

November 29, 2022

San José City Council  
City of San José  
200 E. Santa Clara Street  
San José CA 95113

Re: Item 8.4 – Amendment to Title 20 (Zoning Ordinance or Zoning Code) of the San José Municipal Code for the Parking and Transportation Demand Management Policy Ordinance

Dear Mayor Liccardo, Vice Mayor Jones and Councilmembers:

Thank you for giving us the opportunity to comment on this item. We have no concerns with the ordinance as it relates to the elimination of parking minimums and changes to TDM. The parking reforms presented under this ordinance represent over three years of deep community engagement, policy analysis and development. We are in full support of the recommendations brought forth by city staff to remove parking minimum requirements citywide and reform TDM in San José.

However, we have concerns regarding the proposed ordinance **as it relates to the conversion of parking spaces into Outdoor Dining and Outdoor Uses**. It is no secret that the restaurant, hospitality, and service industries have been disproportionately affected by COVID-19. As a result, cities throughout the state acted quickly to implement outdoor dining and outdoor use programs as a way to lessen the impact of COVID restrictions. The state, in passing bills such as AB 773 and AB 61 recognized the value of outdoor dining and the continuing need for relaxed rules until 2024. As the author of AB 61 commented, “neighborhood restaurants are the backbone of communities.” It is no different in San José.

The City’s Al Fresco initiative has led to a marked change in outdoor street activation and supported local business economic recovery. The City offered a streamlined permitting and registration process for parklets, sidewalk patios, and private parking lot structures. Additionally,

the City was able to appropriate American Rescue Plan funds as grants to local businesses. These efforts equipped businesses to better adapt to changing health guidelines, and by extension, allowed city residents and visitors to once again meet collectively in person and enjoy outdoor dining. This unintended pilot in outdoor dining and public life was enormously successful for local businesses, our streets, and the city.

**The inclusion of a permitting process for outdoor uses in parking spaces within the item before you today represents a step toward codifying and making permanent this citywide initiative.** It establishes administrative processes for businesses to bring their temporary structures into compliance. **However, these critical decisions will have an unclear effect on an indeterminate number of businesses currently utilizing the Al Fresco outdoor dining program today, and those that would hope to do so in the near future.** Effective policy making requires meaningful community and stakeholder engagement, policy analysis and development, and collaborative solution-making.

It is unclear how many current businesses are aware of these proposed changes. Although many businesses will be able to come into compliance under the administrative process, it is unclear how many will be required to undergo a separate, more cost-intensive process. The language in the proposed ordinance would make no changes to the outdoor dining permitting process within Sections 20.40.520, 20.55.201 or 20.75.320 in the City Municipal Code.

- Essentially, this means that businesses (with the exception of downtown) located in commercially zoned, urban village, mixed-use, and pedestrian oriented districts within 150 feet of residentially zoned property that currently have outdoor uses in private parking lots and are interested in converting parking spaces to outdoor dining will need to apply for a Special Use Permit (SUP). **In other words, businesses that fall within these sections of the code will need to follow pre-pandemic rules.** Most private parking lot outdoor uses have been concentrated in non-downtown areas of the city and could potentially mean that a significant number of businesses will be required to undergo the SUP process.
- According to the current PBCE fee schedule, estimates for Special Use Permit costs could range between \$13,000 - \$22,000 (and might still be denied), and take 4 to 6

months to complete. Rather than streamlining the process, this part of the proposed ordinance might have an opposite chilling effect.

Furthermore, there does not appear to be any funding allocated to support those businesses who have used private parking lots to activate San Jose's neighborhoods. OED is offering \$25,000 for parklets and waived fees in order to support businesses who have temporary parklets in making them permanent. It remains to be seen if businesses with private parking lot setups will have the same support. **There is the opportunity to provide clearer guidance and encourage efforts across City departments to unify the Al Fresco program.**

The Al Fresco program has been very much loved in the City and has the support of businesses, diverse organizations, and the general public. While parklets and closed streets in Downtown and Willow Glen have led to enhanced street vibrancy, the reality is that the greatest impact of Al Fresco took place in private parking lots throughout San José. It brings to life the vision of Urban Villages and the General Plan to expand public life, outdoor amenities, and enhancements to the public realm in neighborhoods across the City. Outdoor dining in private parking lots allowed residents in areas not suited for parklets and sidewalk dining (most of San José) to enjoy the benefits of the Al Fresco program. What the private parking lot component of this program has shown is that this type of activity can work in the more suburban areas of our city. It brought people out of their homes and created vibrancy within neighborhoods in a way and in places that had not been possible before. We need to embrace this vibrancy in all parts of the city instead of potentially undercutting the success of the pandemic-era initiative.

We make the following recommendations:

- Rather than suspension of enforcement, extend the temporary program for at least 6 months (some cities, like Los Angeles, have extended their program by as long as 2 years) with direction to staff to:
  - draft an ordinance that provides more flexibility for outdoor dining in zoning designations, commercial corridors, and districts outside of downtown;
  - make available Al Fresco business data, current uses and enforcement of the program citywide and which aspect of the program businesses are utilizing (parklet, sidewalk, or parking lot);

- provide an estimate of process time and total costs for each permitting item required, e.g. permit adjustment, administrative permit, and special use permit.
- Develop coordinated and cross-departmental Al Fresco program materials, guidance, and resources that unifies and encompasses parklets, sidewalk patios, and private property (parking lots); and
- Explore funding opportunities and resources for all businesses that have successfully participated in the Al Fresco program, not just those utilizing parklets.

We appreciate the work staff has done on this issue. It is certainly a step in the right direction; but we believe that if we want to see all of San José enjoy the benefits of Al Fresco, some work is left to be done.

Sincerely,



Fred Buzo  
San José Director



Erika Pinto  
San José Planning Policy Manager