

Making AI Fresco Work

Leveraging San José's temporary outdoor dining initiative to enliven neighborhoods and create economic stability

Acknowledgments

The findings and recommendations of this report are SPUR's and do not necessarily reflect the views of those listed below. Any errors are the authors' alone.

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This report was generously funded by The John S. and James L. Knight Foundation.

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Executive Summary

During the COVID-19 pandemic, the City of San José allowed restaurants, cafés, and bars to put seating on sidewalks and street parking spaces and in off-street private parking lots. The Al Fresco Initiative extended a critical lifeline to these businesses' workers and owners, many of whom are from communities of color and immigrant communities. It proved popular with residents and visitors, allowing them to safely gather to have a meal or drink while enjoying the city's sunny climate. It continues to be popular as a mechanism for advancing economic recovery and enlivening streets.

The Al Fresco Initiative has begun to transform San José's urban environment in ways that are consistent with the city's larger goals of creating vibrant commercial corridors and walkable neighborhoods. If the initiative were to become a permanent, scaled-up program, it could have an even more positive impact. A permanent and expanded program would:

- Establish San José as a city with a lively outdoor dining scene.
- Allow local restaurateurs and bar owners to grow their businesses and adapt to a changing economic landscape.
- Encourage the creation of new street life and outdoor spaces in neighborhoods.
- Foster an ongoing process of collaboration and feedback to meet evolving community needs.

Realizing a permanent al fresco program's full potential would require the city to make the program easier to navigate and more affordable to participate in. In this report, we describe four strategies to simplify and expand the program on the basis of lessons from the initiative and the city's many existing plans and programs for its streets and public spaces:

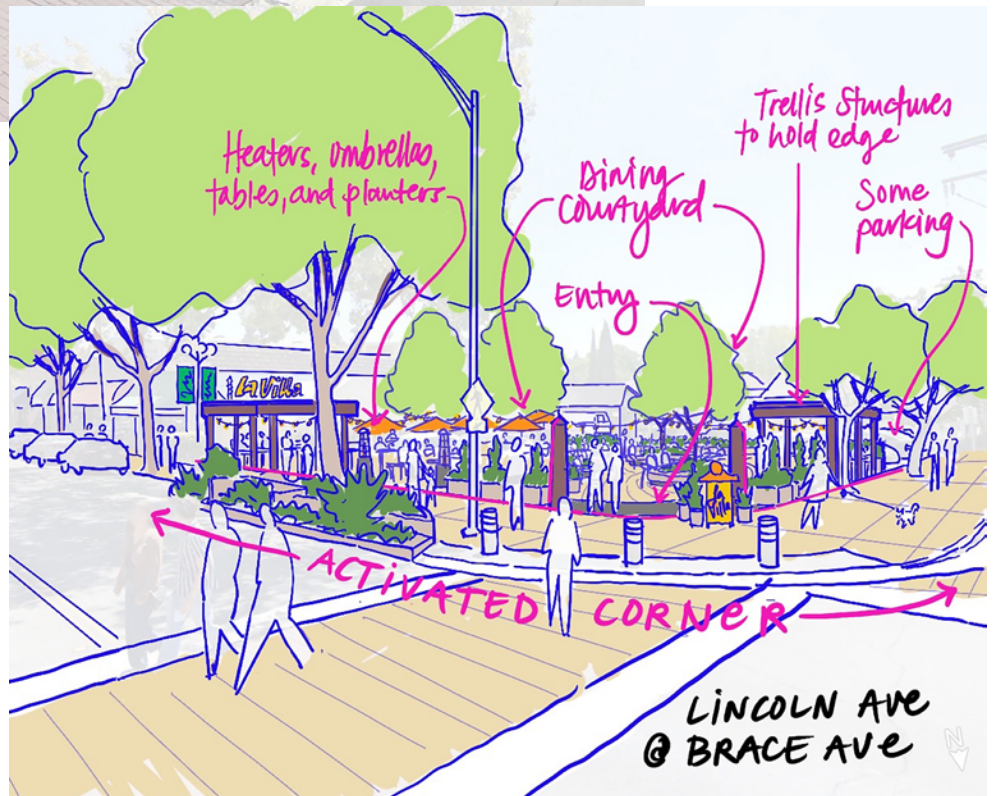
- **Strategy 1:** Transition the temporary Al Fresco Initiative to a permanent program, and direct resources to make it a success.
- **Strategy 2:** Make the program easy to navigate and predictable by improving its interdepartmental coordination, creating a user-friendly program interface, and developing and promoting preapproved and flexible designs.
- **Strategy 3:** Make the program affordable by changing requirements so that more applications qualify for an over-the-counter permit, identifying funding sources other than permitting fees to offset the city's permitting costs, and exploring grant funding for program participants.
- **Strategy 4:** Scale up the program by identifying and resourcing liaisons to amplify it, developing success metrics to track and publish progress, establishing a program database and resource center, and taking a program-enabling approach.

By remedying the lack of clarity, predictability, and affordability that has discouraged many businesses from participating in the temporary Al Fresco Initiative, these strategies would establish a sustainable outdoor dining program that unifies and improves on the city's efforts to increase residents' quality of life.



Parking lot spaces at the corner of Lincoln and Brace avenues reimagined as a dining courtyard welcoming to restaurant patrons and walkers

Source: Leah Chambers



Introduction

Setting the Stage for Vibrant Places

The City of San José has been home to outdoor dining and drinking spots for nearly two decades. But getting tables and chairs on sidewalks and parking lots has not been easy for restaurant and bar owners. Pushed by the COVID-19 pandemic, the city streamlined its outdoor dining permitting process to help more of them offer outdoor seating. But more could be done to help business owners realize the full economic potential of al fresco venues and to allow city residents and visitors to enjoy livelier streets. The city could improve on its pandemic-era Al Fresco Initiative with a permanent program that reflects a deliberate approach to enabling business and advancing equity.

Recognizing that San José has benefited from the Al Fresco Initiative, the City Council has moved to enshrine permanent street closures at San Pedro and Post streets and has indicated its support for a permanent al fresco program — one that improves on the initiative.

In August 2022, SPUR kicked off a research and outreach effort to begin formulating strategies and recommendations for such a program. We developed an advisory committee and conducted interviews with city staff, business leaders, community groups, commercial real estate developers, urban designers, and entrepreneurs to reimagine the Al Fresco Initiative. We hosted two workshops with business owners, city leaders, and neighborhood associations to better understand perspectives on the initiative. We also hosted a workshop with city staff to discuss their vision for a permanent al fresco program and their thoughts on next steps. The insights and recommendations presented in this report have been informed by these workshops, conversations, and interviews.

SAN JOSÉ BUSINESS PROFILE: LUNA Mexican Kitchen

Owner: Jo Lerma-Lopez

Locations: The Alameda (San José), The Pruneyard (Campbell)

Restaurateur Jo Lerma-Lopez opened LUNA Mexican Kitchen, located at 1495 The Alameda, in 2017. The restaurant offers fresh, authentic Mexican cuisine, and it was included in the 2019 *Michelin Guide California*. The community has embraced LUNA Mexican Kitchen, quickly making it one of San José's top dining destinations. In October 2019, Jo and her husband opened the second LUNA Mexican Kitchen location in The Pruneyard shopping center in Campbell.

