

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: April 27, 2009

COUNCIL DISTRICT: City-Wide
SNI AREA: N/A

SUBJECT

An Ordinance of the City of San José amending sections 20.40.100, 20.50.100, 20.90.060; adding a new Part 13.5 to Chapter 20.80; and adding a new section 20.200.995 of Title 20 of the San José Municipal Code to provide for the appropriate location of relocated cardrooms.

RECOMMENDATION

The Planning Commission voted 5-0-2, with Commissioners Jensen and Cahan absent, to recommend that the City Council approve the staff recommendation for a proposed ordinance amending Title 20 of the San José Municipal Code, the Zoning Code, to amend Section 20.40.100 of Chapter 20.40 to allow the relocation of cardrooms subject to a conditional use permit in the CG Commercial General Zoning Districts,

BACKGROUND

Staff gave a brief presentation regarding the settlement of litigation with the cardrooms, which included the consideration of the proposed ordinance for adoption. A copy of one piece of public correspondence was distributed to the Commissioners and is attached. There was no public testimony at the hearing on the proposed amendments.

Commissioner Do asked how the proposed minimum distance between the cardrooms of 500 feet was determined, and expressed that a greater distance might be appropriate. Sr. Deputy Attorney Renee Gurza explained that the distance requirement was meant to keep the cardrooms from being directly adjacent and to avoid the creation of a cardroom "district," and that various distances had been considered. Commissioner Platten commented that the City's goal was not to distribute cardrooms widely, and that 500 feet was an appropriate distance. He then asked whether the cardroom relocation procedures set forth in the proposed ordinance were in complete conformance with the settlement negotiations that took place with Ret'd. Justice Panelli, and Chief Trial Attorney Nora Frimann confirmed that they were.

April 27, 2009

Subject: Cardroom Relocation Ordinance

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ANALYSIS

The memoranda from the City Attorney to the Planning Commission, dated April 13, 2009, and to the City Council relative to the approval of the underlying settlement agreement with the cardrooms, dated March 10, 2009, (both of which are attached), include a complete analysis of the proposed ordinance and underlying litigation with the cardrooms.

EVALUATION AND FOLLOW-UP

This ordinance is a follow-up item identified in the cardroom settlement agreement. Under the proposed ordinance, a separate Conditional Use Permit, or in some cases, a Planned Development Permit would be required for any proposal to relocate an existing cardroom, at which time the conformance of the proposed relocation site would be evaluated against the criteria in the proposed ordinance.

POLICY ALTERNATIVES

The attached memorandum from the City Attorney to the Planning Commission, dated April 13, 2009, includes an analysis of the policy considerations for the City Council with regard to the proposed ordinance.

PUBLIC OUTREACH/INTEREST

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

Public outreach for this proposal complies with the City Council's Public Outreach Process. A description of the proposed ordinance was emailed for public comment to a broad list of commercial, industrial and development interests, to neighborhood associations, and was posted on the City's web site. A public hearing notice for the proposed ordinance was published in the Mercury News and distributed by email. The staff report, as well as the hearing notice have been posted on the Department's website. Staff has been available to discuss the proposal with interested members of the public. A written comment on the proposed ordinance submitted by Mr. Szewczyk was distributed to the Planning Commission at the hearing and is attached.

COORDINATION

The proposed ordinance and this report were coordinated with the City Manager's Office, Police Department, Gaming Administrator, and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

The proposed ordinance provides for an appropriate process for relocation of cardrooms in support of the settlement agreement reached with existing cardrooms, which provide significant revenues to the City, which support service delivery.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

Exempt, PP09-041.


for JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions, please contact Richard Doyle at 408- 535-1900.

Attachments

- Correspondence from Terence Szewczyk
- Memorandum to the Planning Commission, dated April 13, 2009
- Memorandum to the City Council, dated March 10, 2009

Stanley, Carmen

From: Hamilton, Carol
Sent: Friday, April 10, 2009 9:03 AM
To: Stanley, Carmen
Cc: Walton, Susan; Frimann, Nora
Subject: FW: City of San Jose Cardroom Relocation Ordinance

Carmen-

Can you make sure the comment below is transmitted to the Planning Commission with Item #3b on the April 22 PC agenda?

Carol Hamilton
Senior Planner
City of San Jose
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
Third Floor Tower
San Jose, CA 95113
Phone: (408) 535-7837
Email: carol.hamilton@sanjoseca.gov

From: Terence J. Szewczyk [mailto:terry@tscivileng.com]
Sent: Thursday, April 09, 2009 9:41 PM
To: Hamilton, Carol
Subject: RE: City of San Jose Cardroom Relocation Ordinance

Hi Carol: Both Garden City and Bay 101 should be closed due to the amount of crime and corruption that they generate. What happened to the public outcry a few years ago?

Thanks, Terry

Terence J. Szewczyk, P.E.
Principal Engineer
TS/Civil Engineering, Inc.
1776 Technology Drive
San Jose, CA 95110
(408) 452-9300 ext 220
(408) 452-9301 fax

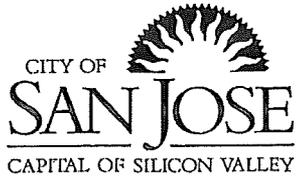
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This correspondence is strictly confidential. Any screening, filtering and/or production for the purpose of public or otherwise disclosure is forbidden without written permission by the author signed above. If you are not the intended recipient, please immediately notify the sender and permanently delete any copies.

From: Hamilton, Carol [mailto:Carol.Hamilton@sanjoseca.gov]
Sent: Thursday, April 09, 2009 5:36 PM
To: Hamilton, Carol
Subject: City of San Jose Cardroom Relocation Ordinance

4/23/2009

The Planning Commission and City Council are scheduled to consider an amendment to the Zoning Ordinance that provides a process for a cardroom that legally exists in the City of San Jose to apply for relocation to another site within the City. The Planning Commission Hearing is scheduled for April 22, 2009 at 6:30 p.m. and the City Council Hearing is scheduled for May 19, 2009 at 7:00 p.m., both in the City Council Chambers at 200 East Santa Clara Street. The public hearing notice and a white paper describing the proposed ordinance are available on our website at <http://www.sanjoseca.gov/planning/zoning/default.asp>. If you have questions regarding this proposed ordinance, please contact **Nora Frimann** at (408) 535-1930 or at nora.frimann@sanjoseca.gov.

Carol Hamilton
Senior Planner
City of San Jose
Department of Planning, Building & Code Enforcement
200 East Santa Clara Street, Third Floor Tower
San Jose, CA 95113
Phone: (408) 535-7837
Email: carol.hamilton@sanjoseca.gov



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: RICHARD DOYLE
City Attorney

SUBJECT: Settlement of Cardroom
Litigation

DATE: March 10, 2009

RECOMMENDATION

It is recommended that the City Council:

- a) Authorize the City Attorney to execute the litigation settlement agreements with Sutter's Place, Inc., dba Bay 101 and Garden City, Inc.
- b) Approve an ordinance revising Title 16 of the San José Municipal Code, Gaming Control Regulatory Program, to clarify and enhance the scope, terms, conditions and procedures of regulations of cardrooms and funding sources, and to make technical changes to the Title.
- c) Adopt a resolution of the Council of the City of San José initiating proceedings on its own motion pursuant to the provisions of Section 20.120.010 of Chapter 20.120 of Title 20 of the San José Municipal Code to amend sections 20.40.100, 20.50.100, 29.90.060, add a new Part 13.5 to Chapter 20.80, and add a new section 20.200.995 of said Title 20 to provide for the appropriate location of relocated cardrooms, setting a public hearing thereon, and referring said proposed Title 20 amendments to the Planning Commission for report or recommendation.
- d) Adopt a resolution amending Resolution No. 72737 (the Schedule of Fees) as amended, to decrease cardroom table fees for Fiscal Year 2008-2009 to \$24,482.00.

OUTCOME

The proposed settlement will result in a dismissal of pending lawsuits challenging certain amendments to Title 16 made in 1999 and the legality of the assessment of table fees through FY 08/09.

BACKGROUND

On November 23, 1999, the San José City Council enacted Title 16 of the San José

Municipal Code entitled "Gaming Control." Title 16 replaced the former cardroom ordinance, Chapter 6.22 of the Municipal Code, under which the City had regulated cardroom operations with various amendments and revisions since the 1960s.

The California Gambling Control Act, enacted in 1997, required localities with existing cardrooms to have in effect by the end of 1999 an ordinance containing specific provisions addressing hours of operation, patron security and safety, the location of cardrooms, wagering limits, and the number of cardroom tables in each cardroom and in the jurisdiction. Without the ordinance, the State would deny State gambling licenses to the existing cardrooms, thereby ending legalized gambling in San José. The Council chose to allow cardrooms to continue to operate in San José by adopting Title 16, which contained the minimum requirements dictated by the Gambling Control Act, as well as changes recommended by a gaming consultant and other provisions directed by Council and the Administration.

The comprehensive system of regulatory controls that the City Council enacted in Title 16 is consistent with the requirements of State law. One provision of the Gambling Control Act, California Business and Professions Code section 19802, authorizes local government to prohibit or regulate gambling activities that are not prohibited or regulated by state law and to impose more stringent local controls or conditions upon cardrooms than are imposed by the Act.

