

**ORDINANCE NO. 28296**

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING PART 12 OF CHAPTER 20.100 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO ALLOW BUSINESSES THAT ARE DESIGNATED AS PUBLIC EATING ESTABLISHMENTS AND MAINTAIN A VALID ENTERTAINMENT PERMIT UNDER TITLE 6 OF THE SAN JOSE MUNICIPAL CODE THE ABILITY TO OBTAIN A SIDEWALK CAFÉ PERMIT TO OPERATE A SIDEWALK CAFÉ IN THE DOWNTOWN, TO ALLOW RETAIL SALES ESTABLISHMENTS THE ABILITY TO OPERATE A SIDEWALK CAFÉ, AND MAKING OTHER CLARIFYING CHANGES TO SAID PART 12 OF CHAPTER 20.100 (THE SIDEWALK CAFÉ PERMITTING PROCESS) AND TO RELATED DEFINITIONS SET FORTH IN CHAPTER 20.200, ALL OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE**

**WHEREAS**, on May 17, 2005, this Ordinance was found by the Director of Planning, Building and Code Enforcement to be categorically exempt from environmental review per the provisions of Section 15305 of the guidelines promulgated under and pursuant to the California Environmental Quality Act of 1970, as amended, under File No. PP05-099, which determination has not been protested nor appealed.

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

**SECTION 1.** Part 12 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**Part 12  
Sidewalk Cafe**

**20.100.1400 Purpose**

The Sidewalk Cafe regulations established in this Part are intended to encourage Sidewalk Cafes in the City of San Jose, to provide for the creation of a more urban

pedestrian environment, and to promote and protect the public health, safety, and general welfare. These general goals include among others the following specific purposes:

- A. To encourage and promote Sidewalk Cafes as visual amenities which in turn intensify pedestrian activity and make street life more attractive; and
- B. To preserve and enhance the character of the City of San Jose; and
- C. To ensure adequate space for pedestrians on the Sidewalks adjacent to Sidewalk Cafes.

#### **20.100.1410 Definitions**

The definitions set forth in this Section shall have the following meanings for the purposes of this Part.

- A. "Director" means the Director of Planning, Building and Code Enforcement or such other person that the City Manager may designate to administer the provisions of this Part.
- B. "Permittee" means the person to whom a Sidewalk Café Permit has been issued pursuant to the provisions of this Part.
- C. "Premises" shall mean the Public Eating Establishment, as defined in Section 20.200.940 of this Code, or the Retail Sales Establishment, together with the appurtenant outdoor Sidewalk Cafe authorized for that Establishment by this Part.
- D. "Retail Sales Establishment" shall mean a "Retail sales, goods and merchandise" use as described in this Title.
- E. "Sidewalk" shall mean that part of the public right-of-way dedicated to pedestrian circulation, including without limitation a public sidewalk or a public pedestrian mall.

#### **20.100.1420 Permit Required; Compliance Required**

- A. No owner or operator of a Public Eating Establishment or a Retail Sales Establishment shall occupy, and no real property owner shall suffer or allow a Public Eating Establishment or a Retail Sales Establishment located on its real property to occupy, any portion of a Sidewalk with umbrellas, tables, chairs or

other portable appurtenances for the convenience of customers unless such owner or operator has first obtained a Sidewalk Café Permit approved by the Director.

- B. No owner, operator or patron of any portion of a Sidewalk Cafe may do, and it shall be unlawful for any owner or operator to do, allow or suffer, any of the following activities in connection with the use, maintenance or operation of a Sidewalk Café:
1. Use the Sidewalk Cafe for any activity other than dining, drinking (in conjunction with dining), and the circulation associated with that activity therein; or
  2. Use the Sidewalk Café in any manner that would violate any term, condition or restriction of the Sidewalk Café Permit or this Part.
- C. A Sidewalk Café Permit grants nothing more than a license to use the public Sidewalk, which license is revocable at will and may be revoked by City, for or without any cause whatsoever, at any time. A Sidewalk Café Permit does not grant any party any estate or other property right in the Sidewalk. The ability to occupy the Sidewalk under a Sidewalk Café Permit is a privilege that is nontransferable and non-assignable.
- D. The Director has the authority to revoke a Sidewalk Café Permit. The Director shall provide a Permittee with prior written notice of the revocation of that Permittee's Sidewalk Café Permit, which notice shall include the effective date of such revocation.

#### **20.100.1430 Application**

- A. The provisions of Section 20.100.110 subsection B shall not apply to applications for a Sidewalk Cafe Permit. The owner or operator of the Public Eating Establishment or the Retail Sales Establishment desiring to extend its business operations into a Sidewalk Café, or the owner of the real property on which the Public Eating Establishment or Retail Sales Establishment is located, may file an application for a Sidewalk Café Permit.

