

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING THE DECLARATIONS ISSUED BY THE DIRECTOR OF EMERGENCY SERVICES ON JUNE 4, 2020 AND JUNE 26, 2020 TO EXPAND PERMISSIBLE BUSINESS USES WITHIN ADJACENT PRIVATE PROPERTY, PUBLIC SIDEWALKS AND PARKLETS

WHEREAS, on March 10, 2020, the City Council of the City of San José (“City”) ratified the Director of Emergency Service’s Proclamation of Local Emergency due to the outbreak of a novel coronavirus in the City; and

WHEREAS, Government Code Section 8634 and Section 8.08.250 of Chapter 8.08 of Title 8 of the San José Municipal Code empower the Director of Emergency Services (City Manager or Designee) to make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; and

WHEREAS, Section 8.08.250 of the San José Municipal Code requires such rules and regulations made and issued by the Director of Emergency Services to be confirmed by the City Council at the earliest practicable time; and

WHEREAS, on March 31, 2020, the Health Officer of the County of Santa Clara (“County Health Officer”) issued an Order directing all individuals to continue to shelter in place and requiring essential businesses to implement a Social Distancing Protocol; and

WHEREAS, on May 18, 2020, the County Health Officer issued a further Order continuing the Social Distancing Protocol but allowing retailers to open with curbside/outdoor pick up, supply chains for retail establishments to reopen and certain outdoor activities to resume; and

WHEREAS, on June 1, 2020, the County Health Officer issued a further Order effective June 5, 2020 continuing the Social Distancing Protocol but allowing certain additional businesses to resume operations, including outdoor dining at restaurants, in-store shopping at retail and shopping centers and limited services that do not require customer contact, subject to limitations; and

WHEREAS, on July 2, 2020, the Health Officer of the County of Santa Clara issued a further Order effective on the later of (1) 12:01 a.m. on July 13, 2020 or (2) 12:01 a.m. two days following approval by the State Department of Public Health of a “variance” under the State’s “Resilience Roadmap” as described at covid19.ca.gov, which updated the Social Distancing Protocol and allowed certain additional businesses to resume operations, subject to limitations; and

WHEREAS, on July 13, 2020, the California State Public Health Officer issued an order that, amongst other things: (1) required a number of businesses statewide to immediately cease indoor operations, (2) required certain additional businesses in Santa Clara County to cease indoor operations effective July 15, 2020, and (3) allowed businesses to modify operations to provide outdoor services; and

WHEREAS, provisions in land use permits and planning approvals issued by the City and/or provisions in the San José Zoning Code prohibit the use of adjacent outdoor areas for the purposes of conducting business activities without first obtaining the City’s authorization through specified application processes; and

WHEREAS, Title 16 of the San José Municipal Code (“Title 16”) regulates gaming within the City and establishes processes for permitting the operations of cardrooms; and

WHEREAS, Title 13 of the San José Municipal Code prohibits encroachments into the public right-of-way or other public property without first obtaining an encroachment permit from the City through specified application processes; and

WHEREAS, to ensure compliance with the Social Distancing Protocol, businesses need additional outdoor areas to serve customers and allow customers to queue while waiting to enter the business premises; and

WHEREAS, on June 4, 2020, the Director of Emergency Services issued a declaration (“Private Property and Sidewalk Declaration”) suspending enforcement of certain provisions in land use permits and approvals and zoning and encroachment requirements in the San José Municipal Code in order to allow many businesses without existing permits for outdoor operations or seating to expand their operations outside in privately-owned outdoor areas, such as parking lots, and use public sidewalks for temporary seating in order to facilitate compliance with the Social Distancing Protocol; and

WHEREAS, on June 9, 2020, the City Council adopted Resolution No. 79558, which ratified and confirmed the Private Property and Sidewalk Declaration; and

WHEREAS, on June 26, 2020, the Director of Emergency Services issued a declaration (“Parklet Declaration”) suspending enforcement of certain provisions in land use permits and approvals and zoning and encroachment requirements in the San José Municipal Code in order to allow food service and retail businesses without existing parklet permits to expand their operations into vehicle parking spaces in the public street that are repurposed for seating and business use by separating the area from vehicular and bicycle traffic with physical barriers installed by the City, in order to facilitate compliance with the Social Distancing Protocol; and