Jo credits the Al Fresco Initiative for allowing the San José business to remain open during the COVID-19 pandemic:

We were faced with difficult decisions to cut staff or find new ways to innovate and keep our doors open. The city's Al Fresco Initiative gave me the opportunity to expand our business operations by using our parking lot. It's become something that people love, and we see a future where we continue to make this space more of a place of connection.

LUNA maintains an outdoor dining patio under the city's previous initiative, and it has expanded operations by converting its parking lot to non-parking uses.

LUNA Mexican Kitchen weathered the pandemic with the help of its al fresco space.

Source: Courtesy of Angelina Ramos / LUNA Mexican Kitchen



Importantly, a permanent al fresco program would be aimed at realizing a vision much larger than putting seats on streets. It would serve as a springboard for placemaking — an approach to urban design that prioritizes people over infrastructure. The purpose of this approach is to create public spaces that are not merely utilitarian but that promote social interaction.

Intentional placemaking benefits everyone. First, it can be a relatively low-cost tool for economic recovery and development. Well-designed and well-programmed public spaces, including al fresco dining spaces, can attract economic activity to currently underutilized infrastructure like sidewalks and parking lots. By reviving downtowns and other commercial areas hollowed out by pandemic-era business closures and remote and hybrid work, these spaces can spur private investment.

Second, placemaking increases quality of life for residents. It enlivens neighborhoods that have seen little investment (public or private), particularly those where foot traffic may be discouraged by safety concerns, poor physical connections to other neighborhoods and downtown, and lack of venues for social and small-scale entrepreneurial activities. By making it easy for people to gather, public spaces can increase well-being and inspire civic pride and participation.

Viewed in the context of placemaking, a permanent al fresco program takes on greater significance and urgency. The strategies recommended in this report not only would facilitate a more equitable program by lowering administrative and cost hurdles to participation but also would pave the way for development of public spaces that increase economic security and pay other social dividends.

Chapter 1

Addressing San José's Pandemic Challenges

The city first allowed restaurants to create outdoor seating areas in 2005 with its Sidewalk Café Pilot Program and in 2013 launched the Curb Café Pilot Program.¹ In 2016, the city authorized the Department of Public Works to issue up to 10 permits citywide for curb cafés. Although businesses were interested in providing these amenities, the city's community engagement process revealed that they faced high construction costs (upward of \$20,000) and a lengthy review process.² Ultimately, very few businesses took advantage of the opportunity to create outdoor seating.

A mild climate makes San José an obvious destination for al fresco dining, but the city's regulations have historically been an obstacle for an expansion of outdoor seating.

Source: Sergio Ruiz



¹ Julia Baum, "San Jose: City Takes Steps to Make It Easier for Restaurants to Set Up Curb Cafes for Al Fresco Diners," *The Mercury News*, October 14, 2015, <https://www.mercurynews.com/2015/10/14/san-jose-city-takes-steps-to-make-it-easier-for-restaurants-to-set-up-curb-cafes-for-al-fresco-diners/>.

² For more information on the city's community and business engagement findings for the parklet and sidewalk café program, review the City Council memo outlining recommendations to streamline permitting processes: <https://www.sanjoseca.gov/Home/ShowDocument?id=56906>.

Under an ordinance change in September 2019, the City Council approved a full transfer of permitting and review jurisdiction from the Department of Planning to the Department of Public Works and outlined administrative and permitting guidelines for parklets and sidewalk seating in the public right of way. Under the change, parklets were allowed to displace up to 50 metered parking spaces and an unlimited number of unmetered spaces.

The onset of the COVID-19 pandemic in March 2020 pushed the city to further relax its outdoor seating regulations and broaden the scope of its outdoor seating programs. In May 2020, Mayor Sam Liccardo and Councilmember Dev Davis proposed and the City Council unanimously approved the Al Fresco Initiative to support the needs of people and businesses reeling from the effects of pandemic health restrictions. The initiative waived some fees, simplified plan checks, and shortened plan reviews. Notably, it overrode zoning restrictions to allow business operations in parking lots across the city. The city provided temporary physical barriers to help businesses transform sections of commercial streets into promenades and parklets. Widely embraced by businesses and patrons alike, these changes reinforced the important role neighborhood commercial districts and corridors play in communities' economic development and physical and social health.

Al Fresco spaces in San José's San Pedro Square and Mayfair neighborhood provide outdoor dining and community gathering venues.

Source: Lanny Nguyen (left photo, San Pedro Square) and Sergio Ruiz (right photo, El Pirrin in Mayfair)



San José's Al Fresco Initiative

San José's Al Fresco Initiative allows businesses such as restaurants, bars, and fitness gyms to apply for temporary use of sidewalks, street parking spaces, and off-street private parking lots to serve customers. It waives sidewalk seating permits and fees that allow restaurants and other businesses to comply with county orders for safe operation of outside seating and patron services.

Two restaurants joined together to transform four street parking spaces into one outdoor dining parklet in Willow Glen.

Source: Lanny Nguyen



Who Runs the Initiative?

The Office of Economic Development (OED) coordinates interdepartmental review of Al Fresco Initiative applications. The OED also facilitates business development, technical assistance, and grant assistance for business owners interested in al fresco spaces. The Department of Public Works (PW) oversees sidewalk and parklet seating permitting; the Fire Department reviews tent and canopy permitting; the Department of Transportation (DOT) handles consistency with safety and design parameters; and the Department of Planning, Building, and Code Enforcement (PBCE) manages permitting for conversion of parking spaces to outdoor operations and provides code enforcement.

How Does the Initiative Work?

The initiative allows for street closures and allows for businesses to conduct operations on sidewalks and in parklets under temporarily relaxed permit processing and fee structures. It includes a registration system for outdoor seating in off-street parking lots. San José had preexisting permitting guidelines for outdoor seating in the public right of way (primarily under the Minor Encroachment

Permit process) for both sidewalk seating and parklets under the jurisdiction of the PW. The city is in the process of establishing and administering permitting guidelines for outdoor seating in private parking lots. It is also in the process of establishing San Pedro Street as a permanent pedestrian-only corridor.

Sidewalk and parklet configurations must go through the PW, while conversion of parking spaces to outdoor uses must now go through the PBCE (it previously went through the OED). An application for sidewalk and parklet seating spaces initiates the current permitting process, which includes a public notice period during which the public is given the opportunity to express support or opposition to the application. The PW, PBCE, and DOT then review site plans to verify that requirements are met or provide comments regarding any needed application revisions. Applicants must submit proof of general liability insurance, making the city an additional insured party for parklet construction and use. Parklet contractors must provide insurance that covers automotive liability, worker's compensation, and employer's liability.

How Does Elimination of Parking Requirements Affect the Al Fresco Initiative?

