



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: June 12, 2007

COUNCIL DISTRICT: 3
SNI AREA: N/A

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE ESTABLISHING A LIMITED PILOT PROGRAM TO ALLOW CERTAIN RESTAURANTS, BARS AND NIGHTCLUBS LOCATED IN AN AREA GENERALLY BOUNDED BY ST. JOHN STREET, 4TH STREET, SAN CARLOS STREET, MARKET STREET, SAN FERNANDO STREET AND SAN PEDRO STREET, AS MORE PRECISELY DESCRIBED ON THE PILOT PROGRAM AREA MAP, TO REMAIN OPEN UNTIL 3:00 A.M. FOR A PERIOD OF UP TO 180 DAYS.

RECOMMENDATION

The Planning Commission voted 7-0-0 to recommend that the City Council approve the proposed Ordinance to establish a limited pilot program to allow restaurants, bars and nightclubs within the specified areas to remain open until 3:00 a.m.

OUTCOME

The proposed ordinance would allow restaurants, bars and nightclubs legally operating until 2:00 a.m. within the specified pilot program areas to remain open one additional hour, until 3:00 a.m., on any day of the week they are currently legally operating until 2:00 a.m., for a 90-180 day pilot program.

BACKGROUND

On June 11, 2007, the Planning Commission held a public hearing to consider the proposed ordinance. The Director of Planning, Building and Code Enforcement recommended approval of the proposed ordinance.

Staff made a brief presentation regarding the proposed ordinance and indicated that a change had been made to the proposed ordinance after preparation of the staff report. Staff clarified that the report stated the decision to extend the pilot program beyond 90 days would be made by the City Council, but that the current proposed ordinance would authorize the City Manager to make this decision.

June 11, 2007

Subject: Nightclub Pilot Program

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Commissioner Campos asked why the pilot program area had not been extended further south. Director Horwedel stated that the intent was to keep the pilot program area to a manageable size to reduce costs and to locate the program in an area with less residential.

Commissioner Zito asked if extension of the operating hours would encourage the service of alcohol to extend later than 1:30 a.m. Director Horwedel stated that the current Conditional Use Permits and ABC regulations require that the service of alcohol cease at 1:30 a.m. and that all alcohol containers be removed by 2:00 a.m. He indicated that the Police Department would be working closely with the nightclubs to address this operational issue.

In response to a question from Commissioner Zito, the City Attorney clarified that only businesses that are currently allowed to be open until 2:00 a.m. would be allowed under the pilot program to remain open until 3:00 a.m.

In response to Commissioner Kalra, Director Horwedel stated that if the pilot program is successful, the program could be extended to a broader area. Commissioner Kalra commented that the program could result in patrons migrating from clubs required to close at 2:00 a.m. to the clubs within the pilot program area. Director Horwedel indicated that a time limit for admitting new club patrons was under consideration to address this concern.

Commissioner Kalra stated that the pilot program was a good idea that would encourage a downtown environment that was safer and more business friendly.

Commissioner Platten indicated that the pilot program was intelligent policy and an appropriate big-city approach that would encourage entertainment and a downtown lifestyle.

Commissioner Kamkar supported the pilot program concept, but asked what would be the measurement of success. Director Horwedel indicated that the Downtown Working Group was looking at how to evaluate the program.

The Planning Commission voted 7-0-0 to recommend approval of the proposed ordinance.

ANALYSIS

This ordinance is intended to test changes in the operating hours of bars, nightclubs and restaurants to determine if these pilot regulations are beneficial in regard to crowd control and security in downtown San Jose. The ordinance would not extend the sale of alcohol beyond the hours currently allowed by the existing Conditional Use and Entertainment Permits or the ABC Permits for these facilities.

POLICY ALTERNATIVES

See City Council memorandum on this item dated June 4, 2007.

PUBLIC OUTREACH/INTEREST

Criteria 1: Requires Council action on the use of public funds equal to \$1 million or greater.

June 11, 2007

Subject: Nightclub Pilot Program

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(Required: Website Posting)

- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30; Public Outreach Policy. Notice regarding the proposed ordinance was published in the Mercury News, mailed to owners and tenants of property located within the pilot program area and within 500 feet of its perimeter, emailed to the Downtown Association and the Chamber of Commerce and posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

This project was coordinated with the Police Department, the Office of Economic Development, the Redevelopment Agency and the City Attorney.