WHEREAS, on June 30, 2020, the City Council adopted Resolution No. 79653, which ratified and confirmed the Parklet Declaration; and

WHEREAS, on August 4, 2020, the City Council adopted Resolution No. 79661, which amended the Private Property and Sidewalk Declaration to allow businesses to utilize sidewalk areas located in front of neighboring businesses with the neighboring property's consent; and

WHEREAS, the City has subsequently received requests to allow cardrooms to operate in adjacent private parking lots, retail to operate on public sidewalks and certain general services and education and training businesses to operate on public sidewalks and in parklets, which the Private Property and Sidewalk Declaration and Parklet Declaration currently do not allow;

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

1. Exhibit A and Exhibit B to the Private Property and Sidewalk Declaration, as amended by Resolution 79661, are hereby replaced in their entirety with the Exhibit A and Exhibit B, respectively, included as Attachment A to this Resolution.
2. Exhibit A to the Parklet Declaration is hereby replaced in its entirety with the Exhibit A included as Attachment B to this Resolution.
3. The remainders of the Private Property and Sidewalk Declaration and the Parklet Declaration are not modified by this Resolution and shall remain in full force and effect.

ADOPTED this _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

NVF:EEH:KML
8/26/2020

ATTACHMENT A

T-39211\1736220_7
Council Agenda: 9/1/2020
Item No.: 8.3

ATT. A-1

DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT A
CONDITIONS AND LIMITATIONS FOR
USE OF ADJACENT PRIVATE PROPERTY

Businesses may expand their existing permitted operations outdoors onto privately-owned, paved areas contiguous to their existing building, including parking lots or vacant lots, subject to the following conditions and limitations.

1. LOCATION OF OUTDOOR OPERATIONS

For purposes of this regulation, an “Outdoor Business Area” is defined as a privately-owned, paved outdoor area that is adjacent to a business’ existing building(s) and that measures up to a maximum of one hundred twenty-five feet (125’) from the face of the building, subject to the following:

- a. An Outdoor Business Area shall not be within fifteen feet (15’) of a fire hydrant in any direction and cannot block any San José Fire Department connections.
- b. An Outdoor Business Area shall not restrict access to or encompass more than fifty percent (50%) of the total available parking spaces of the business’ parking area and shall not restrict existing ADA accessible parking spaces or improvements.
- c. An Outdoor Business Area shall not restrict an emergency vehicle access route.
- d. The boundaries of an Outdoor Business Area shall be a minimum of fifty feet (50’) away from any residential property, except that the residential portion of a mixed use development shall not be considered when determining whether this requirement is satisfied for an Outdoor Business Area that is part of the same mixed use development.

2. ELIGIBLE BUSINESSES

The only businesses eligible to use an Outdoor Business Area under this regulation shall be those (1) allowed to operate under the Health Orders of the State of California and Santa Clara County, as amended, and (2) with any of the following zoning designations as identified in Table 20-90 of the City’s Zoning Code:

- a. General Retail
- b. Education and Training
- c. Entertainment and Recreation
- d. Food Services
- e. General Services
- f. Health and Veterinary Services, except Animal Grooming
- g. Offices and Financial Services
- h. Public, Quasi-Public and Assembly Uses

