José Suspending Enforcement of Certain Provisions in Land Use Permits and Approvals and Zoning and Special Use Permit Requirements in the San José Municipal Code issued August 5, 2020.

OUTCOME

Ratification of the July 31, 2020 Declaration (“Public Parking Lots Declaration”) will waive the requirement that the City receive compensation for leases, licenses, and other agreements that allow businesses to use City-owned public parking lots for outdoor business operations, facilitating compliance with the County of Santa Clara Health Officer’s Social Distancing Protocol.

Ratification of the August 5, 2020 Declaration (“Park and Plaza Declaration”) will streamline the application process, waive fees, and enable certain types of businesses to operate outdoors in City parks and downtown plazas.

BACKGROUND

On May 13, 2020, the Joint Meeting for the Rules and Open Government Committee and Committee of the Whole approved a memorandum from Mayor Liccardo and Councilmember Davis¹ directing the City Manager to bring forward for Council consideration, recommendations that would simplify and expand the process for businesses to operate outdoors, referred to as San José Al Fresco. The goal was to provide additional space for hard-hit businesses to operate within the public health restrictions that are in place to combat the COVID-19 pandemic.

Since that time, the City Manager, in his capacity as Director of Emergency Services, has issued three Emergency Declarations allowing the expansion of business operations while maintaining compliance with the County's Order and Social Distancing Protocol. These declarations included expansion of business uses into private parking lots, on public sidewalks, into on-street parking spaces, and onto public streets. Each declaration further assisted in the economic recovery of businesses in the City.

On July 31, 2020, the City Manager, in his capacity as Director of Emergency Services, issued the Public Parking Lots Declaration, providing that the City could enter into leases, licenses and other agreements with businesses to allow them to use City-owned surface parking lots for outdoor business operations, without the City receiving compensation.

On August 5, 2020, the City Manager, in his capacity as Director of Emergency Services, issued the Park and Plaza Declaration. The declaration allows health and fitness businesses, day camps and recreational businesses, educational and cultural programs, and public eating establishments to expand their business operations into downtown plazas and certain parks City-wide that are in the vicinity of their business locations.

Both the Public Parking Lots Declaration and the Park and Plaza Declaration remain in effect until December 31, 2020, such time as it is terminated or modified by the City Council or the termination of the local state of emergency, whichever occurs first. The Director of Emergency Services found both actions necessary to protect life and property by helping to ensure that businesses had adequate space to comply with the current County Health Order and Social Distancing Protocol.

ANALYSIS

Public Parking Lots Declaration

The City owns and operates public surface parking lots throughout San José. The Public Parking Lots Declaration makes suitable lots available to neighboring businesses to conduct expanded al

¹ Memorandum: <https://sanjose.legistar.com/View.ashx?M=F&ID=8334658&GUID=ECB1EAA5-1945-4AAC-9BCF-D8F29E0542AA>

fresco business operations. The first such parking lot will be a City-owned lot located on Minnesota Avenue, west of Lincoln Avenue, known as Assessor's Parcel Number 429-17-036.

Personal care, health and fitness, food service, and retail businesses allowed to operate outdoors per the current County Health Order will be eligible to occupy space in the lot. Potential users must demonstrate consistency with all applicable public safety and neighborhood regulations. Available space will be offered on a first-come, first-served basis to interested, eligible businesses with a physical presence within a ¼ mile of Assessor's Parcel Number 429-17-036.

Access will be provided to eligible businesses through a Right of Entry Agreement. The term of this agreement will run throughout the duration of the public health emergency, and the fee for the term will be \$1. All laws, including applicable public health and safety, and neighborhood ordinances must be followed for the duration of the entry agreement, or the business risks immediate termination of its rights. Participating businesses will be responsible for all maintenance of their designated area, and permanent fixtures or modifications of any kind will not be allowed. The access agreements provide for three days, no-cause termination to allow the City flexibility in managing the property for the public benefit.

