

ORDINANCE NO. 28072

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

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

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

SECTION 1. Definitions

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

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

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

Council shall also set forth the City Manager's reasons for the extension pursuant to the provisions of this Ordinance.

SECTION 2. Extension of Hours

- A. All drinking establishments or entertainment establishments operating within the Drinking or Entertainment Establishment Pilot Program Area and all public eating establishments operating with the Public Eating Establishment Pilot Program Area, as each of those terms is defined herein or in Title 20 of the San José Municipal Code, that are legally allowed to operate on certain days until 2:00 a.m. as of the effective date of this Ordinance may operate until 3:00 a.m. on those same days during the Pilot Program Period so long as the establishment meets all of the following criteria:
1. The establishment is at all times operating in full compliance with all federal, state and local laws, written policies, permits and other approvals that are applicable to the establishment, including without limitation all of the following:
 - a. All of the terms and conditions of any development permit issued for the establishment by the City of San José under Title 20 of the San José Municipal Code; and
 - b. All of the terms and conditions of any business license or permit issued for the establishment by the City of San Jose under Title 6 of the San José Municipal Code; and
 - c. All requirements to pay business taxes to the City in accordance with the provisions set forth in Title 4 of the San Jose Municipal Code; and
 - d. The prohibition against the selling, giving, delivering, or purchasing of alcoholic beverages between the hours of 2:00 a.m. and 6:00 a.m. of

the same day as described in Section 25631 of the California Business and Professions Code.

- B. No provision of this ordinance shall extend, nor shall be interpreted to extend, the hours during which a business may sell alcoholic beverages pursuant to and in accordance with state and local laws, permits and other approvals applicable to that business.

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

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

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SECTION 4. OPERATIONS AFTER PILOT PROGRAM EXPIRATION

No public eating establishment, drinking establishment and/or entertainment establishment may extend its hours and operate past 2:00 a.m. upon and after the expiration of Pilot Program Period unless such hours of operation are separately allowed under applicable federal, state and local laws, including without limitation a development permit issued under Title 20 of the San José Municipal Code and/or a business license or permit issued under Title 6 of the San José Municipal Code.

PASSED FOR PUBLICATION of title this 19th day of June, 2007, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, LICCARDO,
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED

NOES: NONE

ABSENT: CORTESE

DISQUALIFIED: NONE

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk