



Agenda Report

23-1005

Agenda Date: 8/22/2023

REPORT TO COUNCIL

SUBJECT

Action to Adopt Ordinance No. 2062 Amending the Santa Clara City Code to Create a Limited-Term Pilot Project Regulating Vending Upon Certain Public Sidewalks and Pedestrian Paths Surrounding Levi's Stadium on Event Days

BACKGROUND

At the July 18, 2023 Council meeting, proposed Ordinance No. 2062 was passed for the purpose of publication. Pursuant to City Charter Sections 808 and 812, a summary of proposed Ordinance No. 2062 was published to the Santa Clara Weekly on August 9, 2023, and copies were posted in three public places.

DISCUSSION

SB 946 prohibits California cities and counties from banning sidewalk vendors from operating on public sidewalks or other pedestrian pathways and prohibits cities from regulating sidewalk vendors unless cities establish a permitting system that is consistent with the provisions of SB 946. SB 946 also requires that any restrictions placed on sidewalk vendors be directly related to objective health, safety or welfare concerns. Local jurisdictions that wish to regulate sidewalk vending are required to first adopt a program with regulations consistent with SB 946. The new state law was explained in detail at the April 18, 2023 Council meeting.

During the past event season, the Police Department experienced a drastic increase in the number of unpermitted food and merchandise vendors within the immediate footprint of large-scale stadium events. This increase has caused several health and safety concerns. As currently written, the City Code and regulations do not align with SB 946 and, consequently, the City's ability to address these health and safety concerns would be limited without first updating the City Code.

Following Council's direction at the April 18th meeting, staff prepared ordinance amendments outlining a pilot project prohibiting sidewalk vending on certain enumerated streets surrounding Levi's Stadium on event days. These ordinance amendments were introduced and passed on July 18th.

Council inquired at the July 18th meeting whether the City would include insurance requirements in its permit application, and what similar requirements other cities had. Cities vary on this requirement throughout the state; San Jose and Oakland both require peddlers to obtain commercial general liability insurance policies, while San Francisco and Los Angeles do not. At this time, the City Manager and Police Department do plan to continue to include the insurance requirement for peddlers in the permit application for the pilot project.

Council has already taken action to waive fees and taxes for all required City business licenses and permits for qualified sidewalk vendors operating at stadium events during the pilot program period

(September 21, 2023 through January 31, 2024) on a first come first serve basis in an amount not to exceed \$30,000. Council has also authorized the City Manager to develop administrative guidelines to implement this fee waiver program.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There will be Police Department and Community Development staff time associated with implementing and enforcing new permit requirements for sidewalk vendors, establishing a sidewalk vendor management program and developing a communication plan to vendors ahead of implementation and at events during the pilot period. The most significant impact from a staffing perspective will be conducting enforcement on Levi’s Stadium event days. At this time, there are approximately 8 major events scheduled at Levi’s Stadium during the pilot program; additional event (s) may be added through January 2024.

Up to \$30,000 in Stadium Authority funds will be used to support the permitting initiative. This should make the City general fund whole with respect to any waived fee or tax amounts. This funding proposal will be administered by the Stadium Authority Executive Director out of existing Stadium Authority funds. If a Stadium Authority appropriation is required, a budget amendment will be brought back to the Stadium Authority for its consideration and approval at the next scheduled Stadium Authority meeting.

The Stadium Manager has advised that Stadium will enforce vending regulations on Stadium grounds and parking lots. As such, the Stadium Manager will be handling signage, and the corresponding costs on Stadium grounds and parking lot and will produce signs for public right-of-way (ROW) as appropriate.

COORDINATION

This report was coordinated with the Community Development Department, Police Department, City Attorney’s Office, and City Manager’s Office.

PUBLIC CONTACT

A summary of proposed Ordinance No. 2062 was published to the Santa Clara Weekly on August 9, 2023, and copies were posted in three public places and made available for public inspection at the City Clerk’s Office.