All businesses must list the City as an additional insured on their general commercial liability insurance in an amount not less than \$1,000,000. The business must have no less than \$1,000,000 in workers compensation coverage, and property insurance not less than 100% of the actual replacement value of any materials, property, or stored items on the property. All insurance requirements will be verified by the City's risk manager prior to any business being granted a Right of Entry. Additional operating parameters, as well as terms and conditions can be reviewed in the template Right of Entry Agreement (see Attachment A) developed for this declaration.

Other City-owned, surface-level parking lots will be made available for interested businesses to apply for outdoor space to conduct their business activities. Staff will identify additional lots based on suitability of the location, the impact of the loss of parking from the closure of the lot, and the needs and demand of nearby businesses. Staff will be authorized to temporarily close additional surface-level parking lots as appropriate and enter into Right of Entry agreements with eligible businesses per the terms outlined in the approved Right of Entry Agreement template (see Attachment A). Businesses will be invited to signal their interest via the City's al fresco webpage – sanjoseca.gov/sjalfresco.

Park and Plaza Declaration

The Park and Plaza Declaration allows specified Education and Training, Entertainment and Recreation, and Food Service businesses, as defined in Table 20-90 of the San Jose Municipal Code, to conduct permitted business activities outdoors in public parks and public plazas in the vicinity of their property, subject to certain conditions and limitations. For the purposes of the Declaration "Plaza" refers to Fountain Alley, Hammer Theatre Plaza, the Circle of Palms, and Parque de los Pobladores in Downtown San José, and "Park" has the meaning set forth in

Section 13.14.136 of the San José Municipal Code. Not all Parks are eligible for business use under the declaration, and the City has discretion to determine which Parks will be part of the program. A list of eligible Parks will be available in the Parks and Plazas Regulations document.

In the Downtown Core, a restaurant must be adjacent to the requested Plaza or Park in order to be eligible to operate there under the Parks and Plazas Declaration. All other eligible businesses may conduct operations in a Park or Plaza in the Downtown Core if the business is located within a ¼ mile of the requested Park or Plaza. An eligible business may request to use a Park anywhere outside the Downtown Core if the business is located within three miles of the requested Park. No more than 25% of the total area of a Park will be permitted for outdoor business under this regulation. The entirety of any Plaza or Park in the Downtown Core may be permitted for outdoor business under this regulation. The City shall not permit the use of any areas within a Park that are located within fifty feet of any residential property. In addition, the Parks and Plaza Declaration requires that the City adopt Park and Plaza Regulations and post them to the City's website, which address location criteria, allowed and prohibited uses, hours of operation, and other requirements.

Eligible businesses must submit a streamlined application through the City's website to use a Park or Plaza. The application requires that businesses provide information about their business and the activities they plan to conduct in the requested Park or Plaza and provide the City with proof of insurance meeting the requirements set forth on the application website. There are no application or use fees. If the City determines that the applicant is an eligible business and the permitted use is consistent with this regulation, the City will contact the business within seventy-two hours to notify it that its application has been approved or conditionally approved and discuss next steps. All businesses will be required to provide the City with a cleaning and damage deposit of \$250 prior to the issuance of a permit for use of a Park. No deposit will be required for the use of a Plaza.

Permits for Parks and Plazas under this regulation will be issued on a first-come, first-served basis, subject to availability. Businesses may use an approved location within a Park or Plaza for up to twenty-one consecutive calendar days, with up to eight hours per day of authorized business use. Permittees can submit renewal requests to the City seven calendar days prior to the expiration of their active permit.

The provisions relating to Plazas shall be under the administration and management of the Office of Cultural Affairs and the provisions relating to Parks shall be under the administration management of the Special Parks Use Division of the Department of Parks, Recreation and Neighborhood Services.

