

**ORDINANCE NO. 27791**

**AN ORDINANCE OF THE CITY OF SAN JOSE TO EXTEND AN EXISTING PILOT PROGRAM ALLOWING SIDEWALK CAFÉ PERMITS IN CONJUNCTION WITH A PUBLIC ENTERTAINMENT PERMIT AND ALCOHOL SALES TO, THROUGH AND INCLUDING OCTOBER 31, 2006**

**WHEREAS**, on May 17, 2005, this Ordinance was found to be categorically exempt from environmental review per the provisions of Section 15305 of the California Environmental Quality Act of 1970, as amended, under File No. PP05-099; and

**WHEREAS**, on June 21, 2005 the City Council adopted Ordinance No. 27456 to establish a pilot program for one year to allow for the issuance of sidewalk café permits to businesses that serve alcohol and have a public entertainment permit under the provisions of Title 6 of the San José Municipal Code (the "Pilot Program"); and

**WHEREAS**, the City Council desires to extend the Pilot Program to, through and including October 31, 2006.

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

**SECTION 1.** From the effective date of City of San José Ordinance No. 27456 to, through, and including October 31, 2006, the following regulations pertaining to the issuance of permits for sidewalk cafes in conjunction with the issuance of Public Entertainment Permits shall apply:

**A. Special Findings - Service of Alcohol**

The service of alcoholic beverages shall be authorized by Director only if the following findings are made:

1. The Applicant is licensed as a Bona Fide Public Eating Place by the California State Department of Alcoholic Beverage Control; and
2. The Applicant is in compliance with all conditions and restrictions of his or her state liquor license; and
3. The business has not been issued a Dance Hall Permit, as defined in Chapter 6.58 of this Code; and
4. The Applicant is in full compliance with all provisions of this Code; and
5. Issuance of the Permit would not result in any significant adverse land use impacts.

**B. Conditions and Restrictions**

The issuance of a Permit shall be subject to the following conditions and restrictions, together with such other conditions as may be deemed necessary in order to secure the general purposes of Title 20 of the San José Municipal Code. The Director may, in issuing a Permit under these regulations, increase the restrictiveness of any or all of the following conditions and restrictions:

1. Umbrellas, tables, chairs, and other portable appurtenances shall be confined to the area shown on the approved Permit plan set;
2. 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 or mall area unless the sidewalk cafe is adequately separated from pedestrian traffic;
3. 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 Permit;
4. At least one (1) covered outdoor trash container shall be provided in the sidewalk cafe area during the hours of operation and shall be maintained in a clean and sanitary condition.
5. The Permittee shall maintain the area in a clean and sanitary condition at all times;
6. The Permittee shall keep that portion of the sidewalk area not permitted to be occupied by umbrellas, tables, chairs, and other portable appurtenances free of obstructions at all times;
7. The hours of operation of a sidewalk cafe shall be limited to the hours of operation of the associated establishment with the exception that the hours of operation of a

sidewalk café operating in conjunction with a business that maintains a Public Entertainment Permit pursuant to the provisions of Chapter 6.60 of Title 6 of this Code shall in no event exceed midnight or the hours of operation of the associated establishment, whichever hour occurs earlier;

8. No amplified sound shall be used within a sidewalk cafe. At no time shall any music originating from any part of the Premises create a nuisance;
9. Dancing shall not be permitted or allowed in the sidewalk cafe;
10. The Permittee must at all times comply with all federal, state and local laws regarding the sale, service and consumption of alcohol and the operation of the Premises;
11. The Applicant 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 permit granted pursuant to this Chapter;
12. 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 permit or any renewal thereof. The level of coverage shall be in the amount to be determined by the City's Risk Manager;
13. No Permit signed under this Chapter may be transferred or assigned;
14. The sidewalk or mall area shall not be painted, landscaped or altered in any way without prior written approval of the Director;
15. The Permit does not constitute a deed or grant of an easement by the City and is revocable at any time.
16. Any Permit issued pursuant to these regulations for a sidewalk café that operates in conjunction with a business that maintains a Public Entertainment Permit pursuant to the provisions of Chapter 6.60 of Title 6 of this Code and with the sale of alcohol shall sunset and become null and void at the following date and time: (a) at close of business on October 31, 2006 or midnight on November 1, 2006., whichever time first occurs, on the date that is one (1) year after the effective date of the Permit, or (b) at close of business on October 31, 2006 or midnight on November 1, 2006, whichever time first occurs, on whichever date first occurs under the provisions of this subsection.

**C. Special Conditions - Service of Alcohol**

1. The Applicant must remain in full compliance with all provisions of this Code; and
2. No person shall serve alcoholic beverages at a sidewalk cafe unless and until both the Permit and state liquor license specifically authorizes the service of alcohol; and
3. Alcoholic beverages shall 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
4. The sidewalk cafe shall maintain full food service and shall operate as a bona fide eating place at all times that it is in operation. No sidewalk cafe may function as a bar.

**PASSED FOR PUBLICATION** of title this 20<sup>th</sup> day of June, 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CORTESE, LeZOTTE, NGUYEN,  
PYLE, REED, WILLIAMS, YEAGER; GONZALES

NOES: NONE

ABSENT: CHIRCO

DISQUALIFIED: NONE

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RON GONZALES  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk