



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: February 21, 2012

COUNCIL DISTRICT: Citywide

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 6 AND TITLE 20 OF THE MUNICIPAL CODE AS FOLLOWS: AMENDMENTS TO CHAPTER 6.84 OF TITLE 6 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW SECTION 6.84.015 AND TO AMEND SECTION 6.84.030 AND AMENDMENTS TO CHAPTERS 20.80 AND 20.100 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTIONS 20.80.900 AND 20.100.220, ALL TO MODIFY THE GENERAL PROCESS FOR MAKING A CITY-WIDE DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY AND TO MODIFY THE CONDITIONAL USE PERMIT PROCESS IN CONNECTION WITH THE OFF-SALE OF ALCOHOLIC BEVERAGES.

RECOMMENDATION

The Planning Commission voted 6-0-1 (Commissioner Kamkar absent) to recommend the City Council approve the ordinance to amend Title 6 and Title 20 of the San José Municipal Code to streamline the City permit process for off-sale of alcoholic beverages.

OUTCOME

The proposed amendments to Title 6 (Business Licenses and Regulations) and to Title 20 (Zoning) would provide a more streamlined regulatory process within San Jose for establishments that seek to include off-sale of alcoholic beverages as a business activity.

HONORABLE MAYOR AND CITY COUNCIL

March 8, 2012

Subject: Proposed Title 6 and Title 20 Code Amendment for Off-sale of Alcohol

Page 2

BACKGROUND

On March 7, 2012, the Planning Commission conducted a public hearing on the proposed ordinance. See the attached staff report to the Planning Commission for additional background information and analysis of the proposed amendments.

ANALYSIS

Staff made a brief presentation regarding the proposed ordinance. There was no public testimony or Planning Commission discussion of the proposed ordinance changes.

CEQA

Under the provisions of Section 15061(b)(3) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The proposed project (Public Project File No. PP12-016) consists of an ordinance that modifies the permitting process for the off-sale of alcohol. These changes are not anticipated to result in any changes to the physical environment.

/s/

JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions, please contact Laurel Prevetti at 408-535-7901.

Attachments:

1. Planning Commission Staff Report.



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: February 15, 2012

COUNCIL DISTRICT: Citywide
SNI AREAS: All

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 6 AND TITLE 20 OF THE MUNICIPAL CODE AS FOLLOWS: AMENDMENTS TO CHAPTER 6.84 OF TITLE 6 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW SECTION 6.84.015 AND TO AMEND SECTION 6.84.030 AND AMENDMENTS TO CHAPTERS 20.80 AND 20.100 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTIONS 20.80.900 AND 20.100.220, ALL TO MODIFY THE GENERAL PROCESS FOR MAKING A CITY-WIDE DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY AND TO MODIFY THE CONDITIONAL USE PERMIT PROCESS IN CONNECTION WITH THE OFF-SALE OF ALCOHOLIC BEVERAGES.

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend to the City Council the approval of the ordinance to amend Title 6 and Title 20 of the San José Municipal Code to streamline the City permit process for off-sale of alcoholic beverages.

OUTCOME

The proposed amendments to the Title 6 (Business Licenses and Regulations) and to Title 20 (Zoning) would provide a more streamlined process for the City permit process for the off-sale of alcoholic beverages within San Jose.

BACKGROUND

On December 6, 2005, the City Council adopted ordinances that updated regulations affecting establishments that sell prepackaged alcoholic beverages for off-site consumption (“off-sale alcohol”). These ordinances became effective on February 1, 2006. The regulations revised the approval process and included enhanced findings for approval of an off-sale proposal as part of a

Conditional Use Permit, and mandatory findings for a Determination of Public Convenience or Necessity, when such a determination is required by the State Department of Alcoholic Beverage Control.

The enhanced findings for a Conditional Use Permit included a provision to address the proliferation of establishments in close proximity to existing off-sale uses by requiring additional findings when the number of establishments are more than four (4) within a 1,000-foot radius. Additionally, the finding that addressed the location of such establishments proximate to sensitive uses such as schools and residences was augmented to add public parks, childcare centers, social service agencies, and residential care and service facilities to the list of sensitive uses. If a new off-sale alcohol establishment is to be located within 150 feet of a residential use or residentially zoned property, or within 500 feet of one of the other specified sensitive uses, it must be determined that the proposed establishment is situated and oriented such that it would not adversely affect the sensitive use(s).

