



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Christopher Burton

**SUBJECT:** SEE BELOW

**DATE:** November 21, 2022

Approved

Date

11/23/22

## SUPPLEMENTAL

**SUBJECT: FILE NO. PP22-015/AL FRESCO: PARKING AND TRANSPORTATION DEMAND MANAGEMENT (TDM) ORDINANCE UPDATE AND ITS RELATION TO THE CONTINUATION OF THE AL FRESCO DINING INITIATIVE**

### REASON FOR THE SUPPLEMENTAL

The TDM ordinance update (File No. PP22-015) includes a new permit procedure that would allow most Al Fresco dining establishments on private property to be permitted on an ongoing basis. This memorandum addresses the City's response to the continuation of businesses between the time when the existing Al Fresco Emergency Order expires (December 31, 2022) and when the new ordinance language will be in effect (mid-March 2023).

Staff recommends that the City Council direct staff to suspend the enforcement of outdoor dining and outdoor uses on private property that were previously permitted through the San José Al Fresco (SJ Al Fresco) initiative until such time as the Parking/Transportation Demand Management Ordinance is effective and there is adequate time for businesses to be permitted under the new requirements. Staff recommends setting this date as June 30, 2023.

### 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 Davis 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 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 Areas), on public sidewalks, into on-street parking spaces (Parklets), on 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. As the pandemic continued beyond 2020, the City Manager continued to extend these Emergency Declarations. On December 7, 2021, the City Council further continued the SJ Al Fresco initiative by adopting an uncodified ordinance to allow businesses to continue the use of outdoor areas on private property through December 31, 2022.

With nearly all pandemic restrictions lifted, there is no plan to extend the Emergency Declaration beyond the end of 2022. Under the SJ Al Fresco streamlined process, over 100 businesses have self-registered to conduct outdoor business operations on private property. While the conditions that have necessitated the need for these businesses to make use of the SJ Al Fresco initiative are over, many businesses have expressed an interest in continuing the practice. Under current Zoning Ordinance requirements, most businesses would not be able to continue their outdoor dining, as the space is necessary for ordinance-required parking spaces. The proposed Parking and TDM Ordinance update removes the requirement for mandated minimum parking requirements and provides a streamlined permit process to allow a path forward if businesses would want to continue to make use of parking for outdoor dining or other active uses.

However, should City Council adopt the Parking and TDM Ordinance, it will not become effective until mid-March 2023, roughly three months after the SJ Al Fresco initiative ends. Additionally, it will take some time for the businesses that are continuing their outdoor operations to be permitted under the new ordinance requirements. Staff recommends that the City Council direct staff to suspend the enforcement of outdoor dining and outdoor uses on private property that were previously permitted through the SJ Al Fresco initiative until such time as the Parking/Transportation Demand Management Ordinance is effective and there is adequate time for businesses to be permitted under the new requirements. Staff recommends setting this date as June 30, 2023.

## **CONCLUSION**

The SJ Al Fresco initiative helped local businesses operate under the restrictions of the COVID-19 pandemic. In addition, the SJ Al Fresco initiative expanded business opportunities and activated under-utilized outdoor spaces. The proposed Parking and TDM Ordinance update will establish standards for these expanded outdoor uses to continue to operate. By the City Council temporarily halting enforcement on uses previously permitted under the SJ Al Fresco initiative,

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the City can avoid an interruption in these uses until the new ordinance language goes into effect and the businesses have adequate time to be permitted under the new guidance. Staff will develop information on how a business owner can apply to conduct outdoor operations under the new requirements during this timeframe.

/s/

CHRISTOPHER BURTON, DIRECTOR  
Planning, Building, and Code Enforcement

For questions, please contact Michael Brilliot, Deputy Director, at (408) 535-7831.