

City of San José, California

COUNCIL POLICY

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EFFECTIVE DATE April 26, 1994	REVISED DATE	
APPROVED BY COUNCIL ACTION		4/26/94, Item 9k

BACKGROUND

On November 30, 1984, the City Council approved an amendment to the Zoning Ordinance that required all commercial uses operating between the hours of 12:00 midnight and 6:00 a.m. be subject to a Conditional Use Permit. This ordinance change was established to assure compatibility of late night and early morning uses (e.g., bars, nightclubs, gasoline service stations, fast food restaurants, convenience stores and grocery stores) with surrounding land uses.

Recently, there has been an influx of Conditional Use Permit applications requesting 24-hour operation. As a result, City Staff determined that it would be appropriate to develop measures to assure that these proposals conform to General Plan Policy regarding neighborhood compatibility and urban design, as well as further the policies of the Downtown Strategy Plan. The intended result of these guidelines is balancing the needs ;comment; business to respond to market trends while protecting the quality of life in nearby residential neighborhoods.

DEFINITIONS

For the purposes of the following policies, 24-hour uses are defined as any commercial business that operates between the hours of 12:00 midnight and 6:00 a.m.

"Designated Parking Area" is defined as the area encompassed by a fixed radius from the entrance of a 24-hour use which encompasses 10 percent of the required parking spaces for said use or 25 spaces, whichever is greater, but in no event more than the total number of spaces on the site. "Outdoor Use Area" is defined as any area of the 24-hour use site where outdoor uses such as loading, fueling/service, drive-through operations, outdoor seating/dining, etc., occur.

"Take-out restaurant" is a restaurant licensed by the County Health Department where food is served primarily in individual servings, wholly wrapped in or served on disposable materials, which facilitate the removal of prepared food from the restaurant for outside or off-site consumption. Take-out restaurants are designed to accommodate high volumes of customers and exhibit ratios of customer queuing area to actual dining area generally in excess of 25 percent. The ratio of kitchen/support area to dining area is also higher than for sit down restaurants at 60 percent or more. Take-out restaurants generally require payment prior to food consumption and do not provide table service or regular bussing of tables as food is packaged in disposable containers and self bussing is encouraged by provision of indoor and outdoor customer oriented trash receptacles.

"Sit down restaurant" is a restaurant licensed by the County Health Department where food is served primarily for consumption on the premises and is not specifically designed to accommodate high volumes of customers. Patrons generally order food and are served while seated at tables or are served cafeteria style ;comment; non-disposable containers which do not facilitate removal of prepared food from the restaurant. As an incident to the operation of such restaurants, disposable containers may be available, on a customer request basis only, for removal of food from the restaurant.

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PURPOSE

While there is a general public need for some late night services, especially for shift workers, there are potentially significant problems with such uses including proximity to residential uses, crime, gang activity, drugs, litter, loitering and noise. This Policy is intended to provide guidelines for the appropriate development of establishments that operate on a 24-hour basis in the City of San José while avoiding the problems associated with such operations. However, based on a case-by-case review, specific alternative measures which are demonstrated to meet or exceed the guidelines in this policy may be appropriate.

Existing legal 24-hour uses would not be affected by the policies. New proposals for Conditional Use Permits will be evaluated using the guidelines in this Policy. This Policy is organized to provide general guidelines and to outline specific uses and situations where alternatives to the guidelines may be appropriate. Existing legal non-conforming 24-hour uses could become subject to the policy only if the Council directed the preparation of a new ordinance for neighborhood nuisances related to 24-hour operation.

POLICY

1. General Guidelines

- a. **Area Use Compatibility.** Twenty-four-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area. Users which are largely take-out and convenience in nature tend to have the most problematic neighborhood impacts, specifically: higher traffic volumes, quick turnover with vehicles left running and radios on, litter problems, consuming food and beverages in cars while on site. Given the potential for problems arising from such uses which may or may not have been anticipated at the time of approval, all such permits should include a condition for a Compliance Review based on written complaints, and all such complaints should be referred to the Planning Commission.
- b. **Use Separation.** Physical separation of incompatible uses is the best means to avoid potential problems. Generally, 24-hour uses should not be located within 300 feet (measured from the building entrance and "Designated Parking Area" and/or "Outdoor Use Area" to the residential property line) from any property residentially zoned, planned, or used. Exceptions to the 300-foot separation may be made if the project site is located in the Downtown Core Area or in transition areas where the proximate residential uses are not zoned or planned for residential uses in the long term. The 300-foot separation requirement may be increased or decreased on a case-by-case review of the specific circumstances of the site and proposed use based on the intensity of use, location of other buildings and physical features, neighborhood input or other relevant criteria. Examples of circumstances which might mitigate the 300-foot separation requirement:
 - Separation for residential by a major thoroughfare of at least four moving lanes and a sound wall at the residential property.
 - Complete physical separation from residential by other non-residential buildings.
 - One-hour extensions on Friday and Saturday nights and/or one hour from 5:00 a.m. to 6:00 a.m. daily.
- c. **Outdoor Activities.** Outdoor activities may be limited for 24-hour operations except in the Downtown Core Area. Due to the unique combination of uses in the Downtown Core Area, 24-hour outdoor activities will be evaluated on a case-by-case basis. Services and sales should be conducted entirely within interior spaces between the hours of 12:00 midnight and 6:00 a.m., except for specific development types identified under Policy 2. More restrictive hours and days of operation may be imposed in order to implement policy requirements. Other late night outdoor activities on the site such as truck deliveries, maintenance and garbage collection should be reviewed and may be conditioned to minimize noise impacts.

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- d. **Police Issues.** Crime statistics and police safety issues which are directly related to uses operating between 12:00 midnight and 6:00 a.m. will be analyzed and considered in determining the appropriateness of 24-hour uses. The Chief of Police should provide a written memorandum with this analysis, including a recommendation with or without conditions, for each Conditional Use Permit application for a 24-hour use. Conditions may be imposed to monitor 24-hour uses and minimize nuisance activities. These conditions may include such requirements as interior or exterior security guards, video cameras, additional lighting, limited occupancy, and modifications of controls or procedures to increase effective law enforcement. The likelihood of impacts caused by the disorderly conduct of late night patrons on the surrounding neighborhood should be considered in the review process, especially as it relates to proximity of residential uses.
- e. **Restroom Facilities.** Restroom facilities required by other codes or policies shall remain open and be available during late night business hours. Customer access to restrooms is not required for drive-through facilities when there is no customer access permitted to interior areas. Restrooms that have exterior access will be analyzed from a safety and surveillance aspect and will remain open on a case-by-case basis.
- f. **Noise.** Use of sound attenuation walls and landscaping may be required at property lines in order to minimize noise emanating from the site. Special attention should be paid to the possibility of noise at late night hours such as car stereos, cars starting and conversations which may not be quantifiable, but can reasonably be expected to occur. No amplified sound is permitted between 10:00 p.m. and 7:00 a.m., except low-volume drive-through speakers specifically approved in conjunction with 24-hour drive-through use.
- g. **Lighting.** Light fixtures shall be designed and installed to minimize impacts on adjacent properties, while providing adequate lighting levels to assure security and discourage loitering in parking areas. Typically, light levels of 1.5 or greater footcandles average illumination at ground surface are encouraged. Twenty-four-hour uses may be required to install additional parking lot lighting in the "Designated Parking Area" and such lighting may be other than low pressure sodium. Higher lighting levels may be required for 24-hour uses in the Downtown Core Area on a case-by-case basis.
- h. **Cleaning and Maintenance.** Cleaning and maintenance for outdoor areas utilizing mechanical blowers, vacuums or other noise generating equipment shall not be used between the hours of 10:00 p.m. and 7:00 a.m. Special conditions to control on-and off-site litter may be required on a case-by-case basis.
- i. **Site Improvements.** As a function of the review process for 24-hour uses, the physical condition of the site should be considered. Aesthetic improvements and maintenance conditions may be required to prevent blight.
- j. **Mitigation Management Plan.** A mitigation management plan should be required for all mitigated 24-hour uses to ensure compliance with conditions of approval. The plan should be realistic, practical and enforceable. The plan should include detailed provisions for response to neighborhood complaints; control of noise, litter, graffiti, etc., and provide a protocol for interface with police to resolve potential problems with gangs, drugs, loitering, and other criminal activities.
 - **Conditions of Approval.** The applicant shall provide a management plan and revised plans as necessary for the following items.
 - *Litter Control.* The applicant shall control the litter emanating from the site on a daily basis for a distance of 300 feet along public streets from the site.
 - *Parking.* The applicant shall ensure that the parking lot for drive-through restaurants is not utilized by patrons between 12:00 midnight and 6:00 a.m.