The State Department of Alcohol Beverage Control, prior to licensing of a new off-sale alcohol establishment in an area of undue concentration or high crime (as defined by State law), requires business operators to obtain a Determination of Public Convenience or Necessity from the local jurisdiction. All applications for a Determination of Public Convenience or Necessity are considered by the Planning Commission in conjunction with any associated application for a Conditional Use Permit. The current regulations include factual findings the Planning Commission is required to make in order to approve a request for a Determination of Public Convenience or Necessity. These findings are:

1. The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs, or located within an area in which the Chief of Police has determined that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area, or (b) would increase the severity of existing law enforcement or public nuisance problems in the area; and
2. The proposed use would not lead to the grouping of more than four off-premises sale of alcoholic beverage uses within a one thousand-foot radius from the exterior of the building containing the proposed use; and
3. The proposed use would not be located within five hundred (500) feet of a school, day care center, public park, social services agency, or residential care or service facility, or within one hundred fifty (150) feet of a residence; and
4. Alcoholic beverage sales would not represent a majority of the proposed use; and
5. At least one (1) of following additional findings:
 - a. The census tract in which the proposed outlet for the off-premises sale of alcoholic beverages is located is unusually configured and the proposed outlet

would act as a convenience to an underserved portion of the community without presenting a significant adverse impact on public health or safety; or

- b. The proposed outlet for the off-premises sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety; or
- c. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the City, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-premises sale of alcoholic beverages in the area; or
- d. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

In some instances, the Planning Commission is unable to make one of the first four factual findings, resulting in a “mandatory” denial by the Commission. If the applicant wishes to continue to pursue their application, they file an appeal for consideration by the City Council. Under the current process, the Planning Commission typically provides comments for the record, even though the Commission has no formal role in communicating its comments to the Council in the appeal process.

ANALYSIS

The proposed ordinance seeks to streamline the overall process and provide the Planning Commission an opportunity to make a recommendation to the City Council regarding the application in those instances where one or more of the four factual findings cannot be made by the Commission.

Specifically, the proposed ordinance:

- Retains all of the existing findings and clarifies the need for quantifiable information from the Chief of Police regarding that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area, or (b) would increase the severity of existing law enforcement or public nuisance problems in the area.
- Maintains that in the instances that the Planning Commission can make all of the four factual findings, then the Planning Commission is the decisionmaker on the application as they are today. The application could still be appealed to the City Council.
- Acknowledges that in the instances that the Planning Commission cannot make one or more of the four factual findings, then the City Council is the decision maker and the Commission would have the opportunity to make a recommendation to the City Council regarding the application.

- Maintains the Council's unique ability to make a finding of significant and overriding public benefit or benefits will be provided by the proposed use.

These proposed changes are intended to provide a more direct process to get to hearing before the City Council if the Planning Commission cannot make all of the findings. Rather than forcing an applicant to file an appeal each time the Planning Commission must deny a request for a Determination of Public Convenience and Necessity because the requisite findings cannot be made, the new process would place the Planning Commission in a recommending body role to the City Council as decisionmaker in that instance, removing the requirement for a formal appeal. Operationally, City staff would identify City Council hearing dates on the same notice as the Planning Commission hearing similar to how a rezoning is processed where the Planning Commission is a recommending body to the City Council. In this way, the public and the applicant would have advance indication of the process and hearing dates. The overall result is expected to be reduced frustration on the part of applicants and the public, a more meaningful role for the Planning Commission for these applications, and protection of the Council's decisionmaking when the factual findings cannot be made by the Commission.

PUBLIC OUTREACH

Public outreach for this proposal complies with the City Council's Public Outreach Policy and the Municipal Code. A public hearing notice including the Planning Commission and City Council hearing dates was published in the San Jose Mercury News and Post Record and emailed to a list of interested groups and individuals. The proposed ordinance was presented to and discussed with development industry representatives at the January 27, 2012 Developer Roundtable and presented to and discussed with interested community members at a community meeting on February 8, 2012. Staff has posted the hearing notice, staff report and draft ordinance on the Department's website and has been available to discuss the proposal with interested members of the public.

COORDINATION

The preparation of the proposed ordinance and this staff report have been coordinated with the City Attorney's Office.

