



Office of the Los Angeles City Attorney  
Hydee Feldstein Soto

REPORT NO. R 23 - 0 4 1 6  
NOV 0 2 2023

**REPORT RE:**

**DRAFT ORDINANCE AMENDING SECTIONS 12.03, 12.10.5, 12.11.5, 12.12.2, 12.13, 12.13.5, 12.14, 12.21, 12.21.1, 12.22, 12.24, AND 16.02.1 OF THE LOS ANGELES MUNICIPAL CODE TO STREAMLINE ZONING CODE REGULATIONS TO CREATE A PERMANENT AL FRESCO PROGRAM FOR OUTDOOR DINING ON PRIVATE PROPERTY**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Council File No. 20-1074-S4

Honorable Members:

Pursuant to your request, this Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. The draft ordinance, also known as the Permanent Al Fresco Ordinance, seeks to amend Sections 12.03, 12.10.5, 12.11.5, 12.12.2, 12.13, 12.13.5, 12.14, 12.21, 12.21.1, 12.22, 12.24, and 16.02.1 of the Los Angeles Municipal Code (LAMC) to clarify and streamline Zoning Code regulations regarding outdoor dining on private property.

Due to the unique circumstances of this matter, this Office has also reviewed and approved as to form and legality an alternate ordinance, attached as Exhibit A hereto (Alternative Ordinance) to Planning's Supplemental Report dated November 2, 2023. The Alternative Ordinance excludes background music as an allowed by-right ancillary use to restaurants with valid Al Fresco permits under the Permanent Al Fresco Ordinance.

If enacted, the Permanent AI Fresco Ordinance would create a process for restaurant operators to continue existing outdoor dining operations, subject to certain administrative review processes, that were previously permitted under the City's Temporary AI Fresco Use Authorization (Temporary Authorization Program). The Temporary Authorization Program, currently valid through December 31, 2023, was created in response to the COVID-19 pandemic to help ease the financial stress on restaurant operators. The Permanent AI Fresco Ordinance also creates a process for restaurant operators that do not currently have a Temporary Authorization to apply for the right to utilize outdoor dining operations. The Alternative Ordinance accomplishes the same goals but excludes background music as a by-right use, as mentioned above.

### Background and Summary of Draft Ordinance Provisions

On March 22, 2022, a motion (Harris-Dawson—Bonin) was adopted that in turn adopted the recommendations from the Planning and Land Use Management (PLUM) Committee's March 1, 2022 meeting, during which the PLUM Committee concurred with the recommendations of the Transportation Committee relating to the establishment of a permanent outdoor dining program. Specifically, the recommendations included an instruction to the Department of City Planning (DCP), in coordination with the Department of Building and Safety (LADBS), the Fire Department, and the City Attorney, "to prepare and present a Citywide Ordinance creating a permanent AI Fresco program and generally streamlining outdoor dining provisions throughout the Zoning Code." (CF No. 20-1074.)

On April 27, 2023, the DCP transmitted to the City Planning Commission (CPC) the proposed Permanent AI Fresco Ordinance, which establishes a ministerial process to allow outdoor dining on privately-owned property in zones where restaurant uses are permitted, subject to certain eligibility and operational requirements and restrictions. At that meeting, the CPC approved adoption of the proposed ordinance and instructed the DCP to "report to City Council with recommendations on allowing ambient music in an Outdoor Dining Area."

On May 26, 2023, the DCP submitted a supplemental report to address the allowance of ambient background music in outdoor dining areas, pursuant to the CPC's action. This supplemental report included an Initial Study/Negative Declaration (May 2023 IS/ND)<sup>1</sup>, which was also prepared in response to the CPC's instruction to evaluate potential environmental impacts regarding the allowance of ambient background music.

On June 6, 2023, the PLUM Committee considered the DCP's recommendation, in conjunction with the City Planning Commission's amended findings, and took nine

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<sup>1</sup>The May 2023 IS/ND was prepared in addition to the Statutory and Categorical Exemptions that DCP prepared under ENV-2022-8180-CE.

actions (CF No. 20-1074-S4, dated July 28, 2023), four of which necessitated substantive modifications to the proposed Ordinance (Items 5, 6, 8 and 9 listed below):

- (5) Instruct the DCP to amend the proposed ordinance to limit the application of the curfew to restaurants abutting and across from an alley to a residential zone, not including the Residential/Accessory (RAS) Zone. Amend the proposed curfew hours from 11:00 p.m. across the board to 10:30 p.m. (Sunday – Thursday); and 11:00 p.m. (Friday/Saturday).
- (6) Instruct the DCP to include reasonable enforcement provisions in the final draft of the ordinance with regard to ambient music.
- (8) Instruct DBS as follows:
  - a. Require a City-Issued identification to be posted in the outdoor dining area and made clearly visible to the public indicating that the area is subject to the standards of the AI Fresco Ordinance.
  - b. Provide a hotline phone number and contact information of the LADBS Code Enforcement for complaints or concerns regarding the operation of the outdoor dining area.
- (9) Request the City Attorney to prepare and present the draft AI Fresco Ordinance approved as to form and legality to clarify and streamline LAMC regulations regarding outdoor dining on private property, as recommended in the May 11, 2023 LACPC report, and the May 26, 2023 DCP report which recommends that the proposed AI Fresco Ordinance be modified to allow ambient music in outdoor dining areas in compliance with LAMC Section 112.01 (Noise Regulation).