In December 2022, the City Council approved a parking ordinance that effectively eliminated parking requirements citywide and that outlined a permitting process for the conversion of off-street parking spaces to outdoor uses. The process eases permitting burdens for many al fresco space applicants — but not applicants whose parking lots sit within 150 feet of residentially zoned land. These applicants are excluded from the streamlined permitting process and must instead follow the city's Special Use Permit (SUP) process, potentially incurring fees between \$13,000 and \$22,000 in a bid for an approval that is not guaranteed.³

³ City of San José, "Special Use Permits and Conditional Use Permits," last updated December 27, 2018, <https://www.sanjooseca.gov/home/showpublisheddocument/15471/636815140407570000>, and City of San José, Planning Division, "Planning Application Fee Schedule, Effective August 15, 2022," <https://www.sanjooseca.gov/home/showdocument?id=24803>.

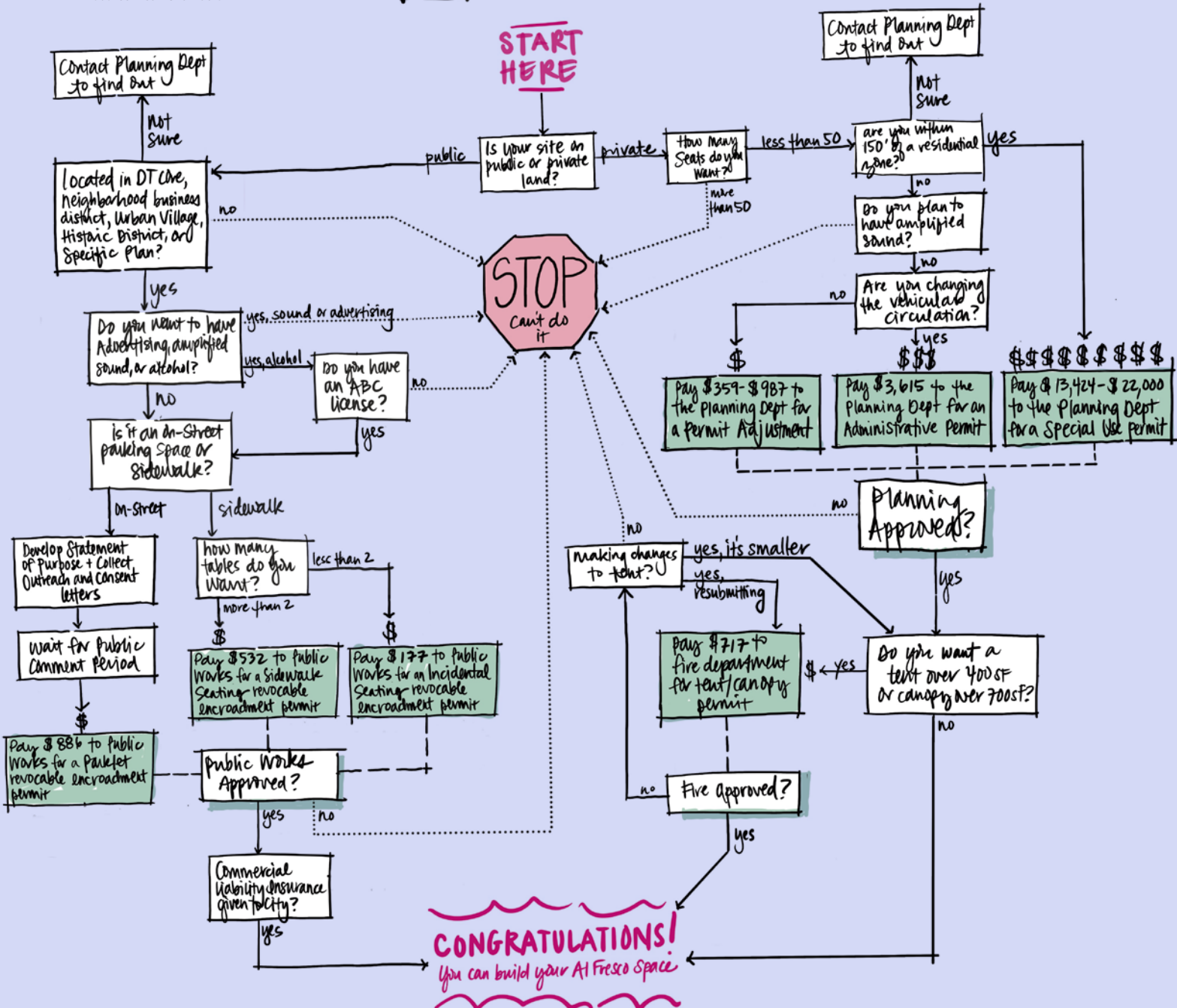
EXHIBIT 1

The Long Path to Opening an Al Fresco Space

Despite the city's pre-pandemic efforts to streamline outdoor seating requirements, businesses in San José find that obtaining a permit for an al fresco space can be onerous and expensive. The city's al fresco processes should be reviewed holistically and re-structured comprehensively under a new permanent program.

Source: Leah Chambers

Want to have an **AL FRESCO** Space?



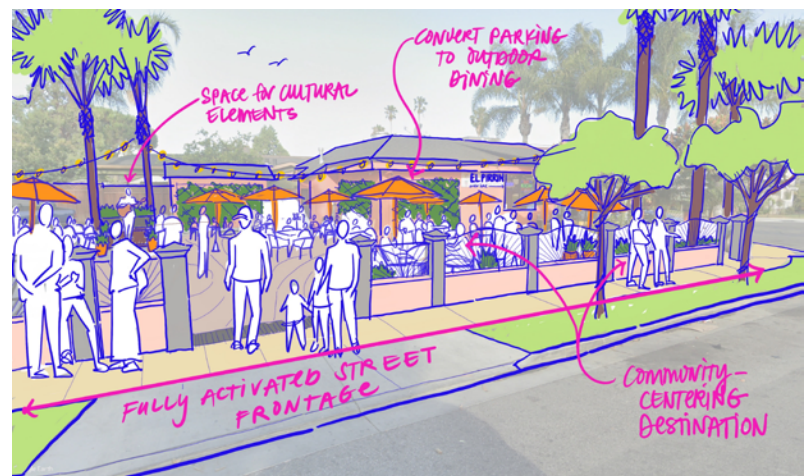
Chapter 2

Increasing Opportunities to Create Equity and Impact

An uncertain economic recovery awaits businesses that struggled through the pandemic and now face challenging economic futures with rising inflation. Increasing food costs are a particular worry for the restaurant and food service industry, which in 2022 accounted for a total taxable annual revenue of \$1.5 billion and employed more than 25,000 workers in San José.⁴ Data from the National Restaurant Association show that restaurants provide upward mobility and opportunities for those seeking entry-level positions and for communities of color.⁵ If the sector is to continue to play a critical role in enhancing upward mobility and the cultural placemaking of urban environments and streetscapes, it needs the support of a holistically restructured and permanent al fresco program.

Parking spaces for the Mayfair neighborhood's El Pirrin restaurant reimagined as spaces for outdoor dining and cultural activities

Source: Leah Chambers



⁴ Governor's Office of Business and Economic Development, Community & Place Based Data Tool, <https://business.ca.gov/apps/>.

⁵ Approximately 41% of restaurant firms are owned by minorities, who own just 30% of businesses in the overall private sector. National Restaurant Association, "Restaurant Industry Facts at a Glance," <https://restaurant.org/research-and-media/research/industry-statistics/national-statistics>.

According to business license tax data, San José is home to more than 2,000 full-service restaurants and bars.⁶ At the end of 2021, a total of 131 businesses had applied for an al fresco activity permit, but only 35 businesses had received a permit for business operations in a parklet, on a public sidewalk, or both, and only 12 businesses had received a permit to operate in a street temporarily closed to vehicular traffic. More than 90 businesses registered for operations in converted parking spaces on private property (the city tracks application withdrawals but doesn't provide application denial data).⁷ Additionally, the city's application data show that engagement in the Al Fresco Initiative for parklet or sidewalk patio activations has been concentrated in a few neighborhoods such as Willow Glen and downtown; District 4 has the least engagement with the initiative.

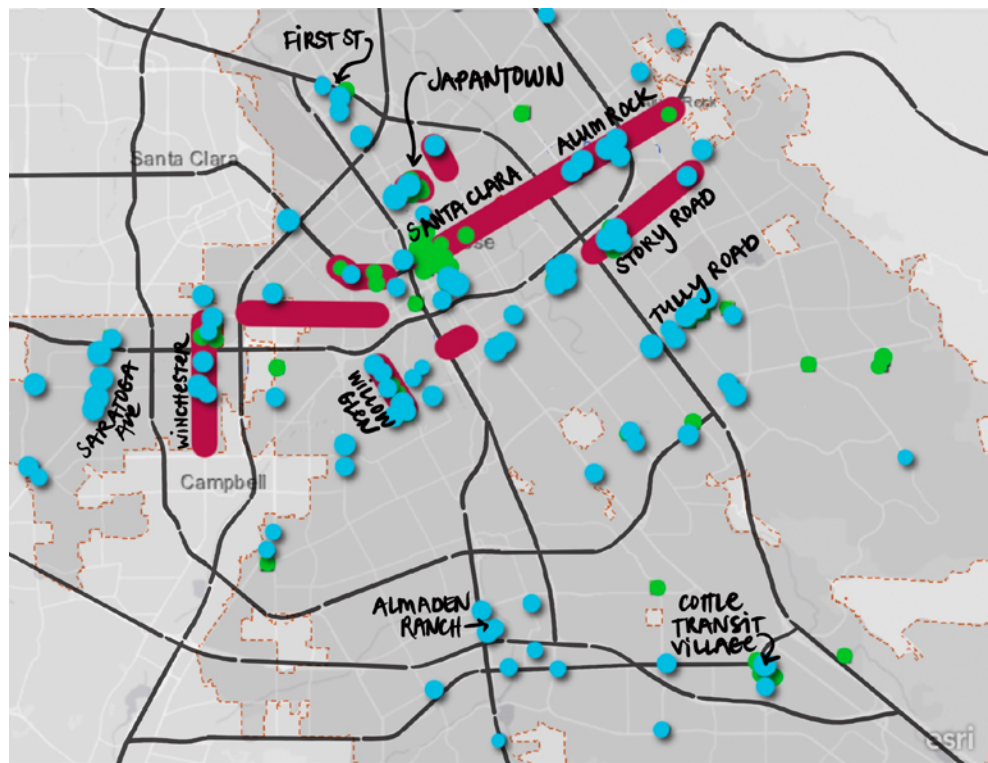
EXHIBIT 2
Distribution of Al Fresco Applications as of November 2022

The current Al Fresco Initiative has been used to activate many of San José's neighborhoods. The movement of al fresco activity well beyond designated commercial corridors and traditional business districts illustrates the potential of a permanent al fresco program to spread that activity citywide.

Source: Ahoura Zandiatashbar and Leah Chambers.

Note: Registration and permit data are from the City of San José.

- = Sidewalk seating and parklets
- = Private property parking lot interventions
- = Neighborhood commercial districts

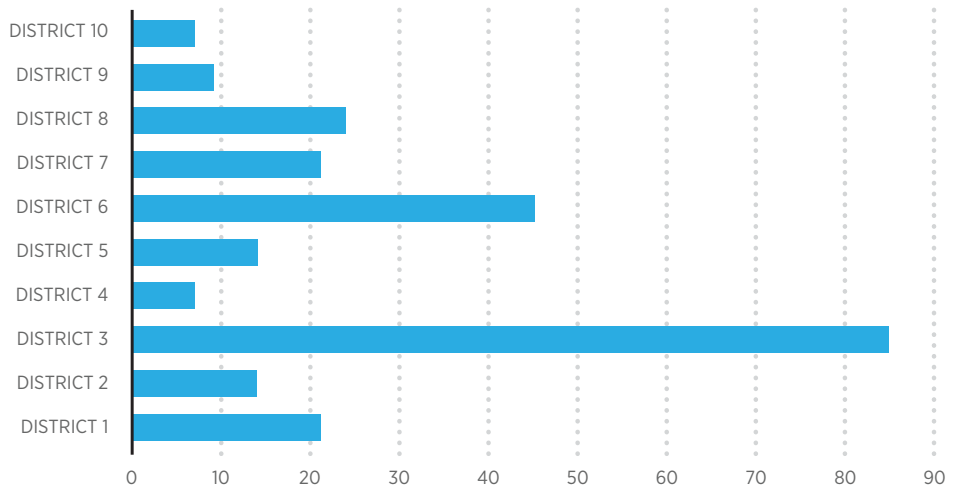


⁶ City of San José, Office of Economic Development, Business Tax License, Accommodation and Food Services, 2023.

⁷ Omar Perez, "San José Extends Al Fresco Outdoor Dining Program," KRON4, December 8, 2021, <https://www.kron4.com/news/bay-area/update-san-jose-extends-al-fresco-outdoor-dinning-program/>.

EXHIBIT 3
Total Al Fresco Applications by Council District
 The city received al fresco applications from businesses in every San José Council District, but the majority came from businesses in districts 3 and 6 (in and around downtown San José).

Source: City of San Jose, Office of Economic Development.



Interviews with business owners and al fresco advocates revealed that the comparatively low uptake of the opportunity offered by the Al Fresco Initiative in lower-income districts farther from downtown is largely due to the initiative’s temporary nature. Several questions were frequently raised: What happens when the program ends? Are al fresco spaces worth the investment when businesses are already struggling to stay open? How much will permitting really cost? Will enforcement be fair and consistent?

The city could address these concerns by creating a permanent and comprehensive al fresco program. Such a program would make public life the focus of the city’s economic recovery strategy and future growth. It could also help deliver on the long-term goals of existing city plans, such as the Envision 2040 General Plan, the Downtown Transportation Plan, and urban village plans, and it could fully implement city design standards and guidelines for complete streets.

Now is the time to leverage the power of the city’s al fresco spaces. As the pandemic showed, public life can flourish in parklets and parking lots that have been transformed into gathering places. When well programmed and developed with established design and maintenance standards, these spaces can create vibrant streets for which residents feel a strong sense of stewardship. San José doesn’t need to spend large sums of money to build new public squares and widen sidewalks — it can use a permanent al fresco program to attract people and activities to existing infrastructure in neighborhoods across the city.

