

Communication from Public

Name: Citizens Preserving Venice
Date Submitted: 06/04/2023 11:16 PM
Council File No: 20-1074-S4
Comments for Public Posting: Please see attached letter in opposition to the Al Fresco Dining Ordinance.

Citizens Preserving Venice

June 4, 2023

VIA ELECTRONIC MAIL

Members of the Planning Land Use Management (PLUM) Committee
City of Los Angeles
200 North Spring Street
Los Angeles, CA 90012

OPPOSE: Al Fresco Dining Ordinance
CPC-2022-8179-CA, CEQA: ENV-2022-8180-CE,
Council File No. 20-1074-S4

Dear Members of the PLUM Committee,

Citizens Preserving Venice (CPV) has reviewed City Planning's CPC-approved Al Fresco Dining Ordinance and gathered input from numerous residents and community leaders. CPV opposes the ordinance as proposed and also opposes allowing ambient music. CPV is not opposed to the concept of al fresco dining, as given our climate we believe there may be more areas where outdoor dining could take place. Such areas, however, must be well planned and designed, and the rules *enforced*. The proposed Ordinance does too little in these areas.

The loss of business suffered due to the COVID pandemic is a reasonable and urgent rationale for temporary/emergency measures. However, any permanent changes to the code should respect the considerations that informed the existing code. An ordinance such as this would likely never have been considered if COVID and the temporary/emergency measures had not happened and in fact was unthinkable. COVID recovery should not be used as an excuse to leverage temporary measures into profitable benefits for businesses on the backs of their neighbors. If allowances need to continue to be made for the sake of recovery, they should be temporary, with defined sunsets.

It also should be pointed out that while this measure is characterized as an emergency measure to help struggling restaurants, its long-term beneficiaries will be the landlords/property owners, who are being gifted with significant and permanent increases in the intensity of use of their properties. In fact, this increase may well make survival more difficult for some restauranteurs since landlords may logically increase rents to match increases in service areas.

We want to make sure you are aware that there are **two major problems with the findings** for the ordinance: 1) for the community survey performed, according to public testimony approximately 80% of the people surveyed were restaurants, which makes the survey biased and unusable, and 2) for purposes of analyzing the potential effects of allowing ambient music, when considering community complaints only Department of Building and Safety complaints were reviewed and not complaints made to the LAPD, which is the entity to which most people complain regarding issues with restaurant noise. **NO decision should be made until those findings are revised and reconsidered.**

Also, there has been inadequate outreach to the community, including to neighborhood councils, especially subsequent to the CPC hearing where additional recommendations were made to extend the curfew from 10:30 to 11 pm and to allow ambient music, with no enforcement mechanism. To

make proposals that increase impacts on the residential neighborhoods should have required additional outreach to the community.

Our other concerns fall into these categories:

- Local Venice experience with enforcement issues for al fresco dining over the past few years during COVID;
- Inherent lack of fairness to neighboring retail stores and restaurants without parking lots;
- Environmental Justice concerns;
- Curfew for outdoor dining with respect to proximity to residential zones;
- Ambient music is impossible to regulate;
- Lack of enforcement mechanism

Local Venice Experience:

Venice has a long history of inadequate parking. In residential neighborhoods directly adjacent to areas being commercialized, such as the Rose Café, there have long been traffic problems as a result of a significant number of parking spaces being used for service area. Traffic is also jammed on Main St. for the same reason. The entire Venice Coastal Zone is already under-parked. Much of Venice was built when streetcars were prevalent and automobiles were not. Apartment buildings of that era provide no parking, which means that residents returning home have to search their neighborhood for parking spots and walk to their homes, often late at night. This program would exacerbate their situation without any consideration or mitigation. Over the past three years the City understandably allowed restaurants to provide al fresco dining as a way to help keep them financially viable during the COVID crisis. Many restaurants in Venice took advantage of this opportunity that had never previously been allowed. Our neighborhoods have now had several years' experience with the program and for the most part this experience has not been good. The reason boils down to a lack of enforcement related to noise, trash, nighttime operating hours, private parties, etc. Experience also shows that the additional al fresco dining patrons often park in adjacent residential areas, further inconveniencing neighbors and visitors. That is not to say that some restaurants did not do a good job, but most did not. The proposed "good neighbor" self-enforcement policy of the ordinance will translate to more of the same bad behavior - *permanently*.

Fairness:

Some restaurants have their own on-site parking lots and most have converted at least some of their parking spaces to outdoor seating. With this proposed ordinance, however, the entire parking area can be converted to al fresco dining, compounding the parking problem for other restaurants and retail stores nearby, as well as neighboring residences. **Yet other establishments with no parking lots do not gain the ability to greatly expand their service area, seating capacity and potential revenues.** In addition, this would unfairly benefit larger businesses that are more likely to have large parking lots, and not small businesses. **The City is quite literally using a limited public asset (parking capacity) to favor certain restaurants who have on-site parking areas, when all establishments were hurt during the COVID crisis.** This is wrong and unfair.