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (408) 615-2220, email clerk@santaclaraca.gov or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Waive Second Reading and Adopt Ordinance No. 2062 Amending Chapter 5.05 (Solicitors and Peddlers) and Section 9.05.165 (Activities and Conduct Prohibited in Parking Facilities Adjacent to the Stadium or Parking Facilities Used for Stadium Events) of the Santa Clara City Code to Create a Limited-Term Pilot Project Regulating Vending Upon Certain Public Sidewalks and Pedestrian Paths Surrounding Levi's Stadium on Event Days Pursuant to SB 946

Reviewed by: Pat Nikolai, Chief of Police

Approved by: Jovan D. Grogan, City Manager

ATTACHMENTS

1. Ordinance No. 2062 (Intro)

ORDINANCE NO. 2062

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, AMENDING CHAPTER 5.05 (SOLICITORS AND PEDDLERS) AND SECTION 9.05.165 (ACTIVITIES AND CONDUCT PROHIBITED IN PARKING FACILITIES ADJACENT TO THE STADIUM OR PARKING FACILITIES USED FOR STADIUM EVENTS) OF “THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA”

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, in 2018 the State legislature passed SB 946 which placed significant limitations on local agencies’ ability to regulate sidewalk vending;

WHEREAS, among other things, SB 946 requires that any time, place, and manner restrictions placed on sidewalk vending to be supported by objective health, safety, and welfare concerns, and limits the types of personal information that can be collected in the permitting process, and limits the enforcement activity that a public agency can conduct;

WHEREAS, existing City Code provisions are not strictly in compliance with the mandates of SB 946 and, therefore, have been largely unenforceable;

WHEREAS, the City recognizes and appreciates that sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities;

WHEREAS, as the State legislature recognized, the City has an interest in regulating the flow of traffic and ensuring the safety of pedestrians;

WHEREAS, the City has observed and experienced a dramatic increase in sidewalk vending around Levi’s Stadium on event days, which has created significant health and safety concerns primarily related to traffic and pedestrians; and

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WHEREAS, the City Council deems it to be in the best interests of the City to create a limited term pilot project regulating vending on specified sidewalks and public paths surrounding Levi's Stadium on event days.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That Subsection (m) of Section 9.05.165 (entitled "Activities and conduct prohibited in parking facilities adjacent to the Stadium or parking facilities used for Stadium events") of Chapter 9.05 (entitled "In General") of Title 9 (entitled "Public Peace, Morals, and Welfare") of "The Code of the City of Santa Clara, California" ("SCCC") is amended to read as follows:

"(m) No person shall bring, or cause to be brought, for the purposes of sale or barter, or have for sale, or sell or exchange, or offer for sale or exchange any food, drink, service, goods, wares, ticket or merchandise, or solicit employment, business or contributions of money or other property, within any portion of the parking areas, including the perimeter sidewalk of the facility except as set forth in Article IV of Chapter 5.05."

SECTION 2: That a new Article IV (entitled "Stadium Pilot Project") is added to Chapter 5.05 (entitled "Solicitors and Peddlers") of Title 5 (entitled "Business Licenses and Regulations") of "The Code of the City of Santa Clara, California" to read as follows:

"Article IV. Stadium Pilot Program

- 5.05.400 Definitions
- 5.05.410 Purpose
- 5.05.420 Permit Required
- 5.05.430 Time, Place, or Manner Restrictions
- 5.05.440 Health, Safety, or Welfare Concerns
- 5.05.450 Enforcement

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5.05.400 Definitions.

(a) “Event Days” means days on which events are held at the Stadium which necessitate street closures pursuant to the Traffic Management and Operations Plan.

(b) “Sidewalk Vendor” means a person who sells food or merchandise, whether stationary or roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.

(c) “Stadium Pilot Program Area” means those specific streets or paths enumerated in SCCC 5.05.430.

