



Memorandum

TO: MAYOR AND COUNCIL

FROM: Paul Krutko

SUBJECT: DOWNTOWN STREET VENDOR
ORDINANCE

DATE: March 23, 2009

Approved

Christine J. Shippy

Date

3/30/09

COUNCIL DISTRICT: District 3

RECOMMENDATION

- (a) Approve an ordinance:
- (1) Repealing Chapter 6.30 of Title 6 of the San Jose Municipal Code, the Flower Vendor Ordinance;
 - (2) Amending Chapter 6.54 of Title 6 of the San Jose Municipal Code, the Peddler Permit Ordinance, to: include regulation of flower street vendors; extend the hours during which approved location peddlers can peddle; authorize the City Manager to make and promulgate time, place and manner regulations reasonably necessary to promote economic growth and create a more vibrant Downtown; and update definitions in the Chapter 6.54 to ensure consistency of terms within Title 6 of the San Jose Municipal Code.
- (b) Approve an ordinance amending Chapter 6.55 of Title 6 of the San Jose Municipal Code, the Downtown Special Events Ordinance, to: reduce the area within which approved location peddler permits may be suspended during a designated Downtown Special Event by limiting the suspension area to the Special Event Boundary; authorize approved location peddlers within the Special Event Boundary to peddle at alternative, temporary approved locations outside the Boundary for the duration of the Downtown Special Event; and clarify the exceptions to the requirement for Event Organizers to provide approved location peddlers an equal opportunity to participate in the Downtown Special Event.
- (c) Direction to staff to repeal all fees related to the Flower Vendor Ordinance and the Flower Vendor Permits from the City's Schedule of Fees and Charges, effective June 1, 2009.

OUTCOME

Adopting the proposed ordinances and approving the proposed direction will allow for greater flexibility for approved location peddlers citywide; allow for a specific street peddler program for approved location peddlers in Downtown (the "Downtown Street Vendor Program") that will evolve with a changing Downtown and increase the potential for approved location peddlers to enhance the distinctive quality of Downtown over the long term; and, allow for Flower Vendors to be included in the Peddler Permit Ordinance so that they are subject to the same requirements as all other peddlers, all to promote economic growth and a vibrant Downtown consistent with the City's Downtown Strategy 2000 and the City's General Plan.

BACKGROUND

As more fully explained in staff's April 11, 2008 memo to City Council, different types of peddling is regulated differently throughout the City of San Jose. For example, flower vendors are subject to different requirements than other vendors peddling in the City. In addition "approved location peddlers" (those peddlers who operate from a stationary cart at the same approved location in the City) are often displaced by other vendors during Special Events and are limited to hours of operation that can interfere with their ability to grow as a business. Moreover, the current approach to approved location peddlers (hereafter, "street vendors"), especially those street vendors operating within the Downtown, was created largely in the 1970s, with restrictions that were meant to address issues no longer existing in the City.

On April 29, 2008, following review of the above memo from staff, City Council adopted the recommendations in staff's memo and directed staff to develop an ordinance amending the San Jose Municipal Code so that flower vendors are subject to the same requirements as other peddlers; and, amending the Peddler Permit Ordinance ("Peddler Ordinance") and the Downtown Special Events Ordinance so as to provide for more flexibility and encourage the business of street peddling citywide, and more specifically, in the Downtown—a key component of the Small Wonders Workplan adopted by the City Council in 2007 and 2008.

ANALYSIS

Summary of Proposed Ordinances

The proposed ordinances will repeal the current Flower Vendor Ordinance so that flower vendors are included in the Peddler Permit Ordinance; amend the current Peddler Permit Ordinance to include the basic, broad parameters of the Downtown Street Vendor Program and authorize the City Manager to, by administrative action, promulgate regulations to specify the implementation details for the Downtown Street Vendor Program; and, require that event organizers offer street vendors within a Special Event Boundary the same opportunity as other prospective vendors.

Downtown Street Vendor Program

The proposed two-part approach of the Downtown Street Vendor Program includes program parameters in the ordinance with implementation details in regulations that will provide flexibility to allow for the evolvement of implementation as necessary based on the “on-the-ground experience” with the street vendors participating in the program.

The table below summarizes the main changes brought about by the part of the proposed ordinance that deals with the Downtown Street Vendor Program and summarizes the main provisions of the regulations that staff would recommend the City Manager establish. This is consistent with policy direction provided by Council on April 4, 2008. The Downtown Street Vendor Program Area can be found in attachment A to this memorandum.

Main Changes to Ordinances and Regulations

	Current Ordinance	New Ordinance/Regulations
Policy Structure	Program governed by citywide approved-location peddler Ordinance	Ordinance outlines broad elements of Downtown Street Vendor Program; City Manager authorized to promulgate new regulations outlining specific requirements
Vendor hours	10:00 a.m. to 7:00 pm or 30 minutes after sunset	Downtown Street Vendor Program - Conform to retail hours: 6:00 a.m.-midnight; Citywide peddlers can start at 6:00 a.m., but maintain closing time of 7:00p.m. or 30 minutes after sunset
Cart Size/Footprint	Specifies maximum cart size	Downtown Street Vendor Program – Regulations will provide flexibility by specifying overall footprint up to 100 sf; retains maximum cart height (10’)
Minimum Days of Operation	None specified	Downtown Street Vendor Program - Required to vend for not less than 15 hours per week, and not less than 3 days per week
Flower Vendors	Permitting authority lies with Finance Department	Citywide – Police Department will have permitting authority for flower vendors citywide; flower vendors included in the Downtown Street Vendor Program
During Special Events	Allows suspension of approved location peddler permits within extensive “Special Event Zones” during designated outdoor special events.	The boundary for a declared Downtown Special Event is the more narrowly defined and event-specific Special Event Boundary, eliminating the need to use “zones”. Allows suspension of street vendor permits within the Special Event Boundary only. Displaced street vendors may relocate during the Downtown Special Event to a location outside the Special Event Boundary. The alternative location will be identified as part of the permit.

Treatment of Flower Vendors

While reviewing the Peddler Permit Ordinance, one issue identified was the presence of an entirely different Chapter within Title 6 of the San Jose Municipal Code that was in place to regulate street vendors that were selling flowers. Instead of having a different process for flower vendors, staff thought it more efficient to repeal the Flower Vendor Ordinance so that flower vendors would not be subject to different regulations than other types of peddlers, which would result in less confusion with street vendors. Therefore, staff will be eliminating the fees associated with the Flower Vendor Permit. In lieu of Flower Vendor fees the City will require use of the Peddler Vendor Permit fees. The changes are outlined below:

Fee Changes

	Eliminated Flower Vendor Permit	Peddler Permit Ordinance
Initial Permit Fee	\$309	\$385
Renewal	\$207	\$137
Identification Card	\$41	\$41
Transfer Fee	\$212	none

Treatment of Approved Location Vendors During Downtown Special Events

In April 4, 2008, Council approved the staff-recommended policy change to the Downtown Special Events Ordinance to eliminate Special Event Zones and instead utilize a "Special Event Boundary" (geographically narrower than "Special Event Zone" and drawn on a more event-specific basis) to define the area impacted by a declared Downtown Special Event.

The practical effect of the use of Special Event Zones is that street vendors located in such Zones in areas that are near but not part of the Downtown Special Event may be shut down for extended periods of time, especially during the summer festival season. This can significantly impact a street vendor's chance of success over the course of the year.