- i. Sale, Vehicle Parts only within the category of Vehicle Related Uses
3. LIMITATIONS ON PERMITTED OPERATIONS
Businesses may conduct their permitted business operations in an Outdoor Business Area, subject to the limitations in this section.
 - a. Canopies shall not exceed seven hundred (700) square feet in area.
 - b. Tents shall not exceed four hundred (400) square feet in area.
 - c. Flames of any type shall not be used in the Outdoor Business Area, including, without limitation, stoves, burners and candles, with the sole exception of heat lamps.
 - d. Cooking or food preparation shall not be allowed in the Outdoor Business Area.
 - e. Generators – gas or diesel – shall not be used in the Outdoor Business Area.
 - f. Electrical extension cords may be used in the Outdoor Business Area subject to the following:
 - i. Extension cords shall be listed and labeled as outdoor rated in accordance with UL 817;
 - ii. Extension cords shall be secured in a manner that is compliant with ADA accessibility standards, does not impede any person's path of travel and does not constitute a tripping hazard; and
 - iii. All extension cords shall be disconnected from their electrical sources each day at the conclusion of operations in the Outdoor Business Area.
 - g. Amplified sound or entertainment shall not be allowed in the Outdoor Business Area.
 - h. Business may be conducted in an Outdoor Business Area daily between the hours of 7 a.m. and 10 p.m.
 - i. Notwithstanding anything to contrary in this regulation, the Chief of Police and Director of Planning, Building and Code Enforcement may adopt additional limitations on uses allowed in an Outdoor Business Area necessary to protect the public health, safety or welfare, including, without limitation, the locations of a business' operations for emergency vehicle access or public safety reasons.
4. OTHER REQUIREMENTS
 - a. Nothing in this regulation authorizes an eligible business to operate in an Outdoor Business Area that it does not have the legal right to use. Eligible businesses shall be responsible for obtaining any consent from property owners or others necessary to use an Outdoor Business Area.
 - b. The text of this regulation shall be posted in each Outdoor Business Area and a copy of the site diagram submitted as part of a business' registration shall be kept at each respective business premises.

- c. Notwithstanding anything to the contrary in this regulation, Title 16 or the regulations adopted pursuant to Title 16, a Relocated Cardroom, as defined in Section 20.200.995 of the San José Municipal Code and identified in Table 20-90 of the City's Zoning Code, may use an Outdoor Business Area for the operation of gaming. Before using an Outdoor Business Area for the operation of gaming, a Relocated Cardroom shall obtain written approval from the Administrator, as defined in Section 16.02.210 of the San José Municipal Code, and the Chief of Police. The Administrator shall not provide his/her written approval unless the Relocated Cardroom has first obtained necessary consents or approvals to allow outdoor gaming operations from all other governing bodies or agencies, including, without limitation, the County of Santa Clara and California Gambling Control Commission. The Chief of Police and Administrator shall have the discretion to implement Cardroom Regulations that govern outdoor gaming operations that are in conformance with or more stringent than State gambling law and regulations. The Cardroom Regulations shall be posted to the City's website. The Administrator's written approval shall require compliance with the Cardroom Regulations and set forth other conditions for operation of gaming in the Outdoor Business Area. Except as expressly exempted by the Administrator's written approval, all provisions of a Relocated Cardroom's existing cardroom permit shall remain in full force and effect and apply to any outdoor gaming operations. Conditions for outdoor operations unrelated to gaming shall be coordinated with and approved by the Director of Planning, Building and Code Enforcement and the director of any other department normally charged with enforcement of the applicable condition. The Administrator's written approval shall incorporate any conditions for outdoor operations unrelated to gaming and supersede any conflicting provisions in Sections 1, 3 and 5 of this Exhibit A.

5. REGISTRATION PROCESS

Before an eligible business may begin using an Outdoor Business Area, the business shall register online in accordance with the following:

- a. The business shall register their use of an Outdoor Business Area through the City's web site. There shall be no fee for registering.
- b. As part of the online registration process, businesses must provide the following:
 - i. The business' name and address;
 - ii. The business owner's contact information;
 - iii. The contact information for the business' primary on-site contact person;
 - iv. Business Tax Certificate Number;
 - v. A site diagram showing all of the following:

1. Dimensions of the proposed Outdoor Business Area;
 2. Distance and physical relationship between a business' existing building, the proposed Outdoor Business Area and vehicle parking and circulation areas, if applicable;
 3. The layout of any furnishings, materials or equipment to be used in the Outdoor Business Area; and
 4. An outline of the boundaries of the proposed area where alcohol will be served, if applicable.
- vi. Any authorization from ABC for the business to serve alcohol in the Outdoor Business Area.
- c. Following registration, a business may immediately begin using the Outdoor Business Area pending the City's review of the registration submission to determine whether it meets the requirements of this regulation.
- d. If a submittal does not comply with the registration requirements, the City will contact the business, which shall immediately cease use of the Outdoor Business Area and correct any deficiencies prior to continuing to use of the Outdoor Business Area.
6. ADMINISTRATION

The provisions of this Exhibit A relating to Relocated Cardrooms shall be under the administration of the Chief of Police in coordination and with approval from the directors of any other department normally charged with enforcement of specific conditions not currently regulated under Title 16. All other provisions of this Exhibit A shall be under the administration of the Director of Planning, Building and Code Enforcement.