The Litigation

Title 16 contains two provisions that have been the subject of complex ongoing litigation with the cardrooms, involving multiple lawsuits and a lengthy administrative process. The first provision that is the subject of the cardrooms' legal challenges is Section 16.16.010, which prohibits gaming between the hours of 2 and 6 a.m. There was a "phase-in period" to August 31, 2001, before the closure provisions were to go into effect. San José's cardrooms had continuous 24-hour gaming operations when Section 16.16.010 was adopted, so the eventual effect of the provision was to be a new four-hour closure of the gaming operations.

The second provision is Section 16.18.070 which eliminated "back line" betting, a method of betting that is used throughout the state as part of certain games referred to as "California" games. This form of betting allows players at the table and unseated players to place bets on other players' bets. This provision also was subject to a "phase-in period" until August 31, 2001. Section 16.18.080 provided for an extension of the phase-in period if necessary to avoid undue hardship.

In August 2001, the cardrooms each filed and began pursuing hardship petitions claiming that they were unable to comply with Sections 16.16.010 and 16.18.070 without experiencing severe financial impacts to their businesses. Pursuant to the provisions of Title 16, and following a lengthy legal discovery period, hearings on these hardship applications took place before the Hearing Officer, Retired Santa Clara County

Superior Court Judge Reed Ambler. In July 2002, Ret'd. Judge Ambler issued a decision relative to the Bay 101 application, in which he found that Bay 101 had failed to meet the threshold test for a finding of hardship, i.e., to use the 18-month period prior to filing the hardship petition to attempt to operate with the new provisions. He also indicated in the decision that he had concluded that there was not adequate evidence to support Bay 101's position that it would go out of business or suffer severe financial impacts if the provisions of Title 16 went into effect. He issued a similar decision as to Garden City.

Bay 101 sought a stay of this decision from the Superior Court so that it could file a legal challenge. Before it was able to obtain the stay, it had to operate for approximately two weeks with the challenged provisions in effect. Bay 101 closed its gaming operation between 2 and 6 a.m., and backline betting was not allowed. Bay 101 filed for bankruptcy prior to obtaining the stay. Because the Hearing Officer's decision relative to Garden City was not issued until August 13, 2002, Garden City did not operate under the disputed provisions during this time. When the Garden City decision was issued, the City stipulated to the same stay obtained by Bay 101. The stays are still in effect.

Pursuant to a court order, a second administrative hearing occurred before Ret'd. Judge Ambler to consider evidence of the economic impacts on Bay 101, while complying with the disputed provisions for two weeks, relative to the hardship applications of the cardrooms. That hearing was concluded in 2005, and resulted in the issuance of a decision as to each cardroom consistent with the initial decisions finding that the hardship petitions failed because each cardroom had not attempted to phase-in the reduced hours of operation and to eliminate backline betting. However, the Hearing Officer also found that there was clear and convincing evidence that the disputed Title 16 provisions had substantial financial impacts on Bay 101, and would have the same effects on Garden City, if implemented. The cardrooms have claimed in the litigation that this finding by Ret'd. Judge Ambler supports a "takings" claim against the City.

The cardrooms have filed several legal challenges to the enactment of the hours of operation limitation in Title 16, as well as the backline betting provisions. They have also challenged the administrative hearing process, claiming among other things that the requirement that they had to pay the costs of that hearing, including all of the City's costs, was a violation of constitutional due process.

In addition to the various challenges to the hours of operation, backline betting and hardship provisions of Title 16, the cardrooms have also filed lawsuits challenging the table fees that have been assessed over the past several years. The cardrooms pay an annual gross receipts tax of 13%. In addition to this tax, which goes to the general fund, the cardrooms each pay an annual assessment for the costs of gaming administration by the City. The assessment is made on each table in the establishments and is referred to as the "table fees." These fees have risen sharply over the past few years, reflecting the City's efforts to better identify and recoup the costs of gaming oversight,

regulation and enforcement. In April 2002, the City hired a Gaming Administrator who has brought a more active approach to gaming regulation in San José. The cardrooms are challenging the table fee assessments as being an illegal tax, and are claiming that the fees are excessive and not reasonably related to the costs of gaming administration.

The lawsuits that are the subject of this proposed settlement are:

- *Sutter's Place, Inc., dba Bay 101 v. City of San José, et al.*, Santa Clara Superior Court Case No. 1-02-CV-810068
- *Sutter's Place, Inc., dba Bay101 v. City of San José, et al.*, Santa Clara Superior Court Case No. 1-02-CV-812404
- *Frederick S. Wyle, as Trustee of Garden City, Inc., v. City of San José, et al.*, Santa Clara Superior Court Case No. 1-02-CV-795974
- *Frederick S. Wyle, as Trustee of Garden City, Inc., v. City of San José, et al.*, Santa Clara Superior Court Case No. 1-02-CV-810548
- *Sutter's Place, Inc., dba Bay 101 v. City of San José, et al.*, Santa Clara Superior Court Case No. 1-06-CV-065644
- *Garden City, Inc. v. City of San José, et al.*, Santa Clara Superior Court Case No. 1-06-CV-068034

The Settlement

Following the second administrative hearing, during a time when certain issues in the ongoing litigation were on appeal and the cardrooms were each emerging from bankruptcy, the parties began mediation efforts with Retired Justice Edward Panelli. Lengthy negotiations ensued, with the City and the cardrooms exploring various methods of resolving the litigation.

The City's interests in a negotiated settlement included avoiding the risks of litigation, including potential damages and attorneys' fees claims if the cardrooms were successful in establishing that the challenged provisions of Title 16, if enforced, would result in a "taking" of their businesses. The City was very interested in developing and enacting an enforcement process for minor violations of Title 16, and in obtaining funding for social programs to assist in addressing perceived and real community impacts from gaming. The City also was interested in obtaining a dismissal of the table fees litigation, with an opportunity to review how the fees are assessed and options to ensure that the work of the Gaming Administrator is adequately funded and that the costs of cardroom regulation are recovered. Lastly, the City was interested in changes to Title 16 that would allow for more effective regulation.

The City understood that the cardrooms' interests in the negotiations included continuing backline betting in their establishments and 24-hour gaming operations, based on their allegations that both of these provisions were necessary to the financial viability of their businesses. They had argued in the administrative proceedings that the

four-hour closure, which was adopted in 1999 in part to address concerns about problem gamblers, did not have that effect. An alternative was developed that would prohibit individuals from patronizing the cardrooms for more than 20 consecutive hours without a four-hour break away from the cardrooms. This change is a way to provide a "cooling off period" in a manner that is focused on individuals. Finally, because both of the cardrooms are located on leased land, the City understood that they were interested in a change to Section 16.30.050 which allowed relocation only if the City were to commence a condemnation action.

ANALYSIS

The proposed settlement has several components. The proposed amendments to Title 16 reflect a number of changes that the City has wanted to make for several years to address issues that have arisen in connection with the application and enforcement of Title 16. The amendments include greater regulatory oversight of independent contractors, vendors, third party proposition players and funding sources. Provisions to streamline certain enforcement procedures, license and permit renewals, and the issuance of temporary licenses and permits are also included.

The proposed Title 16 changes that would allow backline betting reflect the Gaming Administrator's confidence that the revised provisions of the Municipal Code, along with regulations that he has and can promulgate, provide him with the tools necessary to ensure adequate and appropriate regulation of the games generally and backline betting in particular. These provisions include a prohibition on the "stacking" of bets, and the use of cameras to monitor operations to help ensure a fair and safe gaming environment. The proposed change from a four-hour nightly closure to a prohibition against individuals patronizing the cardrooms for more than 20 hours at a time, addresses the public policy concerns underlying the closure, yet allows the cardrooms to avoid what they assert is certain insolvency stemming from a closure or the elimination of backline betting.

The settlement eliminates the risks of the subject litigation, including the significant claims for damages and fees sought by the cardrooms in connection with the adoption of the two disputed provisions of Title 16. A settlement has real value to the City, in part because a judgment against the City would be paid out of the general fund, and in part because the gross receipts tax on the cardrooms represents in excess of \$10 million per year to the general fund. Continuing the litigation also involves substantial expenses, such as expert fees, and demands on staff resources both in the Attorney's and Gaming Administrator's offices, as well as other departments. Additionally, the cardrooms provide employment for hundreds of people in the City.

The proposed changes to Title 20 to allow relocation of the cardrooms pursuant to certain zoning and other land use restrictions attempt to balance the cardrooms' interests in the option to relocate and the City's interest in strictly regulating the location of cardrooms in the City. The existing language in Title 16 precluding relocation except

in the context of a condemnation action was potentially subject to legal challenge. The referral of the proposed Title 20 changes to the Planning Commission for consideration follows the City's process for review of potential zoning code revisions.