Chapter 3

Strategies and Recommendations

The temporary Al Fresco Initiative showcased small-scale interventions with collective transformative power. A permanent al fresco program featuring efficient coordination, an equitable distribution of funding, and simple design and permitting standards could enable the spread of al fresco spaces across the city.

SPUR developed the following strategies with the support of the Al Fresco Task Force and on the basis of workshops and interviews with business advocates, business owners, and city staff.

STRATEGY

1

Make the temporary Al Fresco Initiative a permanent and comprehensive program, and direct resources to make it a success.

The city currently lacks a dedicated and coordinated effort to sustain the temporary Al Fresco Initiative for economic recovery. Businesses across the city would benefit from prioritization and resourcing of a permanent al fresco program.

RECOMMENDATION 1

Make the program a City Council priority.

Who's responsible: Mayor, City Council

City leaders should prioritize creation of a more equitable and sustainable al fresco program — a program that unites disparate ordinance changes for permanent outdoor seating permitting and review processes. They should direct the multiple city departments involved in al fresco activities to align their efforts, with a view to addressing issues of complexity that arose as applicants attempted to navigate participation in the temporary Al Fresco Initiative. By doing so, they would enable a comprehensive strategy to support and refine programmatic efforts that invite businesses to activate streets and the public realm.

RECOMMENDATION 2

Dedicate funding to the permanent al fresco program.*Who's responsible: Mayor, City Council, City Manager, OED*

To extend the reach and strengthen the impact of a permanent al fresco program, the city should allocate funding for staffing, program design and implementation, and high-quality, community-facing service delivery (see Recommendation 8 on funding sources).

In the short term, the city should consider adding two full-time workers to coordinate the program and other placemaking efforts. (The city already has staff dedicated to such efforts in the downtown area.) In the long term, the city should consider hiring a chief of public life or a public realm czar to direct the program and to tame the bureaucracy involved in making changes to public space. Other cities have begun to fund such positions to better coordinate placemaking efforts.⁸

In San José, changes to public space involve multiple city departments. The Department of Public Works handles sidewalk and on-street parking improvements. The Parks Department developed Viva CalleSJ, a free recreation program that temporarily closes miles of city streets to allow people to walk, bike, skate, and play, and it programs open-streets events. The Department of Transportation and the Fire Department review pedestrian-only street closures. The Office of Cultural Affairs coordinates outdoor events featuring small and micro-business ventures. And the Office of Economic Development handles outdoor dining.

San Joséans need to know that there is one person at City Hall who is responsible for enhancing their city by creating public spaces that are equitable, safe, and set up for success.

STRATEGY

2**Make the program predictable and easy to navigate.**

To participate in the current Al Fresco Initiative, businesses must jump hurdles at multiple city agencies. A permanent program must address the permitting bottlenecks and logistical challenges that businesses face in applying for an al fresco permit. The long-term viability of an outdoor dining program depends on making its processes clear and simple.

RECOMMENDATION 3

Improve interdepartmental coordination of al fresco activities.*Who's responsible: OED, PW, DOT, Fire Department*

The Office of Economic Development coordinates multiple city departments' efforts related to the Al Fresco Initiative, and it assists businesses through liaisons for Americans with Disabilities Act compliance, business development, and grant resources.

⁸ Winnie Hu, "As Demand for Open Space Soars, New York Gets a Public Realm Czar," *The New York Times*, February 16, 2023, <https://www.nytimes.com/2023/02/16/nyregion/public-realm-officer-nyc.html>.

Nevertheless, navigating the existing structure for the creation of outdoor seating requires al fresco applicants to understand the inner workings of and resources offered by the city. The city has the opportunity to reassess existing policies and procedures with a view to processing permits more quickly, efficiently, and transparently. City departments should coordinate their procedures as well as publicize resources for businesses interested in applying for an al fresco space.

RECOMMENDATION 4

Create a user-friendly program interface.

Who's responsible: City Manager's Office

The city should unify permit reviews by multiple city departments under a permanent al fresco program and administer that program through a central online portal with an easily accessible user interface that makes permitting steps, grant funding, fees, technical support, and so on predictable and easy to understand. The portal might contain the following elements:

- Timelines
- Requirements (location, design, accessibility, stormwater, fire code, operational, and alcohol licensing)
- Managing city department and referrals
- Education and training opportunities (for applicants to build business capacity and management)
- Technical support (for applicants during the application or renewal process)
- Checklists
- Fee schedules

Portals for outdoor dining programs in San Francisco (Shared Spaces) and Los Angeles (Al Fresco) contain these elements.⁹

In the long term, the al fresco program portal could evolve into an information hub for all of the city's public space offerings, providing a menu of allowable options and requirements for each.

⁹ See San Francisco's Shared Spaces portal at <https://sf.gov/shared-spaces> and Los Angeles' LA Al Fresco portal at <https://go.citygrows.com/la-al-fresco>.

CASE STUDY: San Diego’s Spaces as Places Program






Expanded outdoor dining has been allowed in San Diego since July 2020. In October 2021, the City Council decided to make the pandemic-related initiative permanent, citing its popularity among customers and business owners. City planners developed a permanent program establishing permitting requirements, fee payments, grant assistance, and an equity framework.

The program offers a variety of outdoor dining options on the public right of way, on promenades, and in off-street parking spaces on private property. All but one option are subject to the public right-of-way permit approval process; outdoor dining on private property requires a building permit. Notably, approvals are ministerial unless deviations are requested for the public right-of-way process.^a A ministerial process expedites permitting when a project complies with building and planning codes. Unlike discretionary approvals, which involve judgment or deliberation and are often issued by an appointed or elected decision-making body, ministerial approvals involve the application of clear requirements and are often issued by municipal staff.

EXHIBIT 4 San Diego’s Spaces as Places Program Requirements for Permit Options Are Easy to Understand

Once a proposed space meets locational, design, and operational requirements, the permit is approved without further review. One city department, Development Services, handles the entire process.

Source: City of San Diego, Spaces as Places Design Manual, 2022, <https://www.sandiego.gov/sites/default/files/spaces-as-places-design-manual.pdf>.

	 Outdoor Dining On Private Property	 Sidewalk Cafe	 Streetary	 Active Sidewalk	 Promenade		
					Outside Agency	Private Developer	Single Ownership
Building Permit	X						
Public Right of Way Permit		X	X	X	X	X	
Encroachment and Maintenance Agreement		X	X	X			X
Insurance		X	X	X			X
Maintenance Plan					X		
Street Vacation							X
Neighborhood Use Permit for Deviations		X	X	X			

The city set fees of \$10, \$20, and \$30 per square foot for business owners to receive public right-of-way permits, which are typically good for two years. The city’s planning department uses a “climate equity index” that relies on environmental and socioeconomic factors to determine the sliding scale for fee payment.^b The annual charge for a two-year permit for a parklet of 200 square feet (the size of the average parking space) ranges between \$2,000 and \$6,000.^c

^a These deviations can be requested due to external factors such as immediate proximity to bus or rail stops and site-specific slope and grade issues.
^b City of San Diego, “San Diego Climate Equity Index,” <https://www.arcgis.com/apps/webappviewer/index.html?id=6438f83d648a4126bae695f2b06871bc>.
^c Lori Weisberg, “Permits for Permanent Outdoor Dining Now Available for San Diego Restaurateurs,” *The San Diego Union-Tribune*, January 7, 2022, <https://www.sandiegouniontribune.com/business/story/2022-01-07/permits-for-permanent-outdoor-dining-now-available-for-san-diego-restaurateurs>.

