

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: June 6, 2022

Approved



Date

6/9/2022

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

RECOMMENDATION

Adopt a resolution 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, 2023.

OUTCOME

The recommended City Council action will allow outdoor business operations on closed public streets to continue through June 30, 2023. During this time period, the City of San José (City) will explore the implementation of permanent programs for the continuation of outdoor business operations on closed public streets.

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 City 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 were in place to combat the COVID-19 pandemic.

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

Between June and September 2020, the former 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 of Santa Clara's (County) Order and Social Distancing Protocol. These declarations included expansion of business uses into adjacent private property, on public sidewalks, into on-street parking spaces, onto public streets that the City has closed to vehicular and bicycle traffic, in City-owned parking lots, and into public parks and plazas. Each declaration further assisted in the economic recovery of businesses in the city. At its March 30, 2021 meeting, the City Council voted unanimously to adopt Resolution no. 79947 extending the terms of the declarations, through December 21, 2021, that were issued by the Director of Emergency Services on June 4, 2020, June 26, 2020, July 22, 2020, July 31, 2020, and August 5, 2020.

On November 11, 2021, the City Council voted to extend the term for outdoor business operations on closed public streets until June 30, 2022; the Declaration that allowed for outdoor business operations on closed public streets was issued by the Director of Emergency Services on July 22, 2020.

On April 26, 2022, the City Council directed staff to: 1) extend the ability of businesses to conduct outdoor business operations on closed public streets through June 30, 2023; 2) implement a pilot weekly Thursday evening through Sunday closure of Post Street for outdoor business operations and return to City Council following the pilot to evaluate and consider expanding the closure; and 3) convert the existing temporary SJ Al Fresco closure of San Pedro Street to a permanent closure including permanent infrastructure to facilitate the closure. The City Council also directed staff to evaluate a partial closure of San Pedro Street and to return through the FY 22-23 Manager's Budget Addenda process for City Council consideration of the budget required to perform the additional analysis and community outreach, and to return to City Council after the completion of that work. Manager's Budget Addenda #26 - The Future of San Pedro Square and Post Street - was released on May 31, 2022.

The implementation and management of SJ Al Fresco has involved eight City departments, led by the Office of Economic Development and Cultural Affairs, with substantial ongoing participation from the departments of Public Works, Transportation, Police, Fire, Planning, Building and Code Enforcement, and Parks, Recreation and Neighborhood Services, as well as the City Attorney's Office.

ANALYSIS

Since the various Emergency Declarations were ratified and extended by City Council, San José and Santa Clara County have made significant strides against the COVID-19 pandemic. Vaccination rates remain among the highest in the country and the County and the State of California have relaxed all the restrictive elements of prior health orders, such as social

distancing and occupancy requirements for businesses. However, given San José's beautiful and mild weather and the on-going discovery of COVID-19 variants, many patrons continue to prefer dining outside.

Extending the ability to conduct outdoor business operations on streets closed to vehicular traffic until June 30, 2023 would allow additional time for businesses to utilize the outdoor areas as recommended by the most recent guidance dated May 13, 2022, from the County's Public Health Officer and give staff time to conduct the necessary public outreach and explore the possibility of implementing any permanent street closure(s) pursuant to the Pedestrian Mall Act.

To implement a permanent street closure through the Pedestrian Mall Act, 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, and (4) install appropriate infrastructure and signage to safely implement the street closure. This process will take several months. The majority of business owners along San Pedro Street, between Santa Clara and St. John streets, have expressed a desire to have the street remain closed to vehicular traffic. However, staff has not yet been able to conduct a comprehensive stakeholder 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. Additionally, the question of how to sufficiently provide for fire/life safety access on a completely or partially closed San Pedro Street must be more thoroughly vetted. Extending the ability for San Pedro Street to remain closed until June 2023 will allow more time to address the specific challenges associated with a street closure at this location and will allow for sufficient stakeholder outreach and discussion.

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 retail or dining operations outdoors will hopefully assist these businesses on their road to economic recovery. Extending the ability for business operations in a street closed to vehicular traffic 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 three years, as well as continue to enliven the downtown streetscape, which is desperately needed. Most recent sales tax revenue data shows that sales tax revenue generated by businesses in the Downtown Growth Area continues to be 38.5 percent below pre-pandemic levels, the highest level of decline in any geography of the city.

EVALUATION AND FOLLOW-UP

Staff from a variety of City departments - Economic Development and Cultural Affairs, Public Works, Transportation, Fire, and Police - will work to facilitate, manage, design, and implement the transition of outdoor business operations in streets closed to vehicular traffic from the temporary SJ Al Fresco initiative to permanent City programs. This work will be conducted through interactions with affected small business owners and community-based organization partners. Once the analysis is completed, staff will return to City Council for discussion on the next steps. Staff intends to have this information available by February 2023 for City Council direction and consideration in the FY 2023-2024 budget process.

CLIMATE SMART SAN JOSE

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

PUBLIC OUTREACH

This memorandum will be posted on the City website for discussion at the June 21, 2022 City Council meeting.

COORDINATION

This memorandum has been coordinated with the Fire 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

There are additional costs associated with extending the closure of San Pedro Street through June 2023 to cover lost parking meter revenue and the use of k-rail safety barricades. The 2021-2022 Adopted Operating Budget included \$850,000 in American Rescue Plan Act funds to help businesses to transition from temporary to permanent parklets. However, this funding did not include any allocation to design or implement an extended temporary street closure (Post Street,

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Thursday evening through Sunday) or permanent street closure (San Pedro Street). As indicated in Manager's Budget Addenda #26, staff estimated that an allocation of \$25,000 will be needed to extend the temporary street closure for San Pedro Street through June 30, 2023, and \$270,000 will be needed to conduct an evaluation of the options for a permanent street closure. Once the analysis is completed, staff will return to City Council for discussion on the next steps.

CEQA

Categorically Exempt, File No. ER22-138. CEQA Guidelines Section 15304(e) Minor Alterations to Land.

/s/

NANCI KLEIN

Director of Economic Development and
Cultural Affairs

For questions, please contact Blage Zelalich, Acting Deputy Director of Business Development, at Blage.zelalich@sanjoseca.gov or (408) 535-8172.