EXHIBIT B
CONDITIONS AND LIMITATIONS FOR
USE OF ABUTTING PUBLIC SIDEWALKS

General Retail, Food Services and certain General Services and Education and Training businesses may provide seating and conduct business operations on public sidewalks abutting their property, and any other type of business may provide seating only on public sidewalks abutting their property, all subject to the following conditions and limitations.

1. LOCATION OF SIDEWALK USE

For purposes of this regulation, an “Abutting Sidewalk Area” is defined as a public sidewalk abutting a business’ property, subject to the following:

- a. The Abutting Sidewalk Area may extend to public sidewalks in front of a neighboring property only with the written consent of the neighboring property, which written consent shall be provided to the City prior to the business’ use of such additional area(s).
- b. The Abutting Sidewalk Area shall include a minimum clear pedestrian through zone (*i.e.*, contains no objects) along its entire length that is at least four feet (4’) wide with seven feet (7’) of vertical clearance above the sidewalk surface.

2. ELIGIBLE BUSINESSES

Only businesses allowed to operate under the Health Orders of the State of California and Santa Clara County, as amended, are eligible to use an Abutting Sidewalk Area under this regulation.

3. LIMITATIONS ON PERMITTED OPERATIONS

- a. Food Services businesses, as identified in Table 20-90 of the City’s Zoning Code, may use an Abutting Sidewalk Area for food and beverage service, subject to the limitations in this Exhibit B.
- b. The following businesses, as identified in Table 20-90 of the City’s Zoning Code, may use an Abutting Sidewalk Area for seating and permitted business operations subject to the limitations in this Exhibit B:
 - i. All uses within the category General Retail;
 - ii. Dry Cleaner and Personal Care uses within the category General Services; and
 - iii. Instructional Art Studios and Private Instruction, Personal Enrichment uses within the category Education and Training.
- c. All businesses other than those identified in Sections 3.a.-b. above may use an Abutting Sidewalk Area only to provide seating for the public and

- customers waiting to enter the business establishment. No other business operations shall be conducted on public property under this regulation.
- d. Only tables, chairs, benches, umbrellas, other moveable furniture, barriers required by ABC and other equipment and items reasonably necessary to the business' permitted operations may be placed in an Abutting Sidewalk Area and shall be subject to the following:
 - i. Items placed in the Abutting Sidewalk Area shall be set back a minimum of five feet (5') from building corners;
 - ii. Items placed in the Abutting Sidewalk Area shall be set back a minimum of two feet (2') from the curb;
 - iii. Items placed in the Abutting Sidewalk Area shall not obstruct doorways, fire equipment/connections or interfere with a building's ingress/egress; and
 - iv. Items placed in the Abutting Sidewalk Area shall comply with the City's current Building Code and applicable ADA accessibility standards.
 - e. No part of the Abutting Sidewalk Area or any other public property shall be physically altered pursuant to this regulation, including by attaching any objects to the sidewalk.
 - f. The following are prohibited in the Abutting Sidewalk Area:
 - i. Flames of any type, including, without limitation, stoves, burners, heat lamps and candles;
 - ii. Gas or diesel generators;
 - iii. Amplified sound or entertainment;
 - iv. Advertising;
 - v. Consumption of alcohol except in compliance with ABC rules and regulations;
 - vi. Smoking; and
 - vii. Storage of materials or equipment, including, without limitation, movable furniture.
 - g. An Abutting Sidewalk Area may be used in accordance with this regulation daily between the hours of 7 a.m. and 10 p.m.
 - h. All items placed in an Abutting Sidewalk Area shall be removed each day at the conclusion of a business' operations in the Abutting Sidewalk Area.
 - i. The Abutting Sidewalk Area shall be maintained in good condition and kept free of litter and graffiti.

4. OTHER REQUIREMENTS

Any conflicting provisions contained in an existing permit or authorization from the City allowing sidewalk seating or dining are superseded while this regulation is in effect.

