



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: October 9, 2008

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

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO ALLOW BUSINESS SUPPORT AND BUSINESS AND ADMINISTRATIVE OFFICE USES AS GROUND FLOOR USES WITH A SPECIAL USE PERMIT IN THE DOWNTOWN GROUND-FLOOR SPACE OVERLAY AREA, TO ALLOW ANIMAL GROOMING AS A PERMITTED USE IN DOWNTOWN ZONING DISTRICTS, TO MODIFY PARKING REQUIREMENTS FOR LIVE/WORK UNITS IN DOWNTOWN ZONING DISTRICTS, AND TO MAKE OTHER RELATED CLARIFYING CHANGES AND MODIFICATIONS.

RECOMMENDATION

The Planning Commission voted 7-0-0, to recommend that the City Council approve the staff recommendation for a proposed ordinance amending Title 20 of the San Jose Municipal Code, the Zoning Code, to amend Section 20.70.100 of Chapter 20.70 to allow business support and business and administrative office uses as permitted uses with a Special Use Permit in the DG Downtown Ground-Floor Space Overlay, modify parking requirements for live/work units, and allow animal grooming as a permitted use in Downtown Zoning Districts; amend section 20.70.120 to modify the residential occupancy requirement for live/work units; and make other related clarifying changes and amendments.

BACKGROUND

Staff gave a brief presentation regarding the proposed ordinance and called the Commission's attention to three public comments received regarding the proposed ordinance from the San Jose Downtown Association, Joe Guerra, and Richard Upton (see attached).

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Commission Discussion

Commissioner Kalra expressed concern that allowing office uses in downtown ground-floor tenant spaces could hinder potential future ground-floor retail uses. Staff responded that the proposed ordinance maintains a Special Use Permit (SUP) requirement, which would allow for discretionary review and public input regarding specific proposals for such ground floor uses to ensure that they are not overly concentrated in one area and do not eliminate viable retail. Staff also clarified that it would be possible to monitor the effect of the ordinance over time to ensure that it does not result a negative effect on active ground-floor uses in downtown, and that it would be possible to eliminate the allowance for ground-floor office uses through a subsequent ordinance change if the provision results in unintended negative effects. The City Attorney clarified that such a future ordinance change would not apply to office uses that had been approved under the proposed SUP provision, but would prevent additional office uses.

Commissioner Jensen asked for clarification regarding the relationship between historic buildings and office uses in downtown. Staff indicated that historic buildings often face greater challenges in meeting exiting and other building code and fire requirements to accommodate active retail/restaurant uses, and that some historic buildings are not equipped with the store front window systems needed for successful retail. Staff indicated that a wider array of ground-floor uses would allow historic buildings to be utilized while preserving their historic character.

Commissioner Kalra asked whether there was any flexibility in the proposed parking requirement for live/work units. Staff responded that the Zoning Ordinance currently allows flexibility for the Director of Planning to reduce parking requirements for live/work units based on findings that the parking reduction will not adversely affect surrounding properties and that the project maintains a travel demand management (TDM) program to reduce parking demand.

Commissioner Jensen asked whether the City has received complaints regarding a lack of parking for existing live/work projects. Staff responded that some developers of prior projects have opted to provide more parking spaces than required by the Zoning Ordinance. Staff clarified that live/work uses often include office uses, and that the parking requirement for comparable stand- alone office space is greater than what is proposed for live/work units.

Commissioner Jensen asked if there was a distinction between allowing paid employees or unpaid volunteers to live in live/work units. Staff indicated that the ordinance language would be revised to allow either business employees or unpaid volunteers to live in the units.

Commissioner Zito asked about possible noise impacts to adjacent residential uses resulting from animal boarding. Staff responded that animal boarding uses conducted entirely within a building are currently allowed by right in the DC Downtown Core Zoning District and that the proposed ordinance is intended to allow animal grooming uses by right to align with the other animal uses that do not require a discretionary use permit. Staff indicated that animal grooming is not of concern from a noise perspective because it proposed to be allowed only within an enclosed building.

ANALYSIS

The memorandum from the Director of Planning to the Planning Commission, dated October 1, 2008 (attached), includes a complete analysis of the proposed ordinance.

EVALUATION AND FOLLOW-UP

Not applicable.

POLICY ALTERNATIVES

The memorandum from the Director of Planning to the Planning Commission, dated October 1, 2008, includes an analysis of the alternatives available to the City Council in 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.

A white paper on the proposed ordinance and public hearing dates were e-mailed to a citywide e-mail list consisting of neighborhood associations and development industry representatives. The white paper and a notice of the public hearing was posted in the Department's website. The public hearing notice was published in the Mercury News. Staff has been available to discuss the proposed ordinance with interested members of the community.

