



Memorandum

TO: COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE

FROM: Paul Krutko
John Weis

SUBJECT: SEE BELOW

DATE: March 12, 2008

COUNCIL DISTRICT: District 3

**SUBJECT: DOWNTOWN STREET VENDORS: PERMIT PROCESS
IMPROVEMENTS, ORDINANCE CHANGES, NEW REGULATIONS**

RECOMMENDATION

Accept staff's report and recommend to the City Council that the City Council:

- (a) Approve an ordinance:
 - (1) Repealing the Flower Vendor Ordinance set forth in Chapter 6.30 of Title 6 of the San Jose Municipal Code;
 - (2) Amending the Peddler Permit Ordinance, Chapter 6.54 of Title 6 of the San Jose Municipal Code, to: include regulation of flower street vendors; extend the hours during which approved location peddlers can peddle; authorize the City Manager to make and promulgate time, place and manner regulations reasonably necessary to promote economic growth and create a more vibrant Downtown; and, update definitions in the Chapter 6.54 to ensure consistency of terms within Title 6 of the San Jose Municipal Code; and
 - (3) Amending the Downtown Special Events Ordinance, Chapter 6.55 of Title 6 of the San Jose Municipal Code, to reduce the area within which approved location peddler's permits may be suspended during a designated Downtown Special Event by limiting the suspension area to the Special Event Boundary; authorize peddlers within the Special Event Boundary to peddle at alternative, temporary locations outside the Boundary for the duration of the Downtown Special Event; and clarify the exceptions to the requirement for Event Organizers to provide approved location peddlers an equal opportunity to participate in the Downtown Special Event.
- (b) Accept staff's recommended process to assist those peddlers wishing to operate as approved location peddlers in the Downtown Vendor Program Area.

OUTCOME

Adoption of the above ordinance would result in regulations that encourage and support an increase in the number and the variety of approved location peddlers Downtown, and create a richer customer experience and a livelier pedestrian experience in the public realm, consistent with the San Jose-1stACT vision. Acceptance of the staff's recommended process for assisting approved location peddlers will result in a more supportive experience for those seeking to operate as approved location peddlers in the Downtown Vendor Program Area (see Appendix A for map).

BACKGROUND

“Approved location peddlers” are those peddlers who operate and peddle from a stationary cart at the same approved location in the City every day or during certain days or times of the week. While they remove their carts at the end of the day, they are not considered mobile peddlers and are subject to very different regulations than those peddlers that are mobile or move from location to location to sell their wares.

On September 2007, Council adopted the “Small Wonders Workplan”. The purpose of this plan was to accelerate progress towards achieving a thriving Downtown San Jose that can serve as “Silicon Valley’s City Center”—a vision that is advanced by 1st ACT Silicon Valley, embraced by the City Council, and is consistent with Downtown Strategy 2000. “Small Wonders” are those smaller-scale amenities that create a distinctive and lively street life, fill in between the “Big Deal” building projects and keep people returning to a downtown because it is a special place. To this end, the Small Wonders Workplan includes more than 20 projects aimed at filling in the gaps in Downtown. Project #8 on that list of projects is “the encouragement of street vendors, kiosks, and outdoor markets Downtown.”

Following Council’s adoption of the Small Wonders Workplan, a group was formed to evaluate the City’s current Peddler Ordinance and determine what improvements could be made to the ordinance that would address the project #8 in the Workplan. That group consisted of staff from the Office of Economic Development/Cultural Affairs, the San Jose Redevelopment Agency (SJRA), the Department of Planning, Building and Code Enforcement (Planning), and the Police Department. The Departments of Transportation, Public Works, Environmental Services, and Fire were also consulted and provided input.

After reviewing the Peddler Ordinance, the team found that the current approach to peddlers (hereafter, “street vendors”), especially approved location street vendors within Downtown, was created largely in the 1970s. The goal of the group was to update the City’s approach to approved location street vendors, particularly within the Downtown area, so that it aligned with Downtown’s present situation and future vision without sacrificing public safety. The group also considered the experience of other cities with more highly developed street vendor programs and suggested changes to the ordinance based on the success of those programs.

Changes being proposed for approved location street vendors in the Downtown Vendor Program Area are as follows:

1. Encourage street vendor activity by streamlining the permit process and by improving their initial interaction and experience with the City;
2. Expand hours they can operate to align with retail hours in the Downtown;
3. Promulgate regulations aimed at supporting their business and encouraging economic development;
4. Repeal the Flower Vendor Ordinance so that approved location street vendors selling flowers are not subject to different regulations.

Taken together, the revisions will help achieve the following goals:

- A more lively pedestrian experience Downtown, where unique street vendors add to Downtown's distinctiveness;
- An approval process for new vendors that is clearer, streamlined, and friendlier; and,
- An increase in the number and diversity of vendors Downtown, including street vendors selling retail products as well as food/beverage (currently there are only three hotdog street vendors in this area).

While reviewing the Peddler Ordinance with an eye toward economic development in the Downtown, staff also noted a need for change to other provisions of Title 6 that regulate approved location street vendors and mobile street vendors citywide. One of the issues needing to be addressed was the presence of an entirely different Chapter within Title 6 of the Code that was in place to regulate approved location street vendors that were selling flowers. Instead of having several different processes for flower vendors, staff thought it more efficient to repeal the Chapter, the Flower Vendor Ordinance, so that flower vendors would not be subject to different regulations than other types of peddlers, causing less confusion with peddlers. Other changes staff felt were necessary were updates to the definitions within the Peddler Permit Ordinance to ensure consistency with terms used throughout Title 6 of the Code.

ANALYSIS

Revised Permit Approval Process For Approved Location Street Vendors In the Downtown Vendor Program Area

Currently, the main City contact for potential approved location street vendors is the Police Department and a Police Officer in the Permits Unit. To improve the application experience for the applicant and ensure that the applicant receives assistance that will provide a more successful retail experience Downtown, staff is recommending that the role of the Redevelopment Agency's Project Expeditor be expanded to be the point of contact for street vendors. The Expeditor will facilitate the client's application process, guide location selection, and forward the completed

application to the Police Department for approval, subject to a criminal background check and a site inspection for public safety. Authority to issue the permit will remain with Police, who will continue their role in conducting the background check, inspecting the site for public safety, and ultimately issuing the peddler permit and a photo identification badge.

The SJRA's Project Expeditor will improve the presentation and accessibility of information about the business possibilities for approved location street vendors Downtown and about the permitting process. Program information and downloadable application forms will be available on the SJRA and City websites. The Expeditor is creating an easy-to-understand Program Handout that summarizes key requirements in the ordinance and regulations. City Hall Business Services Center staff will provide packets of information to any applicants seeking information at City Hall.

Permit fees for approved location street vendors wishing to operate in these areas will be paid at the City Hall Cashier and the fee revenue will then be appropriated to the Police Department. See Attachment B: Improved Permit Approval Process for a flowchart of the improved process.

**Main Revisions to Permit Approval Process
Approved Location Peddler Permits for Downtown Street Vendors**

	Current Permit Process	New Permit Process
Main Vendor Contact	Police Officer in Permits Unit	Use of Project Expeditor position to assist in this program
Initial Interaction with Vendor	At Police Department	At City Hall
Vendor Locations	Vendor proposes locations until one is acceptable	SJRA/City works closely with vendor to choose a location; secondary location is chosen if relocation could be required during Downtown events
Approval Recommendation	Police Department	Project Expeditor to Police Department
Permit Issuer/Background Check	Police Department	Police Department
Availability of Program Information	Hard copy from Police Department	On-line (SJRA/City, PD websites) Pick up hard copy at City Hall Business Services Center
Locations Applicant Needs to Visit	Police Department (3 times) City Hall to pay business tax Sheriff (for fingerprinting) Health Department if selling food items	City Hall (one time to pay permit fees/business tax, complete permit application with Project Expeditor and review potential locations) Police Department (twice: once for interview and again to pick up photo ID and permit , if approved) Sheriff (for fingerprinting) Health Department if selling food items
Permit Fees Paid	At Police Department	At City Hall Cashier

Revised Ordinances and New Regulations Regarding Approved Location Street Vendors in the Downtown

In the recommended approach, the Ordinance is revised to include the basic, broad parameters of the Downtown Vendor Program, and new Regulations are created that specify the implementation details. Council must adopt the Ordinance, and the Regulations can be changed by administrative action of the City Manager. This approach is recommended to provide flexibility to change implementation details as necessary based on on-the-ground experience with the program, to promote economic growth and create a more vibrant Downtown consistent with the City’s Downtown Strategy 2000 and the City’s General Plan.

The table below summarizes the main changes to the Ordinances and main provisions of the Regulations.