FISCAL/POLICY ALIGNMENT

Not applicable.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

CEQA: Exempt, PP07-117.


for JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Carol Hamilton at 408-535-7800.



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: June 4, 2007

COUNCIL DISTRICT: 3

SNI AREA: N/A

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSÉ ESTABLISHING A LIMITED PILOT PROGRAM TO ALLOW CERTAIN RESTAURANTS, BARS AND NIGHTCLUBS LOCATED IN AN AREA GENERALLY BOUNDED BY ST. JOHN STREET, 4TH STREET, SAN CARLOS STREET, MARKET STREET, SAN FERNANDO STREET AND SAN PEDRO STREET, AS MORE PRECISELY DESCRIBED ON THE PILOT PROGRAM AREA MAP, TO REMAIN OPEN UNTIL 3:00 A.M. FOR A PERIOD OF UP TO 180 DAYS.

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council approve the proposed ordinance to establish a limited pilot program to allow restaurants, bars and nightclubs within the specified areas to remain open until 3:00 a.m.

BACKGROUND

On March 15, 2007 the Downtown Working Group (DWG) provided the Public Safety, Finance and Strategic Support Committee (PSFSS) with a report containing proposals to improve the nightlife experience in downtown San Jose for residents, business owners and visitors. The proposals included a recommendation for a 90 day pilot program to extend the operating hours of Downtown bars and night clubs already legally operating until 2:00 a.m. by one hour. On March 27, 2007 the City Council considered the DWG report and directed staff to return within 60 days with recommendations addressing the DWG proposals.

In response to that direction, staff placed an ordinance on the June 12, 2007 City Council agenda authorizing a pilot program to allow bars and nightclubs, legally operating until 2:00 a.m. on Second Street between San Fernando and Santa Clara Streets and on Santa Clara Street between Market and Fourth Streets, to remain open until 3:00 a.m. for a period of 90 days. After further coordination, staff recommended that Council consideration of the item be delayed to June 19, 2007 to allow modification of the pilot program to address an expanded area, to include restaurants in the pilot program and to extend the length of the program to a maximum of 180 days. The delay also allows

the proposed pilot program to be reviewed by the Planning Commission for its recommendation to the City Council. The current ordinance proposal includes modifications as discussed in the analysis section below.

ANALYSIS

A recent inventory of clubs in the Downtown Entertainment Zone lists 33 entertainment venues with a total capacity of approximately 10,500 people. Liquor licenses issued by the California Department of Alcohol Beverage Control (ABC) require that bars and nightclubs stop selling alcohol at 2:00 a.m.; Conditional Use Permits and Entertainment Permits issued by the City for these uses require the clubs to cease selling alcohol by 1:30 a.m. and to close by 2:00 a.m. At 2:00 a.m., crowds generated by the simultaneous exodus of club patrons create the potential for large disturbances and place a strain on Police Department staff resources. This ordinance is intended to test changes in the operating hours of bars, nightclubs and restaurants to determine if these pilot regulations are beneficial in regard to crowd control and security in the Downtown. The ordinance would not extend the sale of alcohol beyond the hours currently allowed by the existing Conditional Use and Entertainment Permits or the ABC Permits for these facilities.

The pilot program, as currently proposed, allows restaurants legally operating until 2:00 a.m. to operate until 3:00 a.m. in a twelve-block area as shown on the attached map. Bars and nightclubs operating legally until 2:00 a.m. are proposed to be allowed to operate until 3:00 a.m., up to 90 minutes after they cease selling alcohol, in an approximately six-block area located within the larger restaurant pilot program area (see attached map). This "soft closing" pilot program is intended to allow patrons to dissipate over a longer period of time and to give bar and nightclub patrons an option of obtaining food and non-alcoholic beverages in nearby restaurants after the service of alcohol ceases. The Police Department has indicated that such a program would entail additional police overtime costs associated with extending the shifts of police personnel assigned to the area to cover the additional hour of club operation. The pilot program will allow an assessment of any additional enforcement costs associated with the extended operation period.

The proposed ordinance provides for a 90-day pilot program but allows the City Council to adopt a resolution to extend the pilot for up to an additional 90 days. Should the Council choose to consider these extended hours on a permanent basis, the additional period would allow extension of the program so that businesses wishing to formally extend their hours after the expiration of the pilot program could apply for required amendments to their existing permits if they wish to do so, all without a break in continuity of the pilot program. If the Council does not adopt a resolution extending the program, the pilot program would end after 90 days.