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- *Police Issues.* The applicant shall maintain a liaison with the Police Department to effectively control crime, gang, drug and other police problems which may arise from the operation between 12:00 midnight and 6:00 a.m.
- *Lighting.* The applicant shall provide enhanced lighting of the designated parking and use areas and related areas of the site to the satisfaction of the Director of Planning.
- *Exterior Clean Up.* Exterior clean up and maintenance activities including garbage pick up shall not occur later than 10:00 p.m. or prior to 7:00 a.m. when the business is located within 300 feet of residential uses.

2. Specific Development Types

a. **Restaurants.** "Sit down restaurants" and "take-out restaurants" are defined in the Definition Section of this Policy. The following policy guidelines apply to each type based on potential problems associated with their late night operation.

- (1) "Take-out restaurants" exhibit the most potential problems in this category, specifically:
 - Gang activity and loitering, including gang-related violence, in and around the sites.
 - Criminal activity, including nongang-related violence, harassment, robbery, assault, and drug trafficking focused in and around such facilities.
 - Higher traffic volumes due to quick turn-over of seating and high percentage of take-out service.
 - Take-out service facilitates some vehicular occupants remaining in the vehicle running or not with radios on or engaged in other disruptive activities.
 - Take-out service facilitates the consumption of food in vehicles while parked on-site with the above problems.
 - Consumption of food in the parking lot allows the legal congregation of people and loitering at late night hours without the benefit of supervision afforded to patrons inside the building.
 - The consumption of individual servings of food in vehicles whether on or off the site results in large quantities of litter which tend to be discarded in the general area under cover of darkness and lacking public exposure.
 - The lack of table service and bussing of tables at take-out restaurants results in less interaction, surveillance, and supervision of customers by employees resulting in a greater potential for disturbances between customers.
 - The provision of numerous outside customer trash receptacles in the parking lots of take-out restaurants acknowledges the frequent use of the parking lot for food consumption and even encourages such use. Due to the late night hour darkness and lack of public presence to discourage litter tendencies, littering during the night time hours is heightened.
- (2) "Sit down restaurants" generally do not exhibit the above mentioned problems with "take-out restaurants" because the patrons do not remain in vehicles in the parking lot, food is consumed within the building with appropriate supervision, litter is generally not a problem as food is not served in disposable wrappings or containers, impacts of loitering on and off the site are substantially reduced by the lack of valid reasons to be outside the restaurant for prolonged periods of time, greater surveillance and supervision of customers is afforded by table service and/or regular bussing of tables, and the parking lot is not recommended for use by customers evidenced by the lack of customer trash receptacles.

In view of the above considerations, the 24-hour operation of all restaurants should be reviewed on a case-by-case basis and may be approved with conditions.

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Drive-through uses associated with take-out restaurants do not exhibit all the attributes associated with this category and should be reviewed on a case-by-case basis. The drive-through portion may be approved if in compliance with the Council Policy on drive-through uses and if there are effective measures to restrict the use of the parking lot by customers and other conditions are required as needed. Such restrictions can reduce the potential for loitering on and off site, minimize the time on-site and provide security between employees and customers as well as between customers themselves. The remaining issues of litter off-site and loitering in the surrounding area should be reduced by drive-through only service, but further conditions could be implemented through the use of frequent security patrols of the nearby streets, augmenting regular police patrols.

