



CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
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San José, California 95113
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City Clerk

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSÉ)

I, Dennis D. Hawkins, City Clerk & Ex-Officio Clerk of the Council of and for the City of San José, in said County of Santa Clara, and State of California, do hereby certify that **Ordinance No. 29046**, the original copy of which is attached hereto, was passed for publication of title on the **13th day of March, 2012**, was published in accordance with the provisions of the Charter of the City of San José, and was given final reading and adopted on the **27th day of March, 2012** by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA, LICCARDO,
OLIVERIO, PYLE, ROCHA; REED.

NOES: NONE.

ABSENT: NGUYEN.

ABSTAINED: NONE.

VACANT: NONE.

Said ordinance is effective as of **April 27, 2012**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San José, this **28th of March 2012**.

(SEAL)

DENNIS D. HAWKINS
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

ORDINANCE NO. 29046

AN ORDINANCE OF THE CITY OF SAN JOSE ADDING SECTION 6.84.015 AND AMENDING SECTION 6.84.030 OF CHAPTER 6.84 OF TITLE 6 AND AMENDING SECTION 20.80.900 OF CHAPTER 20.80 AND SECTION 20.100.220 OF CHAPTER 20.100 OF TITLE 20, ALL OF THE SAN JOSE MUNICIPAL CODE, TO MODIFY THE GENERAL PROCESS FOR MAKING A DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY AND FOR PROCESSING A CONDITIONAL USE PERMIT FOR THE OFF-PREMISES SALE OF ALCOHOLIC BEVERAGES

WHEREAS, on February 3, 2012, the provisions of this Ordinance were found to be exempt from environmental review under File No. PP12-016 pursuant to the provisions of the California Environmental Quality Act of 1970, together with state and local guidelines and regulations implementing said Act (collectively, "CEQA"), particularly Section 15061(b)(3) of the State CEQA guidelines, all as amended to date.

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

SECTION 1. Chapter 6.84 of Title 6 of the San José Municipal Code is hereby amended by adding a new Section to be numbered and entitled and to read as follows:

6.84.015 Determination

"Determination" means a determination of public convenience or necessity by the City of San Jose to assist the State of California in the issuance of licenses for the off-sale of alcoholic beverages by the California Department of Alcoholic Beverage Control in those areas that are deemed to be over-concentrated with off-premises sale outlets or those areas that are considered high crime, as specified in Business and Professions Code 23958 et seq., as the same may be amended from time to time.

SECTION 2. Section 6.84.030 of Chapter 6.84 of Title 6 of the San José Municipal Code is hereby amended to read in its entirety as follows:

6.84.030 Findings

- A. Whenever a request for a Determination in connection with the issuance of a license for the off-sale of alcoholic beverages by the California Department of Alcoholic Beverage Control is submitted to the City as allowed under California Business and Professions Code Section 23958.4, as the same may be amended from time to time, the Determination request shall be processed utilizing the process provisions of a conditional use permit contained in Chapter 20.100 of Title 20 of this Code.
- B. Subject to the provisions of this Section, the Planning Commission shall hold a public hearing, review an application for a Determination, and may issue a determination of public convenience or necessity in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-premises sale of alcoholic beverages only after making all of the following findings:
1. The proposed use is not located within a Strong Neighborhoods Initiative or Neighborhood Revitalization area or other area designated by the City for targeted neighborhood enhancement services or programs, or located within an area in which the Chief of Police has determined based upon quantifiable information that the proposed use: (a) would be detrimental to the public health, safety, or welfare of persons located in the area, or (b) would increase the severity of existing law enforcement or public nuisance problems in the area; and
 2. The proposed use would not lead to the grouping of more than four off-premises sale of alcoholic beverage uses within a one thousand-foot radius from the exterior of the building containing the proposed use; and
 3. The proposed use would not be located within five hundred (500) feet of a school, day care center, public park, social services agency, or residential care or service facility, or within one hundred fifty (150) feet of a residence; and

4. Alcoholic beverage sales would not represent a majority of the proposed use; and
5. At least one (1) of the following additional findings:
 - a. The census tract in which the proposed outlet for the off-premises sale of alcoholic beverages is located is unusually configured and the proposed outlet would act as a convenience to an underserved portion of the community without presenting a significant adverse impact on public health or safety; or
 - b. The proposed outlet for the off-premises sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant adverse impact on public health or safety; or
 - c. The census tract in which the proposed outlet is located has a low population density in relation to other census tracts in the City, and the proposed outlet would not contribute to an over-concentration in the absolute numbers of outlets for the off-premises sale of alcoholic beverages in the area; or
 - d. The proposed off-premises sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

C.

In the event the Planning Commission determines that the Planning Commission is able to make all of the findings set forth in Subsection B.1 through B.4 above, the Planning Commission shall be the decision-making body for that request for a Determination for the proposed use and shall proceed to consider the findings required under Subsection B.5 above. The Planning Commission's decision on the Determination shall be appealable to the City Council. In the event the Planning Commission determines that it cannot make one or more of the

required findings set forth in Subsection B.1 through B.4 above, the Planning Commission shall make a recommendation to the City Council as to whether the City Council should make a Determination for the proposed use, taking into consideration the findings that can be made and the provisions of Subsection E below, and the City Council shall be the initial decision-making body for that request for a Determination.

- D. In the event the Planning Commission's decision on a Determination is appealed to the City Council or the Planning Commission determines that it cannot make one or more of the findings set forth in Subsection B.1 through B.4 above, the City Council shall hold a public hearing on the request for the Determination pursuant to the procedures set forth in Section 20.100.280 of Title 20 of the San José Municipal Code. The City Council may issue the Determination if the Council determines that the required findings as set forth in Subsection B above can be made.
- E. Notwithstanding the foregoing provisions and requirements contained in Subsection D above, the City Council may issue a Determination in connection with an application for a license from the California Department of Alcoholic Beverage Control for the off-premises sale of alcoholic beverages where the City Council does all of the following: (a) makes a determination that not all of the required findings set forth in Subsection B can be made; and (b) identifies and finds that a significant and overriding public benefit or benefits will be provided by the proposed use.
- F. Nothing contained in this Chapter shall be deemed or construed as requiring the Planning Commission or City Council to issue a Determination under the provisions of this Chapter. Under no circumstances shall a requestor for a Determination under this Chapter have a right to such Determination, and nothing contained in this Chapter shall be deemed or construed to confer upon any requestor a right to have a Determination made for any particular site.

SECTION 3. Section 20.80.900 of Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.80.900 Off-Sale of Alcoholic Beverages

- A. A conditional use permit may be issued pursuant to the applicable provisions of this title for the off-sale of any alcoholic beverages only if the decision-making body first makes the following additional findings, where applicable:
1. For such use at a location closer than five hundred feet from any other such use involving the off-sale of alcoholic beverages, situated either within or outside the city, that the proposed location of the off-sale alcohol use would not result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one thousand foot radius from the proposed location.
 2. For such use at a location closer than five hundred feet from any other use involving the off-sale of alcoholic beverages, situated either within or outside the city, where the proposed location of the off-sale of alcoholic beverages use would result in a total of more than four establishments that provide alcoholic beverages for off-site consumption within a one thousand foot radius from the proposed location, that the resulting excess concentration of such uses will not:
 - a. Adversely affect the peace, health, safety, morals, or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the area; or
 - c. Be detrimental to public health, safety or general welfare.
 3. For such use at a location closer than five hundred feet from any child care center, public park, social service agency, residential care facility,

residential service facility, elementary school, secondary school, college or university, or one hundred fifty feet from any residentially zoned property, that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential, child care center, public park, social service agency, residential care facility, residential service facility and/or school use.

- B. The off-sale of alcohol as incidental sales in conjunction with the sale of gift baskets, balloons and flowers is exempt from the requirement of a conditional use permit.
- C. Where a conditional use permit application requesting the off-premises sale of alcoholic beverages also would require a determination of public convenience and necessity under the provisions of Chapter 6.84 of Title 6 of this Code, and the Planning Commission cannot make the required findings under Section 6.84.030 of Chapter 6.84 of Title 6 of this Code, the Planning Commission shall make a report and recommendation to the City Council on said conditional use permit application. In this instance, the City Council shall be the initial and final decisionmaking body on said conditional use permit application.

SECTION 4. Section 20.100.220 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.220 Appeal - Hearing Body

Decisions on permits or approvals pursuant to this Chapter are subject to appeal as set forth in Table 20-260 which lists the initial decision maker and the decision making body which will hear any appeal.

Table 20-260 Appeal Hearing Body		
Application	Initial Decision Making Body	Appeal Decision Making Body
Administrative Permit	Director of Planning	No Appeal
Site Development Permit	Director of Planning	Planning Commission

Site Development Permit – Projects within Downtown Districts and exceeding 150 feet and FAR of 6:1	Director of Planning	City Council
Single-Family House Permit Administrative Decision Director's Hearing	Director of Planning Director of Planning	No Appeal Planning Commission
Planned Development Permit	Director of Planning	Planning Commission
Special Use Permit	Director of Planning	Planning Commission
Conditional Use Permit	Planning Commission	City Council
Conditional Use Permit – Drinking Establishments with an approved maximum occupancy load of over 250 persons that operate between 12:00 midnight and 6:00 a.m.	City Council	No Appeal
<u>Conditional Use Permit involving off-premises sale of alcoholic beverages requiring a Determination under Chapter 6.84 where findings required by Planning Commission under Section 6.84.030.B.1-4 cannot be made</u>	<u>City Council</u>	<u>No Appeal</u>
Variance	Director of Planning	Planning Commission
Exception	Director of Planning	Planning Commission
Sidewalk Café Permit I	Director of Planning	City Council
Tree Removal Permit	Director of Planning	Planning Commission
Zoning Code Verification Certificate	Director of Planning	No Appeal

PASSED FOR PUBLICATION of title this 13th day of March, 2012, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA, LICCARDO, OLIVERIO, PYLE, ROCHA; REED.

NOES: NONE.

ABSENT: NGUYEN.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



DENNIS D. HAWKINS, CMC
City Clerk

SAN JOSE POST-RECORD

95 S. Market St., Ste. 535, SAN JOSE, CA 95113
Telephone (408) 287-4866 / Fax (408) 287-2544

SUZANNE GUZZETTA
SAN JOSE CITY CLERK
200 E. SANTA CLARA ST.
SAN JOSE, CA - 95113

PROOF OF PUBLICATION

(2015.5 C.C.P.)

State of California)
County of SANTA CLARA) ss

Notice Type: GORSJ - SAN JOSE ORDINANCE (1 PUB)

Ad Description:
ORDINANCE #29046

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer and publisher of the SAN JOSE POST-RECORD, a newspaper published in the English language in the city of SAN JOSE, county of SANTA CLARA, and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of SANTA CLARA, State of California, under date 02/03/1922, Case No. 27844. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

03/20/2012

Executed on: 03/20/2012
At Los Angeles, California

I certify (or declare) under penalty of perjury that the foregoing is true and correct.




Signature

RECEIVED This space for filing stamp only
San Jose City Clerk

2012 MAR 23 P 4: 02

SJ#: 2280455



CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY
ORDINANCE NO. 29046

AN ORDINANCE OF THE CITY OF SAN JOSE ADDING SECTION 6.84.015 AND AMENDING SECTION 6.84.030 OF CHAPTER 6.84 OF TITLE 6 AND AMENDING SECTION 20.80.900 OF CHAPTER 20.80 AND SECTION 20.100.220 OF CHAPTER 20.100 OF TITLE 20, ALL OF THE SAN JOSE MUNICIPAL CODE, TO MODIFY THE GENERAL PROCESS FOR MAKING A DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY AND FOR PROCESSING A CONDITIONAL USE PERMIT FOR THE OFF-PREMISES SALE OF ALCOHOLIC BEVERAGES PASSED FOR PUBLICATION of title this 13th day of March, 2012, by the following vote:
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NOES: NONE.
ABSENT: NGUYEN.
DISQUALIFIED: NONE.

CHUCK REED
Mayor
ATTEST:
DENNIS HAWKINS, CMC
City Clerk
3/20/12

SJ-2280455#