The settlement agreement also provides for the payment by the cardrooms of \$500,000 each for three years, FYs 09/10 through 11/12, to charitable organizations identified through the Council's Healthy Neighborhoods Committee, (or successor or similar committee of the Council) that address some of the social problems associated with gambling. The payments are to be made by the cardrooms directly to the organizations identified by the City. After FY 11/12, the amount of the required contribution decreases to a percentage of the current cardroom EBITDA (an accounting term referring to earnings before interest, taxes, depreciation, and amortization) that represents half of the \$500,000 or approximately \$250,000 for each cardroom. Because that amount is tied to EBITDA, the amount can fluctuate annually depending on the cardroom's revenues and profitability, among other accounting considerations. Minimally, the cardrooms each will be required to contribute \$125,000 if the specified percentage of EBITDA is less than that amount in any given year.

In exchange for a dismissal of the table fees cases, the City will agree to assess the table fees for this fiscal year at the same amount as last year, \$24,482. In addition, the City will review the process of estimating and assessing the costs to the City of gaming regulation and oversight, and will study various methods of cost recovery including direct fees for specific services such as licensing and permitting. The City will also provide information to the cardrooms on an annual basis showing how the fees were spent.

The proposed settlements provide that the parties will each be responsible for their own costs of litigation. The cardrooms are waiving all claims to recover the costs incurred in the administrative process and all other damages claims.

PUBLIC OUTREACH/INTEREST

This memorandum, settlement agreements, proposed ordinances and resolution will be posted on the City's website for the March 24, 2009, agenda. This memo was included in the Early Distribution Council packet.

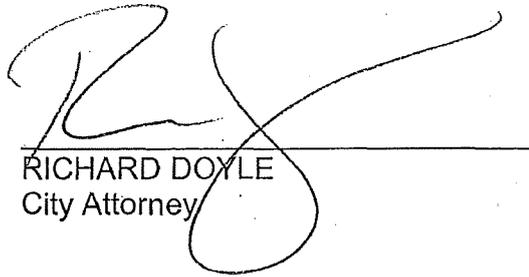
HONORABLE MAYOR AND CITY COUNCIL
March 10, 2009
Subject: Settlement of Cardroom Litigation
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COORDINATION

This settlement has been coordinated with the City Manager's Office, the Police Department, the Finance Department, Planning, Building and Code Enforcement, and the Gaming Administrator.

CEQA

Not a Project.



RICHARD DOYLE
City Attorney

cc: Debra Figone, City Manager

For questions please contact RICHARD DOYLE, City Attorney, at (408) 535-1900.



Memorandum

TO: PLANNING COMMISSION

FROM: RICHARD DOYLE
City Attorney

SUBJECT: See Below

DATE: April 13, 2009

SUBJECT: An Ordinance of the City of San Jose amending Sections 20.40.100, 20.50.100, and 20.90.060; adding a new Part 13.5 to Chapter 20.80; and adding a new section 20.200.995, all to Title 20 of the San Jose Municipal Code to provide for the appropriate location of relocated cardrooms

RECOMMENDATION

It is recommended that the Planning Commission recommend that the City Council approve the proposed ordinance to amend Title 20 (the City's Zoning Code) regulations to provide appropriate criteria and conditions for the relocation of existing cardrooms in the City.

OUTCOME

The proposed ordinance would establish regulations in the City's Zoning Code under which existing cardrooms located in the City could apply for relocation in San Jose. This proposal is being brought forward for consideration pursuant to a settlement of litigation approved by the City Council on March 24, 2009.

BACKGROUND

On November 23, 1999, the San José City Council enacted Title 16 of the San José Municipal Code entitled "Gaming Control." Title 16 replaced the former cardroom ordinance, Chapter 6.22 of the Municipal Code, under which the City had regulated cardroom operations with various amendments and revisions since the 1960s. The two cardrooms located in San Jose filed lawsuits to challenge two particular provisions of the Title 16 amendments, as well as other suits challenging other regulatory actions and fees. During a time when certain issues in the ongoing litigation were on appeal and the cardrooms were each emerging from bankruptcy, the parties began mediation efforts with Retired Justice Edward Panelli. Lengthy negotiations ensued, with the City and the cardrooms exploring various methods of resolving the litigation.

Because both of the cardrooms are located on leased land, the City understood that they were interested in a change to Municipal Code Section 16.30.050 which allowed

them to relocate only if the City were to commence a condemnation action. As part of the settlement of several lawsuits, the City agreed to consider amending that section of Title 16 to allow for relocation of the cardrooms within the City. The City Council approved the settlement, and adopted the proposed change to Title 16 allowing for the relocation. At the same time, the Council adopted a resolution initiating proceedings on its own motion, pursuant to provisions of the City's Zoning Code, to amend the Zoning Code in order to provide for the appropriate location of relocated cardrooms in the City. As a part of that resolution, the City Council also referred the proposed Zoning Code amendments to the Planning Commission for the Commission's report or recommendation.

The proposed amendments to Title 20 that are the subject of this memo were attached to the settlement agreements approved by the City Council on March 24, 2009 and were drafted by City staff, and reviewed with principals and counsel for the two cardrooms. The settlement agreements provide that the City is to consider the proposed amendments as drafted, and that each party has the right to withdraw from the settlement agreements if the terms of amendments are not adopted as proposed.

ANALYSIS

The proposed changes to Title 20 to allow relocation of the cardrooms pursuant to certain zoning and other land use restrictions attempt to balance the cardrooms' interests in having the option to relocate within the City, and the City's interest in strictly regulating the location of cardrooms in the City. The referral of the proposed Title 20 changes to the Planning Commission for consideration follows the City's process for review of potential zoning code revisions.

A summary of the proposed Zoning Code changes are as follows:

Zoning Districts. In order to be eligible for relocation within the City, a cardroom must be legally operating in the City of San Jose. Cardrooms will be able to apply for relocation to sites located in the CG – Commercial General zoning district, or the Mixed Industrial Overlay in the IP- Industrial Park, LI – Light Industrial, or HI – Heavy Industrial zoning districts. Cardrooms also could apply for relocation to a site with a Planned Development zoning district that allowed for such uses. Cardrooms would first need to obtain a conditional use permit in order to relocate to a site in a commercial or industrial zoning district or a planned development permit in order to relocated to a site in a planned development zoning district.

Criteria. Under the proposed ordinance, no conditional use permit could be issued for a Relocated Cardroom unless all of the criteria set forth in the proposed Ordinance are met. Some of the criteria are as follows:

1. The parcel to which a Relocated Cardroom proposes to relocate could not be located closer than one hundred fifty (150) feet from a parcel in a

residential district or R-MH Mobilehome Park District, nor closer than five hundred (500) feet from any school, college, university, or hospital, nor closer than five hundred (500) feet from another cardroom use.

2. The parcel to which a Relocated Cardroom proposes to relocate would have to meet applicable requirements of federal, state or local law, regulation, license or other approval.
3. In addition to the findings required for the issuance of a conditional use permit or a planned development permit set forth elsewhere in the Zoning Code, no conditional use permit or planned development permit for a Relocated Cardroom could be issued unless all of following additional findings are made:
 - a. The granting of the development permit would not violate any City, State or Federal law, regulation or written policy; and
 - b. The existing operations of the cardroom are in full compliance with all City laws, regulations, permits, approvals and written policies applicable to that existing cardroom; but a determination of compliance with Title 16 of the Municipal Code would be limited to a determination that the existing cardroom possesses a current and valid Cardroom Permit under Title 16; and
 - c. The granting of the development permit would not violate any court order; and
 - d. The location to which the Relocated Cardroom proposes to relocate meets the criteria set forth in the proposed Ordinance.
4. No conditional use permit or planned development permit issued to a Relocated Cardroom would impose restrictions or conditions upon a Relocated Cardroom for reasons that are based upon the regulatory authorities and concerns addressed by Title 16 of this Code and that have no articulated land use implication, basis or impact.
5. The proposed ordinance would provide for a rebuttable presumption that a Relocated Cardroom holding a current and valid Cardroom Permit issued pursuant to the provisions of Title 16 of the Municipal Code would not, solely due to its status as a cardroom use, adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area, nor impair the value of property of others located in the vicinity of the site, nor be detrimental to public health, safety or welfare. This provision would not preclude a decision maker for a development permit or approval

from making such a finding on grounds unrelated to the mere status of the Relocated Cardroom use as a cardroom use.

The land use issues associated with cardrooms are similar in some respect to nightclubs and adult entertainment uses. The proposed zoning amendments all for cardroom relocations in one commercial zoning district, in a Planned Development District that specifically allows cardrooms, and on a limited basis in the Industrial Zoning Districts. The criteria provide rigorous separation from properties with residential and school uses to protect sensitive uses from potential impacts. The CUP requirement provides for a public process with full opportunity for public input to the Planning Commission, and on appeal, to the City Council. The CUP also allows conditions to be placed on the operation of a relocated cardroom establishment to mitigate potential land use impacts, although under Title 16, a cardroom would have to be allowed to operate 24 hours per day. The impacts of that requirement can be considered in connection with a proposed relocation however. These provisions ensure that a potential relocation of a cardroom will undergo an open public process, and will be subject to appropriate locational criteria and permit conditions to ensure that the facility is compatible with surrounding uses.

The purpose of the rebuttable presumption is to ensure that Title 20 will not be used in conflict with Title 16 because Title 16 allows for cardrooms to be licensed by, and to operate in, the City of San José. A proposal to relocate a licensed cardroom should be considered under Title 20 based on the normal land use principles employed by the staff and Commission. A denial of a permit would need to be based on identified land use issues and considerations.

