

PARK AND PLAZA REGULATIONS

These regulations (“Park and Plaza Regulations”) are adopted by the Director of Parks, Recreation and Neighborhood Services and the Director of Cultural Affairs pursuant to the Declaration of the Director of Emergency Services of the City of San José Suspending Enforcement of Certain Provisions in Land Use Permits and Approvals and Zoning and Encroachment Requirements in the San José Municipal Code issued August 5, 2020 (“Park and Plaza Order”). The City may amend these Park and Plaza Regulations at any time and such amendments shall be applicable to any Permits issued thereafter, even if an application had been submitted prior to the amendments. These Park and Plaza Regulations shall only apply to Permits issued for business use of a Park or Plaza pursuant to the Park and Plaza Order. Terms not defined herein shall have the meanings set forth in the Park and Plaza Order.

PERMITS REQUIRED

Each business shall obtain a permit from the City (“Permit”) prior to operating within a Park or Plaza. Permits shall contain the terms and conditions for a business’ use of a Park or Plaza. Each business that obtains a Permit (“Permittee”) shall be responsible for complying with all requirements in its Permit. The City may include terms and conditions in a Permit that are in addition to those set forth in these Park and Plaza Regulations. The City reserves the right to limit any type of business use, or the frequency of that use, based on potential negative impacts to the Park or Plaza due to high demand, conflicts with public access or scheduled maintenance activities. If the City denies a Permit for a particular location, it will suggest alternate sites and/or may require the Permittee to mitigate impacts that might arise from the Permittee’s use. The City also may refuse to issue a Permit based on the proposed uses identified in a business’ application to use a Park or Plaza that are not specifically addressed in the Park and Plaza Order or these Park and Plaza Regulations.

ELIGIBLE PARKS AND PLAZAS

The Plazas eligible for business use under the Park and Plaza Order are Fountain Alley, Theatre Plaza, the Circle of Palms and Parque de los Pobladores. The Parks eligible for business use pursuant to the Park and Plaza Order are any of those over one (1) acre in area that the City has designated for such use. A comprehensive list of Parks is available on the following website: <https://www.sanjoseca.gov/your-government/departments/parks-recreation-neighborhood-services/outdoor-activities>. Not all Parks listed on the website have been designated by the City for business use. If an applicant requests use a Park that has not been designated, the City will suggest eligible alternatives.

LOCATION CRITERIA

The specific locations allowed for business use shall be specified in each Permit. The City will determine where to allow business use of each Park or Plaza based on suitability for business use, requests from other businesses to use the same space, community access needs or scheduled maintenance activities. The City will consider the following additional criteria when determining where to allow business use under the Park and Plaza Order:

1. The proposed business area must not create a threat to the public health, safety or welfare;
2. Business areas cannot be within fifteen feet (15’) of a fire hydrant in any direction or

block any Fire Department connections or emergency vehicle or Park or Plaza access routes.

ALCOHOL IN PARKS AND PLAZAS

Only Permittees operating a food service business in a Park or Plaza are allowed to serve alcohol. Alcohol is prohibited in certain Parks. Such Permittees shall comply with all applicable California Alcoholic Beverage Control (“ABC”) regulations regarding alcohol use for their operations within a Park or Plaza. Permittees are solely responsible for securing a valid ABC license to allow/extend business operations within the Park or Plaza. A Permit does not constitute approval by the ABC or City for alcohol use in a Park or Plaza.

HOURS OF OPERATION

Permittees may use a Park or Plaza on the days specified in their Permit from 7 a.m. to sunset, provided, however, that amplification is allowed before 8 a.m. Permittee’s shall not set up equipment in a Park or Plaza earlier than one (1) hour prior to the Permittee’s start of business operations. The Permittee shall remove all equipment and clean up its business operation area no later than sunset on each day it operates within a Park or Plaza.

PARK AND PLAZA USE PARAMETERS

Each business’ use of a Park or Plaza shall conform to all of the parameters set forth in this section. The City reserves the right to include in a Permit any additional conditions or limitations the City deems necessary based on the Permittee’s proposed operations and the location and surrounding physical conditions of, and uses adjacent to, the proposed Park or Plaza.

