



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: November 16, 2021

Approved

Date

11/19/21

SUBJECT: ACTIONS RELATED TO DECLARATIONS SUSPENDING ENFORCEMENT OF CERTAIN PROVISIONS IN LAND USE PERMITS AND APPROVALS AND THE SAN JOSE MUNICIPAL CODE

RECOMMENDATION

- (1) Adopt a resolution amending the Declaration of the Director of Emergency Services of the City of San José issued June 4, 2020, to extend the term for outdoor operations on private property until January 31, 2022, and amending the Declaration of the Director of Emergency Services of the City of San José issued July 22, 2020 to extend the term for outdoor business operations on closed public streets until June 30, 2022; and
- (2) Approve an ordinance allowing the continuation of outdoor business operations on private property from February 1, 2022 until December 31, 2022.

OUTCOME

The recommended Council actions will temporarily allow outdoor business operations on private property to continue through December 2022 and will temporarily allow outdoor business operations on closed public streets to continue through June 30, 2022. During these time periods, the City will explore permanent programs for the continuation of outdoor business operations on private property and closure of public streets to vehicular traffic as part of a Slow Streets program. The emergency declarations for outdoor business operations in parklets and sidewalk seating will be allowed to expire as of December 31, 2021, and City staff will implement administrative changes to the parklet, and sidewalk seating programs as outlined in this memorandum. The emergency declarations for outdoor business operations on public plazas, parks and parking lots and garages will be allowed to expire as of December 31, 2021.

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 (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 outdoors 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.

At its March 30, 2021 meeting, the City Council voted unanimously to adopt Resolution 79947 extending the terms of the Declarations of the Director of Emergency Services of the City of San José issued June 4, 2020, June 26, 2020, July 22, 2020, July 31, 2020, and August 5, 2020, until December 31, 2021.

The implementation and management of SJ Al Fresco involved eight City departments, led by the Office of Economic Development and Cultural Affairs with substantial on-going participation from the Public Works, Transportation, Police, Fire, Planning, Building and Code Enforcement, and Parks, Recreation and Neighborhood Services Departments, as well as the City Attorney's Office. The 2020-2021 Adopted Operating Budget included \$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 supported SJ Al Fresco activation efforts overseen by PRNS (\$789,000), and program facilitation overseen by the Office of Economic Development and Cultural Affairs (\$300,000). The City Council-approved Mayor's March Budget Message for Fiscal Year 2021-2022 directed staff to report back to the Council prior to the 2022-2023 budget development process with options for establishing a permanent outdoor-activation business program in future years, and the 2021-2022 Adopted Operating Budget includes \$700,000 in American Rescue Plan Act funds to assist businesses transitioning from the temporary SJ Al Fresco parklet and sidewalk seating program to the City's permanent parklet

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

and sidewalk seating program. In addition, the City Council-approved Mayor's June Budget Message for Fiscal Year 2021-2022 included one-time funding of \$9,300 to continue the street closure at Coronado Avenue at the Village Oaks Shopping Center through 2021-2022.

ANALYSIS

Under the SJ Al Fresco streamlined process, 131 businesses have self-registered to conduct outdoor business operations on private property, 35 businesses have received a permit for business operations in a Parklet, on a public sidewalk or both, and 12 businesses have received a permit to operate in a street temporarily closed to vehicular traffic. Seventeen permits that have been issued for al fresco operations in a City park. Three streets have been temporarily closed under SJ Al Fresco – two in the Downtown Core (San Pedro and Post Streets) and one in South San José (Coronado Avenue).

Communications and messaging for SJ Al Fresco 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. Communications have been translated into Spanish, Vietnamese, Traditional Chinese and Simplified Chinese or accessible in formats utilizing Google Translate.

Since the various Emergency Declarations were ratified and extended by Council, San José and Santa Clara County have made strides against the COVID-19 pandemic. Vaccinations have increased and the County and State have relaxed the more restrictive elements of prior Health Orders, such as social distancing and occupancy requirements for most businesses. As a result, City staff are transitioning the SJ Al Fresco program from the temporary measures implemented to support public health initiatives and local businesses to permanent programs, as discussed below.

The current Emergency Declarations issued on June 4 (as to sidewalk seating on public streets "Sidewalk Seating"), June 26 ("Parklet Declaration"), July 31 ("Public Parking Declaration") and August 5 ("Parks and Plazas Declaration") will be allowed to expire pursuant to their terms on December 31, 2021. Outdoor business operations on public plazas, parks or in parking lots will revert to the City's existing special events program. Sidewalk seating and parklets on public streets also will revert to the City's existing programs managed by Public Works, with administrative changes made to better respond to the pandemic landscape. Outdoor business operations on private property and in Street Business Areas will be temporarily extended under the existing Emergency Declarations as the City's local emergency is ongoing. However, City staff are in the process of formulating permanent programs to allow outdoor business operations in these areas, as discussed below.

Temporary Extensions of Outdoor Business Operations on Private Property

As mentioned previously, 131 businesses have self-registered through the SJ Al Fresco program to conduct business operations on private property. Approximately one third of these businesses have expressed their desire to continue conducting outdoor business operations past December 31, 2021. While social distancing and capacity limitations have been lifted by the Santa Clara County health department, many customers still strongly prefer to utilize available outdoor seating and the current Health Order encourages outdoor operations when possible.

Concurrently, Planning Building and Code Enforcement and Transportation staff are exploring lifting minimum parking requirements for certain commercial uses throughout the City and anticipate bringing a suite of recommendations forward to Council on this issue in Q1 2022.

If citywide minimum parking requirements are lifted, businesses that were previously allowed to conduct outdoor operations in their parking lot under the SJ Al Fresco initiative would be able to permanently convert these parking spaces to outdoor dining through a staff-level permit, consistent with current permitting requirements for outdoor dining that meets the requirements of the Zoning Ordinance. One exception to this staff-level permit process would be those businesses with outdoor operations within 150 feet of a residence. The Zoning Ordinance currently requires outdoor uses within 150 feet of a residences to secure a Special Use Permit that provides for a closer review of compatibility issues (e.g., noise and hours of operation), and an opportunity for community outreach and feedback. Staff is not proposing changes to the Special Use Permit requirement. The new ordinance providing the ability to continue outdoor business operations on private property under the SJ Al Fresco parameters would expire in December 2022 and each business operating under this temporary ordinance would be expected to complete the necessary permitting and build-out of their outdoor space by that time.

Temporary Extension of the Street Business Area Emergency Declaration

Staff proposes that the Street Business Area Emergency Declaration be extended until June 30, 2022, allowing additional time for the businesses to utilize the outdoor areas as recommended by the County Health Order and give staff time to conduct public outreach and explore the possibility of implementing any permanent street closure(s) pursuant to recent “Slow Streets” legislation signed by Governor Newsom. In order to implement a Slow Streets program, the City must (1) adopt an ordinance to create and implement the program; (2) conduct a public outreach process, (3) provide advance notice of the closure to abutting properties, (4) install appropriate signage of the street closure, and (5) set up a dedicated website for its Slow Streets program. This process will take several months. Most business owners along San Pedro Street, between Santa Clara and St. John streets, have informally expressed a desire to close that street to vehicular traffic. However, staff has not been able to conduct a public outreach process or fully gauge the effect of closing San Pedro Street to vehicular traffic, as many downtown office workers continue to work from home and ingress and egress from abutting properties, including the City’s Market/San Pedro Street Garage, has not been significantly tested yet. Also, the events calendar at the SAP Arena is just starting to schedule again, approaching pre-pandemic

event frequency. Extending the Street Business Area Emergency Declaration until June 2022 will allow more time to address the specific challenges associated with a street closure at any location and will allow for public outreach and discussion.

Transition to Parklets and Sidewalk Seating Under Existing City Programs

The emergency declarations for outdoor business operations in parklets and sidewalk seating will be allowed to expire as of December 31, 2021, and City staff will implement administrative changes to the parklet and sidewalk seating programs that assist those business owners who wish to transition the parklet or sidewalk seating established through the SJ Al Fresco initiative to the City's existing parklet or sidewalk seating program. Staff proposes to obtain a business owners' commitment to transition to a permanent parklet by November 30, 2021 and request additional funding of \$150,000 at the November 30 City Council meeting to continue to provide k-rail rental and to cover lost parking meter revenue until the time where the business owner begins construction on a permanent parklet or by December 31, 2022, whichever date is sooner.

Over the course of the past 18 months, approximately 25 temporary parklets were installed through the SJ Al Fresco initiative that provided much-needed operating space for small business owners at a time when their operating capacities were significantly reduced. The installation of these parklets also substantially improved the vitality of the surrounding streetscape. To this end, it is staff's desire to transition as many business owners as possible who want to enhance their temporary parklet with improvements that meet the City's existing parklet and sidewalk seating program. Enhancements include providing high quality design and materials, performing public outreach, implementing planned maintenance activities, improving ADA accessibility, and providing public access during non-business hours.

The permitting process for a permanent parklet is more substantial than the streamlined temporary program. However, keeping the streamlined process with investments to accelerate design and implementation for safety can realize a smooth transition. The 2021-2022 Adopted Operating Budget includes \$700,000 in American Rescue Plan Act funds to assist businesses transitioning from the temporary SJ Al Fresco parklet and sidewalk seating program to the City's permanent parklet and sidewalk seating program. It is anticipated that approximately 20 businesses could benefit from this allocation of funding, which matches the number of businesses that staff anticipates will want to transition from temporary to permanent parklets.

Staff is currently working with the John S. and James L. Knight Foundation to identify a process by which Knight will work with one or multiple design firm(s) to create a limited number of open source parklet designs that adhere to the parameters and specifications of the City's permanent parklet program and that can be "pulled off the shelf" and utilized by business owners, with minimal additional customization besides site-specific engineering, in relatively short order and at a significantly reduced cost. It is anticipated to take approximately six months for these open-source template designs to be available and up to six additional months to construct the parklet, coinciding with the timing of staff's recommended administrative program

extension. Additionally, staff is in conversations with Knight regarding the opportunity to securing grant funding in an amount not to exceed \$200,000 that would cover staff facilitation, consultation and review of the open source parklet designs, and the opportunity to translate program marketing documents, rules, regulations and applications into Spanish, Vietnamese and Simplified Chinese.

CONCLUSION

While indoor shopping at retail businesses is currently allowed, and indoor dining can proceed without capacity limitations, many customers remain hesitant to shop or dine indoors in the current COVID-19 environment, and the County continues to encourage outdoor activities to the extent possible. Providing the ability for businesses to extend their retail or dining operations outdoors will hopefully assist these businesses on their road to economic recovery. Extending these Emergency Declarations and facilitating the transition from the temporary SJ Al Fresco program to more permanent outdoor operations programs also will allow businesses to recoup a larger portion of the investments they made to conduct business outdoors over the past 18 months.

The Office of Economic Development's Business Development team and the City's Small Business Ambassadors will promote the extension of conducting outdoor business operations through interactions with small business owners, community-based organization partners, regular commercial district business outreach walks and regularly held webinars.

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 apply to permanently conduct outdoor operations will be made easily accessible on the translatable site.

EVALUATION AND FOLLOW-UP

Staff from a variety of City departments – Economic Development and Cultural Affairs, Public Works, Planning, Building and Code Enforcement, Transportation, Fire, and Police - will continue to facilitate, manage, and support the transition of outdoor business operations on private property, in streets closed to vehicular traffic, in on-street parking spaces and on sidewalks from the temporary SJ Al Fresco initiative to permanent City programs. Staff will bring forward policy recommendations or adjustments to City Council for approval to implement any Slow Streets program and/or a permanent program for outdoor business operations on private property as necessary.

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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 December 7, 2021 City Council meeting.

COORDINATION

This memorandum has been coordinated with the Fire Department, the Parks, Recreation and Neighborhood Services Department, the Police Department, the Public Works Department, the Transportation Department, 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

The 2021-2022 Adopted Operating Budget includes \$700,000 in American Rescue Plan Act funds to help businesses to transition from temporary to permanent parklets. Of the approximately 25 temporary parklets installed and operating under the current program, approximately 20 locations are anticipated to transition into a permanent parklet. The \$700,000 will provide up to \$35,000 in funding for parklet permits, design and installation. However, this funding did not include the costs necessary to support the temporary parklet program recommended to be extended to June 30, 2022. At the City Council meeting scheduled for November 30, 2021, the Administration will recommend an increase of \$150,000 to this allocation to cover traffic safety barrier equipment (k-rails) rental and lost meter revenue for existing temporary al fresco parklets and street business areas through the transition period.

As noted above, staff is working with the Knight Foundation to draft and execute a grant agreement in an amount not to exceed \$200,000 to help produce an open-source template design for parklets. Costs covered by the grant include staff facilitation, consultant review of parklet designs for staff facilitation, consultant review, and translation. Actions to recognize and appropriate the grant funding are anticipated to be brought forward as part of the 2021-2022 Mid-Year Budget Review scheduled for City Council consideration on February 9, 2022.

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CEQA

Categorically Exempt, File No. ER21-286, CEQA Guidelines Section 15304 Minor Alterations to Land.

/s/

NANCI KLEIN

Director of Economic Development and Cultural Affairs

For questions, please contact Blage Zelalich, Interim Deputy Director, Business Development, at (408) 535-8172.