Parking Requirement: The parking requirement for a Relocated Cardroom under the proposed Ordinance would be one (1) parking space per 40 sq. ft. of area devoted to card games.

PUBLIC OUTREACH/INTEREST

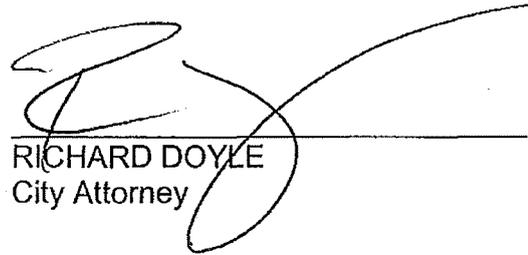
Public outreach for this proposal complies with the City Council's Public Outreach Process. A description of the proposed ordinance was emailed for public comment to a broad list of commercial, industrial and development interests and to neighborhood associations and was posted on the City's web site. A public hearing notice for the proposed ordinance was published in the Mercury News and distributed by email. The staff report, as well as the hearing notice have been posted on the Department's website. Staff has been available to discuss the proposal with interested members of the public.

COORDINATION

These proposed amendments have been coordinated with the City Manager's Office, the Gaming Administrator, the Police Department and the City Attorney's Office.

CEQA

We based the exemption on Section 15061(b)(3), which states that if it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, then the activity is not subject to CEQA. We have the CUP process and additional CEQA review to ensure that the project does not result in a significant impact. Alternatively, we could use the GP 2020 Program EIR, which is appropriately detailed for this level of action.



RICHARD DOYLE
City Attorney

cc: Debra Figone, City Manager
Joe Horwedel, Director, PBCE

For questions, please contact Richard Doyle, City Attorney, at (408) 535-1900.

RESOLUTION NO _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE INITIATING PROCEEDINGS ON ITS OWN MOTION TO AMEND SECTION 20.40.100 OF CHAPTER 20.40, SECTION 20.50.100 OF CHAPTER 20.50, AND SECTION 20.90.060 OF CHAPTER 20.90, AND ADDING A NEW PART 13.5 TO CHAPTER 20.80 AND A NEW SECTION 20.200.995 TO CHAPTER 20.200, ALL OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE (THE ZONING CODE), TO ESTABLISH LAND USE REGULATIONS FOR RELOCATED CARDROOMS

BE IT RESOLVED by the Council of the City of San Jose:

SECTION 1. Pursuant to the provisions of Chapter 20.120 of Title 20 of the San Jose Municipal Code, the Council of the City of San Jose, on its own motion, does hereby initiate proceedings to adopt that certain proposed ordinance entitled, "AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 20.40.100 OF CHAPTER 20.40, SECTION 20.50.100 OF CHAPTER 20.50, AND SECTION 20.90.060 OF CHAPTER 20.90, AND ADDING A NEW PART 13.5 TO CHAPTER 20.80 AND A NEW SECTION 20.200.995 TO CHAPTER 20.200, ALL OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE (THE ZONING CODE), TO ESTABLISH LAND USE REGULATIONS FOR RELOCATED CARDROOMS," a draft version of which is attached hereto, and said ordinance being incorporated herein by reference as if the same was fully set forth herein.

SECTION 2. The above-mentioned ordinance is hereby referred to the Planning Commission for its report and comments, and the City Clerk is hereby directed to send a copy of this resolution to said Planning Commission.

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 20.40.100 OF CHAPTER 20.40, SECTION 20.50.100 OF CHAPTER 20.50, AND SECTION 20.90.060 OF CHAPTER 20.90, AND ADDING A NEW PART 13.5 TO CHAPTER 20.80 AND A NEW SECTION 20.200.995 TO CHAPTER 20.200, ALL OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE (THE ZONING CODE), TO ESTABLISH LAND USE REGULATIONS FOR RELOCATED CARDROOMS

WHEREAS, this ordinance has been determined by the Director of Planning, Building and Code Enforcement to be exempt from environmental review under the provisions of the California Environmental Quality Act of 1970, together with state guidelines promulgated thereunder and the provisions of Title 21 of the San José Municipal Code, all as amended to date (collectively, "CEQA"), and specifically under Section _____ of the CEQA guidelines as set forth in File No. _____, which CEQA determination has not been challenged, protested or appealed; and

WHEREAS, the City Council of the City of San José is the decision-making body for this ordinance; and

WHEREAS, this Council of the City of San José has read, considered and approves said CEQA determination prior to taking any approval actions on this ordinance.

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

SECTION 1. Section 20.40.100 of Chapter 20.40 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.40.100 Allowed Uses and Permit Requirements

- A. "Permitted" land uses are indicated by a "P" on Table 20-90.
- B. "Conditional" uses are indicated by a "C" on Table 20-90. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Conditional Use Permit as set forth in Chapter 20.100.
- C. "Special" uses are indicated by a "S" on Table 20-90. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Special Use Permit as set forth in Chapter 20.100.
- D. "Administrative" uses are indicated by an "A" on Table 20-90. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with an Administrative Permit as set forth in Chapter 20.100.
- E. Land uses not Permitted are indicated by a "-" on Table 20-90. Land uses not listed on Table 20-90 are not Permitted.
- F. When the right column of Table 20-90 includes a reference to a Section number or a footnote, the regulations cited in the Section number or footnote apply to the use. In addition, all uses are subject to any other applicable provision of this Title 20 and any other Title of the San Jose Municipal Code.

Table 20-90 Commercial Districts Land Use Regulations					
Use	Zoning District				Notes & Sections
	CO	CP	CN	CG	
General Retail					
Retail sales, goods and merchandise	-	P	P	P	
Alcohol, off-site sales – beer and/or wine only	-	C	C	C	Section 20.80.900
Alcohol, off-site sales, full range of alcoholic beverages	-	C	C	C	Section 20.80.900
Bakery, retail	-	P	P	P	
Food, beverage, groceries	-	P	P	P	
Nursery, plant	-	P	P	P	Note 1
Outdoor vending	-	A	A	A	Part 10, Chapter 20.80
Pawn shop/broker	-	C	C	C	See Title 6
Seasonal sales					Part 14, Chapter 20.80
Retail Art Studio	-	P	P	P	Section 20.40.140
Education and Training					

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Table 20-90 Commercial Districts Land Use Regulations					
Use	Zoning District				Notes & Sections
	CO	CP	CN	CG	
Child daycare center located on an existing school site or as an incident to an on-site Church/Religious Assembly use involving no building additions or changes to the site	P	P	P	P	
Day care center	C	C	C	C	
Instructional art studios	-	P	P	P	
Instructional art studios, with live models	-	C	C	C	
Private Instruction, personal enrichment	-	P	P	P	
School- elementary and secondary (Public)	P	P	P	P	
School- elementary and secondary (Private)	-	C	C	C	
School, driving (class C & M license)	-	P	P	P	Note 2
School, post secondary	-	P	P	P	Note 3
School, trade and vocational	-	C	C	C	
Entertainment and Recreation Related					
Arcade, amusement	-	C	C	C	
Dancehall	-	C	C	C	
Entertainment	-	C	C	C	
Poolroom/Billiards Establishment	-	C	C	C	
Private club or lodge	C	C	C	C	
Recreation, Commercial (Indoor)	-	P	P	P	
Recreation, Commercial (outdoor)	-	C	C	C	
Relocated Cardroom	-	-	-	C	Section 20.80.1155
Theatre, indoor	-	C	C	C	
Theatre, outdoor	-	-	-	C	
Food Services					
Banquet facility	-	C	C	C	
Caterer	-	P	P	P	Note 4
Drinking establishments	-	C	C	C	
Public eating establishments	-	P	P	P	
Outdoor dining, incidental to a public eating establishment or a retail establishment	-	P	P	P	Section 20.40.520
Wineries, Breweries	-	C	C	C	
Health and Veterinary Services					
Animal boarding, Indoor	-	P	P	P	Section 20.40.120
Animal grooming	-	P	P	P	Section 20.40.120
Emergency ambulance service	C	C	C	C	
Hospital/ In-patient facility	C	C	C	C	
Medical clinic/ out-patient facility	P	P	P	P	
Office, medical	P	P	P	P	
Veterinary clinic	-	P	P	P	
General Services					
Bed and Breakfast	-	P	P	P	Part 2, Chapter 20.80
Dry cleaner	-	P	P	P	
Hotel/motel	-	P	P	P	
Laundromat	-	P	P	P	

