

**Comparison of Proposed SJMC Code Sections in Sidewalk Cafe Ordinance with  
Current Code Sections**

**Part 12  
Sidewalk Cafe**

**20.100.1400 Purpose**

The sidewalk cafe<sup>1</sup> **Sidewalk Cafe**<sup>2</sup> regulations as<sup>3</sup> established in this Part are intended to encourage sidewalk cafes<sup>4</sup> **Sidewalk Cafes**<sup>5</sup> in the City of San Jose, 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.** ~~1.~~<sup>6</sup> To encourage and promote sidewalk cafes<sup>7</sup> **Sidewalk Cafes**<sup>8</sup> as visual amenities which in turn intensify pedestrian activity and make the<sup>9</sup> street life more attractive.<sup>10.</sup> **and**<sup>11</sup>
- B.** ~~2.~~<sup>12</sup> To preserve and enhance the character of the City of San Jose.<sup>13.</sup> **and**<sup>14</sup>
- C.** ~~3.~~<sup>15</sup> To ensure adequate space for pedestrians on the sidewalk<sup>16</sup> **Sidewalks**<sup>17</sup> adjacent to sidewalk cafes<sup>18</sup> **Sidewalk Cafes**<sup>19</sup>.

**20.100.1410 Definitions**

The definitions set forth in this Part shall govern the application and interpretation<sup>20</sup> **Section shall have the following meanings for the purposes**<sup>21</sup> of this Part.

- 1. "Adjacent Property" shall mean only that portion of the public right-of-way which abuts the frontage of the Permittee's Premises.<sup>22</sup>
- 2. "Neighboring Property" shall mean a parcel of land which is within three hundred (300) feet of the subject property.<sup>23</sup>
- A.** <sup>24</sup> **"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.**<sup>25</sup>

- B.** <sup>26</sup>“Permittee” means the person to whom a Sidewalk Café Permit has been issued pursuant to the provisions of this Part.<sup>27</sup>
- C.** <sup>3</sup>~~28~~<sup>28</sup>“Premises” shall mean the Public Eating Establishment, as defined in Section<sup>29</sup>~~20.200.940~~ of this Code, ~~and outdoor sidewalk cafe as~~<sup>30</sup>or the Retail Sales Establishment, together with the appurtenant outdoor Sidewalk Cafe<sup>31</sup> authorized for that Establishment<sup>32</sup> by this Chapter<sup>33</sup> Part<sup>34</sup>.
- D.** <sup>35</sup>“Retail Sales Establishment” shall mean a “Retail sales, goods and merchandise” use as described in this Title.<sup>36</sup>
- E.** <sup>4</sup>~~37~~<sup>37</sup>“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<sup>38</sup>.

<sup>39</sup>**20.100.1420**      **Permit Required; Compliance Required**<sup>40</sup>

- A.**    No owner or operator of a business establishment shall occupy any portion of a public sidewalk or mall<sup>41</sup> **Public Eating Establishment or a Retail Sales Establishment shall occupy, and no real property owner shall suffer or allow a Public Eating Establishment or a Retail Sales Establishment located on its real property to occupy, any portion of a Sidewalk**<sup>42</sup> with umbrellas, tables, and<sup>43</sup> chairs or **other**<sup>44</sup> portable appurtenances for the convenience of customers unless such owner or operator has a<sup>45</sup> **first**<sup>46</sup> obtained a **Sidewalk Café**<sup>47</sup> Permit approved by the Director.
- B.**    <sup>48</sup>**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:**<sup>49</sup>
- 1.**    <sup>50</sup>**Use the Sidewalk Café for any activity other than dining, drinking (in conjunction with dining), and the circulation associated with that activity therein; or**<sup>51</sup>
  - 2.**    <sup>52</sup>**Use the Sidewalk Café in any manner that would violate any term, condition or restriction of the Sidewalk Café Permit or this Part.**<sup>53</sup>
- C.**    <sup>54</sup>**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.**<sup>55</sup>
- D.**    <sup>56</sup>**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.**<sup>57</sup>

### **20.100.1430 Application**

- A. The provisions of Section 20.100.110 subsection B shall not apply to applications for a Sidewalk Cafe 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.<sup>58</sup>
- B. The application for a Sidewalk Café Permit<sup>59</sup> 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<sup>60</sup>:
1. The name and signature<sup>61</sup> of the Applicant; and
  2. The name and address of the establishment<sup>62</sup> 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<sup>63</sup>; and
  3. The hours that the<sup>64</sup> a Sidewalk<sup>65</sup> area is proposed<sup>66</sup> to be occupied<sup>67</sup> used<sup>68</sup> as a sidewalk cafe<sup>69</sup> Sidewalk Cafe<sup>70</sup>; and
  4. A plan,<sup>71</sup> drawn to scale,<sup>72</sup> 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 Cafe<sup>73</sup>; and
  5. The width of the sidewalk<sup>74</sup> Sidewalk<sup>75</sup> where the cafe<sup>76</sup> Sidewalk Cafe<sup>77</sup> is proposed<sup>78</sup> to be located, both before and after the proposed establishment of the Sidewalk Cafe<sup>79</sup>.

### **20.100.1440 Review of Application**

The Director shall consider the following factors in the review of the Sidewalk Café<sup>80</sup> Permit application:

- A.** 4. <sup>81</sup>The convenience and safety of pedestrians, property owners, occupants, customers, residents, or tenants of offices, stores, shops or dwellings in the vicinity; and<sup>82</sup>2. ~~Dimensions<sup>83</sup> of the public sidewalk or mall areas<sup>84</sup>~~ **Premises<sup>85</sup>**; and
- B.** <sup>86</sup>**The dimensions of the Sidewalks affected by a Sidewalk Café Permit application ; and<sup>87</sup>**
- C.** 3. ~~Location<sup>88</sup>~~ **The location<sup>89</sup>** of nearby fire hydrants, utility poles, sign poles, Light Rail tracks and stations, street trees **and other structures within the public right of way<sup>90</sup>**; and
- D.** 4. <sup>91</sup>Other factors that may be relevant to the **safety, efficacy or efficiency of allowing a Sidewalk Café at a<sup>92</sup>** particular location.

<sup>93</sup>**20.100.1450 Findings**

The Director may issue a Sidewalk Café <sup>94</sup>Permit only upon first <sup>95</sup>finding that issuance of the Sidewalk Café <sup>96</sup>Permit:

- A.** ~~1.~~<sup>97</sup>Would not create a nuisance; and
- B.** ~~2.~~<sup>98</sup>Would preserve and<sup>99</sup> or<sup>100</sup> enhance the character of the surrounding area; and
- C.** ~~3.~~ Adequately protects<sup>101</sup> Would adequately preserve and protect<sup>102</sup> the convenience and safety of pedestrians, property owners, occupants, customers, residents or tenants of offices, stores, shops or dwellings in the vicinity of the project<sup>103</sup> Premises<sup>104</sup>; and
- D.** ~~4.~~<sup>105</sup>Would not result in any significant adverse land use impacts.<sup>106</sup>; and<sup>107</sup>
- E.** ~~5.~~ Complies<sup>108</sup> Would comply<sup>109</sup> with the Conditions and Restrictions<sup>110</sup> set forth in this Part.

**20.100.1460 Amendment of Existing Permits for Service of Alcohol**

- A.** Existing Sidewalk Café <sup>111</sup>Permits may be amended to authorized<sup>112</sup> authorize<sup>113</sup> the service of alcoholic beverages in accordance with and when allowed by the provisions of this Part<sup>114</sup>.
- B.** The application process for a new Sidewalk Café <sup>115</sup>Permit set forth in this Part shall be followed, however, the findings previously made pursuant to this Part shall not be reconsidered<sup>116</sup> for an amended Sidewalk Café Permit<sup>117</sup>.