Based on the PLUM Committee's action, this draft ordinance, approved as to form and legality, incorporates all of the requested modifications, including the allowance of background music as an ancillary permitted use by-right, the inclusion of the Committee's request to adjust the curfew hours from 11:00 p.m. to 10:30 p.m. for restaurants abutting and across from an alley to a residential zone, and a panoply of enhanced enforcement provisions to address the allowance of background music.

Such enhanced enforcement mechanisms require action by and additional costs to be incurred by restaurant operators, including the installation of noise monitoring devices capable of continuous monitoring of dBA levels in the outdoor dining area and associated monitoring costs, maintenance and availability of noise monitoring data upon request by the City, imposition of escalated fees, and automatic suspension of background music upon successful imposition of an administrative fine for three violations.

### Summary of the Alternative Ordinance That Excludes the By-Right Allowance of Background Music

In an effort to better meet the policy objective of creating a streamlined permitting process for outdoor dining under the Permanent AI Fresco Program, DCP (in consultation with other City departments, including LADBS and LAPD) also prepared an Alternative Ordinance, attached as Exhibit A to Planning's Supplemental Report, that excludes background music as an allowed by-right use. In lieu of allowing background music as part of the ministerial issuance of a permanent AI Fresco permit, the Alternative Ordinance would allow operators to request relief from the prohibition of background music through a separate discretionary process by way of a conditional use permit.

The Alternative Ordinance mirrors the recommended modifications incorporated into the draft ordinance, as instructed by PLUM at the June 6, 2023 meeting, with the exception of the Alternative Ordinance's prohibition on the by-right allowance of background music. This Alternative Ordinance has also been reviewed as to form and legality by our Office, and can be adopted by the City Council instead of the draft ordinance if the City Council determines that it better reflects the desired policy goals of the Council.

### Charter Findings Required

Charter Section 558(b)(3) requires the Council to make the findings required in Subsection (b)(2) of the same section, namely whether adoption of the proposed ordinance will be in conformity with public necessity, convenience, general welfare and good zoning practice. Charter Section 558(b)(3)(A) allows the Council to adopt an ordinance conforming to the CPC's recommendation of approval of the ordinance, if the CPC recommends such approval. Similarly, Charter Section 556 requires the Council to make findings showing that the action is in substantial conformance with the purposes, intent and provisions of the General Plan.

On May 9, 2023, the CPC adopted the DCP's staff report along with amended findings in support of the draft ordinance. The CPC's amended findings are discussed in the DCP's transmittal report dated May 26, 2023. Separately, the DCP has provided alternate findings in support of the Alternative Ordinance; those findings are discussed in the DCP's supplemental transmittal report dated November 2, 2023. The Council can adopt either the Amended Findings or the Alternative Ordinance Findings, or make its own.

### CEQA Determination

The DCP also recommends that the City Council determine that, based on the whole of the administrative record, that the Project is categorically exempt from CEQA pursuant to CEQA Guidelines, Sections 15303 and 15311 (Case No. ENV-2022-8180-

CE), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies, and that the proposed ordinance's reduction in parking is statutorily exempt from CEQA pursuant to Public Resources Code Section 21080.25.

Moreover, in response to CPC's instruction to modify the draft ordinance to allow ambient background music, the DCP also prepared the May 2023 IS/ND that was previously presented to the PLUM Committee for consideration on June 6, 2023. In response to the PLUM Committee's June 6, 2023, actions, the DCP also prepared an Errata to the May 2023 IS/ND dated October 2023, concerning the possible allowance of background music and enforcement schemes. The Errata provides additional analysis of both the draft ordinance and the Alternative Ordinance. Therefore, the DCP recommends that the City Council find that, pursuant to CEQA Guidelines Section 15074(b), after consideration of the whole of the administrative record, including the May 2023 IS/ND (Case No. ENV-2023-3278-ND), the Errata dated October 2023, and all comments received, there is no substantial evidence that the project will have a significant effect on the environment. If the City Council concurs, it must comply with CEQA by making this determination in its independent judgment prior to or concurrent with its action on the ordinance.

#### Council Rule 38 Referral

A copy of the draft ordinance, as well as a copy of the Alternative Ordinance, has been sent pursuant to Council Rule 38 to LADBS and to LAPD, with a request that all comments be presented directly to the City Council or its Committees when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Kimberly Huangfu at (213) 978-8257. A member of this Office will be present when you consider this matter to answer questions you may have.

Sincerely,

HYDEE FELDSTEIN SOTO, City Attorney

By:   
Kimberly A. Huangfu  
Deputy City Attorney

JH:KAH:jr  
Transmittal