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Table 20-90 Commercial Districts Land Use Regulations					
Use	Zoning District				Notes & Sections
	CO	CP	CN	CG	
Maintenance and repair, small household appliances	-	P	P	P	
Messenger services	P	P	P	P	Note 2
Mortuary and funeral services	P	P	P	P	
Personal services	-	P	P	P	Section 20.200.880
Photo processing and developing	-	P	P	P	
Printing and publishing	-	P	P	P	
Offices and Financial Services					
Automatic Teller Machine	P	P	P	P	Section 20.80.200
Business Support	-	P	P	P	
Financial Institution	P	P	P	P	
Office, general business	P	P	P	P	Section 20.40.110
Public, Quasi-Public and Assembly Uses					
Cemetery	C	C	C	C	
Church/Religious Assembly	C	C	C	C	
Museums, libraries, parks, playgrounds, or community centers (Publicly operated)	P	P	P	P	
Museums, libraries, parks, playgrounds, or community centers (Privately operated)	C	C	C	C	
Residential					
Emergency residential shelter	C	C	C	C	Section 20.80.500
Live/Work	-	S	S	S	Section 20.40.130
Mixed Use/Ground floor commercial with residential above	-	C	C	C	Note 6
Residential Care Facility for seven or more persons	C	C	C	C	
Residential Service Facility for seven or more persons	C	C	C	C	
Single Room Occupancy Hotel	-	C	C	C	Part 15, Chapter 20.80
Single Room Occupancy Living Unit	-	C	C	C	Part 15, Chapter 20.80
Drive-Through Uses					
Drive-through in conjunction with any use	-	-	C	C	
Recycling Uses					
Reverse vending	A	A	A	A	
Small collection facility	A	A	A	A	
Transportation and Utilities					
Data Center	-	-	-	C	
Community television antenna systems	C	C	C	C	
Off-site, alternating use and alternative parking arrangements	S	S	S	S	Section 20.90.200
Parking establishment, off-street	C	C	C	C	
Utility facilities, excluding corporation yards, storage or repair yards and warehouses	C	C	C	C	
Television, radio studios without antenna/dishes	-	-	-	C	
Short term parking lot for uses or events other than on-site	-	-	-	C	Note 7

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Table 20-90 Commercial Districts Land Use Regulations					
Use	Zoning District				Notes & Sections
	CO	CP	CN	CG	
Wireless communication antenna	C	C	C	C	Section 20.100.1300
Wireless communication antenna, slimline monopole	S	S	S	S	Section 20.80.1900
Wireless communication antenna, building mounted	P	P	P	P	Section 20.80.1910
Electrical Power Generation					
Private Electrical Power Generation Facility	C	C	C	C	Note 2
Co-Generation Facility	S	S	S	S	
Stand-by/Backup					
Facilities that do not exceed noise or air standards	A	A	A	P	
Facilities that do exceed noise or air standards	C	C	C	C	
Temporary Stand-by/Backup	P	P	P	P	
Solar Photovoltaic System	P	P	P	P	Section 20.100.610(C)(7)
Vehicle Related Uses					
Accessory installation, passenger vehicles and pick-up trucks	-	-	C	P	
Auto broker, wholesale, no on-site storage	P	P	P	P	
Car wash, detailing	-	-	C	C	
Gas or charge station	-	C	C	P	Note 8
Gas or charge station with incidental service and repair	-	C	C	P	Note 9, Note 13
Glass sales, installation and tinting	-	-	C	P	Note 13
Sale or lease, commercial vehicles	-	-	C	C	Note 13
Sale passenger vehicles, pick-up trucks not exceeding twenty-five (25) feet in length, and motorcycles	-	C	S	S	Note 12, Note 13
Leasing passenger vehicles, pick-up trucks not exceeding twenty-five (25) feet in length, and motorcycles	-	C	C	C	Note 2
Sale, vehicle parts	-	C	P	P	Note 11
Tires, batteries, lube, oil change, smog check station, air conditioning servicing of passenger vehicles and pick-up trucks	-	-	C	P	Note 10, Note 13

Notes Applicable to all Commercial Districts:

- (1) In the CP District, landscaping materials, such as rock, mulch, and sand are limited to prepackaged sales.
- (2) No on site storage of vehicles permitted.
- (3) Includes public and private colleges and universities, as well as extension programs and business schools.
- (4) Not a catering facility.
- (5) No on site storage of vehicles permitted.
- (6) Make sure General Plan supports mixed use or residential.

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- (7) Use must be less than twenty-four (24) hours.
- (8) No incidental repair or service permitted.
- (9) Incidental repair includes air conditioning service, carburetor & fuel injection service, electrical service, radiator service, and tune-up, lube, oil change, and smog check, as well as tires, batteries and accessories installation. Does not allow body repair or painting.
- (10) Non engine and exhaust related service and repair allowed as incidental.
- (11) No outdoor sales areas or dismantling allowed.
- (12) In the CG District, incidental repair of vehicles requires a Special Use Permit. Incidental repair of vehicles is prohibited in all other commercial districts.
- (13) All vehicle-related repair, service, and accessory or other installation shall be conducted within a fully enclosed building.

SECTION 2. Section 20.50.100 of Chapter 20.50 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.50.100 Allowed Uses and Permit Requirements

- A. "Permitted" land uses are indicated by a "P" on Table 20-110.
- B. "Conditional" uses are indicated by a "C" on Table 20-110. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Conditional Use Permit as set forth in Chapter 20.100.

"Conditional" uses which may be approved only on property designated on the Land Use/Transportation Diagram of the San Jose 2020 General Plan, as amended, with the Mixed Industrial Overlay or Combined Industrial/Commercial are indicated by a "C^{GP}" on Table 20-110. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Conditional Use Permit as set forth in Chapter 20.100.
- C. "Special" uses are indicated by a "S" on Table 20-110. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with a Special Use Permit as set forth in Chapter 20.100.
- D. "Administrative" uses are indicated by an "A" on Table 20-110. These uses may be allowed in such designated districts, as an independent use, but only upon issuance of and in compliance with an Administrative Permit as set forth in Chapter 20.100.
- E. Land uses not permitted are indicated by a "-" on Table 20-110. Land uses not listed on Table 20-110 are not Permitted.

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F. When the right column of Table 20-110 includes a reference to a Section number or a footnote, the regulations cited in the Section number or footnote apply to the use. In addition, all uses are subject to any other applicable provision of this Title 20 and any other Title of the San Jose Municipal Code.

Table 20-110 Industrial Districts Land Use Regulations					
Use	Zoning District				Applicable Sections & Notes
	CIC	IP	LI	HI	
Industry					
Auction	C	C ^{GP}	C ^{GP}	C ^{GP}	
Industrial Services	-	-	P	P	
Laboratory, processing	P	P	P	P	
Manufacturing and Assembly					
Light	P	P	P	-	
Medium	P	P	P	P	
Heavy	-	-	-	P	
Research and Development	P	P	-	-	
Catalog and mail order	P	P	P	-	
Construction/Corporation yard	-	-	S	S	
Establishment for the repair, cleaning of household, commercial or industrial equipment or products	-	-	P	P	
Extraction of minerals from the ground, including quarrying	-	-	-	C	
Hazardous materials storage facility	-	-	C	C	
Hazardous waste facility	-	-	-	C	
Junkyard	-	-	-	C	
Miniwarehouse/ministorage	-	-	P	P	
Outdoor uses or storage, industrial	-	-	S	P	Section 20.50.210
Private power generation	C	C	C	C	
Stockyard, including slaughter	-	-	-	C	
Warehouse/Distribution Facility	P	P	P	P	
Wholesale sale establishment	P	S	P	P	
Additional Uses					
Any use not set forth in Tables 20-30, 20-50, 20-90	-	-	-	C	
Any use without a permanent fully enclosed building on-site	C	C	S	S	
Commercial support	-	P	-	-	Note 5, Section 20.50.110
General Retail					
Retail sales, goods and merchandise	P	-	-	-	Note 5, Section 20.50.110
Retail art studio	P	-	-	-	
Alcohol, off-site sales -- beer and/or wine only	C	-	-	-	Note 5, Section 20.50.110

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Table 20-110 Industrial Districts Land Use Regulations					
Use	Zoning District				Applicable Sections & Notes
	CIC	IP	LI	HI	
Alcohol, off-site sales – full range of alcoholic beverages	C	-	-	-	Note 5, Section 20.50.110
Bakery, retail	P	-	-	-	Note 5, Section 20.50.110
Food, beverage, groceries	P	-	-	-	Note 5, Section 20.50.110
Nursery, plant	P	-	C	C	
Outdoor vending	A	-	A	A	Part 10, Chapter 20.80
Large format commercial establishment	-	C ^{GP}	C ^{GP}	-	
Large format commercial establishment, associated commercial	-	C ^{GP}	C ^{GP}	-	Section 20.50.115
Warehouse retail	-	C	C	C	Section 20.50.130
Sales, office furniture, industrial equipment, machinery	P	-	C	-	
Seasonal Sales	P	P	P	P	Part 14, Chapter 20.80
Education and Training					
Day care center	C	C ^{GP}	C ^{GP}	C ^{GP}	
School, driving (class A & B license)	-	-	P	P	
Instructional art studios	P	-	-	-	
Instructional art studios, live models	C	-	-	-	
Private instruction, personal enrichment	P	-	-	-	
School, post secondary	C	C	-	-	
School, trade and vocational	C	-	C	C	
Entertainment and Recreation Related					
Recreation, Commercial/Indoor	P	C ^{GP}	C ^{GP}	C ^{GP}	Section 20.50.110
Relocated Cardroom	C ^{GP}	C ^{GP}	C ^{GP}	C ^{GP}	Section 20.80.1155
Performing arts production and rehearsal space, excluding performances	P	C	C ^{GP}	C ^{GP}	
Food Services					
Caterer	P	-	-	-	
Drinking establishments	C	-	-	-	
Public eating establishments	P	-	C	C	Note 5, Section 20.50.110 and Section 20.50.113
Outdoor dining, incidental to a public eating establishment	P	-	C	C	Note 5, Section 20.50.110 and Section 20.50.113
Health and Veterinary Services					
Animal boarding, indoor	P	-	-	-	
Animal grooming	P	-	-	-	
Emergency ambulance service	C	C ^{GP}	C ^{GP}	C ^{GP}	
Medical clinic/ out-patient facility	P	C ^{GP}	-	-	Note 5, Section 20.50.110

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Table 20-110 Industrial Districts Land Use Regulations					
Use	Zoning District				Applicable Sections & Notes
	CIC	IP	LI	HI	
Office, medical	P	C	-	-	Note 5, Section 20.50.110
Veterinary clinic	P	-	-	-	
General Services					
Crematory	-	-	C ^{GP}	C	
Mortuary, without funeral services	-	-	P	P	
Dry cleaner	P	-	-	-	
Hotel/motel	P	C ^{GP}	-	-	
Laundromat	P	-	-	-	
Maintenance and repair, small household appliances	P	-	-	-	
Messenger services	P	-	-	-	
Personal services	P	-	-	-	Note 5, Section 20.50.110
Photo processing and developing	P	P	P	P	
Printing and publishing	P	P	P	P	
Social Service Agency	-	C	C	C	
Offices and Financial Services					
Automatic Teller Machine	P	P	P	P	Section 20.80.200
Business support	P	-	-	-	
Financial institution	P	-	C ^{GP}	C ^{GP}	Note 5, Section 20.50.110
Office, general business	P	P	-	-	
Office, research and development	P	P	-	-	
Public, Quasi-Public and Assembly Uses					
Church/Religious Assembly	C	C ^{GP}	C ^{GP}	C ^{GP}	
Residential					
Emergency residential shelter, more than 50 beds	C	C ^{GP}	C	C ^{GP}	Section 20.80.500
Emergency residential shelter, 50 beds or fewer	P	C ^{GP}	C	C ^{GP}	Section 20.80.500
Living quarters, custodian, caretakers	-	-	-	C	Note 1
Drive-Through Use					
Drive-through in conjunction with any use	C	C ^{GP}	C ^{GP}	C ^{GP}	
Recycling Uses					
Recycling processing facility	-	C	S	S	
Recycling transfer facility	-	C	S	S	
Large collection facility	-	-	-	P	
Reverse vending	A	A	A	A	
Small collection facility	A	A	A	A	
Transportation and Utilities					
Common carrier	-	-	C	P	
Common carrier depot	S	S	S	S	
Community television antenna systems	C	C	C	C	
Data center	S	S	S	S	

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Table 20-110 Industrial Districts Land Use Regulations					
Use	Zoning District				Applicable Sections & Notes
	CIC	IP	LI	HI	
Off-site, alternating and alternative use parking arrangements	S	S	S	S	Section 20.90.200
Parking establishment not Permitted in Tables 20.30, 20.50 and 20.90	C	C	C	C	
Parking establishment, off-street	C	C	C	C	
Television, radio studio	C	C	C	C	
Utility facilities, excluding corporation yards, storage or repair yards and warehouses	C	C	C	C	
Wireless communication antenna	C	C	C	C	Section 20.100.1300
Wireless communication antenna	S	S	S	S	Section 20.80.1900
Wireless communication antenna, building mounted	P	P	P	P	Section 20.80.1910
Electrical Power Generation					
Base Load Facility	-	-	-	C	
Stationary Peaking Facility	-	-	C	C	
Transportable Peaking Facility	-	-	C	C	
Private Power Generation Facility	C	C	C	C	
Co-Generation Facility	S	S	S	S	
Stand-by/Backup					
Facilities that do not exceed noise and air standards	P	P	P	P	
Facilities that do exceed noise and air standards	C	C	C	C	
Temporary Stand-by-Backup	P	P	P	P	
Solar Photovoltaic System	P	P	P	P	Section 20.100.610(C)(7)
Vehicle Related Uses					
Auto broker, wholesale, no on-site storage	P	P	-	-	
Car wash, detailing	C	-	-	-	
Gas or charge station, excluding incidental service or repair	P	C ^{GP}	C ^{GP}	C ^{GP}	Note 3
Gas or charge station with incidental service and repair	P	C ^{GP}	C ^{GP}	C ^{GP}	Note 4
Leasing passenger vehicles, pick-up trucks not exceeding twenty-five (25) feet in length, and motorcycles	C	-	C	-	
Repair and cleaning of vehicles	-	-	P	P	Note 5
Sale or lease of commercial trucks, buses, trailers, campers, boats, mobilehomes, construction equipment	C	-	C	-	
Vehicle tow yard	-	-	C	S	
Vehicle wrecking, including sales of parts	-	-	-	C	

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Notes:

1. Site must be seven (7) acres or more.
2. No incidental repair or service.
3. Incidental repair includes air conditioning service, carburetor & fuel injection service, electrical service, radiator service, and tune-up, lube, oil change, and smog check, as well as tires, batteries and accessories installation. Does not allow body repair or painting.
4. All vehicle-related repair, service, and accessory or other installation, excepting the cleaning of vehicles, shall be conducted within a fully enclosed building.
5. Retail; recreation, commercial/indoor establishments; public eating establishments; outdoor dining, incidental to a public eating establishment; financial institutions; medical clinics; medical offices; and personal service establishments are permitted in the IP district subject to the limitation of the Commercial Support Use, Section 20.50.110. Public eating establishments in the LI or HI districts are limited to a maximum of 650 gross square feet in size.
6. Crematories shall be separated by at least five hundred (500) linear feet from residential uses, schools, and daycare centers, which distance(s) shall be measured from the nearest points of the parcel boundary on which the crematory is proposed and the parcel boundary on which the residential, school or day care center is located.

SECTION 3. Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended by adding a new Part to be numbered and entitled and to read in its entirety as follows:

**Part 13.5
Relocated Cardroom**

20.80.1155 Relocated Cardroom Criteria for Approval

- A. No Conditional Use or Planned Development Permit shall be issued for a Relocated Cardroom unless all of the following criteria are met:
 1. The lot or parcel to which a Relocated Cardroom proposes to relocate is not located closer than one hundred fifty (150) feet from any lot or parcel, within our outside the City, situate in a residential district, TM District, or R-MH Mobilehome Park District, nor closer than five hundred (500) feet from any school, college, university, or hospital location situate within or outside the City, nor closer than five hundred (500) feet from another cardroom use, including without limitation another Relocated Cardroom, situate within or outside the City.
 2. The lot or parcel to which a Relocated Cardroom proposes to relocate meets all locational criteria applicable to that Relocated Cardroom that may be set forth in federal, state or local law, regulation, license or other approval.

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- B. In addition to the zoning districts in which a Relocated Cardroom may be conditionally permitted with a conditional use permit, a Relocated Cardroom may be allowed in a planned development zoning district, subject to the requirements of that district and the issuance of a planned development permit in accordance with the provisions of Part 8 of Chapter 20.100 of this Title.
- C. Permits and approvals issued under this Title are intended to promote and further the purposes of this Title as set forth in Section 20.10.020 of Chapter 20.10 of this Title, whereas those provisions related to cardrooms set forth in Title 16 of this Code are intended to further the purposes set forth in Section 16.02.010 of Chapter 16.02 of Title 16 of this Code. This provision is declarative of existing law.
- D. In addition to the findings required for the issuance of a conditional use permit or a planned development permit set forth elsewhere in this Title, no conditional use permit or planned development permit for a Relocated Cardroom shall be issued unless all of following additional findings, based upon substantial evidence in the record, are made:
1. The granting of the development permit would not violate any City, State or Federal law, regulation or written policy; and
 2. The existing operations of a cardroom that desires to obtain a development permit to be a Relocated Cardroom are in full compliance with all City laws, regulations, permits, approvals and written policies applicable to that existing cardroom as of the date of issuance of any development permit for a Relocated Cardroom; provided, however, that a determination of compliance with Title 16 of this Code shall mean and be limited to a determination that the existing cardroom possesses a current and valid Cardroom Permit under Title 16 of this Code; and
 3. The granting of the development permit would not violate any court order; and
 4. The location to which the Relocated Cardroom proposes to relocate meets the criteria of this Part.

Notwithstanding the above provisions of this subsection, no conditional use permit or planned development permit issued to a Relocated Cardroom pursuant to the provisions of this Title shall impose restrictions or conditions upon a Relocated Cardroom for reasons that are based upon the regulatory authorities and concerns addressed by Title 16 of this Code and that have no articulated land use implication, basis or impact.