1. Permittees shall keep pathways in their permitted area clear of people and equipment.
2. Permittees using a Plaza shall maintain a minimum, continuous clear pedestrian through zone (i.e., contains no objects) in the Plaza that connects all adjacent sidewalks that is at least eight feet (8’) wide with seven feet (7’) of vertical clearance above the Plaza grade. Permittees shall post adequate signage designating the path of travel for pedestrians.
3. A five foot (5’) clear perimeter around public art in a Park or Plaza is required and no equipment may be placed on the City Seal located at the Circle of Palms.
4. Overhead elements within the Park or Plaza, such as umbrellas, shall provide a minimum vertical clearance of seven feet (7’) above grade and shall not protrude within areas reserved for pedestrians.
5. Permittees shall be required to conduct business activities in their permitted area of the Park or Plaza on each operating date and during the hours stated in their Permit, unless prohibited by State or Santa Clara County Public Health Orders. A Permittee’s failure to do so may result in revocation of its Permit.
6. Permittees shall provide the City with their approved Santa Clara County Public Health Social Distancing Protocol documents prior to the start of business operations under the Park and Plaza Order. Permittees shall post social distancing protocol signage prominently at activity locations in the Park or Plaza.
7. Permittees shall retain participant contact lists in accordance with Santa Clara County Public Health contact tracing requirements.

THINGS PROHIBITED IN PARKS AND PLAZAS

All of the following are prohibited in conjunction with a business’ use of a Park or Plaza pursuant to the Park and Plaza Order:

1. Advertising;
2. Live entertainment;
3. Consumption of alcohol except by a food service business and in compliance with a valid ABC license;
4. Smoking;
5. Cooking;
6. Distributing food or beverages;
7. Electrical cords that cross a designated pedestrian way, including Park pathways or pedestrian through zones in Plazas;
8. Use of parking spaces in a Permittee's business set-up unless pre-approved in writing by the City; and
9. Physically altering any public property or attaching any objects to public property other than signage directing pedestrians in a Plaza or as required by applicable law.

ALLOWABLE EQUIPMENT IN PARKS AND PLAZAS

Permittees shall be allowed to use the following free-standing equipment in their business areas of a Park or Plaza:

1. One (1) seven hundred square foot (700 ft²) canopy (without walls) and one (1) four hundred square foot (400 ft²) tent (with walls). All canopies and tents must comply with San Jose Fire regulations and be weighted down. If both a canopy and tent are utilized, they must be a minimum of twelve feet (12') apart.
2. Umbrellas;
3. Tables and chairs;
4. One gas generator in compliance with San Jose Fire regulations, including, without limitation: no refueling on-site, minimum of a 40B:C fire extinguisher on-site, generator located a minimum of twenty feet (20') away from any tent and one hundred feet (100') from any residential property, cautioned off from public access and plywood placed underneath the generator at all times.
5. For Food Service businesses, a host/hostess podium;
6. For all eligible businesses other than Food Service:
 - A. Resistance bands;
 - B. Mats;
 - C. Dumbbells and kettlebells no heavier than forty pounds (40 lbs);
 - D. Exercise balls and medicine balls;
 - E. Jump ropes; and
 - F. Larger fitness equipment, such as rowing machines, stationary bikes, reformers, etc., only as authorized by the City in a Permit, which approval shall require an equipment move-in/out plan.

Any equipment not identified above may be permitted by the City in its sole discretion.

MAINTENANCE AND OPERATIONS

Park or Plaza maintenance and operations shall conform to all of the following:

1. Each Permittee shall keep its business area in a Park or Plaza in a neat, clean and safe condition at all times;
2. Each Permittee shall keep its business area in a Park or Plaza free of litter and debris; and

3. Each Permittee shall be solely responsible for waste management, deliveries/loading and similar issues relating to their use of the Park or Plaza.