PUBLIC OUTREACH

Notice regarding the proposed ordinance is being published in the Mercury News, mailed to owners and tenants of property located within the pilot program area and within 500 feet of its perimeter, emailed to the Downtown Association and the Chamber of Commerce and posted on the City's website. Staff is available to respond to questions from the public.

PLANNING COMMISSION

June 4, 2007

Subject: Extended Hours of Operation Downtown Pilot Program

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CEQA

The proposed ordinance is exempt pursuant to CEQA Guidelines Section 15061(b)(3). It can be seen with certainty that there is no possibility that this ordinance would have a significant effect on the environment in that the project consists of a short-term pilot program for a limited area, is designed to test whether extended operating hours offer benefits in terms of crowd control and security and will be closely monitored by the Police Department.

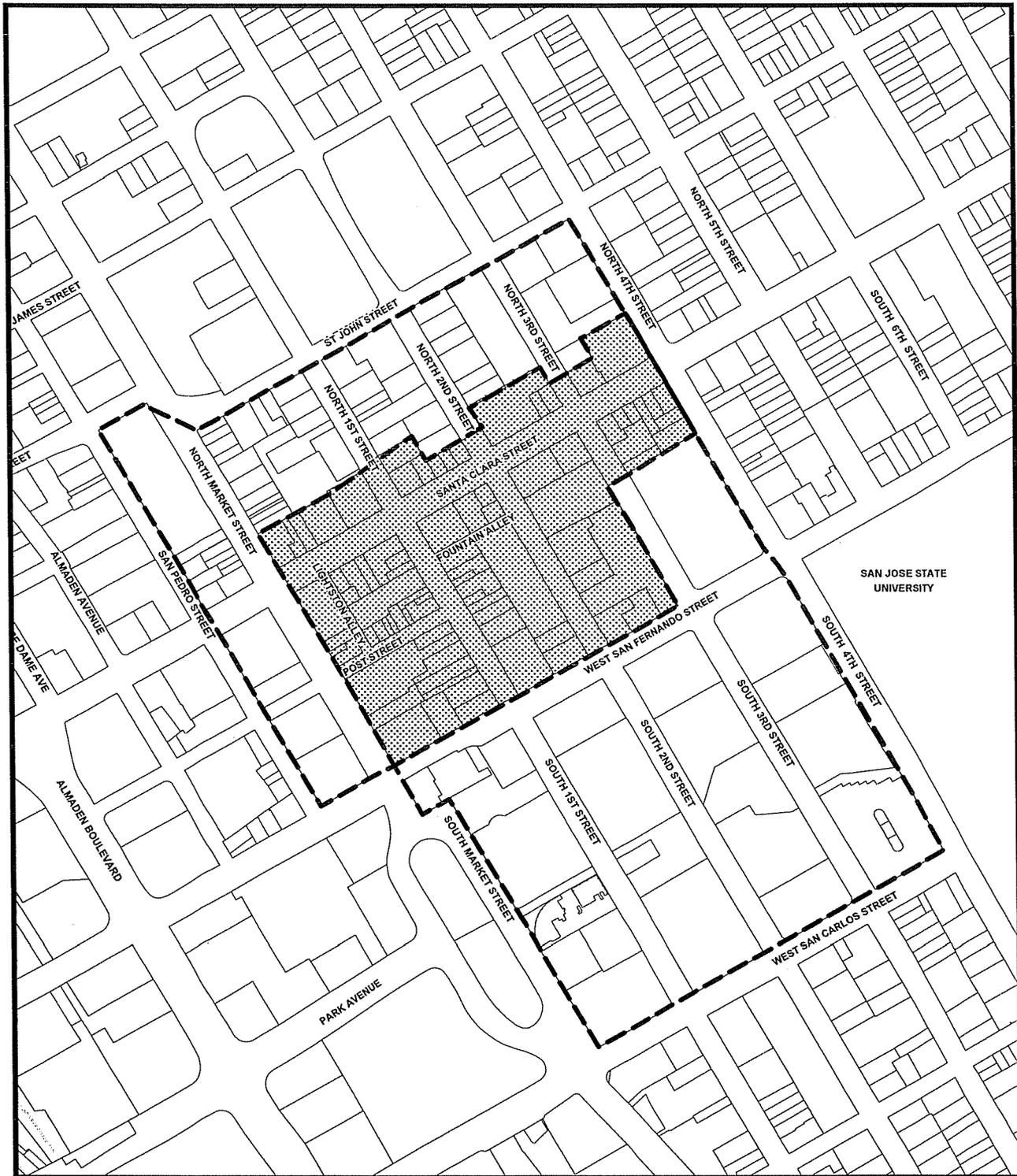
COORDINATION

This project was coordinated with the Police Department, the Redevelopment Agency, the Office of Economic Development and the City Attorney.


for JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Carol Hamilton at 408-535-7837.

Restaurant, Bar and Nightclub Soft Closing Pilot Program Area



Scale: 1" = 500'
Created on 5/29/07



Pilot Program Area for Restaurants



Pilot Program Area for Restaurants,
Bars and Nightclubs



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: May 31, 2007

Approved

Paul Kuntz

Date

6/4/07

COUNCIL DISTRICT: 3
SNI AREA: N/A

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSÉ ESTABLISHING A LIMITED PILOT PROGRAM TO ALLOW CERTAIN RESTAURANTS, BARS AND NIGHTCLUBS LOCATED IN AN AREA GENERALLY BOUNDED BY ST. JOHN STREET, 4TH STREET, SAN CARLOS STREET, MARKET STREET, SAN FERNANDO STREET AND SAN PEDRO STREET, AS MORE PRECISELY DESCRIBED ON THE PILOT PROGRAM AREA MAP, TO REMAIN OPEN UNTIL 3:00 A.M. FOR A PERIOD OF UP TO 180 DAYS.

RECOMMENDATION

Staff recommends that the City Council approve the proposed ordinance to establish a limited pilot program to allow restaurants, bars and nightclubs within the specified area to remain open until 3:00 a.m.

OUTCOME

The proposed ordinance would allow restaurants, bars and nightclubs legally operating until 2:00 a.m. within the specified pilot program area to remain open one additional hour, until 3:00 a.m., on any day of the week they are currently legally operating until 2:00 a.m., for a 90-180 day pilot program.

BACKGROUND

On March 15, 2007 the Downtown Working Group (DWG) provided the Public Safety, Finance and Strategic Support Committee (PSFSS) with a report containing proposals to improve the nightlife experience in downtown San Jose for residents, business owners and visitors. The proposals included a recommendation for a 90-day pilot program to extend the operating hours of Downtown bars and nightclubs already legally operating until 2:00 a.m. by one hour. On March 27, 2007 the City Council considered the DWG report and directed staff to return within 60 days with recommendations addressing the DWG proposals.

May 31, 2007

Subject: "Soft Closing" Pilot Program

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In response to that direction, staff placed an ordinance on the June 12, 2007 City Council agenda authorizing a pilot program to allow bars and nightclubs, legally operating until 2:00 a.m. on Second Street between San Fernando and Santa Clara Streets and on Santa Clara Street between Market and Fourth Streets, to remain open until 3:00 a.m. for a period of 90 days. After further coordination, staff recommended that consideration of the item be delayed to allow modification of the pilot program to address an expanded area, to include restaurants in the pilot program and to extend the length of the program to a maximum of 180 days. The current ordinance proposal includes these modifications as discussed in the analysis section below.

ANALYSIS

A recent inventory of clubs in the Downtown Entertainment Zone lists 33 clubs with a total capacity of approximately 10,500 people. Liquor licenses issued by the California Department of Alcohol Beverage Control require that bars and nightclubs stop selling alcohol at 2:00 a.m. Conditional Use Permits issued by the City for these uses require the clubs to close by 2:00 a.m. At 2:00 a.m., crowds generated by the simultaneous exodus of club patrons create the potential for large disturbances and place a strain on Police Department staff resources. This ordinance is intended to test changes in the operating hours of bars, nightclubs and restaurants to determine if these pilot regulations are beneficial in regard to crowd control and security in the Downtown.

