



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Mayor Sam Liccardo

**SUBJECT:** SEE BELOW

**DATE:** November 29, 2022

Approved

Date: 11/29/2022

**SUBJECT: PP22-015 - Amendment to Title 20 (Zoning Ordinance or Zoning Code) of the San José Municipal Code for the Parking and Transportation Demand Management Policy Ordinance.**

## **RECOMMENDATION**

Approve staff's recommendation, but with the following modifications:

1. Modify the ordinance to provide simpler compliance and greater flexibility for outdoor dining in zoning designations and districts outside of downtown.
  - a. Allow outdoor uses on private property within 150 feet of a residential use to apply for a permit through a simpler, less expensive process than that prescribed for a Special Use Permit—such as the process used for a Public Works “parklet permit.”
  - b. The permit should enable businesses and restaurants to continue using their private parking lots within 150 feet of a residential use where those businesses do not violate any specified conditions for safe and neighborhood-friendly operation.
    - i. Return to Council with the list of those specified conditions, the violation of which could provide the basis for the revocation of a permit to operate outdoors.
    - ii. One of those conditions should incorporate a “catchall” prohibition on any conduct creating a “public nuisance” as defined by other statutory and case law.
2. Suspend enforcement against outdoor dining and outdoor uses on private property as recommended in Staff's Supplemental Memorandum dated November 23, 2022 until this new program is approved by Council and implemented.

## **BACKGROUND**

City staff deserve accolades for bringing this policy before the City Council, as do the community of partners who have helped to shepherd this important work in recent years. If approved, we will join a growing list of cities that have already removed parking minimums.

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This action furthers the City's climate goals, repurposes underutilized land, and breathes life into parking lots transformed to gathering areas for commerce and recreation.

Since we launched *San Jose Al Fresco*, more than 100 businesses continue to use outdoor areas on private property. Restaurants like Luna Mexican Kitchen on The Alameda and Adelita's Taquería on Curtner Avenue have reimaged their parking lots to offer outdoor dining experiences that enable our residents to enjoy San Jose's uniquely excellent climate.

If we do not make this process easier in the coming months for our businesses using their private property/parking lots, many will be required to apply for a Special Use Permit (SUP). SUP costs range between \$13,000 and \$22,000. The process likely takes between 4 and 6 to finish. Upon completion, it's possible these businesses could still be denied. Simply, we'd be doing everything possible to discourage the very actions that we want—and that our city needs.

We expect that nearly every restaurant will comply with their permit conditions, as most businesses do. For the few bad actors, code enforcement should have the tools to remove the business' ability to operate outside.