COORDINATION

This project was coordinated with the City Attorney, the Office of Economic Development, and the Redevelopment Agency.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan policy that promotes economic development through a streamlined development review process.

COST SUMMARY/IMPLICATIONS

Not applicable.

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BUDGET REFERENCE

Not applicable.

CEQA

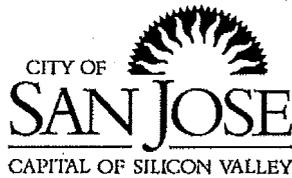
Resolution No. 72767.


Susan Walton
 JOSEPH HORWEDEL, SECRETARY
Planning Commission

For questions please contact Sylvia Do at 408-535-7906.

Attachments

- Public comments (3)



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: October 1, 2008

COUNCIL DISTRICT: Citywide

SNI AREA: All

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO ALLOW BUSINESS SUPPORT AND BUSINESS AND ADMINISTRATIVE OFFICE USES AS GROUND FLOOR USES WITH A SPECIAL USE PERMIT IN THE DOWNTOWN GROUND-FLOOR SPACE OVERLAY AREA, TO ALLOW ANIMAL GROOMING AS A PERMITTED USE IN DOWNTOWN ZONING DISTRICTS, TO MODIFY PARKING REQUIREMENTS FOR LIVE/WORK UNITS IN DOWNTOWN ZONING DISTRICTS, AND TO MAKE OTHER RELATED CLARIFYING CHANGES AND MODIFICATIONS.

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council approve the proposed ordinance to allow business support and business and administrative office uses as ground floor uses with a Special Use Permit in the Downtown Ground-Floor Space Overlay Area, to allow animal grooming as a permitted use in Downtown Zoning Districts, and to modify the parking requirements for live/work units in Downtown Zoning Districts.

OUTCOME

Approval of the proposed ordinance would facilitate office uses in downtown ground-floor tenant spaces, eliminate the permit processing time and costs for animal grooming uses, and modify the residential occupancy and parking requirements for live/work units to support commercial uses in Downtown Zoning Districts.

BACKGROUND

The General Plan specifies that the City should actively promote economic development through a simplified development review process. Consistent with this direction, staff periodically reviews the Zoning Ordinance to identify outdated measures and to determine where process and other requirements can be streamlined without diminishing the City's ability to achieve its land use goals.

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On June 3, 2008, the City Council approved phase one of a two-phased series of streamlining ordinances. The first ordinance amendment was approved to streamline and clarify permit and parking requirements for specific uses in the commercial and industrial zoning districts. The current downtown ordinance is the first of the phase two ordinances; additional commercial and industrial streamlining ordinances are scheduled for Planning Commission consideration on October 22, 2008 and City Council consideration on November 18, 2008.

Table 1 identifies proposed changes to the DC Downtown Core Zoning District that refine and streamline requirements for business support and business and administrative office uses in downtown ground-floor tenant spaces, animal grooming uses, and live/work uses.

Table 1. Proposed Changes

Use	Existing Requirements	Proposed Requirements
DG Downtown ground-floor space overlay	<ul style="list-style-type: none">Business support and business and administrative office uses are not permitted on the ground floor in DG overlay.	<ul style="list-style-type: none">Allow business support and business and administrative office as permitted ground floor uses with a Special Use Permit in DG overlay.
Animal grooming	<ul style="list-style-type: none">Allowed with a Special Use Permit in DC Downtown Core and DC-NT1 Downtown Core - Neighborhood Transition 1 Districts.	<ul style="list-style-type: none">Allow as a permitted use in DC Downtown Core and DC-NT1 Downtown Core - Neighborhood Transition 1 Districts.
Live/work units	<ul style="list-style-type: none">Residential occupancy: "Only occupants of the dwelling may be employees or unpaid volunteers of the business or commercial activity."Parking: 1 per unit.	<ul style="list-style-type: none">Replace existing restriction with: "Only owners or employees of the business associated with the live/work unit may occupy the living unit portion."Parking: 1.5 per unit.

ANALYSIS

Business Support and Business and Administrative Offices

Sections 20.70.520 and 20.70.100 of Title 20 define the DG Downtown Ground-Floor Space Overlay Area (DG Area) and provide regulations for ground-floor uses with street frontage. Properties located in the DG Area are subject to use regulations above and beyond the regulations otherwise applicable in the DC Downtown Core Zoning District. The DG Area is shown in the attached Exhibit A.

