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November 27, 2023

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

REPORT BACK PURSUANT TO PLUM INSTRUCTION REGARDING THE AL FRESCO ORDINANCE FOR PRIVATE PROPOERTY; COUNCIL FILE NO. 20-1074-S4 AND 20-1074-S5

This report has been prepared in response to the instructions provided by PLUM at the hearing on November 7, 2023 regarding the proposed Al Fresco Ordinance, to discuss additional topics for considerations by the PLUM Committee insomuch as the item is pending in Committee.

RECOMMEND THAT THE CITY COUNCIL:

1. Instruct the City Attorney's Office to amend the Development Standards, Operational Requirements, and Prohibitions of Section 9 of the Draft Ordinance (dated 11/02/23) and the Alternative Ordinance (Exhibit A to the Supplemental Report dated 11/03/23) to include "A City-issued identification shall 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 Al Fresco Ordinance. The identification shall include 311 as the contact information for complaints or concerns regarding the operation of the Outdoor Dining Area during business hours. A hotline phone number and contact information for LADBS Code Enforcement shall be provided for complaints or concerns regarding the operation of the Outdoor Dining Area after business hours. A telephone number of the restaurant operator or manager shall be provided for complaints or concerns regarding the operation of the Outdoor Dining Area."
2. Instruct the City Attorney's Office to amend the Parking Relief Allowance of Section 9 of the Draft Ordinance (dated 11/02/23) and the Alternative Ordinance (Exhibit A to the Supplemental Report dated 11/03/23) to include "When an Outdoor Parking Area is located in a building's parking area, automobile parking spaces may be replaced by Outdoor Dining Area, except that at least one automobile parking space must be provided, unless exempted by state law."
3. Determine, based on the whole of the administrative record, that Project No. ENV-2022-8180-CE is exempt from the California Environmental Quality Act (CEQA) pursuant to

CEQA Guidelines, Sections 15303 and 15311, and there is no substantial evidence demonstrating that an exception to a Categorical Exemption pursuant to CEQA Guidelines, Section 15300.2 applies; and the Project is exempt from CEQA pursuant to Public Resources Code Section 21080.25.

4. Find, pursuant to CEQA Guidelines Section 15074(b), after consideration of the whole of the administrative record, including the Negative Declaration No. ENV-2023-3278-ND, Errata dated October 2023, and all comments received, there is no substantial evidence that the project will have a significant effect on the environment; and Find, the Negative Declaration reflects the independent judgment and analysis of the City; and, Adopt the Negative Declaration.
5. Adopt the Alternative Ordinance (Exhibit A to the Supplemental Report dated 11/03/23), reviewed by the City Attorney and approved as to form and legality, as the final AI Fresco Ordinance, with the amendments reflected in the "Alternative Ordinance" (Exhibit A Supplemental Report dated 11/03/23)), namely the non-allowance of background music as an ancillary by-right use for Outdoor Dining Areas.
6. Adopt the Amended Findings (Exhibit B to the Supplemental Report dated 11/03/23) which are associated with "Alternative Ordinance", as the Findings of Council.
7. Instruct the Department of City Planning (DCP) that the ordinance be incorporated into the New Zoning Code (future Chapter 1A of the LAMC) subject to changes to conform to the format and style of the New Zoning Code.

SUMMARY

At its meeting held on November 7, 2023, the Planning and Land Use Management (PLUM) Committee continued the proposed AI Fresco 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 (LAMC) in order to streamline outdoor dining provisions throughout the Zoning Code for private property citywide. In advance of that action, three instructions were read into the record. This report back covers the instructions as outlined below:

- 1) Instruct the DCP and the Los Angeles Department of Building and Safety (LADBS) to:
 - a) Post a City-issued identification in the outdoor dining area and make it clearly visible to the public indicating that the area is subject to the standards of the AI Fresco Ordinance.
 - b) Provide contact information/hotline phone number for LADBS, Code Enforcement after-hours complaints and/or concerns regarding the operation of the outdoor dining area and include 311 as the phone number to call during business hours.
 - c) Create a database of complaints based on addresses for the AI Fresco establishment.
- 2) Instruct the DCP, City Attorney's Office and relevant departments to report back on the AI Fresco establishment and the allotment of handicap parking including feasibility of revising the Ordinance to include parking spaces for people with disabilities.
- 3) Instruct the DCP and LADBS to report back on:

- a) Outdoor dining are standards. Why changes in the draft ordinances become more restrictive and what are options for an appropriate, nuanced balance between protecting small business owners running the restaurants and their neighbors.
- b) Background music allowance. How can it be ensured that the process that is established for background music is not unnecessarily burdensome to responsible restaurants.
- c) How can it be ensured that the ordinance appropriately addresses these concerns?

1. CITY IDENTIFICATION/CONTACT INFORMATION/DATABASE

The proposed Alternative Ordinance transmitted to the Council File on November 3, 2023 (Exhibit A to the City Planning's Supplemental Report, dated 11/02/2023) recommended for approval by the Department of City Planning, in collaboration with the Department of Building and Safety, includes the following provision as requested by the PLUM Committee in its instructions from June 6, 2023:

A City-issued identification shall 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. A hotline phone number and contact information for LADBS Code Enforcement shall be provided for complaints or concerns regarding the operation of the Outdoor Dining Area. A telephone number of the restaurant operator or manager shall be provided for complaints or concerns regarding the operation of the Outdoor Dining Area.

This language is recommended to be modified to include 311 as the phone number to call during business hours, pursuant to instruction 1b above, as follows:

A City-issued identification shall 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. The identification shall include 311 as the contact information for complaints or concerns regarding the operation of the Outdoor Dining Area during business hours. A hotline phone number and contact information for LADBS Code Enforcement shall be provided for complaints or concerns regarding the operation of the Outdoor Dining Area after business hours. A telephone number of the restaurant operator or manager shall be provided for complaints or concerns regarding the operation of the Outdoor Dining Area.

The Department of Building and Safety will create a database of complaints based on addresses of AI Fresco establishment and communicate any necessary information related to noise complaints to the Los Angeles Police Department in accordance with the report from Board of Police Commissioners transmitted to the Council File on October 31, 2023. This database will facilitate streamlined communication and effective enforcement among the various enforcement agencies that oversee all aspects of AI Fresco operations on private property.

2. ACCESSIBLE PARKING

The Alternative Ordinance has no restrictions on the number of parking spaces that can be replaced by Outdoor Dining Areas. The evolution of this allowance from the City Planning's original November 30, 2022 iteration was in response to strong public feedback to mirror any permanent program standards after the LA AI Fresco Temporary Authorizations, for which there is no current restriction on parking- accessible or otherwise. This approach allows businesses to dictate the amount of parking and outdoor dining rather than the Zoning Code. As it currently

stands, the language outlined below from the Alternative Ordinance is compliant with the access requirements of the Americans with Disabilities Act (ADA) and State Building Codes, which incorporate the relevant federal requirements.

Parking Relief Allowance. When an Outdoor Dining Area is located in a building's parking area, automobile parking spaces may be replaced by Outdoor Dining Area.

As a matter of policy, the language above means that an operator may choose to remove all the parking that is replaced by the Outdoor Dining Area, thus not triggering application of the ADA and corresponding accessibility standards in the State Building Code (CBC Chapter 11B). However, if a restaurant operator elects to leave even one parking space on site, that space must be accessible in accordance with the ADA and State Building Code standards.

There are important considerations that the Department on Disability (DOD) has expressed in response to taking this policy approach. As it relates to community impacts, replacing existing and currently required accessible parking on private property with outdoor dining decreases existing access to restaurants for people with disabilities. For the more than 11 percent of Los Angeles residents with disabilities, including over 25 percent of residents aged 65-74 and over 50 percent of residents aged 75 and over¹, the availability of parking at the restaurant may determine whether or not they are able to patronize the restaurant. Related to business impacts, people with disabilities and their families have nearly half a trillion dollars in disposable income² that may not be spent at local restaurants if new barriers to access are created by removing accessible parking. Finally, as it relates to City impacts, removal of accessible parking from private property raises concerns about a potential increase in liability for the City due to shifting site arrival points to public/City property. Patrons who arrive by vehicle will need to identify alternative site arrival points, such as on-street parking or other nearby parking facilities, that may or may not be accessible. This shift may also lead to increased utilization of City sidewalks to access restaurants and, although improvements are being made to the condition of City sidewalks, considerable work remains to address existing accessibility barriers.

After discussion of these considerations and other relevant factors, the recommendation is that the ordinance be revised to read as follows:

Parking Relief Allowance. When an Outdoor Parking Area is located in a building's parking area, automobile parking spaces may be replaced by Outdoor Dining Area, except that at least one automobile parking space must be provided, unless exempted by state law.

Because ADA and State Building Code accessible parking requirements apply when any number of parking spaces are provided, the proposed standard, "...at least one automobile parking space must be provided" will require that at least one accessible automobile parking space be provided. It should be noted that regardless of what operators of Al Fresco establishments choose to do with parking, they will need to bring their property up to current code standards in order to be in compliance with applicable Building and Fire Codes once a permit process is initiated regardless of proposed changes to the Zoning Code.

¹ U.S. Census Bureau. 2022 American Community Survey 1-Year Estimates, Table S1810, <https://data.census.gov/table/ACSST1Y2022.S1810?q=disability&t=Disability&q=160XX00US0644000> (November 21, 2023).

² Yin, M., Shaewitz, D., Overton, C., & Smith, D.-M. (2018). A Hidden Market: The Purchasing Power of Working-Age Adults With Disabilities. American Institutes for Research. <https://www.air.org/sites/default/files/2022-03/Hidden-Market-Spending-Power-of-People-with-Disabilities-April-2018.pdf>.

3. ORDINANCE STANDARDS, BACKGROUND MUSIC, & THE COASTAL ZONE

Outdoor Dining Area Standard

As stated in City Planning's Supplemental Report, dated 11/02/2023, the Alternative Ordinance proposed changes to the definition of an Outdoor Dining Area in order to: 1) ensure maximum flexibility in response to public feedback and the policy guidance provided by the City Planning Commission and 2) consistent and predictable application of enclosure standards by LADBS. To understand how the Alternative Ordinance is both more flexible and predictable, it is critical to clarify that an Adjustment, Modification or Variance cannot be used to permit deviations from LAMC Section 12.03 "Definitions" or Section 12.22 "Exceptions." By removing prescriptive standards from the "Definitions" section, the standards are inherently more adaptable to the variety of existing conditions throughout the City and creates a process by which various restaurateurs can request to configure their Outdoor Dining Areas in ways that are most suitable to their needs.

Additionally, by providing percentages for Outdoor Dining Area enclosures, the rules are more predictable, consistent, and flexible, especially given that the proposed change provides for at minimum, twice as much and up to three times as much perimeter enclosure as compared to the April 27, 2023 draft version of the ordinance, which specified that only one structural wall would be allowed for an enclosure. Furthermore, the proposed Alternative Ordinance allows for full perimeter enclosure if the Outdoor Dining Area is largely uncovered (not counting umbrellas and other mobile shading devices). The proposed changes attempt to make the requirements for outdoor dining more flexible by preserving the central premises of an "al fresco" atmosphere: balancing roof coverage and perimeter enclosure to maintain fresh air circulation and openness to the sky.

The revised definition also clarifies that an Outdoor Dining Area is an accessory use to an existing restaurant located on the same lot. In previous iterations this was an implicit fact given that the allowance of outdoor dining is predicated on the existence of a restaurant allowed by the underlying Zoning.

Therefore, relative to the definition and enclosures standards, these proposed changes are both more permissive and explicit than the previous version of the proposed ordinance and continue to be in line with the policy direction provided throughout the legislative process.

With regards to the hours of operations, while there are clear restrictions on businesses that are abutting and across an alley from a residential zone, as a legal matter, the Office of the City Attorney requested clarification on what hours of operations apply to those businesses that are *not* abutting and across an alley from residential zones. Therefore, both the Committee instructions from June 6, 2023 and the Form and Legality edits are reflected in the proposed Alternative Ordinance to provide additional clarity as to what hours dictated Outdoor Dining Area operations under all circumstances and reads as follows:

An Outdoor Dining Area shall operate no later than 10:30 p.m. on Sundays through Thursdays and no later than 11:00 p.m. on Fridays and Saturdays, if abutting or across an alley from a residential zone, not including the RAS zone. If the Outdoor Dining Area is not abutting or across an alley from a residential zone, then the Outdoor Dining Area is subject to any applicable hours limitation imposed by law, discretionary action, or previously issued permit.

In summary, the changes to this standard simply establishes that any previously governing hours of operations shall still be maintained, if and when applicable, and does not introduce any policy change or new regulations to those businesses that are not abutting or across an alley from a residential zone.

Background Music Allowance

Pursuant to PLUM's June 6, 2023 instructions to provide reasonable enforcement provisions in the final draft of the ordinance with regard to ambient music, operational standards included to allow background music in an Outdoor Dining Area are necessary to ensure that noise levels continue to comply with the Noise Ordinance and do not become a nuisance to neighboring properties. However, these requirements pose an additional permitting hurdle and cost for operators, directly conflicting with the original intent of the Ordinance, as well as the CPC's and PLUM's expressed desire to maintain a simple, streamlined process for restaurants to continue operating their Outdoor Dining Areas that were temporarily authorized under the COVID-19 emergency. Moreover, about 65.8% of public comments received since the release of the Initial Study/Negative Declaration (or 50 out of 76 total public comments), specifically addressed concerns related to excessive noise from Al Fresco operators during the pandemic. It should be noted that music is not permitted in an Outdoor Dining Area with a Temporary Al Fresco Authorization, therefore, no standards or best management practices for music were established previously. For the proposed Permanent Al Fresco Program, the Ordinance before the PLUM Committee establishes operational standards for Outdoor Dining Areas that include best management practices for operators playing background music, as well as a more comprehensive arsenal of enforcement and revocation tools, which constitute a permitting and implementation program not previously established by the Temporary Al Fresco Authorizations under the Emergency Order.

After thoroughly considering the implementation of such regulations, in consultation with LADBS, City Attorney, and LAPD, City Planning has determined that the most effective approach to achieving the City Council's policy objective of creating a streamlined process for restaurants to provide outdoor dining on private property is to maintain the prohibition on background music citywide and instead allow individual operators to pursue background music via a Conditional Use Permit, as well as including enhanced enforcement procedures for serial violators.

As such, City Planning recommends disallowing background music by-right from Outdoor Dining Areas and an Alternative Ordinance. The Alternative Ordinance continues to provide LADBS with the authority to conduct enforcement and revocations proceedings for violations to general Outdoor Dining Area standards. However, the additional operational standards specific to background music, as well as the escalating monetary penalties for ACE Citations issued by LAPD have been removed, as such provisions are not necessary if background music is disallowed by-right citywide. Instead, operators interested in pursuing background music in an Outdoor Dining Area may apply to do so through a discretionary Conditional Use Permit.

Coastal Development Permits

Council File 20-1074-S5 was established by Council Action on August 11, 2023. The preceding motion instructs the following:

INSTRUCT the Department of City Planning, with the assistance of the Los Angeles Department of Transportation, Los Angeles Department of Building and Safety, Bureau of

Engineering, and in consultation with the City Attorney, and the Coastal Commission, to prepare a report within 60 days with recommendations to establish a programmatic Coastal Development Permit for Al Fresco outdoor dining on both private property and in the public right of way in the Coastal Zone

The named Departments have been meeting regularly and with the California Coastal Commission (CCC) to produce the report back with recommendations, opportunities, and challenges of establishing a programmatic Coastal Development Permit (CDP) for outdoor dining in the Coastal Zone. The report is nearing completion and contemplates a range of financial considerations in order to provide the CCC with the desired mitigation needed to offset the reduction in parking spaces taken up by outdoor dining on both private property and the public right-of-way.

Importantly, the report was delayed slightly from the 60-day timeline in anticipation of the recently approved AB 1217 (Gabriel) which amends Section 65907 of the Government Code to reduce the number of required parking spaces for existing uses by the number of spaces that the local jurisdiction determines are needed to accommodate an expanded outdoor dining area until July 1, 2026. The bill was signed into law on October 8, 2023 and may make it possible for operators in the Coastal Zone to extend the emergency waiver that was provided by the Coastal Commission under the previous business pandemic relief bill, AB 61. Since then, City Planning has been in communication with the CCC to understand the processes of extending the waiver in order to utilize the additional time granted by the Bill until July 1, 2026 to address the State Agencies mandates on changes to existing Coastal Development Permits that did not contemplate or condition outdoor dining, and reconcile the instruction from City Council to report back on establishing a programmatic CDP for future Al Fresco operations within the Coastal Zone.

Importantly, it needs to be noted that any version of the ordinance under consideration by the City Council, whether that be the proposed Alternative Ordinance or otherwise, can not resolve the matter of CDPs in the Coastal Zone as the permanent Al Fresco Ordinance for private property is a local ordinance and has no ability to change or override CDPs itself. This current legislative process does not change the need for a CDP in compliance with the California Coastal Act pursuant to LAMC Section 12.20.2 and in accordance with Section 30600(b) of the California Public Resources Code, however the City continues to work actively and collaboratively with all the affected departments and with Coastal Commission to determine a path forward for restaurants in the Coastal Zone.

Sincerely,



VINCENT P. BERTONI, AICP
Director of Planning

VPB:AV:hsc:nc:bk