**Main Changes to Ordinance and Regulations
Approved Location Peddler Permits for Downtown Vendors**

	Current Ordinance	New Ordinance/Regulations
Policy Structure	Program governed by citywide fixed-location peddler Ordinance	Ordinance outlines broad elements of Downtown fixed-location vendor program; new regulations outline specific requirements
Vendor hours	10:00 a.m. to 7:00 pm or 30 minutes after sunset	Conform to retail hours: 6:00 a.m.-midnight Downtown
Vendor locations	Sidewalk portion of public streets	Expands allowable locations to include certain plazas and paseos in addition to sidewalks-- subject to safety, ADA compliance and pedestrian flow requirements
Size/Design	Specifies maximum cart size	Provides flexibility by specifying overall footprint (100 sf); retains maximum cart height (10’);
Minimum Days of Operation	None specified	Expected to vend for not less than 15 hours per week, and not less than 3 days per week
Flower Vendors	Permitting authority lies with Finance Department	Police Department has permitting authority for flower vendors citywide; flower vendors included in Downtown Vendor Program
During Special Events	Allows suspension of approved location peddler permits within extensive “Special Event Zones” during designated outdoor special events.	The boundary for a declared Downtown Special Event will include the more narrowly defined and event-specific Special Event Boundary, eliminating the need to use “zones”. Allows suspension of approved-location peddler permits within the Special Event Boundary only. Displaced vendors may relocate during the Downtown Special Event to a location outside the Special Event Boundary. The alternative location will be identified as part of the permit.

Treatment of Permanent Vendors During Special Events

The most important change being proposed regarding Downtown Special Events is shrinking the “Special Event Zone” designation down to a “Special Event Boundary” designation, so that fewer approved-location peddlers will be affected. The second most important change proposed is the ability to relocate approved location peddlers outside of a designated Downtown Special Event.

Currently, an Event Organizer can request to designate their event as a “Downtown Special Event.” The designation of the boundaries for a Downtown Special Event is based on four distinctive, large zones. The Event Organizer must offer vendors with valid approved locations within the designated Special Event Zones the same opportunity to participate in a declared Downtown Special Event as the Event Organizer offers to its own vendors. If a vendor with an approved location within the designated Special Event Zone(s) chooses not to participate in the declared Downtown Special Event on the same terms as other event vendors or is not selected to participate, the Event Organizer can require the vendor to close down operations during the event. The practical effect of this policy is that vendors located in the designated Special Event Zones in areas that are near but not part of the Downtown Special Event may be shut down for extended periods of time, especially during the summer festival season. This can significantly impact the vendor’s chance of success over the course of the year.

Staff recommends revisions to the Downtown Special Events Ordinance to eliminate Special Event Zones and instead utilize a “Special Event Boundary” (geographically narrower than “Special Event Zone” and drawn on a more event-specific basis) to define the impacted area. The revised Ordinance would provide that the event organizer must offer the approved location vendors within the Special Event Boundary the same opportunity as other vendors to vend within the event, paying the same charges as other temporary vendors serving the event. An impacted approved location vendor that chose not to participate in the event would be given the opportunity to relocate to a temporary location outside the Special Event Boundary. Vendors whose approved locations are outside of the Special Event Boundary would be able to remain in operation and sell their goods to event attendees walking to the event site.

In the special cases where an entire “Special Event Boundary” area is required for event equipment or where an event is for a private function or the event does not have any vendor components, peddlers with fixed-location permits will be offered an alternative location for the special event period.

EVALUATION AND FOLLOW-UP

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

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

PUBLIC OUTREACH/INTEREST

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

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

The Office of Cultural Affairs has interacted with several of the main event producers who currently request suspension of approved location vendors during Downtown Special Events, regarding the changed treatment of approved location vendors during special events.

Most of the recommendations received from the Event Organizers were in conflict with the goals of the San Jose/1st ACT vision which is to create a richer customer experience and a livelier pedestrian experience in the public realm 365 days of the year. Specifically, the Event Organizers prefer the larger Zone concept rather than the more narrowly defined event Boundary concept to minimize competition for attendee dollars. While festivals and events make for a vibrant downtown during specific periods throughout the year, achieving the San Jose/ 1stACT vision requires updated procedures as to how approved-location vendors are managed during Downtown Special Events. The updated procedures were developed to allow approved location vendors more opportunities to remain in operation either at their designated fixed locations or temporary locations while allowing the Event Organizers control of the specific areas used for the Downtown Special Event.

COORDINATION

This memo has been coordinated with the Office of Cultural Affairs, Police Department, the City Attorney's Office, and Finance.

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POLICY ALIGNMENT

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



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For questions please contact KIM WALES, ASSISTANT DIRECTOR, OED, 535-8177.

Attachment A: Downtown Vendor Program Area
Attachment B: Improved Permit Approval Process

**Downtown Vendor Program
Approved Location Peddler Permits**

Streamlining the Permitting Process

