



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Welsh

SUBJECT: SEE BELOW

DATE: August 27, 2020

Approved

Date

8/28/20

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 Declarations issued June 4, 2020 and June 26, 2020 by the Director of Emergency Services of the City of San José to expand permissible business uses within public sidewalks and parklets.

OUTCOME

Amending the Declarations issued June 4 and June 26, 2020 will allow instructional art studios, private instruction/personal enrichment businesses, dry cleaners, and personal services business to expand their operations onto public sidewalks and in parklets, within the limitations previously outlined in the Declarations. Businesses classified as General Retail in Table 20-90 of the San José Municipal Code will also be allowed to expand their operations onto public sidewalks.

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

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

José 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.

Since that time, the City Manager, in his capacity as Director of Emergency Services, has 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 private parking lots, 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.

All the Declarations remain in effect until December 31, 2020, or until such time as they are 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 these actions 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.

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. Staff has received specific requests to amend the June 4, 2020 Declaration (Sidewalk Declaration) to allow retail operations and personal care services such as hair salons, barber shops, and nail services on public sidewalks. The proposed amendments would allow these uses. To provide consistency of allowed uses for sidewalks and parklets under the San José Al Fresco initiative, the proposed amendment to the June 26, 2020 Declaration (Parklet Declaration) would also allow personal care services in parklets. In addition, to maximize permissible outdoor business uses within public sidewalks and parklets while maintaining an appropriate balance with public use, staff proposes including instructional art studios, private instruction/personal enrichment businesses, and dry cleaners to both the Sidewalk Declaration and Parklet Declaration.

ANALYSIS

Sidewalk Declaration

Currently, only restaurants and other businesses that provide sit-down food service may utilize the public sidewalk for business operations. All other eligible businesses may only provide seating for the public and customers waiting to enter their business on the sidewalk. To maximize the number of eligible businesses allowed to operate outdoors while protecting the public's use of the sidewalk, staff recommends that Instructional Art Studio and Private Instruction, Personal Enrichment under Education & Training, and Dry Cleaner and Personal Services under General Retail in the City's Zoning Code (Table 20-90) be added as eligible business uses on the public sidewalk. Per the Code, the personal services category includes establishments which provide non-medical services of a retail character to customers. These

businesses include, but are not limited to, beauty or barber shops, nail salons, shoe repair shops, tailors, clothing rental, portrait photography, and weight loss centers. Classes offered at Kumon® academic enrichment centers, the School of Visual Philosophy or The Arsenal Art Supplies are examples under the Private Instruction, Personal Enrichment category.

Staff also recommends that General Retail be included as a permissible use under the Sidewalk Declaration. While indoor shopping at retail businesses is allowed under the County's Health Order, the number of customers allowed inside a store at one time has been significantly reduced to meet social distancing protocols. Some customers also remain hesitant to shop indoors in the current COVID-19 environment. Extending retail business operations outdoors will provide an additional level of comfort that will hopefully help these businesses recover.

Parklet Declaration

A parklet is defined as the vehicle parking spaces within the public street adjacent to a business' property that are repurposed for seating and business use by separating the area from vehicular traffic with physical barriers. Under the Parklet Declaration, the City is temporarily relaxing rules and regulations, streamlining the process and waiving fees for the installation of parklets in on-street parking spaces. The City also installs the traffic barriers to create the parklets. The locations, dimensions and materials used for parklets are determined by the City based on factors outlined in the Parklet Regulations adopted by the Director of Public Works.

Permissible uses outlined in the Parklet Declaration are General Retail and Food Service businesses. To maintain consistency with allowable uses on public sidewalks, staff proposes to expand permissible business uses in parklets to include Instructional Art Studio and Private Instruction, Personal Enrichment, and Dry Cleaner and Personal Services.

CONCLUSION

Amending the Sidewalk Declaration and Parklet Declaration is intended to help businesses comply with County Health Orders and Social Distancing Requirements by providing outdoor capacity to a wider variety of businesses in the City of San José. More businesses will be able to safely expand their business operations and increase the number of employees that return to work.

Content on sanjoseca.gov/sjalfresco will be updated to reflect the additional permissible uses as a result of Council action, including a list of Frequently Asked Questions available in English, Spanish, and Vietnamese. Information on how a business owner can register or apply to conduct outdoor operations is easily accessible on the translatable site.

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EVALUATION AND FOLLOW-UP

Once these amendments are approved, staff will conclude its policy work associated with the San José Al Fresco initiative. Staff will transition its efforts to outreach for additional business participation and implementation support primarily through the Parks, Recreation and Neighborhood Services Department's Placemaking Team.

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 September 1, 2020 City Council meeting.

COORDINATION

This memorandum has been coordinated with the Department of Public Works, 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

Physical barriers for parklets 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 needed using the Small Business allocation in the Coronavirus Relief Fund.

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CEQA

Categorically Exempt, File No. ER20-114 and ER20-179, CEQA Section 15304(e) Minor Alterations to Land.

/s/

KIM WALESH

Deputy City Manager

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