RECOMMENDATION 5

Develop and promote preapproved and flexible designs.

Who's responsible: PW, PBCE, OED

The city should develop and promote al fresco setups that comply with regulatory requirements, thereby providing businesses with greater certainty that their application will result in a permit. These preapproved setups should offer business owners some degree of flexibility to adapt designs to suit their location and business. City staff should explore and dedicate funding to designs that will work for a variety of businesses.

Importantly, standardized designs would allow for expedited permitting of sidewalk seating and parklets that meet all city requirements. These amenities currently require a public notice process that can result in increased interdepartmental review and project modification requests.¹⁰

San José's approach to the permitting of accessory dwelling units (ADUs) can serve as a model for permitting al fresco spaces. The city provides a list of builders whose plans have been preapproved. Homeowners who use these plans spend relatively less time and money securing a permit. When a site-specific plan and related documents are accurate and complete, a permit may be issued on the day of the scheduled plan review meeting.¹¹

The city offers other resources to help ADU applicants. It staffs a dedicated ADU Ally position to provide individualized project support. It also provides project checklists and worksheets detailing project zoning qualification and land use designation requirements as well as development, water flow, and fire safety standards.

In 2022 alone, the city's ADU dashboards show that the city issued more than 500 permits and that more than 320 ADUs were built.¹²

STRATEGY

3**Make the program affordable.**

The city should establish a fee and permitting structure that streamlines permitting to decrease staff review time, lowering costs for both the city and applicants.

RECOMMENDATION 6

Publish a clear fee schedule.

Who's responsible: Mayor, City Council, City Manager's Office, PBCE, PW, OED

In the short term, the city should make clear the anticipated amount of time and fees required to review and decide on a permit application. Currently, the Department of Public Works' permit process

¹⁰ To see the City of San José's sidewalk and parklet seating regulations, visit <https://www.sanjooseca.gov/home/showpublisheddocument/58208/637245393132430000>.

¹¹ For more information on the City of San José's ADU plan review and permit process, visit <https://www.sanjooseca.gov/business/development-services-permit-center/accessory-dwelling-units-adus>.

¹² City of San José, "ADU Permit Activity Dashboards," <https://www.sanjooseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/development-data/permit-statistics-reports/adu-permit-activity>.

for sidewalk seating and parklets could consist of multiple reviews. If an applicant must revise and resubmit their materials due to a public objection to their project during its public notice period or to address review comments, the permit application fee could increase substantially.

In the long term, the city should develop a sliding fee scale that relies on environmental and socioeconomic factors, as San Diego has done. Environmental factors could include flood risk and tree coverage, and socioeconomic factors could include rent burden and household income. A data-informed sliding fee scale would ensure that a permanent al fresco program is equitably designed to reach people and businesses in neighborhoods and communities across the city.

RECOMMENDATION 7

Make al fresco permitting available citywide.

Who's responsible: Mayor, City Council, City Manager's Office, PBCE, PW, OED

Currently, permits for al fresco spaces are available only to businesses located in the downtown core, neighborhood business districts, urban villages, and certain planning and growth areas. The city should make many more locations eligible for these permits. Neighborhoods with relatively wide sidewalks are concentrated near and around downtown and are prime candidates for expanded sidewalk seating, but most restaurants located in mixed-use commercial areas do not have wide sidewalks. Instead, they more often have a parking lot or on-street parking spaces that they can convert into outdoor dining or parklets.¹³

The parking ordinance approved in December 2022 established a permit process for businesses interested in converting parking spaces on private property into outdoor uses. However, the code change came with the caveat that most uses within 150 feet of residential parcels (essentially all al fresco projects in mixed-use neighborhoods) undergo a Special Use Permit (SUP) process. An SUP process increases fees (a minimum of \$13,000), which are in addition to legal and design costs that business owners must incur for materials to support their permit application. It also increases the number of departments that must review the application and triggers an onerous process for obtaining neighbors' approval of the proposed al fresco space. This is all money and time spent before construction has even begun.

For the many San José businesses that are within 150 feet of residential parcels, the SUP process can be a deterrent to applying for an al fresco permit. The city should allow outdoor dining spaces in areas zoned for commercial or mixed use, which would eliminate the SUP process. This move would enable many more restaurants and bars to provide an al fresco experience to their customers and thereby economically strengthen the city's hospitality industry.

Furthermore, the city should expedite approval of al fresco permits when all locational, design, and operational requirements are met. It should speed review of proposals for simple al fresco setups. Complex setups and requests for variances could be subject to more detailed reviews.

¹³ A map of sidewalk widths in the City of San José is available at <https://codeforsanjoose.org/sidewalk-widths/>.

EXHIBIT 5
How Do San José’s Outdoor Dining Regulations Compare to San Diego’s?

Across the board, San José places more restrictions on outdoor dining than San Diego does.

Source: Data for San Diego are from the City of San Diego, Spaces as Places Design Manual, 2022, <https://www.sandiego.gov/sites/default/files/spaces-as-places-design-manual.pdf>.

	SAN JOSÉ	SAN DIEGO
OUTDOOR SEATING OPTIONS	Parklets, sidewalk seating, private property (parking lots), pedestrian-only street closures	Parklets (streetaries), sidewalk seating (active sidewalks and sidewalk cafés), private property (parking lots), promenades
PERMITS	<p>Encroachment permit: Parklets, sidewalk seating</p> <p>Permit adjustment or administrative permit: Private property (parking lot)</p> <p>Special use permit: Private property within 150 feet of residential development</p>	<p>Ministerial public right-of-way permit: All al fresco spaces not on private property as long as locational, design, and operational requirements are met</p> <p>Building permit: Outdoor dining on private property</p>
ALLOWABLE LOCATIONS	Downtown core, specific plan and growth areas, urban villages, neighborhood business districts	Citywide on the public right of way and private property off-street parking spaces
AMPLIFIED SOUND	Prohibited	Entertainment or amplified music is allowed between 8 a.m. and 9 p.m. Sunday through Thursday and between 9 a.m. and 10 p.m. Friday through Saturday.

RECOMMENDATION 8

Identify alternative funding sources to offset city administration costs.

Who’s responsible: City Manager’s Office, OED

Fees pay for the city staff time needed for plan review, permit approval, and enforcement — a valid practice — but these fees pose a heavy cost burden on small business owners seeking to get their al fresco space approved. Instead of asking restaurateurs to cover the cost of staff time, the city should consider alternative funding sources. San José is already studying expanded funding for the Department of Planning from the city’s General Fund. It should explore use of the General Fund and other city sources to cover permit review and approval under a permanent al fresco program. In addition, the city should consider implementing a sliding fee scale based on a San José equity index.