5. REGISTRATION PROCESS

Before an eligible business may begin using an Abutting Sidewalk Area, the business shall register online in accordance with the following:

- a. The business shall register its use of an Abutting Sidewalk Area through the City's web site. There shall be no fee for registering.
- b. As part of the online registration process, businesses must (a) consent to standard terms and conditions on the registration website and (b) upload a certificate of insurance meeting the requirements set forth on the registration website.
- c. Following registration, a business shall have the City's conditional approval – allowing the business to immediately begin using the Abutting Sidewalk Area – pending the City's review of the registration submission to determine whether it meets the requirements of this regulation.
- d. If a submittal does not comply with the registration requirements, the City will contact the business, which shall immediately cease use of the Abutting Sidewalk Area and correct any deficiencies prior to continuing to use of the Abutting Sidewalk Area.

6. ADMINISTRATION

The provisions of this Exhibit B shall be under the administration of the Director of Public Works.

NVF:EEH:KML
8/26/2020

ATTACHMENT B

T-39211\1736220_7
Council Agenda: 9/1/2020
Item No.: 8.3

ATT. B-1

DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT A
CONDITIONS AND LIMITATIONS FOR
USE OF PARKLETS

General Retail, Food Services and certain General Services and Education and Training businesses may provide seating and conduct business activities within a Parklet adjacent to their property, subject to the following conditions and limitations.

1. LOCATION OF USE

For purposes of this regulation, a “Parklet” is defined as the vehicle parking spaces within the public street adjacent to a business’ property that are repurposed for seating and business use by separating the area from vehicular and bicycle traffic with physical barriers approved, paid for and installed by the City (“Traffic Barriers”). Parklet locations, dimensions and materials shall be determined by the City. Nothing in this regulation shall require the City to provide Traffic Barriers or permit Parklets in any particular location.

2. ELIGIBLE BUSINESSES

The only businesses eligible to use a Parklet under this regulation shall be those (1) allowed to operate under the Health Orders of State of California and Santa Clara County, as amended, and (2) with any of the following zoning designations as identified in Table 20-90 of the City’s Zoning Code:

- a. General Retail;
- b. Food Services;
- c. Dry Cleaner and Personal Care uses only within the category General Services; and
- d. Instructional Art Studios and Private Instruction, Personal Enrichment uses only within the category Education and Training.

3. LIMITATIONS ON PERMITTED OPERATIONS

- a. A business shall not utilize any areas within a Parklet that extend beyond the business’ frontage without the written consent of the neighboring property. This written consent shall be provided to the City prior to the business’ use of the additional area(s).
- b. This regulation only allows eligible businesses to conduct permitted operations within a Parklet. Businesses shall obtain a temporary sidewalk use permit prior to using the public sidewalk adjacent to a Parklet.
- c. All Parklets shall be subject to the Parklet Regulations adopted by the Director of Public Works and posted on the City’s website. The Parklet Regulations shall address location criteria, allowed and prohibited uses, hours of operation, maintenance and other requirements.

4. OTHER REQUIREMENTS

- a. Traffic Barriers are and shall remain the City's property. No part of a Parklet, including Traffic Barriers, or any other public property shall be physically altered pursuant to this regulation, including by attaching any objects to the Traffic Barriers, without the City's prior written consent. Businesses shall not move Traffic Barriers once installed by the City. The City will remove Traffic Barriers after the expiration or termination of this regulation unless it determines, in its discretion, to remove the Traffic Barriers at an earlier time.
- b. This regulation shall not supersede permits or authorizations from the City for existing parklets, which shall remain in full force and effect.

5. APPLICATION PROCESS

Eligible businesses shall apply online for a Parklet in accordance with the following:

- a. Each business shall apply for a Parklet through the City's website. The application will require that businesses: (a) consent to standard terms and conditions, (b) provide the City with proof of insurance meeting the requirements set forth on the application website, and (c) submit a site diagram of the proposed Parklet. There shall be no application or approval fee.
- b. If the City determines that the applicant is an eligible business and the Parklet may be installed in the requested location, the City will contact the business to notify it that its application has been approved, discuss next steps and coordinate installation of Traffic Barriers.

6. ADMINISTRATION

The provisions of this Exhibit A shall be under the administration of the Director of Public Works.