

**From:** [Phan, Johnny](#)  
**To:** [Downtown West Project](#)  
**Subject:** FW: Google - Diridon/DW - Exhibits F2 and F3  
**Date:** Tuesday, April 6, 2021 2:59:19 PM  
**Attachments:** [Google - DW - Exhibits F2 and F3.docx](#)

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**From:** Miller, Gregg <gmiller@coblentzlaw.com>  
**Sent:** Sunday, March 21, 2021 11:23 AM  
**To:** Phan, Johnny <Johnny.Phan@sanjoseca.gov>  
**Cc:** Straka, Stephanie <SStraka@coblentzlaw.com>  
**Subject:** Google - Diridon/DW - Exhibits F2 and F3

[External Email]

Johnny: attached are revised Exhibits F2 and F3. I believe there is only one change – in the first paragraph on the first page. Thanks,

**Gregg Miller**

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## **Exhibit F2**

### **Rules Regarding Public Access**

#### **1. Hours of Operation**

Except as set forth in Section 2 herein, each of the Privately-Owned Publicly Accessible Open Spaces, excluding the Los Gatos Creek Riparian Corridor, shall be open to the general public every day from sunrise until 9:00 p.m.

#### **2. Scope of Permissible Park Use**

The public is welcome to access the Privately-Owned Publicly Accessible Open Spaces for the following general uses:

- to enjoy the park during the hours of operation ("park hours")
- to enjoy open spaces during park hours, other than those times reserved for private events or necessary closing
- to engage in commercial activity and revenue generating activities with permission of the Developer/owner
- to enjoy and participate in public, community curated events that do not require payment, which will happen a minimum 6 times annually
- to enjoy the gardens, naturalized areas, and landscaping without entering flowerbeds or damaging vegetation
- to sit on a park chair or one seat on a bench designed for sharing
- to deposit waste in trash or recycling receptacles
- to walk dogs on a leash so long as the person walking the dog cleans up after the dog and deposits waste into appropriate receptacles
- to take souvenir photos; commercial photography by Developer/owner permission only

- to apply to the Developer/owner to host private events, i.e., corporate events, protests, or other special events

### **Exhibit F3**

#### **Rules Regarding Public Events, Private Events, and Temporary Closures**

“Public event” and “private event” shall have the meaning set forth in the General Development Plan. Excluding semi-public open space (as defined in the DWDSG) under lease by a business, the Los Gatos Creek Riparian Corridor, and limited-access mid-block passages (as defined in the DWDSG), all spaces are publicly accessible, subject to the following limitations:

- a. All public events and private events require prior Developer/owner permission, and Developer/owner has the authority in its sole discretion to determine whether an event is permitted, consistent with the rules and limitations for public events, private events and/or temporary closures set forth in this Exhibit F3.
- b. All public events and private events permitted by this Exhibit F3 are permitted without any further authorization, permits, or approvals from the Director of PBCE or any other City department, except to the extent a permit is required under the San Jose Municipal Fire Code (Fire Code) or the event includes amplified noise that exceeds [60] decibels (dBA), which permit processes and requirements are set forth in the General Development Plan.
- c. Notwithstanding the limitations regarding partial closures set forth below, each individual Privately-Owned Publicly Accessible Open Space may be closed in its entirety (inclusive of the reservable areas) for a private event a maximum of six (6) times per year, not to exceed eight (8) hours in any month, except as permitted by Paragraph (p). Except for closures described in Paragraph (p), Developer or Owner shall provide notice to the City of each planned closure for a large private event as allowed under this paragraph at least seven (7) days in advance of the closure, and shall

- post notice at the entrance to the subject Open Space least forty-eight (48) hours in advance of such closure to inform the public.
- d. No more than one entire Privately-Owned Publicly Accessible Open Space's reservable area may be reserved for a private event at any one time, except for five (5) days per year, when all Privately-Owned Publicly Accessible Open Space reservable areas may be reserved for no more than five (5) consecutive days, provided that prior notification to the general public via posted signage, and written notification to the City Department of Parks, Recreation & Neighborhood Services (“PRNS”) and other stakeholders. During such closures, public access to all City-Dedicated Park spaces and trails shall be provided unless closure of such City-Dedicated Park space is expressly approved in writing by PRNS.
  - e. Private events held in Privately-Owned Publicly Accessible Open Space reservable areas shall be limited to no more than five (5) consecutive days in one location.
  - f. Events shall be assigned to specific venues within the Privately-Owned Publicly Accessible Open Space network appropriate to the size and nature of the event and where the event will impose the least impact to the level of service on the Privately-Owned Publicly Accessible Open Space or the public's use therefore, as determined by Developer/owner in its sole discretion.
  - g. Non-reservable event areas shall remain open and accessible to the public during private events.
  - h. Events shall maintain a clear public path of travel around the event and through the Privately-Owned Publicly Accessible Open Space, including a safe path of travel marked in accordance with ADA standards shall be maintained.