Currently, Section 20.70.100 does not allow business support or business and administrative office uses in ground-floor building space located in the DG Area. This use restriction was intended to achieve more active commercial uses, such as retail and restaurants, in ground-floor tenant spaces. The proposed ordinance would modify the restriction to allow *business support* and *business and administrative* uses subject to a Special Use Permit (SUP). This ordinance amendment is intended to support the City's economic development goals and encourage downtown revitalization by

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facilitating the use of tenant spaces that may otherwise remain as vacant and inactive storefronts. A number of the buildings located in the DG Area are designated Historic Landmarks or are identified as historic resources on the city's Historic Resources Inventory. These historic resources often face greater challenges in meeting existing and other building code and fire requirements for new uses; the wider array of allowable ground floor uses proposed in the ordinance would give property owners greater flexibility in finding tenants. The SUP requirement would allow for discretionary review and public input regarding specific proposals for such ground floor uses to ensure that they are not overly concentrated in one area and do not eliminate viable retail.

Animal Grooming

Section 20.70.100 lists regulations for uses in the Downtown Zoning Districts. Currently, animal grooming requires a Special Use Permit (SUP). The proposed ordinance would eliminate the SUP requirement and allow the use without a discretionary permit, consistent with the existing requirement for other animal related uses, including *animal boarding* and *veterinary* uses. Any use involving the care of animals, including animal grooming, would be required to be conducted wholly inside a building.

Live/Work

Section 20.70.120 of Title 20 establishes regulations for live/work uses in the Downtown Zoning Districts. Currently, only occupants of the dwelling may be employees or unpaid volunteers of the business or commercial activity component of live/work units. The current parking requirement for live/work uses, one space per unit, reflects this relatively stringent requirement. The current regulations allow for live/work units that function much like home occupations. The proposed ordinance would allow owners or employees of the business associated with the live/work unit to occupy the living unit portion, but would allow the business to have other employees that do not live in the unit, thereby providing greater flexibility regarding types of live work businesses and greater opportunity for such businesses to grow in place. In order to ensure that adequate parking is provided for the live/work units, staff is proposing to increase the parking requirement to 1.5 parking spaces per unit. This ordinance would not modify the permit requirements for live/work uses in Downtown Zoning Districts; live/work uses are currently allowed by right in the DC Downtown Core Zoning District and allowed with the issuance of a Special Use Permit in the DC-NT1 Downtown Core – Neighborhood Transition 1 Zoning District.

POLICY ALTERNATIVE

Alternative #1: Retain existing Zoning Ordinance provisions and do not streamline and clarify regulations for *business support* and *business and administrative office* uses in the Downtown Ground-Floor Space Overlay Area, and animal grooming and live/work uses in Downtown Zoning Districts.

Pros: This alternative would maintain the same Zoning Ordinance requirements for specific uses over time.

Cons: Retaining current requirements would not achieve the economic development benefits of the proposed streamlining measures.

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Reason for not recommending: The proposed streamlining measures offer tangible benefits in reduced time and costs for applicants without compromising the objectives of the City's land use approval processes.

Alternative #2: Further streamline the requirements of the Zoning Ordinance by allowing specific uses to locate in the Downtown Ground-Floor Space Overlay Area by right without a Special Use Permit.

Pros: This alternative could provide additional time and cost savings for applicants by eliminating the Special Use Permit requirement for specific uses in the Downtown Ground-Floor Space Overlay Area.

Cons: Eliminating the Special Use Permit requirement for *business support* and *business and administrative office* uses could potentially result in an over concentration of these uses on the ground floor of buildings in the Downtown Ground-Floor Space Overlay Area contrary to the City's goals for a predominance of active ground floor retail, restaurant and other active uses in the area.

Reason for not recommending: The SUP requirement would allow for staff review of specific ground-floor uses in the DG Area, a noticed public hearing to elicit community input, and a discretionary decision regarding the compatibility of the proposed use with the City's goals for ground floor uses in the Downtown.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)
- **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.

A notice of the public hearing was posted on the City website, published in the Mercury News and emailed to a citywide list of development interests, neighborhood associations and interested individuals. Staff has been available to discuss the proposal with interested members of the community.

COORDINATION

This project was coordinated with the San Jose Redevelopment Agency, the Office of Economic Development, and the City Attorney.

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FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan policy that promotes economic development through a streamlined development review process.