The proposed ordinances provide that the event organizer must offer street vendors within the Special Event Boundary the same opportunity as other prospective vendors to vend within the event, paying the same charges as other temporary vendors serving the event. Under the proposed ordinances, an impacted street vendor that chooses not to participate in the event or is not selected by the event organizer to participate in the Downtown Special Event would have the opportunity to relocate to a temporary location outside the Special Event Boundary. Similarly, in the special cases where all available space within a Special Event Boundary is required for event equipment or where an event is a private function or the event does not have any vendors, street vendors in the Special Event Boundary would be able to relocate to an alternative location for the special event period. Street vendors whose approved locations are outside of the Special Event

Boundary would be able to remain in operation at those locations and sell their goods to event attendees walking to the event site.

Regulations for Downtown Street Vendor Program

Following adoption of these ordinances, the City Manager will propose regulations to manage the Downtown Street Vendor Program. The regulations will specify details about the time, place, and manner of street vendor activity, providing a means to control factors like waste management, cart size parameters, etc.

These regulations will be subject to a public review process that requires they be posted for thirty (30) days on the City Clerk's website and copies mailed to current holders of street vendor permits in the Downtown. During those thirty days, any member of the public can send comments and concerns about the proposed regulations to the City Manager which the City Manager must consider before adopting the proposed regulations as final. After consideration of all comments and concerns, the City Manager must issue the final regulations along with an explanation for the regulations.

EVALUATION AND FOLLOW-UP

Staff will report implementation progress on the Downtown Street Vendor Program as part of twice-yearly reports about the Small Wonders Work Plan to the Community and Economic Development Committee.

Staff will conduct a specific assessment after one year of the impact of the changed treatment of street vendors during special events on the Downtown events and on the street vendors and report to the Community and Economic Development Committee.

Staff suggests a review of the program after one year, including consideration of organization options for managing and monitoring the program if it is successful and grows.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)
- Criterion 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)**
- Criterion 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

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a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

In developing the recommendation approved by Council in April 2008, staff interacted with several of the main event producers who currently request suspension of permits held by street vendors during Downtown Special Events, regarding the changed treatment of street vendors during special events. This included notification and consultation by email, as well as a group discussion after the Community and Economic Development Committee meeting. Staff has also interacted with the existing Downtown street vendors to understand their concerns.

Staff has worked with the San Jose Downtown Association (SJDA) to develop the following outreach strategy:

1. A summary of the Downtown Street Vendor Program changes and improvements will be included in the SJDA newsletter with regular reminders following (similar to other programs like the Facade Improvement, Sidewalk Cafe and Sign Grant programs).
2. Information about the Downtown Street Vendor Program will be posted on the SJDA website and available through SJDA front desk and outreach staff.
3. SJDA will send information about the Downtown Street Vendor Program via email to each neighborhood committee (SoFA, San Pedro and Historic Districts plus other smaller business districts – Paseo de San Antonio, San Carlos Street and River Street) and announce it verbally at neighborhood committee meetings.

COORDINATION

This memo has been coordinated with the City Attorney's Office, the Office of Economic Development/Cultural Affairs, the San Jose Redevelopment Agency (SJRA), the Department of Planning, Building and Code Enforcement (Planning), the Police Department, and Finance. The Departments of Transportation, Public Works, Environmental Services, and Fire were also consulted and provided input.

FISCAL/POLICY ALIGNMENT

These actions further the implementation of the Downtown 2000 Plan and the Economic Development Strategy (Initiative #4: Evolve and Position Downtown as a Unique Creative and Cultural Center of Silicon Valley.)

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COST SUMMARY

The changes that will occur as a result of the amendments to the San Jose Municipal Code, specifically, the Peddler Permit Ordinance, will result in minor changes to the fees charged to Flower Vendors for new approved locations, as well as for annual renewals of the peddler permit. These changes will not result in a significant increase or decrease in revenue for remaining street vendors. Additionally, these changes will result in streamlined permitting processes, which may encourage additional street vendor locations.

CEQA

Downtown Strategy 2000 EIR, Resolution No. 72767



PAUL KRUTKO
Chief Development Officer

For questions please contact KIM WALES, CHIEF STRATEGIST, 408-535-8177.

Attachment A: Downtown Vendor Program Area

Attachment A