The pilot program, as currently proposed, allows restaurants legally operating until 2:00 a.m. to operate until 3:00 a.m. in a twelve-block area as shown on the attached map. Bars and nightclubs operating legally until 2:00 a.m. are proposed to be allowed to operate until 3:00 a.m., one hour after they cease selling alcohol, in an approximately six-block area located within the larger restaurant pilot program area (see attached map). This "soft closing" pilot program is intended to allow patrons to dissipate over a longer period of time and to give bar and nightclub patrons an option of obtaining food and non-alcoholic beverages in nearby restaurants after the service of alcohol ceases. The Police Department has indicated that such a program would entail additional police overtime costs associated with extending the shifts of police personnel assigned to the area to cover the additional hour of club operation. The pilot program will allow an assessment of any additional enforcement costs associated with the extended operation period.

The proposed ordinance provides for a 90-day pilot program but allows the City Council to adopt a resolution to extend the pilot for up to an additional 90 days. Should the Council determine to consider these extended hours on a permanent basis, this additional extension period would allow extension of the program so that businesses wishing to formally extend their hours after the expiration of the pilot program could apply for required amendments to their existing permits and approvals or other processes could be put into place to allow those business to apply for extended hours if they wish to do so, all without a break in continuity of the pilot program. If the Council does not adopt a resolution extending the program, the pilot program would end after 90 days.

POLICY ALTERNATIVES

The following alternative action is available to the Council in regard to this item:

Alternative: This alternative consists of applying the pilot program to all restaurants, bars and nightclubs operating legally to 2:00 a.m. in the entire Downtown Core Area.

Pros: This approach would allow testing of the "soft closing" concept within a broader area, providing a more comprehensive evaluation of the benefits and costs of allowing nightclubs and bars legally operating until 2:00 a.m. to remain open one hour past the time they cease selling alcohol.

Cons: The Police Department has indicated that allowing bars and nightclubs in the entire Downtown Core to remain open until 3:00 a.m. would increase the police staffing costs associated with the pilot program.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. Notice regarding the proposed ordinance is being published in the Mercury News, mailed to owners and tenants property located within the pilot program area and within 500 feet of its perimeter, emailed to the Downtown Association and the Chamber of Commerce and posted on the City's website. Staff is available to respond to questions from the public.

COORDINATION

This project was coordinated with the Police Department, the Redevelopment Agency, the Office of Economic Development and the City Attorney.

FISCAL/POLICY ALIGNMENT

Not applicable.

HONORABLE MAYOR AND CITY COUNCIL

May 31, 2007

Subject: "Soft Closing" Pilot Program

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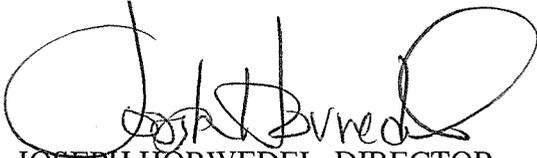
COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