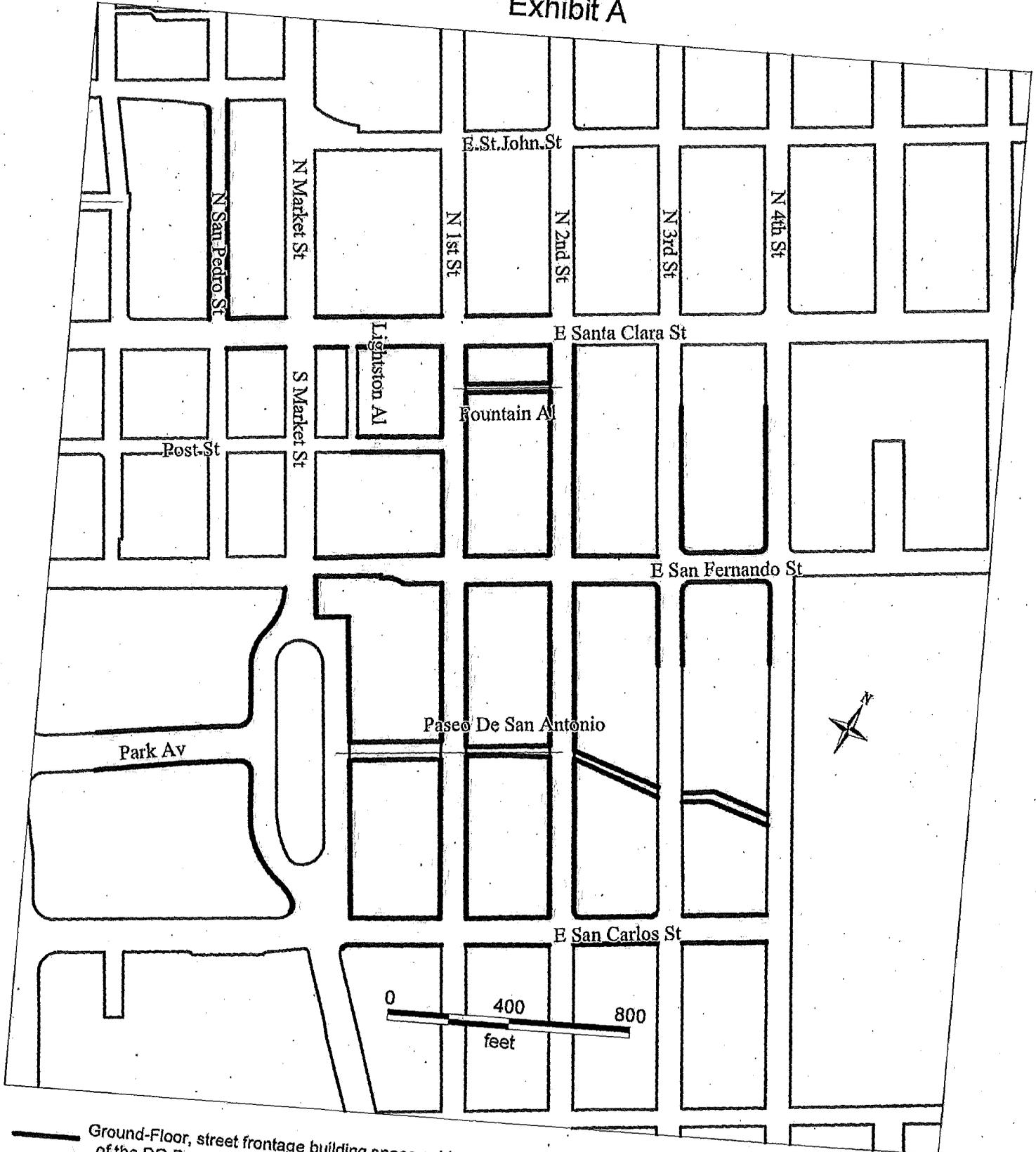
CEQA

Pursuant to CEQA Guidelines Section 15162, the City of San Jose has determined that the proposed project is pursuant to or in furtherance of the Downtown Strategy Plan and does not involve new significant effects beyond those analyzed in the Final Environmental Impact Report (EIR) for the Downtown Strategy Plan in San Jose. Therefore, the City of San Jose can take action on the project as being within the scope of the Downtown Strategy and the Final EIR. (File No. PP08-197).

For Andrew Curbue
JOSEPH HORWEDEL, Director
Department of Planning, Building and Code
Enforcement

For questions please contact Sylvia Do at 408-535-7906.

Exhibit A



Ground-Floor, street frontage building space subject to the regulations of the DG Downtown Ground Floor Space Overlay Area

Map Created On:
10/1/2008

Do, Sylvia

Sent: Tuesday, September 30, 2008 4:19 PM
To: Do, Sylvia
Subject: RE: Zoning Ordinance Amendment Revising the Requirements of the Downtown Zoning District

Sylvia

Do I read the live work language correctly to mean that if a husband and wife want to live in a live work unit, the only way they can both live there is if they both are also owners or employees of the business in the work unit?