Subsequent San José Al Fresco Work

The changing nature of the COVID-19 pandemic and State and County Health Orders make it extremely difficult to anticipate all possible scenarios under which outdoor business operations may be needed or desired by the business community. However, staff has received specific

requests to amend the existing Sidewalk Emergency Declaration to allow personal care services such as hair salons, barber shops, and nail services to operate on public sidewalks and in parklets and to allow retail operations on public sidewalks. Staff plans to bring these two amendments forward to Council for consideration and approval by the end of August 2020. Once these amendments are approved, staff will conclude its policy work associated with the San José Al Fresco initiative and transition to implementation support primarily through the Parks, Recreation and Neighborhood Services Department's Placemaking Team.

CONCLUSION

The Public Parking Lot Declaration and the Parks and Plazas Declaration are intended to help ensure compliance with County Health Orders and Social Distancing Requirements and provide economic support to local businesses experiencing significant negative impacts as a result of the public health emergency. By expanding business operations into public surface lots, city-wide parks and downtown plazas, businesses can move closer to achieving regular capacity and increase the number of employees utilized. Neither initiative requires permit fees, and both are designed to be as simple as possible for businesses to utilize.

Content on sanjoseca.gov/sjalfresco will be updated to reflect the changes implemented as a result of the Park and Plaza Declaration, including a list of Frequently Asked Questions available in English, Spanish, and Vietnamese. Communication about the changes will be relayed to neighborhood business district partner organizations. Information on how a business owner can request the expansion of their business operation in a public surface parking lot will also be posted at sanjoseca.gov/sjalfresco.

EVALUATION AND FOLLOW-UP

Staff will monitor the number and types of request that come in for expanded business operations in city-owned surface parking lots, city-wide parks, and downtown plazas to ensure the Declarations that have been issued meet the needs of the struggling businesses in San José. Any necessary amendments to these Declarations will be brought to Council for discussion and approval.

CLIMATE SMART SAN JOSE

The recommendations in this memo align with one or more Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memo will be posted on the City website for discussion at the August 11, 2020 City Council meeting.

COORDINATION

This memorandum has been coordinated with Real Estate Services, Parks, Neighborhood and Recreational Services, the Department of Transportation, the City Manager's Budget Office, and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

The City has an existing inventory of traffic barriers that will be utilized to safely close designated surface parking lots and will procure additional barriers as needed using the Small Business Assistance allocation in the Coronavirus Relief Fund programmed for the San José Al Fresco initiative, as included in the City Council-approved Mayor's June Budget Message for Fiscal Year 2020-2021.

The surface parking lot on Minnesota Avenue, just west of Lincoln Avenue, does not currently generate revenue for the City. Revenues that the City might have otherwise received from normal uses of parks and plazas is anticipated to be minimal because the 2020-2021 budget assumes a lower revenue collection as a result of the restrictions on large outdoor gatherings in the most recent County Health Order.

HONORABLE MAYOR AND CITY COUNCIL

August 7, 2020

Subject: San José Al Fresco

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CEQA

Categorically Exempt, File No. ER20-163, CEQA Guidelines Section 15304(e) Minor Alterations to Land.

/s/

KIM WALESH

Deputy City Manager

For questions, please contact Blage Zelalich, Downtown Manager, at (408) 535-8172.

Attachment: Right of Entry Agreement – Al Fresco Parking Lot Access

RIGHT OF ENTRY AGREEMENT
Al Fresco Parking Lot Access

This Right of Entry Agreement (“Agreement”), dated as of _____, 20__ for reference purposes only, is entered into by and between _____ (“LICENSEE”), and the CITY OF SAN JOSÉ, a California municipal corporation (“CITY”), and shall become effective upon execution by the CITY.

RECITALS

- A. CITY is the owner of property described as Assessor’s Parcel Number 429-17-036, consisting of 37,013 square feet on Minnesota Avenue, west of Lincoln Avenue in San Jose, California, more particularly depicted on **Exhibit A-1** attached hereto (“Property”); and
- B. LICENSEE desires to enter upon a portion of the Property as described in **Exhibit A-2** attached hereto and incorporated herein (“Access Area”), in order to conduct outdoor business activities; and
- C. CITY is willing to permit LICENSEE to access the Access Area proposed by LICENSEE for the purposes described herein.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