- B. The application for a Sidewalk Café Permit shall contain the following information and any additional information that the Director may reasonably require to process or reach a determination on the Sidewalk Café Permit application:
1. The name and signature of the Applicant; and
  2. The name and address of the Public Eating Establishment or the Retail Sales Establishment desiring to extend its operations into a Sidewalk Café and to which the Sidewalk Café would be appurtenant; and
  3. The hours that a Sidewalk area is proposed to be used as a Sidewalk Cafe; and
  4. A plan, drawn to scale, showing the locations, the number, and the arrangement of umbrellas, tables, chairs, and other portable appurtenances proposed to be located on a Sidewalk adjacent or near to a Public Eating Establishment or a Retail Sales Establishment, together with the proposed location(s) of the Sidewalk Cafe; and
  5. The width of the Sidewalk where the Sidewalk Cafe is proposed to be located, both before and after the proposed establishment of the Sidewalk Cafe.

**20.100.1440 Review of Application**

The Director shall consider the following factors in the review of the Sidewalk Café Permit application:

- A. The convenience and safety of pedestrians, property owners, occupants, customers, residents, or tenants of offices, stores, shops or dwellings in the vicinity of the Premises; and
- B. The dimensions of the Sidewalks affected by a Sidewalk Café Permit application ; and
- C. The location of nearby fire hydrants, utility poles, sign poles, Light Rail tracks and stations, street trees and other structures within the public right of way; and
- D. Other factors that may be relevant to the safety, efficacy or efficiency of allowing a Sidewalk Café at a particular location.

**20.100.1450 Findings**

The Director may issue a Sidewalk Café Permit only upon first finding that issuance of the Sidewalk Café Permit:

- A. Would not create a nuisance; and
- B. Would preserve or enhance the character of the surrounding area; and
- C. Would adequately preserve and protect the convenience and safety of pedestrians, property owners, occupants, customers, residents or tenants of offices, stores, shops or dwellings in the vicinity of the Premises; and
- D. Would not result in any significant adverse land use impacts; and
- E. Would comply with the Conditions and Restrictions set forth in this Part.

**20.100.1460 Amendment of Existing Permits for Service of Alcohol**

- A. Existing Sidewalk Café Permits may be amended to authorize the service of alcoholic beverages in accordance with and when allowed by the provisions of this Part.
- B. The application process for a new Sidewalk Café Permit set forth in this Part shall be followed for an amended Sidewalk Café Permit.

**20.100.1470 Special Findings - Service of Alcohol**

The service of alcoholic beverages within and as a part of a Sidewalk Café Permit may be allowed only if the Director first makes all of the following findings:

- A. The use located on the Premises does not function solely as a Drinking Establishment as that use is defined in Section 20.200.300 of this Title; and
- B. The owner or operator of the Public Eating Establishment desiring to extend its business operations into a Sidewalk Café holds a current and valid liquor license issued by the California Department of Alcoholic Beverage Control allowing its Public Eating Establishment to operate as a Bona Fide Public Eating Place under State law; and

- C. The licensee under the liquor license issued by the California Department of Alcoholic Beverage Control is in full compliance with all conditions and restrictions of his or her liquor license; and
- D. The Public Eating Establishment has not been issued a Dance Hall Permit, as defined in Chapter 6.58 of this Code; and
- E. The Public Eating Establishment has not been issued a Public Entertainment Permit, as defined in Chapter 6.60 of this Code, if the Establishment is located outside of the Downtown Core area, as that area is described in the City's General Plan, as amended from time to time; provided, however, that a Public Entertainment Permit may be issued to a Public Eating Establishment within said Downtown Core area; and
- F. The applicant for the Sidewalk Café Permit or the Public Eating Establishment to which the proposed Sidewalk Café would be appurtenant, and the site upon which the Public Eating Establishment is located are all in full compliance with all provisions of this Code and would continue to be in full compliance if and after a Sidewalk Café Permit is issued; and
- G. The issuance of the Sidewalk Café Permit would not result in any significant adverse land use impacts based upon all of the information known by and/or submitted to the Director related to the Sidewalk Café Permit.

**20.100.1480 Conditions and Restrictions**

The issuance of a Sidewalk Café Permit, and the operation of any Sidewalk Café, shall be subject to all of the following additional conditions and restrictions, together with such other conditions as may be deemed necessary by the Director in order to secure the general purposes of this Title. The Director may, in issuing a Sidewalk Café Permit, increase the restrictiveness of any or all of the following conditions and restrictions.