RECOMMENDATION 9

Explore grant funding for program applicants.

Who’s responsible: City Manager’s Office, OED

The city should dedicate grant funding to the businesses seeking to develop al fresco spaces. This recommendation aligns with the top recommendation of San José’s COVID-19 Recovery Task Force, which was to direct city funds to small business owners. It also aligns with many cities’ allocation of American Rescue Plan funds to businesses to bring existing parklets, sidewalk cafés, and private property spaces into compliance with city codes. The sums for individual businesses typically range from \$20,000 to \$30,000. Accordingly, San José should expend its set-aside of \$850,000 in

COVID-19 federal relief funds to help restaurants make temporary seating areas permanent — and it should allow restaurant owners who have developed an al fresco space in a private parking lot to be eligible for these funds.

In San Diego, Spaces as Places administrators allocated approximately \$300,000 in fiscal year 2022–2023 for outdoor business grant funding. This funding came from Senate Bill 1186 fees, collected through the sale of business licenses and renewals and the Small Business Enhancement Program.¹⁴ San José could also use SB 1186 fees to provide grant funding to businesses seeking to offer customers outdoor seating.

An equitable distribution of grant funding can make a permanent al fresco program more accessible to low-income communities and allow outdoor dining to spread more broadly across the city.

STRATEGY

4

Scale the program up.

Expanding a permanent al fresco program throughout San José and ensuring a more equitable distribution of al fresco spaces citywide will require the city to (1) gather input from users as it develops the program, (2) be proactive in promoting the program and in educating potential applicants about available resources, and (3) develop and track metrics to inform decisions about the program.

RECOMMENDATION 10

Set up liaisons to serve as a resource to amplify the program.

Who's responsible: OED

City departments should identify and work closely with community advocates, business leaders, and associations to facilitate outreach to neighborhoods across the city. Program staff should meet twice yearly with these liaisons to hear about the experience of program users and to make changes that meet users' needs. Additionally, the city should work with the liaisons to promote the program and offer access to technical resources. It should ensure that liaisons are helping non-English-speaking businesses participate in the program.

¹⁴ Ashley Ludwig, "San Diego Restaurant Spaces as Places' Grant Funding Available," MSN, February 8, 2023, <https://www.msn.com/en-us/money/smallbusiness/san-diego-restaurant-spaces-as-places-grant-funding-available/ar-AA17gEu5>.

EXHIBIT 6
Where Al Fresco
Could Grow

Al fresco space registrations and permit applications are concentrated in off-street parking lots outside of neighborhood business districts and in a few downtown neighborhoods. The Berryessa, Silver Creek Valley, and Cambrian neighborhoods represent opportunities for outreach.

Source: Ahoura Zandiatashbar and Leah Chambers.

Note: Registration and permit data are from the City of San José.

- = Al fresco registrations and permit applications
- = Opportunities to expand a permanent al fresco program



RECOMMENDATION 11
Establish a holistic set of success metrics.

Who's responsible: OED, PBCE, PW, DOT

To ensure that a permanent al fresco program meets the needs of business owners, neighborhood residents, and visitors, the city should develop and track program metrics on which it bases program improvements and capacity building, especially with regard to grants, technical assistance, and learning forums for program applicants and participants.

The city should publish readily available data points such as the number and location of al fresco space permits and registrations, the number of businesses that move forward with an al fresco setup and the number that don't, the date of application submission and approval or denial, and code violations. As a permanent al fresco program evolves, the city should track metrics aligned with city goals related to equity, economic recovery, small business support, and quality of life. For example, it should gather data on sales tax increases, job creation, street safety impacts (crime reduction), and decreases in greenhouse gas emissions due to lessened driving. It should collect other data by conducting surveys of businesses and the wider San José community.

Instituting reporting and assessment mechanisms could help the city measure program effectiveness — and make decisions about further program investments on that basis — as well as amplify success stories.

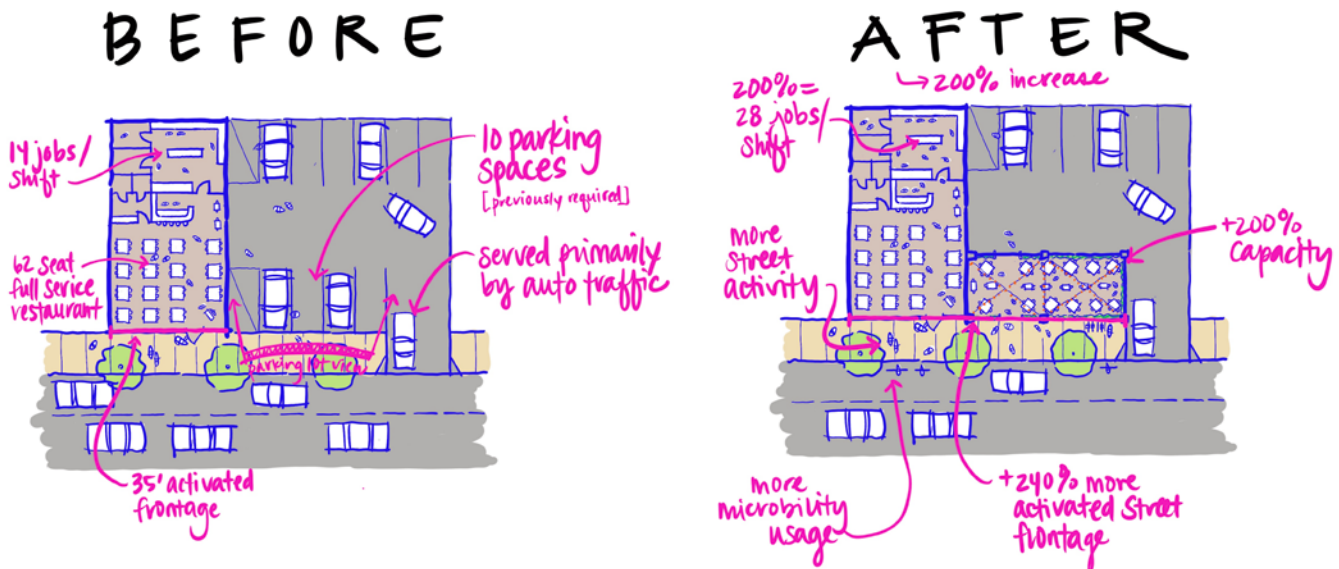
EXHIBIT 7

The Transformative Power of Al Fresco

A permanent al fresco program would offer local businesses the opportunity to transform their parking lots into revenue-generating outdoor dining uses that activate street frontage. Doubling a restaurant's seating capacity with outdoor seating can double jobs and more than triple the activated street frontage.

Source: Leah Chambers

Note: Data come from Auguste Escoffier School of Culinary Arts, "How Many Employees Does It Take to Run a Restaurant," Dec. 21, 2022, <https://www.escoffier.edu/blog/food-entrepreneurship/how-many-employees-does-it-take-to-run-a-restaurant/>.



RECOMMENDATION 12

Take an enabling approach to the program.

