

ORDINANCE NO. 27626

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 6 OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTION 6.84.030 OF CHAPTER 6.84 TO CLARIFY THE NATURE OF TARGETED LAW ENFORCEMENT AREAS UNDER THAT SECTION, TO FURTHER MODIFY CHAPTER 6.84 TO ALLOW FOR CONSIDERATION OF GREATER PUBLIC BENEFIT IN PUBLIC CONVENIENCE OR NECESSITY DETERMINATIONS, TO ADD A NEW CHAPTER 6.86 ESTABLISHING OPERATING REGULATIONS AND AN INSPECTION PROGRAM FOR OFF-SALE ALCOHOLIC BEVERAGE ESTABLISHMENTS, AND AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO AMEND SECTION 20.80.600 TO PROVIDE FOR A DEVELOPMENT PERMIT REQUIREMENT FOR CONVERSIONS OF GASOLINE SERVICE STATIONS, IN WHOLE OR IN PART, AND TO MAKE OTHER CLARIFYING OR TECHNICAL CHANGES TO TITLE 20 RELATED TO IMPLEMENTATION OF THIS ORDINANCE

WHEREAS, on August 10, 2005, this Ordinance was found to be categorically exempt from environmental review per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970, as amended, under File No. PP 05-161;

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

SECTION 1. Section 6.84.030 of Chapter 6.84 of Title 6 of the San José Municipal Code is hereby amended to read as follows:

6.84.030 Findings

- A. Whenever a request for a determination of public convenience or necessity 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 request and any appeal 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, or the City Council on appeal, 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-sale of alcoholic beverages only after first finding that:
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 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 (4) off-sale uses within a one thousand (1,000) foot radius from 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. Alcohol sales would not represent a majority of the proposed use.

Notwithstanding the foregoing, the City Council, on appeal, 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-sale of alcoholic beverages where the City Council does all of the following: (a) makes a determination that not all of the preceding findings can be made; (b) identifies and finds that a significant and overriding public benefit or benefits will be served by the proposed use.

- C. The Planning Commission, or the City Council on appeal, 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-sale of alcoholic beverages only after first finding that:
 1. The census tract in which the proposed outlet for the off-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 impact on public health or safety; or
 2. The proposed outlet for the off-sale of alcoholic beverages would enhance or facilitate the vitality of an existing commercial area without presenting a significant impact on public health or safety; or
 3. 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-sale of alcoholic beverages in the area; or

4. The proposed off-sale of alcoholic beverages is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.
- D. Nothing contained in this Chapter shall be deemed or construed as requiring the Planning Commission, or City Council on appeal, to issue a determination of public convenience or necessity under the provisions of this Chapter. Under no circumstances shall an applicant for a determination of public convenience or necessity under this Chapter have a right to such determination, and nothing contained in this Chapter shall be deemed or construed to confer upon any applicant a right to have a determination of public convenience or necessity made for any particular site.

SECTION 2. Title 6 of the San José Municipal Code is amended to add a new chapter, to be numbered, entitled and to read as follows:

CHAPTER 6.86
OFF-SALE ALCOHOLIC BEVERAGE ESTABLISHMENTS
Part 1
Definitions

6.86.010 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

6.86.020 Alcoholic Beverage

“Alcoholic Beverage” includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half (1/2) of 1 percent (1%) or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances, and sale of which require a State Department of Alcoholic Beverage Control license.

6.86.030 Alcohol Beverage Control Act

The “Alcohol Beverage Control Act” is codified in Division 9 of the California Business and Professions Code Sections 23000 et seq., as may be amended.

6.86.040 Alcoholic Beverage Sales Commercial Activity

“Alcoholic Beverage Sales Commercial Activity” means the retail sale, for off-premises consumption of Alcoholic Beverage.

6.86.050 Director

“Director” means the Director of the Department of Planning, Building and Code Enforcement and his/her designee, or such other director designated by the City Manager to administer this Chapter.

6.86.060 Off-Sale Alcoholic Beverage Establishment

“Off-Sale Alcoholic Beverage Establishment” includes any business that engages in Alcoholic Beverage Sales Commercial Activity.

6.86.070 Premises

“Premises” mean the real property on which the Alcoholic Beverage Sales Commercial Activity is taking place.

**Part 2
Operating Regulations**

6.86.200 Applicability and Purpose

- A. The provisions of this Chapter shall apply to any Off-Sale Alcoholic Beverage Establishment.
- B. The provisions of this Chapter are intended to provide a minimum level of public health, safety and welfare protection at Off-Sale Alcoholic Beverage Establishments and of persons residing or working in the surrounding area. Nothing in this Chapter is intended nor shall prevent the City from imposing more stringent, site-specific operating requirements and conditions through other applicable permitting and approval processes, including, without limitation, environmental or land use approvals or permits. In the event of a conflict between an operating regulation set forth in this Chapter and a requirement or condition contained in any other applicable permit or approval, the more stringent or restrictive requirement or condition shall apply.

6.86.210 Operating Regulations

- A. Each Off-Sale Alcoholic Beverage Establishment subject to this Chapter shall be in compliance with all of the provisions of the Alcohol Beverage Control Act, and the terms and conditions set forth in this Chapter.

- B. The provisions of this Chapter shall constitute operating regulations for Off-Sale Alcoholic Beverage Establishments. It shall be unlawful for an owner and/or operator of an Off-Sale Alcoholic Beverage Establishment to violate any of the provisions of this Chapter.

6.86.220 Compliance Inspection

The Director and/or any peace officer shall have the power and authority to enter an Off-Sale Alcoholic Beverage Establishment during regular business hours to inspect the Premises, to determine compliance with the provisions of this Chapter.

6.86.230 Property Maintenance

The property owner and/or operator of an Off-Sale Alcoholic Beverage Establishment shall keep the Premises in a clean and safe condition by, at a minimum, performing all of the following tasks:

- A. Properly remove and store all trash, litter, rubbish and debris on the Premises at the end of each business day; and
- B. Properly dispose of all trash, litter, rubbish and debris from the Premises; and
- C. Remove graffiti placed upon the Premises within forty-eight (48) hours of its occurrence; and
- D. Keep driveways, sidewalk, parkstrips, fire access roads and streets on or adjacent to the Premises clear and clean; and

- E. Provide lighting on the Premises to ensure the safety of the public and the employees of the Off-Sale Alcoholic Beverage Establishment; and
- F. Otherwise operate in a manner that does not create or result in any significant adverse impacts upon its Premises or within three hundred (300) feet of the Premises.

6.86.240 Performance Standards

- A. The property owner and/or operator of an Off-Sale Alcoholic Beverage Establishment shall not conduct the Alcoholic Beverage Sales Commercial Activity in a manner that creates or results in a public nuisance on the Premises or within three hundred (300) feet of the Premises including but not limited to:
 - 1. disturbance of the peace;
 - 2. illegal drug activity;
 - 3. public drunkenness;
 - 4. drinking in public;
 - 5. gambling;
 - 6. prostitution;
 - 7. sale of stolen goods;
 - 8. public urination;
 - 9. theft;
 - 10. assaults;
 - 11. batteries; or
 - 12. acts of vandalism.
- B. The property owner and/or operator of an Off-Sale Alcoholic Beverage Establishment shall immediately produce, upon request by the Director and/or

peace officer, a copy of the State Department of Alcoholic Beverage Control license and the terms and conditions of the license.

C. The property owner and/or operator engaged in the concurrent sale of Alcoholic Beverage and motor vehicle fuel shall abide by Section 23790.5 of the California Business and Professions Code, as may be amended, in that:

1. No beer or wine shall be displayed within five (5) feet of the cash register or the front door unless it is in a permanently affixed cooler as of January 1, 1988.
2. No advertisement of Alcoholic Beverage shall be displayed at motor fuel islands.
3. No sale of Alcoholic Beverage shall be made from a drive-in window.
4. No display or sale of beer or wine shall be made from an ice tub.
5. No beer and wine advertising shall be located on motor fuel islands and no self-illuminated advertising of beer or wine shall be located on buildings or windows.
6. Employees on duty between the hours of 10 p.m. and 2 a.m. who sell beer or wine shall be at least 21 years of age to sell beer and wine.

Part 3

Inspection Program

6.86.300 Inspection Program Fees

A. The property owner of the Premises on which an Off-Sale Alcoholic Beverage Establishment is engaged in Alcoholic Beverage Sales Commercial Activity shall pay an annual inspection program fee as set forth in the Schedule of Fees established by Resolution of Council.