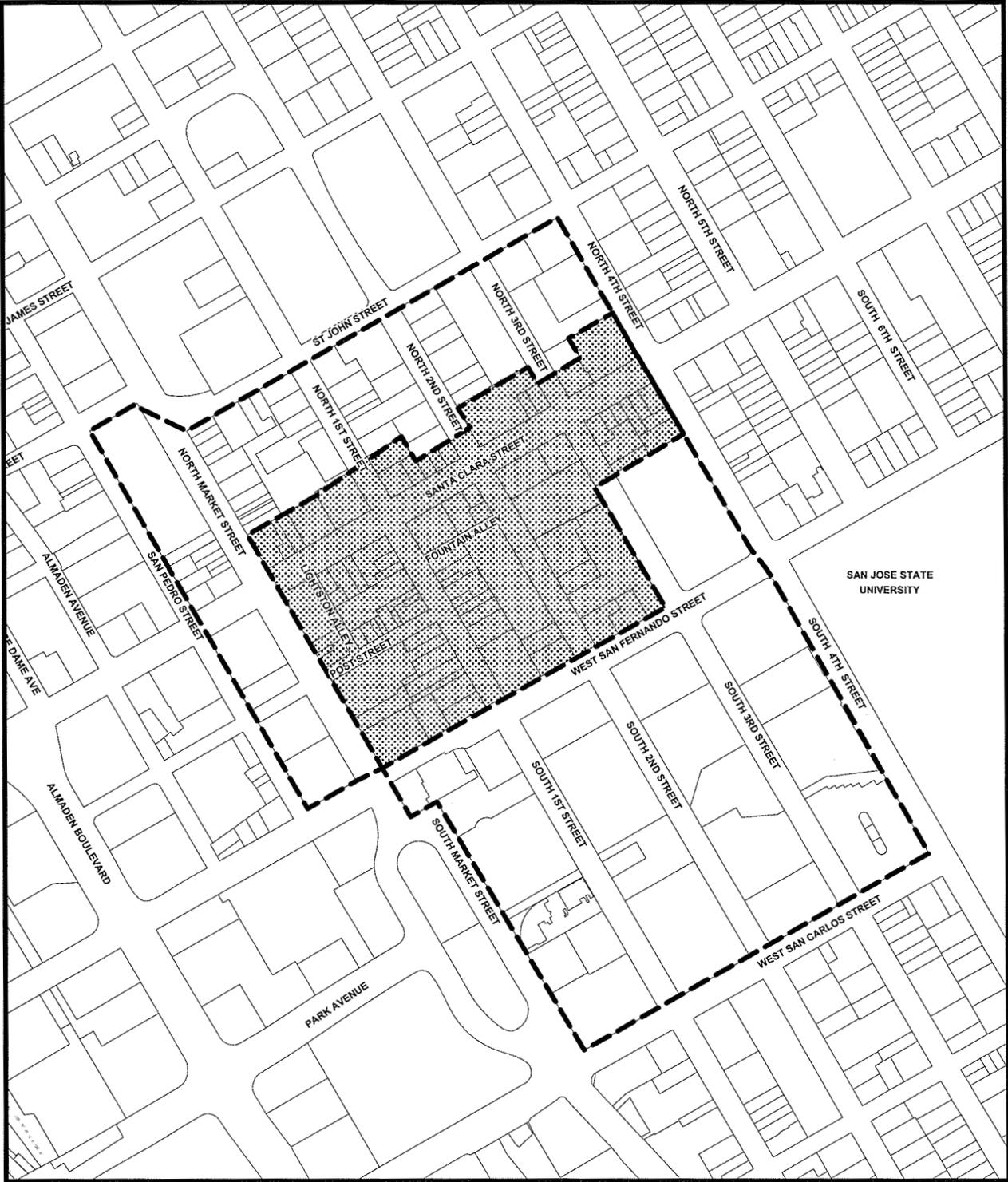
CEQA: Exempt, PP07-117.

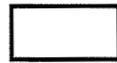
A handwritten signature in black ink, appearing to read "Joseph Horwedel", is written over a printed name.

JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Carol Hamilton at 408-535-7837.

Restaurant, Bar and Nightclub Soft Closing Pilot Program Area



-  Pilot Program Area for Restaurants
-  Pilot Program Area for Restaurants, Bars and Nightclubs

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE ESTABLISHING A LIMITED PILOT PROGRAM TO ALLOW CERTAIN PUBLIC EATING ESTABLISHMENTS, DRINKING ESTABLISHMENTS AND/OR ENTERTAINMENT ESTABLISHMENTS LOCATED IN AN AREA GENERALLY BOUNDED BY SAINT JOHN STREET, 4TH STREET, SAN CARLOS STREET, MARKET STREET, SAN FERNANDO STREET AND SAN PEDRO STREET AND THAT ARE LEGALLY OPERATING UNTIL 2:00 A.M. THE ABILITY TO REMAIN IN OPERATION UNTIL 3:00 A.M. FOR A PERIOD OF UP TO ONE HUNDRED EIGHTY DAYS, ALL AS MORE PARTICULARLY DESCRIBED HEREIN

WHEREAS, on June 4, 2007, the provisions of this Ordinance were found to be categorically exempt from environmental review per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970 and related guidelines promulgated thereunder, all as amended, under File No. PP 07-117.

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

SECTION 1. Definitions

For the purposes of this Ordinance, the following terms shall have the meanings ascribed to each of them as noted hereinbelow.

- A. **Public Eating Establishment Pilot Program Area**. The “Public Eating Establishment Pilot Program Area” shall mean all of those certain real properties that are wholly located within the area bounded by St. John Street, 4th Street, West San Carlos Street, South Market Street, West San Fernando Street, and San Pedro Street, which Public Eating Establishment Pilot Program Area is visually depicted on that certain map entitled “Public Eating Establishment Pilot Program Area” attached hereto as Exhibit “A” and incorporated herein by this

reference.