Joe Guerra
SunCal Companies
www.suncal.com
(408) 307-7806
97 S. 2nd Street Suite 220
San Jose, CA 95113

Do, Sylvia

Sent: Wednesday, October 01, 2008 4:30 PM

To: sylvia.do@sanjoseca.gov

Subject: Offices instead of retail on the ground floor in downtown (was: Zoning Ordinance Amendment Revising the Requirements of the Downtown Zoning District)

Dear Sylvia Do:

I see in the files that you sent with the email below that the city is considering the allowance of offices on the ground floor of office buildings in downtown.

What are the boundaries of the area for which this change is being proposed, and what is the reasoning behind it? I know that Palo Alto has a policy for its downtown area which mandates retail for ground floor space; this policy has helped to make its downtown vibrant.

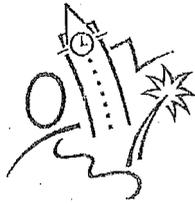
A change allowing for office space on the ground floor seems to be a good idea in the short term for landlords who can make more money off of renting space for office use than retail. But in the long run it makes all of downtown space less valuable the more downtown becomes a sterile dead place with offices taking up ground floor space.

Preventing offices from moving into ground floor space shouldn't hurt businesses looking for space--I believe there is plenty of vacant office space in downtown without having to open up ground floor space for leasing.

Best regards,

Richard Upton
78 N. 12th St.
San Jose
(408) 655-5302

10/9/2008



**SAN JOSE DOWNTOWN
ASSOCIATION**

28 N. FIRST STREET
SUITE 1000
SAN JOSE, CA 95113
TEL: 408-279-1775
FAX: 408-279-1904
WWW.SJDOWNTOWN.COM

October 5, 2008

Planning Commission of the
City of San Jose
c/o Carol Hamilton
Planning Division
200 E. Santa Clara Street
San Jose, CA 95113

Re: October 8, 2008 Public Hearing
Proposed Downtown Screening Ordinance

Dear Chair and Planning Commissioners:

The Advocacy Committee of the San Jose Downtown Association has reviewed the below proposal on amending portions of Title 20 on Downtown use requirements:

Proposed Downtown Streamlining Ordinance

September 2008 Use	Existing Requirements	Proposed Requirements
DG Downtown ground-floor space overlay	Business support and business and administrative office uses are not permitted on the ground floor in DG overlay.	Allow business support and business and administrative office as permitted ground floor uses with a Special Use Permit in DG overlay.
Animal grooming	Allowed with a Special Use Permit in DC Downtown Core and DC-NT1 Downtown Core - Neighborhood Transition 1 Districts.	Allow as a permitted use in DC Downtown Core and DC-NT1 Downtown Core - Neighborhood Transition 1 Districts.
Live/work units	Residential occupancy: "Only occupants of the dwelling may be employees or unpaid volunteers of the business or commercial activity." Parking: 1 per unit.	Replace existing restriction with: "Only owners or employees of the business associated with the live/work unit may occupy the living unit portion." Parking: 1.5 per unit

We support the proposed change to the ground floor space overlay, as this limitation was unnecessary in the original ordinance and it only dampened our efforts to turn the lights on in many empty spaces located inside the overlay area.

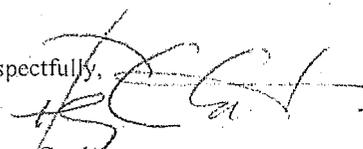
Animal grooming as a permitted use is logical and we support this change.

We do not agree on increasing the parking ratio for live/work units. There is adequate downtown public parking available to accommodate employees that may not live in some live/work units. Maintaining the ratio at 1.0 per unit is our recommendation to the Commission.

Additionally, we would like to express our desire to be contacted at an earlier stage for consultation on zoning matters affecting Downtown. The Association was formed in 1986 to act on behalf of its current 1,700 members. Our members are keenly interested in land use issues. The Downtown Association was instrumental in developing the original ground floor ordinance, particularly the boundaries. We would have appreciated input into these "streamlines" in advance rather than hear about them for the first time in Mercury News advertisements. We believe there are other changes to the ground floor ordinance that could have been incorporated if we had been consulted in advance.

The Advocacy Committee recommends that regular meetings be scheduled with City staff for discussion of ongoing or upcoming land use proposals in the Downtown.

Respectfully,


Henry Cord
SJDA Board Member and Advocacy Committee Chair

cc. Joe Horwedel, Director, PBCE
Harry Mavrogenes, Executive Director, RDA
Advocacy Committee Members
Scott Knies, Executive Director, SJDA