- E. For the purpose of making a finding under Section 20.100.720.A.1 of Chapter 20.100 of this Title, or other similar finding required for a land use determination under another section of this Title, there shall be a rebuttable presumption that a Relocated Cardroom that holds a current and valid Cardroom Permit issued pursuant to the provisions of Title 16 of this Code will not, solely due to its status as a cardroom use, adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area, nor impair the value of property of others located in the vicinity of the site, nor be detrimental to public health, safety or welfare. This provision shall not preclude a decision maker for a development permit or approval from finding that a Relocated Cardroom will adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area of a Relocated Cardroom, or will impair the value of property of others located in the vicinity of the site, or will be detrimental to public health, safety or welfare, on grounds unrelated to and not based upon the mere status of the Relocated Cardroom use as a cardroom use.
- F. A determination of compliance with applicable laws, regulations, policies, permits, and other approvals made under this Part shall be made only for the purposes of this Part after review of information submitted for a development permit application. No such finding made under this Part shall preclude a contrary finding from being made a future date or outside of the context of this Part.
- G. Obtaining a development permit or other approval under the provisions of this Title shall not be construed or deemed to be a license or permit to operate a Relocated Cardroom under the provisions of Title 16 of this Code or state or federal law nor in any way constitute a fulfillment of the requirement to obtain such an operational license or permit under Title 16 of this Code or under state or federal law.

SECTION 4. Section 20.90.060 of Chapter 20.90 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.90.060 Number of Parking Spaces Required

- A. All parking requirements in Table 20-190 are minimums unless otherwise specified. Each land use shall provide, on site, at least the minimum number of parking spaces required by Table 20-190, unless a modification has been granted pursuant to Section 20.90.220 or 20.90.230.
- B. All required parking shall be made available to residents, patrons and employees of a use on the site.

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- C. All parking spaces shall be standard size spaces as set forth in Section 20.90.100. Alternatively, a Development Permit may:
1. Authorize all off-street parking spaces to be uniform-size car spaces, as set forth in Section 20.90.100; or
 2. Allow up to forty (40) percent of the off-street parking spaces to be small car spaces as set forth in Section 20.90.100. The remainder of the required off-street parking spaces shall be standard car space as defined in Section 20.90.100.
- D. If the number of off-street parking spaces hereinafter required contains a fraction, such number shall be rounded to the nearest higher whole number.
- E. Whenever alternative units of measurement are specified in Tables 20-190, 20-200 or 20-210 for computing off-street parking requirements for any given use, the unit of measurement which provides the greatest number of off-street parking spaces for such use shall control.
- F. The minimum number of off-street parking spaces required for any given use is the same irrespective of the district in which such use is conducted. In case of a use for which off-street parking requirements are not specified at all, the requirements for the most nearly similar use for which off-street parking requirements are specified shall apply.
- G. When two or more uses are located in the same lot or parcel of land or within the same building, the number of off-street parking spaces required shall be the sum total of the requirements of the various individual uses computed separately in accordance with this Chapter 20.90, except as hereinafter provided for alternating uses.

Table 20-190 Parking Spaces Required by Land Use		
Use	Parking Required	Applicable Sections
Agriculture and Resource Uses		
Agriculture and Resource Uses	1 per employee	
Drive-Through Uses		
Drive-through in conjunction with any use	No additional parking required	
Education and Training		
Day care center	1 per 6 children, up to 5 spaces and thereafter 1 per 10 children (Includes	

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Table 20-190 Parking Spaces Required by Land Use		
Use	Parking Required	Applicable Sections
	employee parking)	
Instructional studios	1 per 150 sq. ft. of floor area	
Private instruction, personal enrichment	1 per 3 students, plus 1 per staff	
School- elementary (K-8)	1 per teacher, plus 1 per employee	
School- secondary (9-12)	1 per teacher, plus 1 per employee, plus 1 per 5 students	
School, post secondary	1 per 3 students, plus 1 per staff	
School, trade and vocational	1 per 3 students, plus 1 per staff	
Entertainment and Recreation		
Arcade, amusement	1 per 200 sq. ft. of floor area	
Batting Cages	1 per station, plus 1 per employee	
Bowling establishment	7 per lane	
Dancehall	1 per 40 sq. ft. open to public	
Driving range	1 per tee, plus 1 per employee	
Golf course	8 per golf hole, plus 1 per employee	
Health club, gymnasium	1 per 80 sq. ft. recreational space	
Miniature golf	1.25 per tee, plus 1 per employee	
Performing arts rehearsal space	1 per 250 sq. ft. of floor area	Section 20.90.220(E)
Poolroom	1 per 200 sq. ft. of floor area	
Private club or lodge	1 per 4 fixed seats on the premises, or 1 per 6 linear feet of seating, plus 1 per 200 square feet of area without seating but designed for meeting or assembly by guests, plus 1 per 500 sq. ft. of outdoor area developed for recreational purposes	
Recreation, Commercial (indoor)	1 per 80 sq. ft. of recreational area	
Recreation, Commercial (outdoor)	20 per acre of site	
Relocated Cardroom	1 per 40 sq. ft. of area devoted to card games	
Skating rink	1 per 50 sq. ft. of floor area	
Swim and tennis club	1 per 500 sq. ft. of recreation area	

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Table 20-190 Parking Spaces Required by Land Use		
Use	Parking Required	Applicable Sections
Motion picture theatre, indoor	1 per 3 seats in theaters with 1-3 screens; 1 per 3.3 seats with 4+ screens	
Motion picture theatre, outdoor	1 per 300 sq. ft.	
Theaters, Auditoriums, Sports Arenas, and Stadiums-- with or without fixed seats	1 per 4 fixed seats on the premises, plus 1 per 7 linear feet of fixed benches, or 1 per 30 square feet of area used for assembly	
Food Services		
Banquet facility	1 per 2.5 seats or 1 per 40 square feet of dining area, whichever requires the greater number of parking spaces	
Caterer w/eating facility (not a catering facility)	1 per 2.5 seats or 1 per 40 square feet of dining area, whichever requires the greater number of parking spaces	Note 3
Caterer w/no public interface	1 per 250 sq. ft.	
Drinking establishments	1 per 2.5 seats or 1 per 40 square feet of drinking area, whichever requires the greater number of parking spaces	Note 3
Entertainment (with any food or alcohol service)	1 per 40 sq. ft. of area open to the public	Note 3
Outdoor dining incidental to a public eating establishment or a retail establishment	0 spaces up to 25 seats, 1 space per 2.5 for seats over 25	
Public eating establishments	1 per 2.5 seats or 1 per 40 square feet of dining area, whichever requires the greater number of parking spaces	Note 3
Take-out Only Establishment (including but not limited to pizza delivery, ice cream shops, doughnut shops)	1 per 75 sq. ft. of area open to the public, minimum of 5 spaces, plus 1 per delivery vehicle (if applicable)	Note 3
General Retail		
Alcohol, off-site sales	1 per 200 sq. ft. of floor area	Note 3 and Part 11, Chapter 20.80
Auction house	1 per 2 seats, or 1 per 50 sq. ft. of auction area exclusive of warehouse area	
Food, beverage, groceries	1 per 200 sq. ft. of floor area	Note 3
Plant nursery	1 per 200 sq. ft. of floor area	
Open air sales establishments and areas	1 per 200 sq. ft. of floor area	

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Table 20-190 Parking Spaces Required by Land Use		
Use	Parking Required	Applicable Sections
Outdoor vending	3 parking spaces	Part 10, Chapter 20.80
Pawn shop/broker	1 per 200 sq. ft. of floor area	
Large format commercial establishment	1 per 200 sq. ft. of floor area	
Large format commercial establishment, associated commercial	1 per 200 sq. ft. of floor area	
Retail sales, goods and merchandise	1 per 200 sq. ft. of floor area	Note 3
Retail sales of furniture	1 per 250 sq. ft. of floor area	Note 3
Retail art studio	1 space per 200 sq. ft. of retail area	Note 3
Sales, appliances, industrial equipment, and machinery	1 per 1000 sq. ft. of floor area	
Neighborhood Shopping Center (minimum 100,000 sq. ft. in size), includes a mix of permitted and conditional uses	1 per 225 sq. ft. of floor area	Note 1
General Services		
Bed and Breakfast	2 spaces, plus 1 per guest room, plus 1 per employee	
Crematory	1 per full-time employee	
Dry cleaner	1 per 200 sq. ft. of floor area	
Hotel/motel	1 per guest room or suite, plus 1 per employee	Section 20.90.220(C)
Laundromat	1 per 200 sq. ft. of floor area	
Maintenance and repair, small consumer goods	1 per 200 sq. ft. of floor area	
Messenger services	1 per 200 sq. ft. of floor area, plus 1 per company vehicle	
Mortuary and funeral services	1 per 4 seats, plus 1 per company vehicle	
Mortuary, excluding funeral services	1 per full-time employee, plus 1 per company vehicle	
Personal services	1 per 200 sq. ft. of floor area	Note 3
Photo processing and developing	1 per 200 sq. ft.	
Printing and publishing	Minimum 1 per 350 sq. ft. of floor area, maximum 5% over minimum required.	
Social Service Agency	1 per 250 sq. ft. of floor area	
Health and Veterinary Services		
Animal boarding, indoor	1 per employee, plus 1 per 1,000 sq. ft. of floor area	
Animal grooming	1 per 200 sq. ft. of floor area	
Emergency Ambulance Station	1 per employee, plus 1 per on-site staff, plus 1 per facility vehicle	
Hospital per in-patient facility	1 per 2.5 beds	
Medical clinic/out-patient facility	1 per 250 sq. ft. of floor area	
Medical, dental and health practitioner	1 per 250 sq. ft. of floor area	