- 1. **Right of Entry.** CITY hereby grants to LICENSEE a temporary, revocable, non-assignable, and non-exclusive right of entry (“Right of Entry”) for the purpose of and upon the terms and conditions hereinafter described subject to all licenses, easements, leases, encumbrances and claims of title affecting the Property.
- 2. **Purpose.** Subject to the limits herein stated, the Right of Entry granted herein is a right to enter onto the Property for the sole purpose of _____. Access to the Property is restricted to LICENSEE’s administrative and operations personnel and customers. LICENSEE shall not allow other individuals or equipment to enter the Property.
- 3. **Term.** Subject to the termination provision set forth in Section 5 below, the term of the Right of Entry (“Term”) shall begin upon execution of this Agreement by CITY (“Commencement Date”) and payment of the License Fee (defined below) for the entire Term and shall terminate upon the effective date of any modification or termination of applicable State and County orders that would allow LICENSEE resume its business operations in its indoor business premises.

4. Terms and Conditions. The Right of Entry is given subject to the following terms and conditions.
- 4.1 Compensation. LICENSEE shall pay CITY \$1 in return for the rights granted under this Agreement.
- 4.2 Compliance with Laws. LICENSEE shall obtain and maintain all necessary permits, licenses and approvals, from the relevant agencies having jurisdiction and comply with all current laws, ordinances, orders, rules, regulations and permits with respect to its use of the Property pursuant to this Agreement. This includes, but is not limited to, any neighborhood curfews, and all applicable public health declarations and regulations stipulating restrictions or regulations for the safe operation of businesses during the COVID-19 public health emergency. No entry shall be made until CITY has received and approved a schedule for the proposed work including details of the work to be performed.
- 4.3 No Alteration of Space and Maintenance. In no event shall LICENSEE's use of the Property involve any alteration thereto. No stand-by backup electrical power generation facility is allowed to be installed or constructed on the Property. No permanently affixed fixtures or modifications of any kind are to be installed. No digging or other penetrating of the ground is allowed for any reason. At all times during the Term, LICENSEE shall maintain the Property in a safe, clean and orderly condition.
- 4.4 As-Is Condition and Assumption of Risk. LICENSEE accepts the condition of the Property as-is and with all faults and acknowledges that: i) CITY is under no obligation to provide any additional preparations, improvements, utilities or equipment to the Property prior to use by LICENSEE, and ii) LICENSEE's use of the Property is entirely at its own risk. Without limiting the generality of the foregoing, LICENSEE acknowledges that it shall be solely responsible for instituting and carrying out security measures on the Property to prevent vandalism or theft (which measures, if any, shall be subject to the prior written approval of CITY), and that CITY shall not be responsible for providing any security at the Property and shall not be liable for any vandalism or theft that may occur on the Property. For avoidance of doubt, LICENSEE acknowledges that its use of the Property shall be at its own risk and that LICENSEE shall be responsible for all costs, risk or liability that occurs or arises during or as a result of its use or occupancy of the Property.
- 4.5 Release and Waiver. To the maximum extent permitted by law, LICENSEE on behalf of itself and its employees, owners, members, officers, agents, contractors and invitees (collectively, the "Licensee Parties" and each a "Licensee Party"), waives and releases CITY and its

officers, employees and agents from any and all liability that occurs on the Property that is suffered by LICENSEE or any Licensee Party for any injury suit, action, claim, demand, loss, damage, liability, or liability for damages of any kind or nature, whether for loss of or damage to property, or injury to or death of persons, and whether or not known or suspected (collectively "Claims"), which may arise out of use of the Property by LICENSEE or any Licensee Party except such loss or damage as is caused by the sole active negligence or willful misconduct of CITY, its officers, employees or agents acting in their official capacities and acting within the scope of their official duties. The foregoing shall include any loss, damage, claim, or liability for damages or injury caused by or resulting from LICENSEE's or any Licensee Party's introduction or generation of Hazardous Materials, as defined in **Exhibit B**, on the Property, or the creation of increased hazard to the public from existing materials arising from the use of the Property by LICENSEE or any Licensee Party. However, LICENSEE shall not be responsible for any cleanup of Hazardous Materials not caused, generated or disturbed by LICENSEE or any Licensee Party.