- i. Private events held during business hours Monday through Thursday shall be encouraged to avoid high public use hours, as determined by Developer/owner.
- j. Private events held during evenings, weekends, and holidays and other hours of high public use should be limited, as determined by Developer/owner, in order to avoid high public use hours, as determined by Developer/owner.
- k. Private events held on weekends shall be limited to one weekend per month per Privately-Owned Publicly Accessible Open Space. As much as possible, as determined by Developer/owner, the event should allow the public to hear, see, or otherwise appreciate the event.
- l. Unless otherwise approved by Developer/owner, event support structures and furnishings shall be located on hardscape areas and shall be selected and arranged with a high regard for the visual and aesthetic quality of the Privately-Owned Publicly Accessible Open Space.
- m. Events involving animal acts, petting zoos, carnival rides, hot air balloons, or helicopter landings shall not be permitted.
- n. Vehicle access through the Privately-Owned Publicly Accessible Open Spaces is prohibited, except that vehicle access for the limited purpose of setting up or dismantling furnishings, decor, or other items associated with a public or private event may be permitted with prior approval of Developer/owner.
- o. Special Events, as defined in the General Development Plans, are permitted with prior Developer/owner permission. Special Events are permitted pursuant to the requirements specified in the Downtown West Planned Development Zoning District and General Development Plan.

- p. Notwithstanding any provision in this Exhibit to the contrary, Privately-Owned Publicly Accessible Open Spaces may be closed, at Developer/owner's reasonable discretion, on short-notice or at any time for security or safety needs, and for maintenance or repair. Any security or safety-related closure lasting longer than seven (7) days shall require written approval from City, a request for which shall be responded to within twenty-four (24) hours of receipt, and the approval of which shall not be unreasonably withheld.

Each of the following Privately-Owned Publicly Accessible Open Spaces may be partially closed for private events as described below (by percentage of total open space, and duration), subject to the rules and conditions above:

- a. Los Gatos Creek Park: A maximum of twenty-five percent (25%) of Los Gatos Creek Park is reservable by the public for private event use for each event zone depicted on Figure 1 for up to fifty-four (54) days per year (15%) from Sunrise to 12am. The same is reservable by Developer for private event use for each event zone depicted on Figure 1 for up to seventy-three (73) days per year (20%) from Sunrise to 12am.
- b. The Meander: A maximum of fifty-five percent (55%) of the total Privately-Owned Publicly Accessible Open Space within The Meander is reservable by the public for event use for each event zone depicted on Figure 2 for up to fifty-four (54) days per year (15%) from Sunrise to 10 pm. The same is reservable by Developer for private event use for each event zone depicted on Figure 2 for up to seventy-three (73) days per year (20%) from Sunrise to 12:00 am.
- c. Creekside Walk at South Autumn Street: A maximum of thirty-five percent (35%) of the total Privately-Owned Publicly Accessible Open Space within Creekside Walk at

- South Autumn Street is reservable by the public for event use for each event zone up depicted on Figure 3 for up to fifty-four (54) days per year (15%) from Sunrise to 12:00 am. The same is reservable by Developer for private event use for each event zone depicted on Figure 3 for up to one hundred twenty-seven (127) days per year (35%) from Sunrise to 12:00 am.
- d. The Gateway and Los Gatos Creek East: A maximum of thirty-five percent (35%) of the total Privately-Owned Publicly Accessible Open Space within the Gateway and Los Gatos Creek East is reservable by the public for event use for each event zone depicted on Figure 4 for up to fifty-four (54) days per year (15%) from Sunrise to 2:00 am. The same is reservable by Developer for private event use for each event zone depicted on Figure 4 for up to seventy-three (73) days per year (20%) from Sunrise to 2:00 am.
  - e. Northend Park: A maximum of fifty percent (50%) of the total Privately-Owned Open Space within Northend Park is reservable by the public for event use for each event zone depicted on Figure 5 for up to fifty-four (54) days per year (15%) from Sunrise to 10 pm. The same is reservable by Developer for private event use for each event zone depicted on Figure 5 for up to seventy-three (73) days per year (20%) from Sunrise to 12am.



**Figures 1 through 5** *[separate pdf]*