



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Welsh

SUBJECT: SEE BELOW

DATE: October 29, 2020

Approved		Date	10/29/20
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SUBJECT: ACTIONS RELATED TO DECLARATIONS SUSPENDING ENFORCEMENT OF CERTAIN PROVISIONS IN LAND USE PERMITS AND APPROVALS AND THE SAN JOSE MUNICIPAL CODE

RECOMMENDATION

- (a) Accept staff report on the status of the San José Al Fresco program; and
- (b) Adopt a resolution amending the Declarations of the Director of Emergency Services of the City of San José issued June 4, 2020, as amended, June 26, 2020, as amended, July 22, 2020, July 31, 2020, and August 5, 2020, to extend the duration of these declarations until March 31, 2021 or June 30, 2021, as applicable; require additional safety measures for outdoor operations on private property; extend permissible business hours for outdoor operations in the Downtown Core; expand the list of allowable equipment that may be used in Outdoor Business Areas to allow for cold weather operations, and make other amendments.

OUTCOME

The City Council will receive an update on the current status of the SJ Al Fresco initiative and amending the Declarations issued June 4 (“Private Parking and Sidewalk Declaration”), June 26, 2020 (“Parklet Declaration”), July 22, 2020 (“Street Business Area Declaration”), July 31, 2020 (“Public Parking Declaration”), and August 5, 2020 (“Parks and Plazas Declaration”) will allow City businesses to continue to conduct outdoor operations through the winter of 2020-2021 to facilitate compliance with the State and County Health Orders. The recommended Council action will also make changes to the current Al Fresco regulations, including (1) requiring safety barriers for outdoor operations on private property, (2) extending permissible outdoor business hours for private property and sidewalk operations in the Downtown Core until midnight, (3) allowing for additional equipment to be utilized for cold weather operations; and (4) allowing

businesses to apply for permits to erect tents or canopies larger than those allowed under the current regulations and/or to apply for permits to erect structures.

BACKGROUND

On May 13, 2020, the Joint Meeting for the Rules and Open Government Committee and Committee of the Whole approved a memorandum from Mayor Liccardo and Councilmember Davis¹ directing the City Manager to bring forward for Council consideration, recommendations that would simplify and expand the process for businesses to operate outdoors, referred to as San José Al Fresco (or SJ Al Fresco). The goal was to provide additional space for hard-hit businesses to operate within the public health restrictions that are in place to combat the COVID-19 pandemic.

Between June and September 2020, the City Manager, in his capacity as Director of Emergency Services, issued five Emergency Declarations allowing the expansion of business operations while maintaining compliance with the County's Order and Social Distancing Protocol. These declarations included expansion of business uses into adjacent private property (Outdoor Business Area), on public sidewalks, into on-street parking spaces (Parklets), onto public streets that the City has closed to vehicular and bicycle traffic (Street Business Areas), in City-owned parking lots, and into public parks and plazas. Each declaration further assisted in the economic recovery of businesses in the City. The Director of Emergency Services found these actions necessary to protect life and property by helping to ensure that businesses had adequate space to comply with current State and County Health Orders and Social Distancing Protocol.

The implementation and management of SJ Al Fresco involve eight City departments, led by the Office of Economic Development and Parks, Recreation and Neighborhood Services (PRNS) with substantial on-going participation from the Public Works Department, the Department of Transportation, the City Attorney's Office, the Police and Fire Departments, Planning, Building and Code Enforcement, and the Office of Cultural Affairs. The 2020-2021 Adopted Operating Budget includes \$1.1 million to support this effort, \$900,000 from the Coronavirus Relief Fund, and \$189,000 from the General Fund supported by external grant funding. This funding is intended for SJ Al Fresco activation efforts overseen by PRNS (\$789,000) and program facilitation overseen by the Office of Economic Development (\$300,000).

ANALYSIS

Under the SJ Al Fresco streamlined process, 106 businesses have self-registered to conduct outdoor business operations on private property, 26 businesses have received a permit for business operations in a Parklet, on a public sidewalk, or both, 12 businesses have received a

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

permit to operate in a street closed to vehicular traffic. There are 2 businesses operating outdoors in City-owned parking lots or garages and 7 permits that have been issued for al fresco operations in a City park. Three streets have been closed under SJ Al Fresco – two in the Downtown Core (San Pedro and Post Streets) and one in South San Jose (Coronado Avenue).

The PRNS Placemaking Team consisting of four full-time and 3.5 part-time staff was tapped to carry out business support activations and, through conversations with each Council office, identified 65 potential sites to activate. The team conducted outreach to 651 businesses in the City's most heavily COVID-19-impacted zip codes. Nineteen sites, and at least one in each City Council District, are actively engaged in Al Fresco operations facilitated through the Placemaking Team. Most of the businesses at these sites are ethnic-focused, minority-owned businesses.

Communications and messaging for the Al Fresco initiative have been focused on the small business community, with www.sanjoseca.gov/sjalfresco serving as the primary location and clearinghouse for program information and updates. Digital media messaging, webinars, the creation of a Council toolkit, and direct outreach by the PRNS Placemaking Team and neighborhood business association and community-based organization partners have been the primary messaging tools and outlets utilized in SJ Al Fresco communications. Communications have been translated into Spanish, Vietnamese, Traditional Chinese, and Simplified Chinese or accessible in formats utilizing Google Translate. The Office of Economic Development's Public Information Officer has led this effort in coordination with communications staff from PRNS and support from the Emergency Public Information Officer(s).

Extension of the Emergency Declarations

The current Emergency Declarations remain in effect until December 31, 2020, or until such time as they are terminated or modified by the City Council or the termination of the local state of emergency, whichever occurs first. Staff recommends extending the Private Property and Sidewalk Declaration, Street Business Area Declaration, Parklet Declaration, and Public Parking Declaration until June 30, 2021 and the extension of the Parks and Plazas Declaration until March 31, 2021.

On October 14, 2020, Santa Clara County moved from the Red Tier into the Orange Tier on the State of California's County Risk Assessment matrix. This move allowed some businesses to resume operations indoors, but at a substantially reduced capacity. For instance, the Orange Tier allows indoor dining, some family entertainment, gyms and fitness facilities at 25% capacity, and museums at 50% capacity. Extending four of the five Emergency Declarations for an additional six months allows businesses to recoup investments they will make to conduct business outdoors during Winter and a potentially rainy Spring. Staff recommends only extending the Parks and Plazas Declaration until March 31, 2020, as there may be a significant interest by special event producers to reserve those spaces for larger activations in the Spring.

While staff recommends the extension of all five Emergency Declarations, after December 30, 2020, the City will no longer have funding to waive fees or to provide and install traffic safety barriers to create Street Business Areas or Parklets. Therefore, for future requests to create a Parklet or Street Business Area, the costs associated with the City's review and approval, as well as the costs to obtain, install and maintain traffic barriers will be the responsibility of the business or businesses requesting the closure. A Street Business Area is a portion of the public street abutting a business's property that has been repurposed for seating and business use by separating the area from vehicular and bicycle traffic with physical barriers. A Parklet is a vehicle parking space within the public street adjacent to a business's property that is repurposed for seating and business use by separating the area from vehicular traffic with physical barriers. The dimensions and materials used for Parklets will remain determined by the City based on factors outlined in Parklet Regulations adopted by the Director of Public Works.

Staff's recommended amendments do not address outdoor business operations after the expiration of the emergency declarations. This transition period, including staff's recommendations on whether to continue outdoor operations after the expiration of the current emergency, will be addressed in a future staff recommendation after staff has evaluated the Al Fresco program and determined which elements might be appropriate for extension.

Private Parking Lot Operations

The Private Property and Sidewalk Declaration were intended to provide a simple and streamlined way for a significant number of businesses in the city to expand business operations. Staff was not (and is currently not) resourced to review proposed private property set-ups or inspect outdoor business operations on private property. As a result, outdoor business operations on private property was established as a self-registration process, rather than a process that consisted of City review and the issuance of a separate permit.

Per City Council direction at the October 20, 2020 meeting, staff recommends amending the Private Property and Sidewalk Declaration to require that all businesses operating on private property install safety barriers to separate those within an Outdoor Business Area from surrounding vehicular traffic. In conjunction with this new requirement, staff intends to provide documentation outlining a list of barriers that might mitigate risks to those in Outdoor Business Areas on private property, as well as parameters for allowable set-ups of these barriers. The document will be posted on the SJ Al Fresco webpage and be available in multiple languages to businesses that self-register. Staff will notify businesses that have already self-registered that these new guidelines are available and will encourage them to adjust their logistical set-ups to maximize safety. It should be noted that given the nature of these outdoor operations, there is no way to entirely protect Outdoor Business Areas from all threats. Private property owners and businesses will continue to be responsible for ensuring that their employees, contractors, and guests are safe while in Outdoor Business Areas.

Hours of Operation in the Downtown Entertainment Zone

Staff recommends that the hours of outdoor operations on private property and public sidewalks in the Downtown Entertainment Zone be extended until midnight. Hours have already been extended for Parklets and Street Business Areas (see below). Hours of operation for each business operating under the city-wide SJ Al Fresco initiative were originally set from 7:00 a.m. to 10:00 p.m. These hours were selected to support the intent of the Santa Clara County Health Order to suppress the spread of COVID-19 by minimizing socializing but still provide dining-out options. Staff also selected these hours to minimize impacts to neighboring properties, especially outdoor operations on private property given the proximity to residential areas and the large number of businesses allowed to operate outdoors under Al Fresco.

The Downtown Entertainment Zone, bounded by Highway 87, Julian Street, Fourth Street, and Interstate 280, is an established dining and nightlife destination. The majority of nighttime establishments within the Entertainment Zone have permits to operate past midnight. Many establishments have only recently re-opened for sit-down service and have made considerable financial investments in equipment and additional staff to conduct business outdoors. Santa Clara County's transition into the Orange Tier allows limited-capacity indoor dining until midnight and allows bars to conduct business outdoors. Also, while Downtown has a growing residential population, the small number of residents that live near establishments in the Downtown Entertainment Zone are accustomed to businesses operating until midnight. Through the administrative regulations established as part of the Parklet Declaration and Street Business Area Declaration, staff has already extended the business hours in Parklets and Street Business Areas in the Downtown Entertainment Zone until midnight.

Winterization Efforts – Heaters, Tents, Canopies, and Structures

While indoor shopping at retail businesses is allowed under the County's Health Order, and outdoor dining can proceed at a limited-capacity, many customers remain hesitant to shop or dine indoors in the current COVID-19 environment. Providing the ability for businesses to comfortably extend their retail or dining operations outdoors during the upcoming winter will hopefully assist these businesses on their road to economic recovery. To this end, staff recommends amending the Private Property and Sidewalk Declaration to allow heaters to be used on public sidewalks. Businesses will have to follow the Fire Department's established regulations and guidelines for the use and storage of these heaters. Heaters are already allowed on private property, in Street Business Areas, and in Parklets.

In addition, staff recommends that Council modify the Private Property and Sidewalk Declaration to allow a business to erect structures, tents over 400 square feet, or canopies over 700 square feet on private property or public sidewalks, if the business obtains a separate permit from the City. Staff also intends to modify the administrative regulations for Parklets ("Parklet Regulations") and Street Business Areas ("Street Business Regulations") to allow tents over 400 square feet or canopies over 700 square feet if a business obtains a separate permit issued by the

Fire Department. Similarly, staff intend to modify the Parklet Regulations and Street Business Regulations to allow structures in a Street Business Areas and Parklets if a business obtains a separate permit issued by the Public Works department. Staff's intended changes to the Parklet Regulations and Street Business Regulations do not include requirements for businesses to provide a deposit for maintenance or removal of structures or large tents or canopies on public property.

Ultimately, streets and sidewalks must be kept in a safe condition and open for the public's use. Unlike private property for which a business is solely responsible, the City reviews and issues permits for encroachments in the public right-of-way to ensure that they are safe and that they will be removed when required. Pursuant to the permits issued to businesses to utilize a Parklet or Street Business Area, businesses are responsible for maintaining and removing items they place on public property. However, if a business does not adequately maintain and remove structures, tents, and canopies it uses for outdoor operations, the City may need to utilize its own resources to ensure that the public right of way is cleared. If the City allows structures, large tents, and canopies for permittees, there could be an increase in unpermitted structures, large tents, and canopies.

Staff intends to cover City of San José permit costs associated with the review and inspection of tents, canopies, and structures for businesses that are currently registered or permitted under the Al Fresco initiative. These requests will be taken on a first-come, first-served basis so long as funding remains available through the beginning of December 2020. Priority will be given first to businesses operating in Parklets or Street Business Areas and then to those operating on private property.

CONCLUSION

The extension of the SJ Al Fresco initiatives, as well as the proposed program adjustments, are intended to help businesses comply with County Health Orders and Social Distancing Requirements by continuing to provide increased outdoor capacity to a wide variety of businesses in the city of San José.

Content on sanjoseca.gov/sjalfresco will be kept up-to-date, including a list of Frequently Asked Questions available in English, Spanish, and Vietnamese. Information on how a business owner can register or apply to conduct outdoor operations is easily accessible on the translatable site.

EVALUATION AND FOLLOW-UP

Staff will continue to facilitate, manage, and support outdoor business operations under SJ Al Fresco to the best of its ability with the resources that have been allocated to the initiative. While staff is evaluating funding availability and spending priorities to support the City's pandemic response through June 30, 2021 and will bring forward recommendations for the City

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Council's consideration in December 2020, there is no funding currently allocated for the initiative after December 31, 2020. The PRNS Placemaking Team will continue support for SJ Al Fresco through winter and then are currently scheduled to shift toward planning for Summer Viva Parks programming and Viva Calle SJ in the fall. Staff will also monitor the need for the initiative and its effectiveness over the next four to eight months and return to Council with any necessary amendments or extensions.

CLIMATE SMART SAN JOSE

The recommendations in this memo align with one or more Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memo will be posted on the City website for discussion at the November 3, 2020 City Council meeting.

COORDINATION

This memorandum has been coordinated with Parks, Recreation and Neighborhood Services, the Office of Cultural Affairs, the Fire Department, the Police Department, the Public Works Department, the Department of Transportation, the City Attorney's Office, and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

Funding to cover the costs of reviewing and inspecting tents and structures for the winterization of SJ Al Fresco operations is included in the \$300,000 allocated within the Local Assistance appropriation in the Coronavirus Relief Fund.

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CEQA

Categorically Exempt, File No. ER20-223, CEQA Guidelines Section 15304(e) Minor Alterations to Land.

/s/

KIM WALESH

Deputy City Manager

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