- 4.6 Indemnification. To the maximum extent permitted by law, LICENSEE shall indemnify, defend, and hold harmless CITY and its officers, employees and agents against any and all Claims, resulting from or arising out of LICENSEE's or any Licensee Party's use of the Property, including, but not limited to, entries of LICENSEE or any Licensee Party, except such loss or damage as is caused by or the sole active negligence or willful misconduct of CITY, its officers, employees or agents acting in their official capacities and acting within the scope of their official duties. The foregoing shall include, but not be limited to, any Claims resulting from LICENSEE's or any Licensee Party's introduction or generation of Hazardous Materials, as defined in **Exhibit B**, on the Property, or the creation of increased hazard to the public from existing materials arising from the entries of LICENSEE or any Licensee Party. However, LICENSEE shall not be responsible for any cleanup of Hazardous Materials not caused, generated or disturbed by LICENSEE or any Licensee Party.
- 4.7 Survival. The provisions of subsections 4.3, 4.4, 4.5 and 4.10 shall survive expiration or termination of the Right of Entry as to liabilities and other Claims arising out of events that occur prior to the later of: (i) expiration or termination of the Right of Entry or (ii) the date LICENSEE vacates the Property and restores it to its original condition and free of hazards.
- 4.8 Insurance. During the term of this Right of Entry, LICENSEE shall have and maintain the minimum insurance requirements as set forth in the attached **Exhibit C**.

- 4.9 No Grant; Limited to Access Area. The Right of Entry constitutes a revocable license; nothing herein shall be construed as a grant of title or any interest in the Property. LICENSEE's use of the Property shall only include the Access Area.
- 4.10 No Admission of Liability. Nothing herein shall be construed as an admission of liability by CITY of its responsibility as to any Hazardous Materials that may be found on the Property, nor, except as expressly provided herein, as an admission of liability by LICENSEE as to any Hazardous Materials which may be found on the Property.
- 4.11 Restoration of Property. LICENSEE shall fully restore the Property to its pre-existing condition or better upon expiration of the Right of Entry or upon vacating the Property prior to termination or expiration of the rights granted by this Agreement. If the restoration is not so performed by LICENSEE upon expiration or termination of this Agreement or upon LICENSEE's vacation of the Property prior to termination or expiration, CITY shall have the right, but not the obligation, to perform the necessary restoration after providing no less than seven (7) days prior written notice to LICENSEE that it will do so. Upon receipt of the notice of restoration costs from CITY, LICENSEE agrees to reimburse CITY for such costs incurred, plus an additional amount equal to twenty percent (20%) thereof for administrative overhead within thirty (30) days. The demand for payment by CITY shall be prima facie evidence that the expense incurred was necessary and reasonable and that such expense was incurred by CITY on behalf of LICENSEE. This provision shall survive expiration or termination of the Right of Entry or this Agreement.
- 4.12 Graffiti Abatement. LICENSEE shall be responsible for the prompt abatement of any and all graffiti that occurs in the Access Area during the term of this Agreement. If LICENSEE fails to abate any graffiti in a prompt manner, CITY may immediately undertake such repairs and submit an invoice for the reasonable costs thereof to LICENSEE for reimbursement, and LICENSEE shall reimburse CITY within fifteen (15) days after its receipt of an invoice therefor and reasonable supporting documentation of the work completed.
- 4.13 City Access to Property. CITY shall continue to have the right to use and access the Property in its entirety and grant such use and access rights to third parties.
5. Termination of Right of Entry. CITY shall have the right to terminate the Right of Entry, without cause, by giving not less than three (3) days prior written notice of termination to LICENSEE. CITY shall have the right to immediately terminate the Right of Entry in the event that CITY's Director of Economic Development determines, in the Director's sole discretion, that LICENSEE has violated any

neighborhood curfews, or any applicable public health declarations and regulations stipulating restrictions or regulations for the safe operation of businesses during the COVID-19 public health emergency. CITY's Director of Economic Development is authorized to terminate the Right of Entry on behalf of CITY. Notwithstanding anything to the contrary in this Agreement, LICENSEE shall vacate the Property and restore it as provided in Section 4.10 by 11:59 p.m. on the date of termination.

6. No Liens or Encumbrances. LICENSEE shall not permit or suffer any liens or encumbrances to be imposed upon the Property or any building or structure thereon, as a result of LICENSEE's activities without promptly discharging the liens or encumbrances.
7. Assignment. LICENSEE may not assign this Agreement or its rights and obligations hereunder without obtaining CITY's prior written consent. Any assignment without such written consent shall be void. Any assignment by LICENSEE shall not relieve LICENSEE of its indemnification obligations set forth in this Agreement.
8. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements made prior to the date hereof. This Agreement may not be amended or revised except by a writing executed by both parties hereto.
9. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.
10. Authority. Each person signing below warrants and guarantees that s/he is legally authorized to execute this Agreement on behalf of the respective party and that such execution shall bind said party to the terms of this Agreement.
11. Notices. All notices given in conjunction with this Agreement shall be written, and shall be effective upon personal delivery to the other party or, if by mail, three (3) days after deposit in the U.S. Mail, first class postage prepaid to the applicable address stated below, or to such other address as the party may designate by written notice:

LICENSEE: _____

Attn: _____

CITY: City of San José
OED – Real Estate Services

200 E. Santa Clara Street, 12th Floor
San Jose, CA 95113
Attn: Real Estate Manager

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
13. Venue. In the event that suit shall be brought by either party hereunder, the parties hereto agree that venue shall be exclusively vested in the state courts of California in the County of Santa Clara or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern District of California, San José, California.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year written below.

APPROVED AS TO FORM:

“CITY”

CITY OF SAN JOSE,
a California municipal corporation

KEVIN FISHER
Chief Deputy City Attorney

NANCI KLEIN
Director of Economic Development
Director of Real Estate

“LICENSEE”

By: _____

[NAME]

[Title]

