



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Welsh

SUBJECT: SEE BELOW

DATE: June 5, 2020

Approved

Date

6/8/20

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 of the Council of the City of San José 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 4, 2020 (“Emergency Order”).

OUTCOME

Ratification of the Emergency Order will allow many businesses without existing permits for outdoor operations or seating to expand their operations outside in privately owned outdoor areas, such as parking lots, and use public sidewalks for temporary seating in order 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 expand the process for businesses to operate outdoors. The goal was to provide additional space

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

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for hard-hit businesses to operate within the public health restrictions in place to combat the COVID-19 pandemic.

Staff was in the process of developing San José Al Fresco program parameters when, on Monday, June 1, the Santa Clara County Public Health Director announced that on Friday, June 5, 2020, restaurants in the county would be allowed to open to outdoor dining, subject to social distancing and health requirements. Those restrictions include requiring patrons dining together to be from a single household, for example, and for staff to wear masks and appropriate personal protective equipment.

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 that would have made it more difficult for businesses to operate while complying with the Social Distancing Protocol.

ANALYSIS

Under the Emergency Order, the City is temporarily relaxing rules and regulations that restrict outdoor operations. The City Manager's Emergency Declaration became effective 12:01 a.m. June 5, 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 County Health Order and Social Distancing Protocol while reopening to the public.

The Emergency Order allows many businesses without existing permits to (1) operate outside in adjacent privately-owned parking lots or other paved areas and/or place customer seating in public sidewalks adjacent to their business. A large number of brick and mortar businesses are eligible to take advantage of the relaxed rules and the Emergency Order applies to all geographic areas in the City.

The Emergency Order contains important limitations and conditions for the use of private property and public sidewalks that staff believe are necessary for the protection of the public health, safety and welfare. Moreover, businesses must continue to comply with applicable laws in operating outdoors or providing public sidewalk seating, including County Health Orders. Only businesses allowed to operate under applicable law are eligible to take advantage of the relaxed rules. However, the Emergency Order allows businesses not currently allowed to operate to participate when they are permitted to do so under future County Health Orders.

To take advantage of the relaxed rules, businesses must register online with the City. There is no fee for registration. There are two types of registrations, one for private property use and one for public sidewalk use.

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Businesses that already have a permit from the City to operate outdoors need not apply; their existing permit remains in effect. However, these businesses may take advantage of the relaxed rules notwithstanding more restrictive requirements in their existing permits.

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 has prepared a webpage and a list of Frequently Asked Questions available in English, Spanish, and Vietnamese to assist businesses wanting to take advantage of the relaxed rules. Communications about the program went out in all three languages to all businesses that have provided the City with email addresses through the Business Tax database. A social media campaign about the program is also underway.

CONCLUSION

The Emergency Order is intended to help businesses comply with County Health Orders and Social Distancing Requirements. By providing expanded outdoor capacity, restaurants and other 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 the broader San José Al Fresco initiative and will return to Council with recommendations that consider including additional outdoor areas and uses (e.g. parking spaces, streets, plazas, paseos and parks) with streamlined processed and reduced or eliminated city service costs.

CLIMATE SMART SAN JOSE

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

COORDINATION

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

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COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

Categorically Exempt, File No. ER20-114, CEQA Section 15304(e) Minor Alterations to Land.

/s/

KIM WALESH

Deputy City Manager

Director, Office of Economic Development

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