**20.100.1470 Special Findings - Service of Alcohol**

The service of alcoholic beverages shall be authorized by Director<sup>118</sup> within and as a part of a Sidewalk Café Permit may be allowed<sup>119</sup> only if the Director first makes all of the <sup>120</sup>following findings are made<sup>121</sup>:

- A.** <sup>122</sup>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<sup>123</sup>
- B.** ~~1.~~<sup>124</sup>The Applicant is licensed<sup>125</sup> 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<sup>126</sup> as a Bona Fide Public Eating Place by the California<sup>127</sup> under<sup>128</sup> State Department of Alcoholic Beverage Control<sup>129</sup> law<sup>130</sup>; and
- C. 2.**<sup>131</sup> The Applicant is in<sup>132</sup> licensee under the liquor license issued by the California<sup>133</sup> Department of Alcoholic Beverage Control<sup>134</sup> is in full<sup>135</sup> compliance with all conditions and restrictions of his or her state<sup>136</sup> liquor license; and
- D. 3.**<sup>137</sup> The business<sup>138</sup> Public Eating Establishment<sup>139</sup> has not been issued a Dance hall<sup>140</sup> Hall<sup>141</sup> Permit, as defined in Chapter 6.58 of this Code, ~~or~~<sup>142</sup> ~~a Public Entertainment Permit, as defined in Chapter 6.60 of this Code~~<sup>143</sup>; and
- E. 144** The Public Eating Establishment has not been issued<sup>145</sup> a Public Entertainment Permit, as defined in Chapter 6.60 of this Code<sup>146</sup>, 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<sup>147</sup>
- E. 4.**<sup>148</sup> The Applicant is<sup>149</sup> 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<sup>150</sup> 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<sup>151</sup>; and
- G. 5.** Issuance<sup>152</sup> The issuance<sup>153</sup> of the Sidewalk Café<sup>154</sup> 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<sup>155</sup>.

<sup>156</sup>**20.100.1480**      **Conditions and Restrictions**

The issuance of a **Sidewalk Café**<sup>157</sup> Permit, **and the operation of any Sidewalk Café**<sup>158</sup> shall be subject to **all of**<sup>159</sup> the following **additional**<sup>160</sup> conditions and restrictions, together with such other conditions as may be deemed necessary **by the Director**<sup>161</sup> in order to secure the general purposes of this Title. The Director may, in issuing a **Sidewalk Café**<sup>162</sup> 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**<sup>163</sup>:

- A. 1.**<sup>164</sup> Umbrellas, tables, chairs, and other portable appurtenances shall be confined to the area shown on the approved **Sidewalk Café**<sup>165</sup> Permit plan set; **and**<sup>166</sup>
- B. 2.**<sup>167</sup> 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 or mall area<sup>168</sup> **Sidewalk**<sup>169</sup> unless the sidewalk cafe<sup>170</sup> **Sidewalk Café**<sup>171</sup> is adequately separated from pedestrian traffic; **and**<sup>172</sup>
- C. 3.**<sup>173</sup> 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**<sup>174</sup> Permit; **and**<sup>175</sup>
- D. 4.**<sup>176</sup> At least one (1) covered outdoor trash container shall be provided in the sidewalk cafe<sup>177</sup> **Sidewalk Café**<sup>178</sup> area during the hours of operation **of the Sidewalk Café**<sup>179</sup> and shall be maintained in a clean and sanitary condition<sup>180</sup>; **and**<sup>181</sup>
- E. 5.**<sup>182</sup> The Permittee<sup>183</sup> **Premises**<sup>184</sup> shall maintain the area<sup>185</sup> **be maintained**<sup>186</sup> in a clean and sanitary condition at all times; **and**<sup>187</sup>
- F. 6.**<sup>188</sup> The Permittee shall keep that<sup>189</sup> portion of the sidewalk<sup>190</sup> **Sidewalk**<sup>191</sup> area not permitted to be occupied by umbrellas, tables, chairs, and other portable appurtenances **shall be kept**<sup>192</sup> free of obstructions at all times; **and**<sup>193</sup>