EXHIBIT A-1

Aerial View of Property

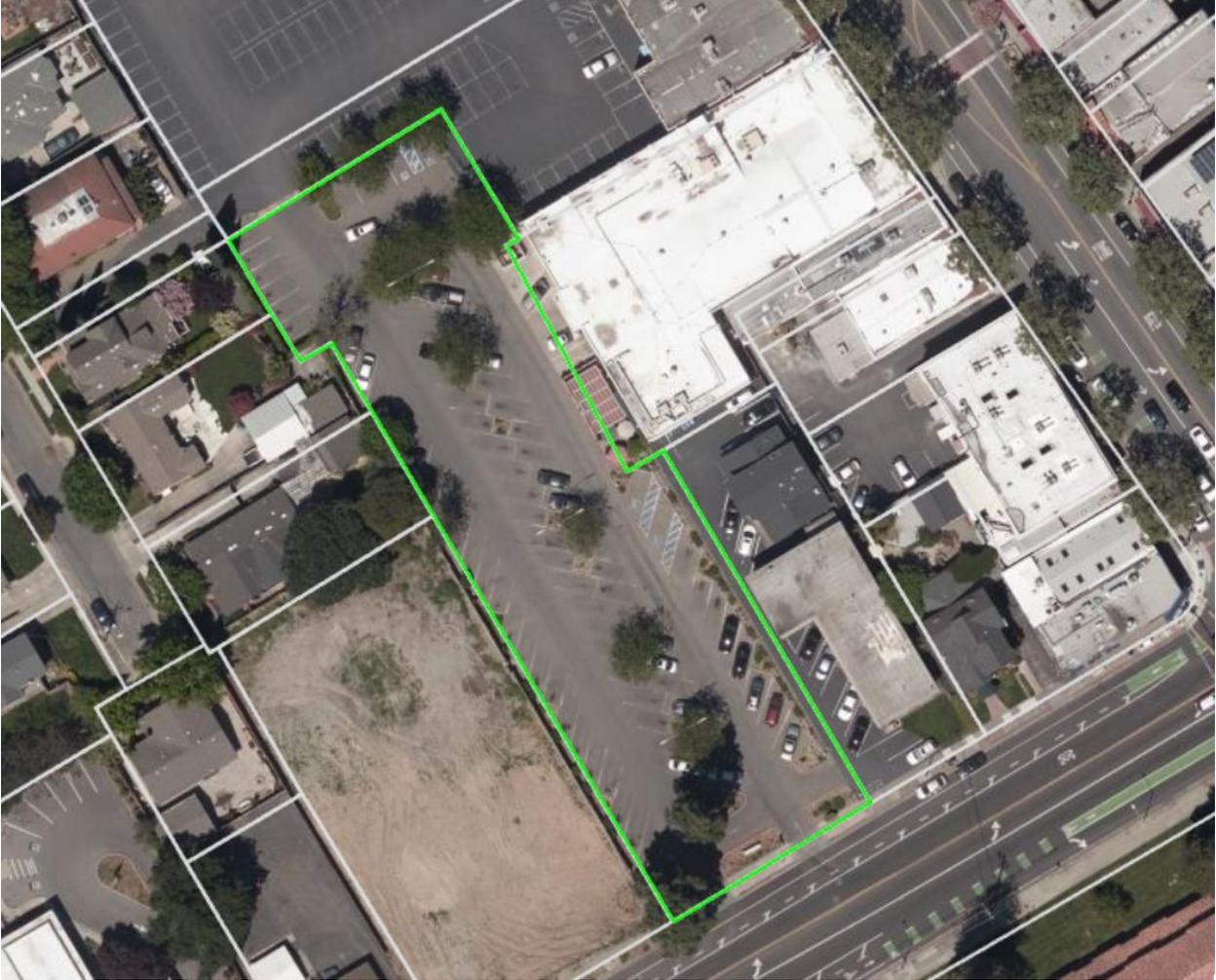


EXHIBIT A-2

Access Area Map

EXHIBIT B

Definition of Hazardous Materials

For the purpose of this Agreement, “**Hazardous Materials**” shall mean any and all: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws; (b) materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and, (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

For the purposes of this Agreement, “**Environmental Laws**” shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state super-lien or environmental clean-up.

EXHIBIT C

INSURANCE REQUIREMENTS

LICENSEE, at LICENSEE's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or are in connection with, entries onto the Access Area hereunder by LICENSEE, its officers, employees, agents or contractors.

A. **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001 and including liquor liability coverage if alcohol is being sold; and
2. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
3. Property Insurance for all personal property, contents or materials of LICENSEE, its licensees, contractors or materials men or subcontractors stored at, on or about the Access Area.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. **Minimum Limits of Insurance**

LICENSEE shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury, property damage, and liquor liability if alcohol is being sold with coverage extending o the Access Area. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

3. Property Insurance in an amount not less than one hundred percent (100%) of the actual replacement value of any materials, property, or stored items on or behalf of, by or through LICENSEE at the Access Area.

C. **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by CITY's Risk Manager.

D. **Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. CITY, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, LICENSEE; products and completed operations of LICENSEE; premises owned, leased or used by LICENSEE; and automobiles owned, leased, hired or borrowed by LICENSEE. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

2. Property Insurance and Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of CITY, its officers, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (10) days' prior written notice has been given to CITY

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. **Verification of Coverage**

LICENSEE shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that

insurer to bind coverage on its behalf and demonstrate that coverage has been extended to the Access Area.

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov:

Certificate Holder
City of San Jose – Finance Department
Risk & Insurance Program
200 East Santa Clara St., 14th Floor
San Jose, CA 95113-1905

G. **Contractors**

LICENSEE shall include all contractors as insured under its policies or shall obtain separate certificates and endorsements for each contractor.