CEQA

Under the provisions of Section 15061(b)(3) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The proposed project (Public Project File No. PP12-016) consists of an ordinance that modifies the permitting process for the off-sale

PLANNING COMMISSION

February 15, 2012

Subject: Proposed Industrial Streamlining Ordinance

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of alcohol. These changes are not anticipated to result in any changes to the physical environment.

A handwritten signature in blue ink, appearing to read "Joseph Horwedel", is written over the typed name. The signature is stylized and cursive.

JOSEPH HORWEDEL, Director

Department of Planning, Building and Code Enforcement

For more information please call Laurel Prevetti at (408) 535-7901.

Attachment: Draft Ordinance

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE ADDING SECTION 6.84.015 AND AMENDING SECTION 6.84.030 OF CHAPTER 6.84 OF TITLE 6 AND AMENDING SECTION 20.80.900 OF CHAPTER 20.80 AND SECTION 20.100.220 OF CHAPTER 20.100 OF TITLE 20, ALL OF THE SAN JOSE MUNICIPAL CODE, TO MODIFY THE GENERAL PROCESS FOR MAKING A DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY AND FOR PROCESSING A CONDITIONAL USE PERMIT FOR THE OFF-PREMISES SALE OF ALCOHOLIC BEVERAGES

WHEREAS, the provisions of this Ordinance have been found to be exempt from environmental review under File No. PP12-016 pursuant to the provisions of the California Environmental Quality Act of 1970, together with state and local guidelines and regulations implementing said Act (collectively, "CEQA"), particularly Section 15061(b)(3) of the State CEQA guidelines, all as amended to date.

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

SECTION 1. Chapter 6.84 of Title 6 of the San José Municipal Code is hereby amended by adding a new Section to be numbered and entitled and to read as follows:

6.84.015 Determination.

"Determination" means a determination of public convenience or necessity by the City of San Jose to assist the State of California in the issuance of licenses for the off-sale of alcoholic beverages by the California Department of Alcoholic Beverage Control in those areas that are deemed to be over-concentrated with off-premises sale outlets or those areas that are considered high crime, as specified in Business and Professions Code Section 23958 et seq., as the same may be amended from time to time.

SECTION 2. Section 6.84.030 of Chapter 6.84 of Title 6 of the San José Municipal Code is hereby amended to read in its entirety as follows:

6.84.030 Findings.

A. Whenever a request for a Determination in connection with the issuance of a license for the off-sale of alcoholic beverages by the California Department of Alcoholic Beverage Control is submitted to the City as allowed under California Business and Professions Code Section 23958.4, as the same may be amended from time to time, the Determination request shall be processed utilizing the process provisions of a conditional use permit contained in Chapter 20.100 of Title 20 of this Code.

B. Subject to the provisions of this Section, the Planning Commission shall hold a public hearing, review an application for a Determination, and may issue a determination of public convenience or necessity in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-premises sale of alcoholic beverages only after making all of the following findings:

1. The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs, or located within an area in which the Chief of Police has determined based upon quantifiable information that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area, or (b) would increase the severity of existing law enforcement or public nuisance problems in the area; and
2. The proposed use would not lead to the grouping of more than four off-premises sale of alcoholic beverage uses within a one thousand-foot radius from the exterior of the building containing the proposed use; and
3. The proposed use would not be located within five hundred (500) feet of a school, day care center, public park, social services agency, or

residential care or service facility, or within one hundred fifty (150) feet of a residence; and

4. Alcoholic beverage sales would not represent a majority of the proposed use; and
5. At least one (1) of following additional findings:
 - a. The census tract in which the proposed outlet for the off-premises sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant adverse impact on public health or safety; or
 - b. The proposed outlet for the off-premises sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety; or
 - c. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the City, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-premises sale of alcoholic beverages in the area; or
 - d. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

C. In the event the Planning commission determines that the Planning Commission is able to make all of the findings set forth in Subsection B.1 through B.4 above, the Planning Commission shall be the decision-making body for that request for a Determination for the proposed use and shall proceed to consider the findings

required under Subsection B.5 above. The Planning Commission's decision on the Determination shall be appealable to the City Council. In the event the Planning Commission determines that it cannot make one or more of the required findings set forth in Subsection B.1 through B.4 above the Planning Commission shall make a recommendation to the City Council as to whether the City Council should make a Determination for the proposed use, taking into consideration the findings that can be made and the provisions of Subsection E below, and the City Council shall be the initial decision-making body for that request for a Determination.

D. In the event the Planning Commission's decision on a Determination is appealed to the City Council or the Planning Commission determines that it cannot make one or more of the findings set forth in Subsection B.1 through B.4 above, the City Council shall hold a public hearing on the request for the Determination pursuant to the procedures set forth in Section 20.100.280 of Title 20 of the San José Municipal Code. The City Council may issue the Determination if the Council determines that the required findings as set forth in Subsection B above can be made.

E. Notwithstanding the foregoing provisions and requirements contained in Subsection D above, the City Council may issue a Determination in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-premises sale of alcoholic beverages where the City Council does all of the following: (a) makes a determination that not all of the required findings set forth in Subsection B can be made; and (b) identifies and finds that a significant and overriding public benefit or benefits will be provided by the proposed use.

F. Nothing contained in this Chapter shall be deemed or construed as requiring the Planning Commission or City Council to issue a Determination under the provisions of this Chapter. Under no circumstances shall a requestor for a Determination under this Chapter have a right to such Determination, and nothing contained in this Chapter shall be deemed or construed to confer upon any requestor a right to have a Determination made for any particular site.

SECTION 3. Section 20.80.900 of Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.80.900 Off-Sale of Alcoholic Beverages.

A. A conditional use permit may be issued pursuant to the applicable provisions of this title for the off-sale of any alcoholic beverages only if the decision-making body first makes the following additional findings, where applicable:

1. For such use at a location closer than five hundred feet from any other such use involving the off-sale of alcoholic beverages, situated either within or outside the city, that the proposed location of the off-sale alcohol use would not result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one thousand foot radius from the proposed location.
2. For such use at a location closer than five hundred feet from any other use involving the off-sale of alcoholic beverages, situated either within or outside the city, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one thousand foot radius from the proposed location, that the resulting excess concentration of such uses will not:
 - a. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the area; or
 - c. Be detrimental to public health, safety or general welfare.
3. For such use at a location closer than five hundred feet from any child care center, public park, social service agency, residential care facility, residential service facility, elementary school, secondary school, college or university, or one hundred fifty feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a

manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

B. The off-sale of alcohol as incidental sales in conjunction with the sale of gift baskets, balloons and flowers is exempt from the requirement of a conditional use permit.

C. Where a conditional use permit application requesting the off-premises sale of alcoholic beverages also would require a determination of public convenience and necessity under the provisions of Chapter 6.84 of Title 6 this Code, and the Planning Commission cannot make the required findings under Section 6.84.030 of Chapter 6.84 of Title 6 of this Code, the Planning Commission shall make a report and recommendation to the City Council on said conditional use permit application. In this instance, the City Council shall be the initial and final decisionmaking body on said conditional use permit application.

SECTION 4. Section 20.100.220 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.220 Appeal - Hearing Body

Decisions on permits or approvals pursuant to this Chapter are subject to appeal as set forth in Table 20-260 which lists the initial decision maker and the decision making body which will hear any appeal.

Table 20-260 Appeal Hearing Body		
Application	Initial Decision Making Body	Appeal Decision Making Body
Administrative Permit	Director of Planning	No Appeal
Site Development Permit	Director of Planning	Planning Commission

Site Development Permit – Projects within Downtown Districts and exceeding 150 feet and FAR of 6:1	Director of Planning	City Council
Single-Family House Permit Administrative Decision Director's Hearing	Director of Planning Director of Planning	No Appeal Planning Commission
Planned Development Permit	Director of Planning	Planning Commission
Special Use Permit	Director of Planning	Planning Commission
Conditional Use Permit	Planning Commission	City Council
Conditional Use Permit – Drinking Establishments with an approved maximum occupancy load of over 250 persons that operate between 12:00 midnight and 6:00 a.m.	City Council	No Appeal
Conditional Use Permit involving off-premises sale of alcoholic beverages requiring a Determination under Chapter 6.84 where findings required by Planning Commission under Section 6.84.030.B.1-4 cannot be made	City Council	No Appeal
Variance	Director of Planning	Planning Commission
Exception	Director of Planning	Planning Commission
Sidewalk Café Permit I	Director of Planning	City Council
Tree Removal Permit	Director of Planning	Planning Commission

PASSED FOR PUBLICATION of title this day of , 2012, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk