



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Welsh

SUBJECT: SEE BELOW

DATE: June 26, 2020

Approved

Date

6/26/2020

SUBJECT: RATIFICATION OF THE DECLARATION SUSPENDING ENFORCEMENT OF CERTAIN PROVISIONS IN LAND USE PERMITS AND APPROVALS AND ZONING AND ENCROACHMENT REQUIREMENTS IN THE SAN JOSE MUNICIPAL CODE

RECOMMENDATION

Adopt a resolution confirming and ratifying 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 June 26, 2020 (“Emergency Order”).

OUTCOME

Ratification of the Emergency Order will streamline the application process for parklets, waive fees and allow the City to create parklets for restaurants and retail businesses by procuring and installing traffic barriers in approved locations to facilitate compliance with the County of Santa Clara Health Officer’s Social Distancing Protocol. The temporary relaxation of rules will last through December 31, 2020, unless the local emergency ends before this date, or the City reinstates existing regulations.

BACKGROUND

On May 13, 2020, the Rules and Open Government Committee approved a memorandum from Mayor Liccardo and Councilmember Davis¹ directing the City Manager to bring forward for Council consideration a program, referred to as San José Al Fresco, that would simplify and

¹ Memorandum: <https://sanjose.legistar.com/View.ashx?M=F&ID=8334658&GUID=ECB1EAA5-1945-4AAC-9BCF-D8F29E0542AA>

expand the process for businesses to operate outdoors. The goal was to provide additional space for hard-hit businesses to operate within the public health restrictions in place to combat the COVID-19 pandemic.

On Friday, June 5, 2020, Santa Clara County allowed restaurants in the county to open for outdoor dining and in-store shopping, among other activities, subject to social distancing and health requirements. To enable businesses to reopen while maintaining compliance with the County's Order and Social Distancing Protocol, the City Manager, in his capacity as Director of Emergency Services, signed an Emergency Order on June 4, 2020 relaxing rules to allow many businesses throughout the city without existing permits for outdoor operations or seating to expand their operations outside to public sidewalks and in privately owned outdoors areas such as parking lots.

The Emergency Order signed on June 26, 2020 further assists in the economic recovery of businesses in the City by allowing for the expansion of dining and retail operations into on-street parking spaces while adhering to mandatory social distancing requirements set forth by the County.

ANALYSIS

Under the Emergency Order, the City is temporarily relaxing rules and regulations, streamlining the process and waiving fees for the installation of parklets in on-street parking spaces and providing for the City to install traffic barriers to create the parklets. The City Manager's Emergency Declaration became effective 12:01 a.m. June 27, 2020. The Emergency Order found that this action was necessary to protect life and property by helping to ensure that businesses had adequate space to comply with the current County Health Order and Social Distancing Protocol.

A parklet is defined as the vehicle parking spaces within the public street adjacent to a business' property that are repurposed for seating and business use by separating the area from vehicular traffic with physical barriers. Physical barriers for parklets will be provided and installed by the City. The City has an existing inventory of traffic barriers that will be utilized for creating parklets and will procure additional barriers as needed using the Small Business Assistance allocation in the Coronavirus Relief Fund programmed for the San Jose Al Fresco initiative, as approved as part of the Mayor's June Budget Message for Fiscal Year 2020-2021. The locations, dimensions and materials used for parklets will be determined by the City based on factors outlined in regulations specific to this parklet initiative that will be adopted by the Director of Public Works ("Parklet Regulations").

In addition to the fact that the City, rather than individual businesses, will be creating parklets, this Emergency Order differs from the City's existing Parklet Program in several important ways. First, the Emergency Order does not require businesses to construct a platform for the

parklet to be flush with the curb and will be able to place tables and chairs directly on to the street surface. Businesses also will be allowed to operate in areas of the parklet beyond their business' frontage with the written consent of the neighboring business owner, which is not normally allowed. In addition, the Emergency Order allows retail businesses to operate their businesses from parklets, which is not allowed by the current Parklet Program, provided that no retail operations may be conducted on the public sidewalk adjacent to the parklet. Finally, the parklets created under the Emergency Order are intended to be larger, unbroken areas along commercial streets, rather smaller parklets that only serve individual businesses. Therefore, the City will prioritize parklets in locations where there is substantial local business support for repurposing on-street parking.

The Emergency Order contains important limitations and conditions for the use of parklets that staff believe are necessary for the protection of the public health, safety and welfare. Parklets may be used for outdoor dining, with or without table service, retail operations, and customer and general public seating. The Emergency Order does not require the City to create parklets in any particular area and the City will determine where parklets can be located based on criteria set forth in the Parklet Regulations. For example, parklets will be limited to streets in commercial areas that have a posted speed limit of 25 MPH or less. Moreover, businesses must continue to comply with applicable laws in operating outdoors, including County Health Orders. Only businesses allowed to operate under applicable law are eligible to take advantage of the relaxed rules.

To take advantage of the relaxed rules, businesses must apply online with the City. There are no fees for applying or participating in the parklet initiative. Because of the significant physical differences between existing parklets and the parklets being created by the City under the Emergency Order, existing parklets will continue to be subject to the permits issued under the City's Parklet Program. However, a business with an existing parklet may apply for a parklet on a neighboring property under the Emergency Order.

With Council approval, the relaxed rules will be in effect through December 31, 2020, unless the local emergency ends before this date or the City reinstates existing regulations.

Staff is in the process of updating content on sanjoseca.gov/sjalfresco to reflect the changes implemented as a result of the Emergency Order, including a list of Frequently Asked Questions available in English, Spanish, and Vietnamese. Communications about the initiative will be included in all three languages in the City's weekly COVID-19 Mitigation and Response Flash Report and will be distributed through neighborhood business district partner organizations.

CONCLUSION

The Emergency Order is intended to help ensure compliance with County Health Orders and Social Distancing Requirements and provide economic support to local businesses experiencing interruptions as a result of the public health emergency. By providing further expanded outdoor capacity in on-street parking space, restaurants and retail businesses can safely reopen and put people back to work. The program does not require permit fees and is designed to be as simple as possible for businesses.

EVALUATION AND FOLLOW-UP

Staff continues to work on a broader San Jose Al Fresco initiative, addressing additional outdoor areas and uses (e.g., streets, plazas, and parks) with streamlined processes and reduced or eliminated city service costs as Santa Clara County allows additional business uses and activities to resume. Staff will return to City Council to implement any proposed program changes and/or fee waivers as necessary.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memo will be posted on the City website for discussion at the June 30, 2020 City Council meeting.

COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

Physical barriers for parklets will be provided and installed by the City. The City has an existing inventory of equipment that will be utilized and intends to procure additional barriers as needed using the Small Business allocation in the Coronavirus Relief Fund.

CEQA

Determination of Consistency with the Envision San José 2040 General Plan Final Program Environmental Impact Report (FEIR), for which findings were adopted by City Council through Resolution No. 76041 on November 1, 2011, and Supplemental EIR Resolution No. 77617, adopted by City Council on December 15, 2015, and Addenda thereto. Pursuant to Section 15168 of the CEQA Guidelines, the City of San José has determined that this activity is within the scope of the earlier approved programs and the Final Program EIRs adequately describe the activity for purposes of CEQA. The project does not involve new significant effects beyond those analyzed in the Final Program EIRs.

/s/

KIM WALESH

Deputy City Manager

Director of Economic Development

For questions, please contact Blage Zelalich, Downtown Manager at (408) 535-8172.