- G.** <sup>194</sup>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.<sup>195</sup>
- H.** ~~7.~~<sup>196</sup>The hours of operation of a sidewalk cafe<sup>197</sup> **Sidewalk Cafe**<sup>198</sup> shall be limited at a maximum<sup>199</sup> to the hours of operation of the associated establishment;<sup>200</sup> **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**<sup>201</sup>
- I.** ~~8.~~<sup>202</sup>No amplified sound shall be used within a sidewalk cafe. At<sup>203</sup> **Sidewalk Café.** **and at**<sup>204</sup> no time shall any music originating from any part of the Premises create a nuisance; **and**<sup>205</sup>
- J.** ~~9.~~<sup>206</sup>Dancing shall not be permitted or allowed in the sidewalk cafe;<sup>207</sup> **Sidewalk Cafe;** **and**<sup>208</sup>
- K.** ~~10.~~<sup>209</sup>The Permittee must at all times comply or cause the compliance<sup>210</sup> with all federal, state and local laws regarding the sale, service and consumption of alcohol<sup>211</sup> **alcoholic beverages**<sup>212</sup> and the operation of the Premises; **and**<sup>213</sup>
- L.** ~~11.~~<sup>214</sup>The Applicant<sup>215</sup> **Permittee**<sup>216</sup> 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 permit<sup>217</sup> **Sidewalk Café Permit**<sup>218</sup> granted pursuant to this Chapter; **and**<sup>219</sup>
- M.** ~~12.~~<sup>220</sup>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 permit<sup>221</sup> **Sidewalk Café Permit**<sup>222</sup> or any renewal thereof. The level of coverage shall be in the amount to be determined by the City's Risk Manager;<sup>223</sup> **or the City Manager's designee assigned to perform the functions of the Risk Manager;** **and**<sup>224</sup>

- N. 13.** <sup>225</sup>No Sidewalk Café <sup>226</sup>Permit signed and issued <sup>227</sup>under this Chapter may be transferred or assigned; and <sup>228</sup>
- O. 14.** <sup>229</sup>The sidewalk or mall <sup>230</sup>Sidewalk <sup>231</sup>area shall not be painted, landscaped or altered in any way without prior written approval of the City's <sup>232</sup>Director; <sup>233</sup>of Transportation; and <sup>234</sup>
- P. 15.** <sup>235</sup>The Sidewalk Café <sup>236</sup>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. A.** <sup>237</sup>The Applicant must <sup>238</sup>Permittee shall <sup>239</sup>remain, and shall cause the Premises to remain, <sup>240</sup> in full compliance with all provisions of this Code at all times <sup>241</sup>; and
- B.** <sup>242</sup>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 <sup>243</sup>
- C. B.** <sup>244</sup>No person shall serve alcoholic beverages at a sidewalk café <sup>245</sup>Sidewalk Café <sup>246</sup> unless and until both the Sidewalk Café <sup>247</sup>Permit and state <sup>248</sup>the <sup>249</sup>liquor license issued by the California Department of Alcoholic Beverage Control <sup>250</sup> specifically authorizes the service of alcohol <sup>251</sup>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 <sup>252</sup>; and
- D. C.** <sup>253</sup>Alcoholic beverages shall <sup>254</sup>may <sup>255</sup>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. D** <sup>256</sup>The sidewalk café <sup>257</sup>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<sup>258</sup>. ~~No sidewalk cafe may function as a bar.~~<sup>259</sup>

E. <sup>260</sup>No Sidewalk Cafe may function as a Drinking Establishment as defined in Section 20.200.300 of this Title.<sup>261</sup>

#### **20.200.270 Development Permit**

"Development Permit" means any Permit issued pursuant to Chapter 20.100 of this Title,<sup>262</sup> with the exception of a Sidewalk Café Permit issued pursuant to Part 12 of Chapter 20.100.<sup>263</sup>

#### **20.200.1120 Sidewalk Cafe**

"Sidewalk cafe"<sup>264</sup> Cafe<sup>265</sup> is a portion of an eating and/<sup>266</sup> or drinking<sup>267</sup> retail sales<sup>268</sup> establishment located on a public sidewalk or mall which functions as an extension of the use of the adjacent private property by an eating and/<sup>269</sup> or drinking<sup>270</sup> retail sales<sup>271</sup> establishment. A sidewalk cafe is open to the sky except that it may have awnings or umbrellas. ~~No portion of the sidewalk cafe shall be used for any purpose other than dining, drinking, and the associated circulation therein.~~<sup>272</sup>