- b. **Gasoline Service Stations.** Gasoline service stations are a type of outdoor retail operation which have difficulty meeting all of the requirements listed in the General Guidelines. Additionally, gas stations only without retail convenience store uses do not exhibit the problems of other late night uses. Specifically, there is generally a reduced frequency of use; the outside customer areas are intensely lighted, much more so than parking lot areas; there are very few, if any, parking spaces for prolonged stay on-site; service is rendered quickly at the fueling stations, customers are discouraged from loitering and blocking service areas; and very little is available on-site which may result in litter problems. For this reason it is appropriate to look at alternative means to meet the intent of the guidelines without unduly restricting service station uses because the sale of gasoline may be necessary for the safe transport of people during the late night and early morning hours.
 - (1) Gasoline service stations shall not provide automotive repair service between the hours of 10:00 p.m. and 7:00 a.m.
 - (2) Gasoline service stations shall not provide car wash service between the hours of 10:00 p.m. and 7:00 a.m.
 - (3) Restroom facilities shall remain open and available during business hours. Measures to assure surveillance and security will be required.
- c. **Large Retail Centers.** Typically, large retail centers include stores of 20,000 square feet or larger that represent chain retail companies which are operating on a 24-hour basis. These types of operations are usually found within neighborhood shopping centers that are located on sites of 8 to 10 acres. It is also common for these sites to be adjacent to residential areas, although the 24-hour use (in particular, activity areas such as the parking and entrance) may, itself, be adequately separated from the residential use. Take-out food service as an incident to the retail use, to the extent that retail use offers such takeout use, may be limited or eliminated during late night operation as a condition of a Conditional Use Permit. Conditions of approval could include, as necessary, the provision of security patrols of the parking lot area to reduce these potential impacts. Restaurant uses proposed within large retail centers shall be reviewed under the Policy guidelines found under the restaurant development type section of this Policy. The provision of appropriate mitigation measures will be required on a case-by-case basis.
- d. **Small Commercial Retail.** There are a number of potential problems associated with the late night operation of small commercial stores such as: drug dealing, loitering, car radios, fights, loud conversations, litter, and other problems caused by late night patrons. These problems, even if anticipated, are generally very difficult to effectively mitigate.

The quick in-out service touted by such small stores combined with the generally low volume of customers at late night hours should mitigate the worst problems associated with loitering of groups leading to fights and other problems. Most of the products sold at such stores are intended for use at home or other locations off site where the packaging would be disposed of and should not, therefore, result in litter at on near the store.

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Additionally, many of the same problems identified for take-out restaurants may arise if, as an incident to the primary retail use, stores offer take-out food service. The current experience with these facilities is, however, that the very limited extent of prepared food service which is generally restricted to soft drinks and self-service microwave heating of cold food is purely incidental to the purchasing of other packaged commodities intended for use off site. These facilities do not provide indoor seating, nor is the service capacity large enough to facilitate multiple customers loitering in the parking lot consuming food in cars. In this case, conditions to effectively control such problems or limit food service should be considered as described for large retail users above.

The main problems with these small commercial retail sites are their size, usually less than one acre, and their close proximity to residential neighborhoods. Loitering is enhanced by the availability of pay phones outside and video games inside the store. As such, the separation from residential uses for these facilities should be carefully evaluated, and may be increased on a case-by-case basis, or special operational limitations and conditions may be imposed to reduce impacts. Restaurant uses proposed within small retail centers shall be reviewed under the Policy guidelines found under the restaurant development type section of this Policy.

- e. **Bar, Nightclubs, and Adult Uses.** Uses under this category should meet the City Council Policy on the Guidelines for the Evaluation of Nightclubs and Bars.