



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kim Welsh

**SUBJECT:** SEE BELOW

**DATE:** July 31, 2020

Approved

Date

7/31/20

## **ACTIONS RELATED TO DECLARATIONS SUSPENDING ENFORCEMENT OF CERTAIN PROVISIONS IN LAND USE PERMITS AND APPROVALS AND ZONING AND ENCROACHMENT REQUIREMENTS IN THE SAN JOSE MUNICIPAL CODE**

### **RECOMMENDATION**

- (a) Adopt a resolution of the City Council 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 July 21, 2020.
- (b) Adopt a resolution of the City Council amending 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, to allow businesses to use sidewalk areas beyond their business frontage with neighboring property consent.

### **OUTCOME**

Ratification of the July 21, 2020 Declaration (“Street Business Area Declaration”) will streamline the application process, waive fees, and allow the City to close streets to allow for the expansion of business operations in approved locations, facilitating 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.

Amending the June 4, 2020 Declaration (“Sidewalk Declaration”) will enable businesses already allowed to use sidewalks to expand outdoor dining and seating under the San José Al Fresco initiative to areas in front of neighboring businesses with the consent of the neighboring business or property owner.

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## **BACKGROUND**

On May 19, 2020, the City Council approved a memorandum from Mayor Liccardo and Councilmember Davis<sup>1</sup> 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 for hard-hit businesses to operate within the public health restrictions that are in place to combat the COVID-19 pandemic.

On Friday, June 5, 2020, Santa Clara County allowed restaurants in the County to open for outdoor dining and in-store shopping, among other activities, subject to social distancing and health requirements. 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, approved the Sidewalk Declaration relaxing rules to allow many businesses throughout the City, without existing permits for outdoor operations or seating, to expand their operations outside onto public sidewalks and privately-owned outdoors areas adjacent to their businesses, such as parking lots.

On June 26, 2020, the City Manager, in his capacity as Director of Emergency Services, approved a Declaration that further assisted in the economic recovery of businesses in the City by allowing for the expansion of dining and retail operations into on-street parking spaces while adhering to mandatory social distancing requirements set forth by the County.

On July 22, 2020 the City Manager, in his capacity as Director of Emergency Services, approved the Street Business Area Declaration, providing that the City could close commercial streets that met certain criteria and allow businesses to operate within those streets after receiving an encroachment permit from the City. Under the Street Business Area Declaration, the City is temporarily streamlining the process and waiving fees for the expansion of business operations into public streets. The Street Business Area Declaration became effective 12:01 a.m. July 22, 2020 and remains in effect until December 31, 2020, such time as it is terminated or modified by the City Council or the termination of the local state of emergency, whichever occurs first. The Director of Emergency Services found the action necessary to protect life and property by helping to ensure that businesses had adequate space to comply with the current County Health Order and Social Distancing Protocol.

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

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## **ANALYSIS**

### *Street Business Area Declaration*

A Street Business Area is defined as the portion of the public street abutting a business' property that has been repurposed for seating and business use by separating the area from vehicular and bicycle traffic with physical barriers approved, paid for, and installed by the City. The City has an existing inventory of traffic barriers that will be utilized to safely close designated commercial streets and will procure additional barriers as needed using the Small Business Assistance allocation in the Coronavirus Relief Fund programmed for the San José Al Fresco initiative, as included in the City Council-approved Mayor's June Budget Message for Fiscal Year 2020-2021. The locations, dimensions and materials utilized for the street closure will be determined by the City based on factors outlined in regulations specific to this street closure initiative that are jointly adopted by the Director of Public Works and the Chief of Police ("Street Business Area Regulations").

Street Business Areas shall be limited to the Downtown Core, Neighborhood Business Districts, Urban Villages, Specific Plan Areas, and Historic Districts as identified in the Envision San José 2040 General Plan. Each business shall obtain an encroachment permit from the City prior to operating within a Street Business Area.

The Street Business Area Declaration contains important limitations and conditions for the use of closed commercial streets that staff believe are necessary for the protection of the public health, safety, and welfare. Allowable uses in a Street Business Area include outdoor dining, with or without table service, business operations, and customer and general public seating. The Declaration does not require the City to close a street in any particular area and the City will determine where Street Business Areas can be located based on the criteria set forth in the Street Business Area Regulations. The criteria include, but are not limited to, 1.) substantial support from businesses and residents abutting the designated street; 2.) businesses being the primary ground floor land use on the street; 3.) the street being free of dedicated bike lanes and not interfering with a public transit route; and 4.) a posted speed limit of 30 mph or below. Moreover, businesses must continue to comply with applicable laws in operating outdoors, including County Health Orders. Only businesses allowed to operate under applicable law are eligible to take advantage of the relaxed rules.

The Declaration does not contain any specific durations for the street closures and states that the City will reopen closed streets after the expiration or termination of the Declaration unless the City determines, in its discretion, to reopen the street at an earlier time.

### *Sidewalk Declaration*

The Sidewalk Declaration does not allow businesses to use public sidewalks in front of neighboring properties. Staff has received requests from businesses to be able to expand outdoor

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dining, specifically, in front of a neighboring property or business frontage, with consent from the neighboring business or property owner. Similar provisions have been included in the other Al Fresco emergency declarations.

#### *Additional San José Al Fresco Work*

Staff intends to bring a fourth emergency declaration under the San José Al Fresco initiative to City Council for ratification in August 2020. The declaration will allow health and fitness businesses, day camps and recreational businesses, educational and cultural programs, and restaurants to expand their business operations into downtown plazas and parks city-wide that are adjacent to their brick and mortar locations.

The changing nature of the COVID-19 pandemic and State and County Health Orders make it extremely difficult to anticipate all possible scenarios under which outdoor business operations may be needed or desired by the business community. This results in a continuous trickle of incoming requests to either amend existing emergency declarations or create new ones. Staff has received a small number of additional requests to consider 1.) business use of a City-owned parking lot or garage; 2.) allowing personal care services such as hair salons, barber shops and nail services to operate on public sidewalks and in parklets; and 3.) allowing retail operations on public sidewalks. Staff is in the process of determining the most appropriate path forward to address these requests. Once these requests have been addressed, staff will conclude its policy work associated with the San José Al Fresco initiative and transition to Al Fresco implementation support and other city-wide recovery priorities.

The Parks, Recreation and Neighborhood Services Department's Placemaking Team is in the process of determining the number and scope of city-wide business support activations named Viva Al Fresco, as included in the City Council-approved Mayor's June Budget Message for Fiscal Year 2020-2021. Viva Al Fresco activations are likely to be street closures in commercial business districts of limited duration and limited frequency (i.e., Thursday, Friday, Saturday evenings for 4 weeks versus 24 hours per day/7 days per week).

### **CONCLUSION**

The Street Business Area Declaration is intended to help ensure compliance with County Health Orders and Social Distancing Requirements and provide economic support to local businesses experiencing significant negative impacts as a result of the public health emergency. By expanding business operations onto streets closed to vehicular traffic, businesses can move closer to achieving regular capacity and increase the number of employees utilized. Allowing businesses to expand sidewalk seating in front of neighboring store-fronts will also increase business capacity. Neither initiative requires permit fees, and both are designed to be as simple as possible for businesses to utilize.

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### **EVALUATION AND FOLLOW-UP**

Staff will continue to monitor the expansion of business operations into Street Business Areas downtown on San Pedro Street, between Santa Clara and W, St. John Streets and consider the implementation of other Street Business Areas as they are proposed. Staff intends to bring an emergency declaration addressing the streamlined use of downtown plazas and city-wide parks for outdoor business operations to City Council for ratification in August 2020. Staff will also address the additional aforementioned requests received to expand business operations outdoors.

Content on [www.sanjoseca.gov/sjalfresco](http://www.sanjoseca.gov/sjalfresco) will be updated to reflect the changes implemented as a result of the Street Business Area Declaration and amendments to the Sidewalk Declaration, including a list of Frequently Asked Questions available in English, Spanish, and Vietnamese. Communication about the changes will be relayed to neighborhood business district partner organizations.

### **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 August 4, 2020 City Council meeting.

### **COORDINATION**

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

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

### **COST SUMMARY/IMPLICATIONS**

Physical barriers for street closures will be provided and installed by the City. The City has an existing inventory of equipment that will be utilized and intends to procure additional barriers as

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needed. Funding of \$900,000 within the Coronavirus Relief Fund is allocated for the San José Viva Al Fresco Program, including \$600,000 for the Placemaking Team, as directed in the Mayor's June Budget Message for Fiscal Year 2020-2021, as approved by the City Council.

**CEQA**

Categorically Exempt, File No. ER20-159, 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.