- B. The fee shall be for the administration of the inspection program and to conduct an annual inspection.
- C. In the event payment has not been received after thirty (30) days from the date the notice to pay was mailed, an additional penalty assessment, pursuant to the Schedule of Fees as adopted by Resolution of the City Council, shall be added to the required inspection program fee.
- D. Failure to pay the fee required pursuant to this Chapter shall not excuse the property owner from the responsibility of ensuring compliance with the other provisions of this Chapter.

6.86.310 Inspection

- A. Upon receipt of the Off-Sale Alcoholic Beverage Establishment inspection program fee, the Director may cause the Premises to be inspected to determine if the Premises is in compliance with the provisions of this Chapter, other applicable provisions of this Code, and state law.
- B. The Premises shall be subject to inspection at any time during regular business hours.
- C. All inspections shall be performed in accordance with Chapter 17.02 of this Code.
- D. The property owner and/or operator shall be provided a written report of the annual inspection within a reasonable time after the inspection.
- E. Should any inspection reveal noncompliance with any of the provisions of the conditional use permit, the Code, or state law, and should reinspection be

needed to determine compliance, the cost of any such reinspection, shall be billed to the property owner and/or operator in the amount set forth in the Schedule of Fees established by Resolution of the City Council.

SECTION 3. Section 20.80.600 of Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

20.80.600 Special Use Permit Required

- A. No person, firm or corporation shall convert, in whole or in part, a gasoline service station to any other use without a Special Use Permit in the case of conversion to a permitted or special use in the District, or a Conditional Use Permit in the case of conversion to a conditional use in the District.

- B. The following requirements shall be applied by the Director, or the Planning Commission on appeal, in granting a Special Use Permit under this Part:
 - 1. Tank Safeguarding or Removal. All flammable or combustible liquid storage tanks shall be safeguarded or removed in compliance with the provisions of Chapter 17.68 of Title 17 of the San José Municipal Code, and the area shall be resurfaced and landscaped in a manner appropriate to the proposed converted use.

 - 2. Equipment. Pumps, pump island, mechanical equipment, wells, offices, accessory structures, insignias, trademarks, billboards, signs, kiosks and the supporting structures, mounting, and foundations of the listed items, and any and all other improvements situate on the site, and formerly utilized for the gasoline service station use, shall be removed or found to be compatible with the proposed conversion.

3. Soil Testing and Clean-up. The lot may be tested for soil contamination. If such contamination is found, the soil shall be rendered free of such contamination through clean-up procedures which are in accordance with applicable federal, state and local regulations.
4. Driveway Closure. Existing driveways shall be closed as determined by the Director to minimize ingress and egress to the site to reduce potential hazards to pedestrian and vehicular circulation.
5. Landscaping. Landscaping shall be included in the site design to enhance the overall aesthetics of the converted site.

SECTION 4. Section 20.100.140 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

20.100.140 Concurrent Review

- A. Whenever applications for the same site have been filed for one or more Development Permits or approvals required by this Title, such Development Permit or approvals may be reviewed and acted on in a unified process. Determinations of Public Convenience or Necessity governed by Chapter 6.84 of Title 6 of the San José Municipal Code may be included in the unified process. Tree Removal Permits governed by Chapter 13.32 of Title 13 of the San Jose Municipal Code may be included in the unified process. Subdivision approvals governed by Title 19 of the San José Municipal Code may be included in the unified process.
- B. The unified process shall use the procedures required for the highest level Permit or approval. Permits and approvals are ranked as follows with the highest level Permit or approval listed first: Rezoning; Conditional Use Permit;

Determination of Public Convenience or Necessity, Planned Development Permit; Special Use Permit; Site Development Permit; Single Family House Permit-Director's Decision; Development Exception; Development Variance; Sidewalk Café Permit; Tree Removal Permit; Single Family House Permit-Administrative Decision.

- C. The hearing body shall make the findings, if any, applicable to each Permit or approval.

SECTION 5. This ordinance shall be effective on February 1, 2006.

PASSED FOR PUBLICATION of title this _____ day of _____, 2005, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

RON GONZALES
Mayor

ATTEST:

LEE PRICE, CMC
City Clerk