- B. **Drinking or Entertainment Establishment Pilot Program Area**. The “Drinking or Entertainment Establishment Pilot Program Area” shall mean all of those certain real properties that are wholly located within the area bounded by Santa Clara Street, North 3rd Street, West San Fernando Street, and North Market Street, as well as those properties designated on the County of Santa Clara Assessor Parcel Maps with the following numbers: 259-34-015, 259-34-016, 259-34-017, 259-34-018, 259-34-019, 467-21-004, 467-21-005; 467-21-040; 467-21-027; 467-21-026, 467-21-025, 467-21-024, 467-21-023, 467-21-054, 467-20-072, 467-20-079, 467-23-033, 467-23-034, 467-23-035, 467-23-036, 467-23-037, 467-23-038, 467-23-039, 467-23-088, 467-23-089, 467-23-069, and which Drinking or Entertainment Establishment Pilot Program Area is visually depicted on that certain map entitled “Drinking or Entertainment Establishment Pilot Program Area” attached hereto as Exhibit “B” and incorporated herein by this reference.
- C. **Pilot Program Period**. The “Pilot Program Period” shall mean that duration of time beginning on the effective date of this Ordinance and ending on October 25, 2007 at 3:00 a.m.; provided, however that prior to October 25, 2007 at 3:00 a.m. the City Manager may extend the duration of the Pilot Program Period for a period of up to ninety (90) additional days if the City Manager determines that the extension period is needed or desired in order to gather additional information regarding the effectiveness of the Pilot Program or in order to establish processes through which the Pilot Program could be offered as a more permanent option in a manner that would not interrupt the operations of businesses participating in the Pilot Program. The City Manager shall provide an informational memorandum to the City Council and notices to Public Eating Establishments within the Public Eating Establishment Pilot Program Area and to Drinking Establishments and/or Entertainment Establishments within the Drinking

or Entertainment Establishment Pilot Program Area, all on or before October 25, 2007, if the City Manager determines to extend the Pilot Program as provided herein. The City Manager's memorandum to the City Council shall also set forth the City Manager's reasons for the extension pursuant to the provisions of this Ordinance.

SECTION 2. Extension of Hours

A. All drinking establishments or entertainment establishments operating within the Drinking or Entertainment Establishment Pilot Program Area and all public eating establishments operating with the Public Eating Establishment Pilot Program Area, as each of those terms is defined herein or in Title 20 of the San José Municipal Code, that are legally allowed to operate on certain days until 2:00 a.m. as of the effective date of this Ordinance may operate until 3:00 a.m. on those same days during the Pilot Program Period so long as the establishment meets all of the following criteria:

1. The establishment is at all times operating in full compliance with all federal, state and local laws, written policies, permits and other approvals that are applicable to the establishment, including without limitation all of the following:
 - a. All of the terms and conditions of any development permit issued for the establishment by the City of San José under Title 20 of the San José Municipal Code; and
 - b. All of the terms and conditions of any business license or permit issued for the establishment by the City of San Jose under Title 6 of the San José Municipal Code; and
 - c. All requirements to pay business taxes to the City in accordance with the provisions set forth in Title 4 of the San Jose Municipal Code;

and

- d. The prohibition against the selling, giving, delivering, or purchasing of alcoholic beverages between the hours of 2:00 a.m. and 6:00 a.m. of the same day as described in Section 25631 of the California Business and Professions Code.
- B. No provision of this ordinance shall extend, nor shall be interpreted to extend, the hours during which a business may sell alcoholic beverages pursuant to and in accordance with state and local laws, permits and other approvals applicable to that business.

SECTION 3. Operations After 2:00 A.M.

Any public eating establishment located in the Public Eating Establishment Pilot Program Area and any drinking establishment and/or entertainment establishment located in the Drinking or Entertainment Establishment Pilot Program Area that is qualified to participate in the Pilot Program described in this Ordinance by meeting all of the criteria set forth in this Ordinance and that elects to participate in the Pilot Program during the Pilot Program Period by extending its allowed hours of operations from 2:00 a.m to 3:00 a.m. may participate and engage in all those activities that are otherwise legally allowed during its normal operations from 1:00 a.m. to 2:00 a.m., with the exception of selling, giving, delivering or purchasing alcoholic beverages. As noted in Section 2B above, the selling, giving, delivering, or purchasing of any alcoholic beverage after the hours allowed for that activity by applicable state and local laws, permits and other approvals shall remain and is prohibited.