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Table 20-190 Parking Spaces Required by Land Use		
Use	Parking Required	Applicable Sections
Veterinary clinic	1 per 250 sq. ft. of floor area	
Industry		
Catalog and mail order house	1 per 250 sq. ft. of floor area of office space plus, plus 1 per 1000 sq. ft. of floor area of warehouse and distribution area	
Commercial Support	1 per 350 sq. ft. of floor area	
Distribution facility	A minimum of two (2) for facilities with a total gross floor area under five-thousand (5,000) square feet; a minimum of five (5) for facilities with a total gross floor area between five thousand (5,000) sq. ft. and twenty-five thousand (25,000) sq. ft.; for facilities with a total gross floor area in excess of twenty-five thousand (25,000) sq. ft. a minimum of one (1) per five-thousand (5,000) sq. ft. of gross floor area or a fraction thereof	
Establishment for the repair, cleaning of household, commercial or industrial equipment or products	1 per 350 sq. ft. of floor area	
Hazardous materials storage facility	1 per employee plus 1 per company vehicle	
Hazardous waste facility	1 per employee plus 1 per company vehicle	
Industrial Services	1 per 350 sq. ft. of floor area	
Junkyard	1 per employee	
Laboratory	1 per 350 sq. ft. of floor area	
Manufacturing and Assembly, Light, Medium, Heavy	1 per 350 sq. ft. of floor area plus 1 per company vehicle	
Miniwarehouse/ministorage	1 per 5,000 sq. ft. of floor area, plus 1 per resident manager	Note 4
Outdoor storage	1 per employee	
Private power generation	1 per employee plus 1 per company vehicle	
Research and Development	1 per 350 sq. ft. of floor area	
Stockyard, including slaughter	1 per employee	

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Table 20-190 Parking Spaces Required by Land Use		
Use	Parking Required	Applicable Sections
Warehouse	A minimum of two (2) for warehouses with a total gross floor area under five-thousand (5,000) square feet; a minimum of five (5) for warehouses with a total gross floor area between five thousand (5,000) sq. ft. and twenty-five thousand (25,000) sq. ft.; for warehouses in excess of twenty-five thousand (25,000) sq. ft. of total gross floor area a minimum of one (1) per five-thousand (5,000) sq. ft. of gross floor area or a fraction thereof	
Warehouse retail	Minimum 1 per 2,000 sq. ft. of floor area; maximum 1 per 250 sq. ft. of floor area	
Wholesale sale establishment	1 per 2,000 sq. ft. of floor area, plus 1 per company vehicle	
Offices and Financial Services		
Automatic Teller Machine (Free standing)	2 per machine	
Business support	1 per 200 sq. ft. of floor area plus 1 per company vehicle	
Financial institution	1 per 250 sq. ft. of floor area	
Offices, business and administrative	1 per 250 sq. ft. of floor area	
Offices, research and development	1 per 300 sq. ft. of floor area	
Private security	1 per 250 sq. ft. of floor area office space, plus 1 per employee, plus 1 per company vehicle	
Public, Quasi-Public and Assembly Uses		
Cemetery	1 per full-time employee	
Church/Religious Assembly	1 per 4 fixed seats, or 1 per 6 linear feet of seating, or 1 per 30 sq. ft. of area designed for assembly, used together or separately for worship.	
Community television antenna systems	1 per company vehicle	
Museums and libraries	1 per 300 sq. ft. of area open to the public	
Parks and playgrounds	1 per 500 sq. ft.	

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Table 20-190 Parking Spaces Required by Land Use		
Use	Parking Required	Applicable Sections
Community centers	1 per 4 fixed seats, or 1 per 6 linear feet of seating, plus 1 per 200 square feet of area without seating but designed for meeting or assembly by guests, plus 1 per 500 sq. ft. of outdoor area developed for recreational purposes	
Utility facilities, excluding corporation yards, storage or repair yards and warehouses	1 per 1.5 employees, plus 1 per company vehicle	
Recycling Uses		
Processing facility	1 per employee of the largest shift, plus 1 per facility vehicle	
Transfer facility	1 per employee of the largest shift, plus 1 per facility vehicle	
Small collection facility	1 per attendant	
Residential		
Emergency residential shelter	1 per 4 beds, 1 per 250 square feet of area which is used for office purposes	Section 20.90.220(C)
Guesthouse	1 per guest room, plus 1 per each employee	
Live/Work	No additional parking required above what is required for commercial use parking	
Living quarters, custodian, caretakers	1 per living unit	
Mixed Use/Ground floor commercial with residential above	Respective commercial and residential parking requirements combined	
Multiple dwelling	See Table 20-210, required parking is determined by the type of parking facility and the number of bedrooms	
One family dwelling	2 covered	Note 5 and Section 20.90.220(B)
Residential Care or Service Facility	1 per first 6 client beds, plus 1 additional space for up to 4 client beds (or portion thereof) above the first six, plus 1 additional space for each additional four client beds (or portion thereof), plus 1 space for each employee or staff member.	Section 20.90.220(C)

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Table 20-190 Parking Spaces Required by Land Use		
Use	Parking Required	Applicable Sections
Servants quarters attached to a one-family dwelling or attached to a garage structure	1 additional parking space	
SRO Facilities within 2,000 ft. of public transportation		
SRO Residential Hotels	.25 per SRO unit	
SRO Living Unit Facilities with shared kitchen and bathroom facilities	.25 per SRO unit	
SRO Living Unit Facilities with partial or full kitchen and bathroom facilities	1 per SRO unit	
SRO Facilities not within 2,000 ft. of public transportation	1 per SRO unit	
Sororities, fraternities and dormitories occupied exclusively (except for administrators thereof) by students attending college or other educational institutions	1 per guest room, plus 1 per employee	
Temporary farm labor camp necessary to the gathering of crops grown on the site	1 per dwelling unit	
Travel Trailer Parks	1 per employee	
Two family dwelling	See Table 20-200, required parking is determined by the type of parking facility and the number of bedrooms	
Transportation and Utilities		
Common carrier depot	1 per employee, plus 1 per company vehicle	
Data center	1 per 250 sq. ft. of office/meeting/technician work space, plus 1 for each 5,000 sq. ft. of floor area, or fraction thereof, devoted to computer equipment space	
Television and radio studio	1 per 250 sq. ft. of space devoted to office use	
Wireless communication antenna	1 per site	
Vehicle Related Uses		
Accessory installation, passenger vehicles and pick-up trucks	4 per vehicle work station, plus 1 per employee	
Auto broker, retail w/on-site storage	See Vehicle sales and leasing	
Auto broker, wholesale, no on-site storage	1 per 250 sq. ft. of floor area	

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Table 20-190 Parking Spaces Required by Land Use		
Use	Parking Required	Applicable Sections
Car wash	1 per employee, plus stacking as follows: self service - 5 cars per lane full service - 15 cars (may be in multiple lanes)	Note 2
Gas or charge station	1 per employee, plus 1 per air and water pump service area, plus 1 space for information stop	
Gas or charge station with incidental service and repair	4 per grease rack or vehicle work station, plus 1 per employee, plus 1 per air and water pump service area, plus 1 space for information stop	
Glass sales, installation and tinting	4 per vehicle work station, plus 1 per employee	
Repair and cleaning per detailing of vehicles	4 per grease rack or vehicle work station, plus 1 per employee	
Sale or lease of vehicles	1 per 350 sq. ft. enclosed showroom, 1 per 2,500 sq. ft. open area, plus 2 per service bay	
Exclusively indoors sales	1 per 200 sq. ft.	
Auto rental agency	1 per 400 sq. ft. of floor area, plus 1 per rental vehicle	
Sale, vehicle parts	1 per 200 sq. ft. of floor area	
Tires, batteries, accessories, lube, oil change, smog check station, air conditioning	4 per grease rack or vehicle work station, plus 1 per employee	
Tow yard	1 per employee, plus 1 per company vehicle	
Vehicle wrecking, including sales of parts	1 per employee	

Notes:

1. A covenant of easement is required when multiple parcels are involved.
2. Stacking shall be calculated at twenty (20) feet per car.
3. Parking for uses of this type located within a Neighborhood Business District and meeting all of the requirements set forth in Section 20.90.220(C), may be reduced as specified in Section 20.90.220(C).
4. Parking for miniwarehouse/ministorage uses meeting all of the requirements of Section 20.90.220(D) may be reduced as specified in Section 20.90.220(D).
5. Covered parking may include carports or garages.

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RD:RG
3/24/09

SECTION 5. Chapter 20.200 of Title 20 of the San José Municipal Code is hereby amended by adding a new Section to be numbered and entitled and to read in its entirety as follows:

20.200.995 Relocated Cardroom

"Relocated Cardroom" means a cardroom, as defined in Title 16 of this Code, that holds a valid Cardroom Permit issued pursuant to Title 16 and is relocated from an existing site in accordance with the provisions of Part 13.5 of Chapter 20.80 of this Title.

PASSED FOR PUBLICATION of title this day of , 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

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