5.05.410 Purpose.

The purpose of this Article is to strike a balance between supporting entrepreneurship and maintaining a safe environment for Stadium patrons by enacting a limited-term pilot program regulating the time, place, and manner in which Sidewalk Vendors may conduct business within the designated Stadium Pilot Program Area surrounding Levi’s Stadium on Event Days, based upon objective health, safety, and welfare concerns.

This Article shall become inoperative on January 31, 2024, and shall be considered repealed on that date, unless this Section is amended on or before January 31, 2024, to delete or extend this date.

5.05.420 Permit Required.

(a) At any time, whether on an Event Day or otherwise, Sidewalk Vendors operating within the Stadium Pilot Program Area must possess a valid sidewalk vending permit issued by the Chief of Police or designee.

(b) To obtain a sidewalk vending permit, Sidewalk Vendors must complete a permit application, which shall be on a form available at the Police Department, with the following information:

(1) Categories of personal identification and business information to be enumerated by the Police Department on the application, and which shall be in accordance with Senate Bill 946

(2) Fingerprinting in accordance with SCCC 5.05.050

(3) Business Tax Certificate in accordance with SCCC 3.40.060

(4) Proof of current and valid permit, or other form of approval, from other applicable public agencies including, but not limited to, the Santa Clara County Department of Environmental Health

(5) If an individual or entity other than the applicant owns the pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used by the applicant, such individual or entity shall be identified in the manner prescribed by the Police Department

(6) If the applicant is employed or otherwise engaged by another individual or entity to perform Sidewalk Vendor services, such individual or entity shall be identified in the manner prescribed by the Police Department

(c) Permits shall be valid for a period of one year and Sidewalk Vendors must renew their permits annually.

(d) Fees associated with the initial permit application or annual renewal shall be established by resolution of the City Council and must be remitted at the time of submission of the application or request for renewal.

(e) An initial permit application may be denied under any of the following circumstances:

- (1) The applicant failed to submit all required information or fees
- (2) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application
- (3) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(f) A request for permit renewal, which shall be on a form available at the Police Department, may be denied under any of the following circumstances:

- (1) The applicant failed to submit all required information or fees
- (2) The applicant failed to request renewal prior to expiration of the permit
- (3) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application
- (4) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(g) The decision of the Chief of Police or designee to deny, revoke, or not renew, a permit may be appealed under the procedures set forth in SCCC Sections 2.115.050 – 2.115.090.

(h) The permit issued pursuant to this Article, and all interests, rights and obligations pertaining thereto, are personal to the holder of such permit, and are not transferable or assignable, by operation of law or otherwise.

5.05.430 Time, Place, or Manner Restrictions

(a) No Sidewalk Vendor shall sell food or merchandise, whether stationary or roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path, within the Stadium Pilot Program Area on Event Days during the hours of street or trail closures. In no event shall Street Vending occur within the Stadium Pilot Program Area on Event Days within two hours before the commencement of an event and two hours after the conclusion of an event.

(b) The Stadium Pilot Program Area shall be defined as the following:

- (1) Tasman Drive (from Great America Parkway to Calle de Sol)
- (2) Tasman Drive eastbound off-ramp to Star and Stripes Drive
- (3) Tasman Drive stairways to Stars and Stripes Drive
- (4) Great America Parkway (from Bunker Hill Drive to Patrick Henry Drive)
- (5) Stars and Stripes Drive (from the Tasman Drive eastbound off-ramp to

Bill Walsh Way)

- (6) San Tomas Aquino Creek Trail (from Great America Parkway to

Agnew Road)

- (7) Old Glory Lane east of Great America Parkway

5.05.440 Health, Safety, or Welfare Concerns

(a) The following health, safety, or welfare concerns exist upon the sidewalks and other pedestrian paths listed in SCCC 5.05.430(b):

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(1) Street Vending in the Stadium Pilot Program Area on Event Days and the associated customer queues scattered within a large, high-density pedestrian group presents a variety of risks to the vendors, their customers, other pedestrians, emergency responders, vehicular traffic, and pedi-cab traffic