Who's responsible: Mayor, OED, PBCE, PW, DOT, Fire Department, Police Department, Parks, Recreation & Neighborhood Services

The city has *allowed* outdoor dining, but going forward it should take an *enabling* approach to a permanent al fresco program. Because the program has the potential to benefit both San José's economy and quality of life, it is in the city's interest to encourage uptake. This means outreach to promote the program to businesses as well as a focus on helping program applicants and participants get al fresco spaces up and running. In particular, the city should be proactive in helping businesses address liability issues that have been the focus of city staff in designing and implementing the temporary Al Fresco Initiative. For instance, city departments should continue to engage with restaurateurs and bar owners on Americans with Disabilities Act (ADA) compliance in light of the proliferation of ADA non-compliance lawsuits against small businesses.¹⁵ Specifically, the city should (1) identify design components of outdoor seating that support the needs of people with disabilities,

¹⁵ Hundreds of businesses in Santa Clara County have been sued during the pandemic for alleged ADA violations, leading to some business closures. Nadia Lopez, "Access v. Abuse: Crema Coffee in San José Closes Due to ADA Lawsuit," *San José Spotlight*, January 2020, <https://sanjosespotlight.com/access-v-abuse-crema-coffee-in-san-jose-closes-due-to-ada-lawsuit/>.

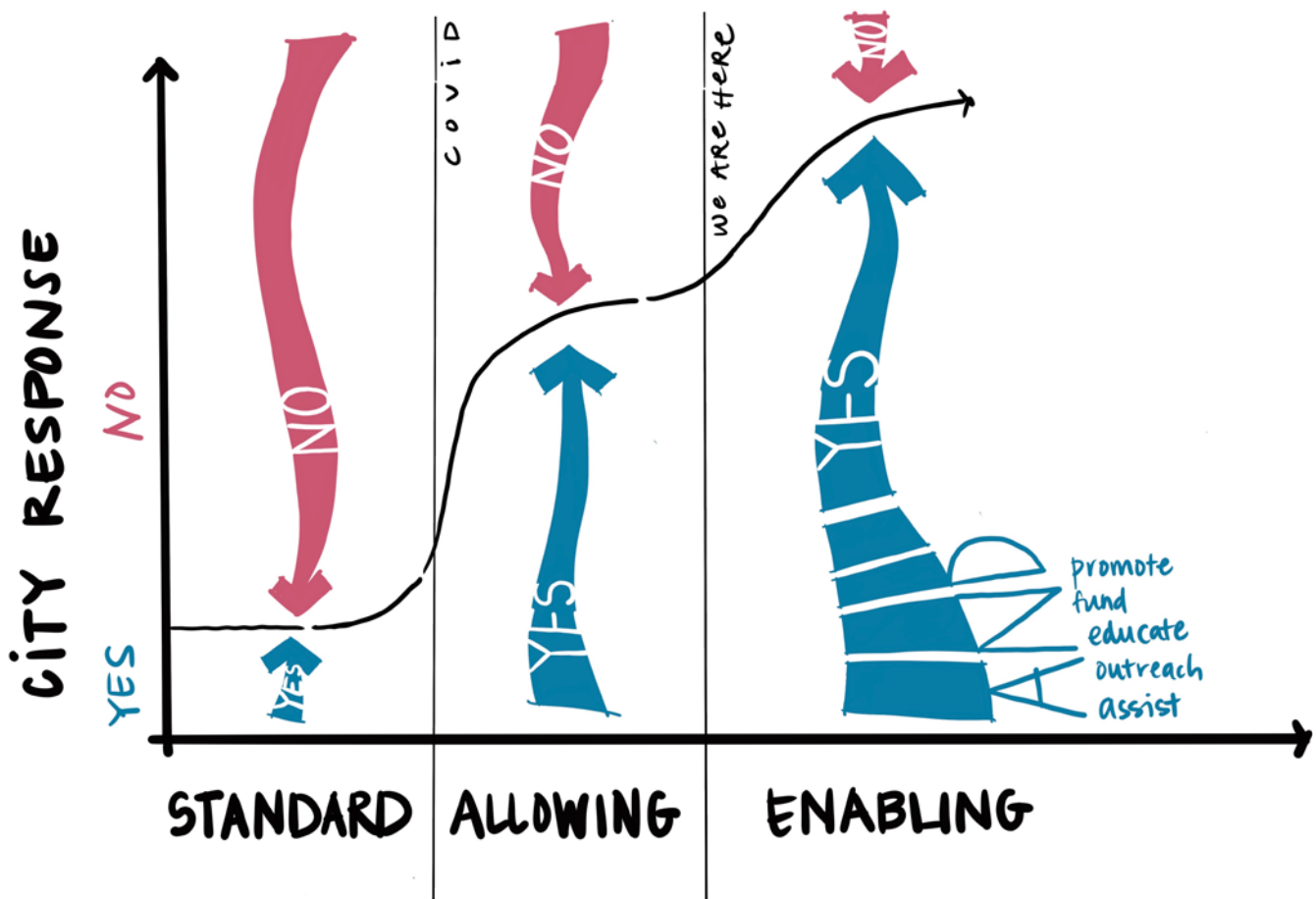
such as better curb accessibility in right-of-way parklets and in private property setups; (2) share information on ADA compliance through training sessions for businesses; and (3) create a mechanism for the city and the public to flag accessibility issues and for businesses to address them before penalties or lawsuits are pursued.

EXHIBIT 8

Allowing vs. Enabling Al Fresco Dining

Emergency powers granted during the pandemic allowed city departments to streamline al fresco permitting in the interest of public safety. A permanent program should take an “enabling” approach whereby departments step up efforts to promote and fund the program, reach out to potential applicants, and assist those applicants to access al fresco resources.

Source: Leah Chambers



Conclusion

Realizing Benefits for Businesses and People

During the pandemic, San José's temporary Al Fresco Initiative prioritized the needs of restaurants and bars struggling to stay open and of people eager to safely patronize these establishments. By exploring the potential of the city's parking lots and streets to serve as outdoor dining spots, the initiative supported the longevity of local businesses and fostered livelier neighborhoods.

Now is the time to (1) reconsider how the outdoor dining spaces that are vital to both public life and prosperity are designed, built, regulated, and financed and (2) make a permanent al fresco program an effective tool for aligning many of the city's existing plans and visions for San José's urban development.

The most important action is for the San José City Council to prioritize a permanent al fresco program by directing resources (funds and staff) to it. Such a program should take a holistic approach, unifying multiple city departments' al fresco-related efforts, thereby ensuring efficient and effective administration. Lowering financial and regulatory barriers to creating al fresco spaces will support the business activity that brings people to ground floors, neighborhood streets and sidewalks — and now parking lots.

The City of San José should strive to do more than return to the pre-pandemic status quo. By learning from the successes and challenges of pandemic-era shifts in policy that enabled the Al Fresco Initiative, the city can develop a permanent program that will more equitably meet the needs of residents in search of a better quality of life and increased prosperity. This is San José's opportunity to lead by making public life the centerpiece of its continued recovery strategy and its long-term future.