The Permittee, and/or anyone operating a Sidewalk Café without having first obtained the requisite Sidewalk Café Permit pursuant to the provisions of this Part, shall comply or cause the compliance with all of the following conditions and restrictions:

- A. Umbrellas, tables, chairs, and other portable appurtenances shall be confined to the area shown on the approved Sidewalk Café Permit plan set; and
- B. Equipment for the service of customers, including but not limited to trays or carts, eating or drinking utensils, linens, and cooking appliances shall not be placed or maintained on any portion of the Sidewalk unless the Sidewalk Cafe is adequately separated from pedestrian traffic; and
- C. All umbrellas, tables, chairs and other portable appurtenances shall be removed from the area at the end of each business day at the hour specified in the Sidewalk Café Permit; and
- D. At least one (1) covered outdoor trash container shall be provided in the Sidewalk Cafe area during the hours of operation of the Sidewalk Café and shall be maintained in a clean and sanitary condition; and
- E. The Premises shall be maintained in a clean and sanitary condition at all times; and
- F. The portion of the Sidewalk area not permitted to be occupied by umbrellas, tables, chairs, and other portable appurtenances shall be kept free of obstructions at all times; and
- G. The Sidewalk Café area shall contain tables and chairs and shall operate as a café and shall not operate in a “standing only” manner in any way or in any portion of the Sidewalk Café area.
- H. The hours of operation of a Sidewalk Cafe shall be limited, at a maximum, to the hours of operation of the associated Public Eating Establishment or Retail Sales Establishment; provided, however, that a Sidewalk Café appurtenant to a Public Eating Establishment with an Entertainment Permit and located within the Downtown Core area shall not operate between the hours of 12:00 midnight and 6:00 a.m.; and
- I. No amplified sound shall be used within a Sidewalk Café, and at no time shall any music originating from any part of the Premises create a nuisance; and
- J. Dancing shall not be permitted or allowed in the Sidewalk Cafe; and

- K. The Permittee must at all times comply or cause the compliance with all federal, state and local laws regarding the sale, service and consumption of alcoholic beverages and the operation of the Premises; and
- L. The Permittee shall submit to the City's Risk Manager a signed agreement to defend, indemnify, save, and hold harmless the City and all of its officers, agents, or employees from any liability for damages resulting from any and all operations under a Sidewalk Café Permit granted pursuant to this Chapter; and
- M. Each Permittee shall, at his or her own cost and expense, obtain and maintain in full force and effect all of the necessary insurance coverage for the full term of the Sidewalk Café Permit or any renewal thereof. The level of coverage shall be in the amount to be determined by the City's Risk Manager or the City Manager's designee assigned to perform the functions of the Risk Manager; and
- N. No Sidewalk Café Permit signed and issued under this Chapter may be transferred or assigned; and
- O. The Sidewalk area shall not be painted, landscaped or altered in any way without prior written approval of the City's Director of Transportation; and
- P. The Sidewalk Café Permit does not constitute a deed or grant of an easement by the City and is revocable at any time.

**20.100.1490 Special Conditions - Service of Alcohol**

- A. The Permittee shall remain, and shall cause the Premises to remain, in full compliance with all provisions of this Code at all times; and
- B. The Permittee shall remain, and shall cause Permittee's Premises to remain, in full compliance with all provisions and conditions of any liquor license or other authorization issued for Permittee's premises by the California Department of Alcoholic Beverage Control; and
- C. No person shall serve alcoholic beverages at a Sidewalk Cafe unless and until both the Sidewalk Café Permit and the liquor license issued by the California Department of Alcoholic Beverage Control specifically authorize the service of alcoholic

beverages, which authorization from California Department of Alcoholic Beverage Control may require a license that includes a sidewalk café or may require a premises expansion authorization; and

- D. Alcoholic beverages may be consumed only on the Permittee's Premises. The Permittee shall not allow patrons to leave the confines of the Premises with any alcoholic beverage and shall not allow patrons to give or sell alcoholic beverages to any person outside the Premises; and
- E. A Sidewalk Cafe appurtenant to a Public Eating Establishment outside of the Downtown Core area, as that area is described within the City's General Plan as may be amended from time to time, shall maintain full food service and shall operate as a bona fide eating place at all times that it is in operation, and a Sidewalk Café appurtenant to a Public Eating Establishment within said Downtown Core area shall maintain food service and operate as a Public Eating Establishment, respectively, at all times that it is in operation.
- F. No Sidewalk Cafe may function as a Drinking Establishment as defined in Section 20.200.300 of this Title.

**SECTION 2.** Section 20.200.270 of Chapter 20.200 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**20.200.270 Development Permit**

"Development Permit" means any Permit issued pursuant to Chapter 20.100 of this Title, with the exception of a Sidewalk Café Permit issued pursuant to Part 12 of Chapter 20.100.

**SECTION 3.** Section 20.200.1120 of Chapter 20.200 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

**20.200.1120 Sidewalk Cafe**

"Sidewalk Cafe" is a portion of an eating or retail sales establishment located on a public sidewalk or mall which functions as an extension of the use of the adjacent private property by an eating or retail sales establishment. A sidewalk cafe is open to the sky except that it may have awnings or umbrellas.

**PASSED FOR PUBLICATION** of title this **29TH** day of APRIL, 2008, by the following vote:

AYES: CAMPOS, CHIRCO, CORTESE, NGUYEN, OLIVERIO,  
PYLE, WILLIAMS.  
NOES: CHU, CONSTANT, LICCARDO; REED.  
ABSENT: NONE.  
DISQUALIFIED: NONE.

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk