



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: SEE BELOW

DATE: March 22, 2021

Approved

Date

3/23/21

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

RECOMMENDATION

Adopt a resolution extending the terms of the Declarations of the Director of Emergency Services of the City of San José issued June 4, 2020, June 26, 2020, July 22, 2020, July 31, 2020, and August 5, 2020, all as amended until September 30, 2021.

OUTCOME

The recommended Council action will extend the terms of the Declarations issued June 4 (“Private Parking and Sidewalk Declaration”), June 26, 2020 (“Parklet Declaration”), July 22, 2020 (“Street Business Area Declaration”), July 31, 2020 (“Public Parking Declaration”) and August 5, 2020 (“Parks and Plazas Declaration”) until September 30, 2021 to facilitate compliance with the State and County Health Orders.

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 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.

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

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 outdoors 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 Area), on public sidewalks, into on-street parking spaces (Parklets), onto 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.

The implementation and management of SJ Al Fresco involves eight City departments, led by the Office of Economic Development with substantial on-going participation from the Public Works Department, the Department of Transportation, the City Attorney's Office, Police and Fire, Planning, Building and Code Enforcement, Parks, Recreation and Neighborhood Services, and the Office of Cultural Affairs. The 2020-2021 Adopted Operating Budget included \$1.1 million to support this effort, \$900,000 from the Coronavirus Relief Fund and \$189,000 from the General Fund supported by external grant funding. This funding was intended for SJ Al Fresco activation efforts overseen by PRNS (\$789,000), and program facilitation overseen by the Office of Economic Development (\$300,000).

ANALYSIS

Under the SJ Al Fresco streamlined process, 131 businesses have self-registered to conduct outdoor business operations on private property, 35 businesses have received a permit for business operations in a Parklet, on a public sidewalk or both, 12 businesses have received a permit to operate in a street temporarily closed to vehicular traffic. There is one business operating outdoors in a City-owned parking lot and nine permits that have been issued for al fresco operations in a City park. Three streets have been temporarily closed under SJ Al Fresco – two in the Downtown Core (San Pedro and Post Streets) and one in South San Jose (Coronado Avenue).

The PRNS Placemaking Team conducted outreach to 651 businesses in the city's most heavily COVID-19-impacted zip codes. Nineteen sites, and at least one in each City Council District, were actively engaged in al fresco operations facilitated through the Placemaking Team before Santa Clara County was effected by the Regional Stay at Home Order issued shortly before the 2020 winter holidays.

Communications and messaging for SJ Al Fresco have been focused on the small business community, with www.sanjoseca.gov/sjalfresco serving as the primary location and clearinghouse for program information and updates. Communications have been translated into Spanish, Vietnamese, Traditional Chinese and Simplified Chinese or accessible in formats utilizing Google Translate.

Extension of the Parks and Plazas Emergency Declarations

In early March 2021, Santa Clara County moved from the Purple Tier into the Red Tier on the State of California's County Risk Assessment matrix. This move allowed some businesses to resume operations indoors, but at a substantially reduced capacity. For instance, the Red Tier allows indoor dining and museums at 25% capacity, gyms and fitness facilities at 10% capacity. This limited capacity for indoor gym and fitness businesses continues to have a significant negative affect on their business operations.

The current Parks and Plazas Declaration remains in effect until March 31, 2021 or until such time as it is terminated or modified by the City Council or the termination of the local state of emergency, whichever occurs first. As mentioned previously, there are nine businesses (all fitness-related) that have been issued a permit to operate outdoors in a city park under the SJ Al Fresco initiative. Six of the nine businesses would like to extend their permits past the current March 31 deadline. The PRNS Special Parks Use team has also received two additional permit applications from businesses that would like to operate under the SJ Al Fresco initiative past March 31, 2021.

Initially, the March 31, 2021 end date was proposed to avoid potential park scheduling conflicts with special event producers requesting the use of outdoor space for larger activations in the Spring of 2021. PRNS and Office of Cultural Affairs staff no longer anticipate this conflict.

Extension of the Private Property, Sidewalk, Street, Parklet and Public Parking Emergency Declarations

The Private Property and Sidewalk Declaration, Street Business Area Declaration, Parklet Declaration and Public Parking Declaration currently are to remain in effect until June 30, 2021 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.

While indoor shopping at retail businesses is allowed under the County's Health Order, and indoor dining can proceed at a limited-capacity, many customers remain hesitant to shop or dine indoors in the current COVID-19 environment. Providing the ability for businesses to comfortably extend their retail or dining operations outdoors during San Jose's warm summer months will hopefully assist these businesses on their road to economic recovery. Extending these Emergency Declarations will also allow businesses to recoup a larger portion of the investments they made to conduct business outdoors during the winter.

CONCLUSION

The extension of the SJ Al Fresco initiatives are intended to help businesses comply with State and County Health Orders and Social Distancing Requirements by continuing to provide increased outdoor capacity to a wide variety of businesses in the city of San Jose.

Content on sanjoseca.gov/sjalfresco will be kept up-to-date, 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.

While staff recommends the extension of all five Emergency Declarations until September 30, 2021, staff is not prepared to make recommendations regarding outdoor business operations after the expiration of the emergency declarations at this time. This transition period, including staff's recommendations on how to continue outdoor operations after the expiration of the current emergency, will be addressed in a future staff recommendation after staff has evaluated the Al Fresco program against current city policies, programs and fees related to conducting outdoor business operations.

EVALUATION AND FOLLOW-UP

Staff will continue to facilitate, manage, and support outdoor business operations under SJ Al Fresco to the best of its ability with the limited resources that have been allocated to the initiative. Staff will also monitor the need for this initiative, or some aspects of it, and its effectiveness over the next four months and return to Council with any necessary amendments or extensions.

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 March 30, 2021 City Council meeting.

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COORDINATION

This memorandum has been coordinated with Parks, Recreation and Neighborhood Services, the Office of Cultural Affairs, the Fire Department, the Police Department, the Public Works Department, the Department of Transportation, 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

Staff is evaluating funding availability and spending priorities to support the City's pandemic response past June 30, 2021. Though there is not yet funding currently allocated for SJ Al Fresco after June 30, 2021, the City Council-approved Mayor's March Budget Message for Fiscal Year 2021-2022 directs the Administration to extend the program using federal relief funds to the extent possible. This direction will be included in the 2021-2022 Proposed Operating Budget that is scheduled to be released on May 3, 2021.

CEQA

Categorically Exempt, File No. ER21-042, CEQA Guidelines Section 15304 Minor Alterations to Land.

/s/

NANCI KLEIN

Director of Economic Development

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