(2) Interfering with the ability of disabled persons and other pedestrians to safely follow a path of travel in both ingress and egress from the Stadium on EventDays

(3) Interfering with the ability of public safety or other emergency responders to quickly and safely travel through the crowds

(4) Street Vendors and associated customer queues extending into vehicular and pedi-cab driving lanes, and in close proximity to rail lines

(5) Unsafe food preparation, storage, and handling practices, including lack of hand washing facilities

(6) Inadequate waste disposal that can lead to pollution, or hazardous and unsanitary conditions

(7) Use of propane tanks on portable carts without security measures is particularly dangerous in the context of a large, highly dense, pedestrian group

(8) Hot greasy cook tops without structures for safety clearances and required fire extinguishing devices which are particularly dangerous in the context of a large, highly dense, pedestrian group

(9) Merchandise sales of counterfeit, unsafe or inappropriate items (e.g., flares) that are particularly dangerous in the context of a large, highly dense, pedestrian group

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(10) Alcohol being sold to Stadium patrons without Alcoholic Beverage Control permits, particularly in situations in which Stadium halts alcohol sales prior to the conclusion of the event for safety purposes

5.05.450 Enforcement

(a) A violation of any requirement of this Article IV, except for permit requirements under SCCC 5.05.420, is punishable only by the following administrative penalty structure or permit revocation:

- (1) One hundred dollars (\$100) for a first violation
- (2) Two hundred dollars (\$200) for a second violation within one year of the first violation
- (3) Five hundred dollars (\$500) for each additional violation within one year of the first violation
- (4) The Chief of Police or designee may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations

(b) A Sidewalk Vendor operating within the Stadium Pilot Program Area without possessing a valid sidewalk vending permit issued in accordance with SCCC 5.05.420 is subject to the following penalties:

- (1) Two hundred fifty dollars (\$250) for a first violation
- (2) Five hundred dollars (\$500) for a second violation within one year of the first violation
- (3) One thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(c) The Police Department shall make available instructions or other materials explaining a Street Vendor’s right to request an ability-to-pay determination pursuant to SB 946.”

SECTION 3: Ordinances Repealed. With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

SECTION 4: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

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SECTION 5: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of “The Charter of the City of Santa Clara, California.”

PASSED FOR THE PURPOSE OF PUBLICATION this 18TH day of July, 2023, by the following vote:

AYES:	COUNCILORS:	Becker, Chahal, Hardy, Jain, Park, and Watanabe, and Mayor Gillmor
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST:



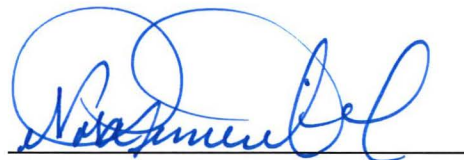
NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

FINALLY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SANTA

CLARA this 22ND day of August, 2023, by the following vote:

AYES:	COUNCILORS:	Becker, Chahal, Hardy, Park, and Watanabe, and Mayor Gillmor
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	Jain
ABSTAINED:	COUNCILORS:	None

ATTEST:



NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None

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WHEREAS, existing City Code provisions are not strictly in compliance with the mandates of SB 946 and, therefore, have been largely unenforceable;

WHEREAS, the City recognizes and appreciates that sidewalk vending provides important entrepreneurship and economic development opportunities to low-income and immigrant communities;

WHEREAS, as the State legislature recognized, the City has an interest in regulating the flow of traffic and ensuring the safety of pedestrians;

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SECTION 2: That a new Article IV (entitled "Stadium Pilot Project") is added to Chapter 5.05 (entitled "Solicitors and Peddlers") of Title 5 (entitled "Business Licenses and Regulations") of "The Code of the City of Santa Clara, California" to read as follows:

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(c) “Stadium Pilot Program Area” means those specific streets or paths enumerated in SCCC 5.05.430.

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This Article shall become inoperative on January 31, 2024, and shall be considered repealed on that date, unless this Section is amended on or before January 31, 2024, to delete or extend this date.

5.05.420 Permit Required.

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(b) To obtain a sidewalk vending permit, Sidewalk Vendors must complete a permit application, which shall be on a form available at the Police Department, with the following information:

(1) Categories of personal identification and business information to be enumerated by the Police Department on the application, and which shall be in accordance with Senate Bill 946

(2) Fingerprinting in accordance with SCCC 5.05.050

(3) Business Tax Certificate in accordance with SCCC 3.40.060

(4) Proof of current and valid permit, or other form of approval, from other applicable public agencies including, but not limited to, the Santa Clara County Department of Environmental Health

(5) If an individual or entity other than the applicant owns the pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance used by the applicant, such individual or entity shall be identified in the manner prescribed by the Police Department

(6) If the applicant is employed or otherwise engaged by another individual or entity to perform Sidewalk Vendor services, such individual or entity shall be identified in the manner prescribed by the Police Department

(c) Permits shall be valid for a period of one year and Sidewalk Vendors must renew their permits annually.

(d) Fees associated with the initial permit application or annual renewal shall be established by resolution of the City Council and must be remitted at the time of submission of the application or request for renewal.

(e) An initial permit application may be denied under any of the following circumstances:

- (1) The applicant failed to submit all required information or fees
- (2) The applicant falsified information on the application, concealed a material fact or otherwise committed any fraud in the application
- (3) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

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- (4) Within the past five years, the applicant had a criminal judgment for misdemeanor or felony entered against him or her for a crime of violence or a property crime related to theft or fraud

(g) The decision of the Chief of Police or designee to deny, revoke, or not renew, a permit may be appealed under the procedures set forth in SCCC Sections 2.115.050 – 2.115.090.

(h) The permit issued pursuant to this Article, and all interests, rights and obligations pertaining thereto, are personal to the holder of such permit, and are not transferable or assignable, by operation of law or otherwise.

5.05.430 Time, Place, or Manner Restrictions

(a) No Sidewalk Vendor shall sell food or merchandise, whether stationary or roaming, from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or other nonmotorized conveyance, or from one's person, upon a public sidewalk or other pedestrian path, within the Stadium Pilot Program Area on Event Days during the hours of street or trail closures. In no event shall Street Vending occur within the Stadium Pilot Program Area on Event Days within two hours before the commencement of an event and two hours after the conclusion of an event.

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(a) The following health, safety, or welfare concerns exist upon the sidewalks and other pedestrian paths listed in SCCC 5.05.430(b):

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5.05.450 Enforcement

(a) A violation of any requirement of this Article IV, except for permit requirements under SCCC 5.05.420, is punishable only by the following administrative penalty structure or permit revocation:

- (1) One hundred dollars (\$100) for a first violation
- (2) Two hundred dollars (\$200) for a second violation within one year of the first violation
- (3) Five hundred dollars (\$500) for each additional violation within one year of the first violation
- (4) The Chief of Police or designee may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations

(b) A Sidewalk Vendor operating within the Stadium Pilot Program Area without possessing a valid sidewalk vending permit issued in accordance with SCCC 5.05.420 is subject to the following penalties:

- (1) Two hundred fifty dollars (\$250) for a first violation
- (2) Five hundred dollars (\$500) for a second violation within one year of the first violation
- (3) One thousand dollars (\$1,000) for each additional violation within one year of the first violation.

(c) The Police Department shall make available instructions or other materials explaining a Street Vendor’s right to request an ability-to-pay determination pursuant to SB 946.”

SECTION 3: Ordinances Repealed. With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

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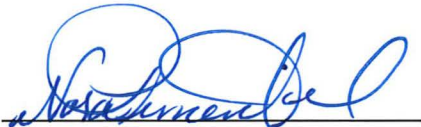
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SECTION 4: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 5: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 18TH day of July, 2023, by the following vote:

AYES:	COUNCILORS:	Becker, Chahal, Hardy, Jain, Park, and Watanabe, and Mayor Gillmor
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST: 
NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None