There is another aspect of fairness that should be noted. There are many parts of the City where al fresco dining may be compatible with the needs of the area. However, an area such as Venice is different for the simple reason that tens of thousands of visitors come to Venice that do not go to these other areas of the City. The L.A. Chamber of Commerce has noted that Venice is the second most visited destination in southern California after Disneyland. **However, Disneyland has plenty**

of parking and Venice does not. To allow this significant reduction in parking and treat this popular, dense, unique community as any other area of the City is a mistake. Until the Al Fresco Dining Ordinance is “tested” in other parts of the City, it should be delayed in the Coastal Zone. In addition, a Coastal Development Permit should continue to be required for any expansion of service floor area for outdoor dining in the Coastal Zone.

This ordinance would reverse decades of public policy on parking requirements, with no mitigations! Mitigations must be required in order to cover the loss of parking, i.e. providing parking elsewhere, rideshare coupons, etc. There are many unanswered questions. How does this impact those establishments who currently pay for parking to be provided off site? Also, it is unclear whether existing deed restrictions for required parking will be modified. Another concern is that loading zones are often located in the parking areas so they would be lost as well. Where will the loading activities take place?

Allowing for 100% elimination of on-site parking also allows for the intensification of use by converting the former parking area to *additional new seating, up to 150 seats*. Therefore, the impact is even worse than eliminating up to 100% of on-site parking as it adds significant expansion and intensification for which parking is also not provided and it favors big business (how many small restaurants have the kitchen capacity to add 150 seats!) Of course, the restaurants that add 150 seats at the expense of parking are likely not adding more bathrooms. Venice already has way too few public bathrooms (it is believed that Santa Monica has double the number for approximately half the visitors.)

These issues must be fully vetted before this ordinance is finalized and implemented.

Environmental Justice:

This ordinance, as currently drafted, essentially violates the spirit if not the precise letter of the Environmental Justice regulations and policies of the City in that it unfairly negatively impacts neighborhoods where the majority of mid to lower income residents live adjacent to commercial zones. It is unlikely that the negative quality of life problems resulting from this proposed ordinance (noise, loss of parking, sanitation, and lack of enforcement) would impact wealthier communities. This ordinance will result in commodification of neighborhoods that don't have the resources to fight back, decreasing their quality of life. High net worth residents, living in upscale neighborhoods such as Brentwood or Pacific Palisades that are exclusively residential, will likely not be impacted because their properties are not contiguous with or adjacent to restaurants in commercial areas. The affluent population of Los Angeles lives behind gates and walls or is surrounded by land and will therefore not experience such quality-of-life disruptions as this ordinance will cause.

Curfew:

We support a 10:30 pm curfew for outdoor dining for establishments within 250 feet of a residential zone (as opposed to establishments adjacent residential zones). Worst case, the curfew could be extended to 11 pm only on Friday and Saturday nights. The impact on residential areas from noise from outdoor dining has been a serious quality of life issue for many residential areas nearby restaurants with outdoor dining and/or music.

Ambient Music:

The existing law's prohibition on outside music and speakers must remain. First, there is no clear definition of “ambient music.” As per the dictionary, ambient music is “a genre of music that puts an emphasis on tone and atmosphere,” or “a style of gentle, largely

electronic instrumental music with no persistent beat, used to create or enhance a mood or atmosphere.” Also, the definition of ambient music is not an objective one but is open to interpretation and whether the music being played is ambient would be difficult if not impossible to enforce. As currently indicated in the CPC’s Amended Findings: “...the proposed ordinance contains robust outdoor dining standards to protect the public health welfare and safety of communities and residential areas by addressing common issues that may be associated with outdoor dining, such as noise and operations. *Music, television monitors, and live entertainment would be prohibited in outdoor dining area...*” As the City originally determined, prohibiting music is key to the success of the al fresco dining program. The original findings made clear that the new outdoor dining standards must ensure that outdoor dining would not cause adverse effects to the public health, safety, and welfare of neighbors and surrounding communities, such as noise. The findings further state that “the project contains measures to avoid environmental impacts, such as noise and adverse behavior...” With the addition of ambient music, that would no longer be the case. There are innumerable studies regarding the nature of sound and how sound carries outdoors, particularly at night and particularly near bodies of water, such as in Venice Beach. Yet the most obvious and basic mitigations, such as walls to protect neighbors from loud noise, are nowhere to be found in this proposed ordinance.

The additional research performed by Planning to consider ambient music as per the CPC’s request cannot override the original findings because noise complaints were erroneously evaluated. The report indicates that in the three years from April 1, 2020 to April 4, 2023 the Department of Building and Safety only logged 134 noise complaints for the entire City of Los Angeles, suggesting that noise would not be a problem. But it did not consider noise complaints to the LAPD, which is the City department where the vast majority of complaints are lodged. The report regarding ambient music was based on incomplete data and its conclusions were premature, incomplete, and erroneous. The conclusion defies logic in that it essentially states that a change to a noise ordinance would not have any impact on noise and in turn its impacts on the community. **The report’s findings regarding ambient music cannot be relied upon and must be redone to include a valid analysis of complaints received between April 1, 2020 to April 4, 2023 by LAPD before a decision can be made.**

Enforcement:

The ordinance currently states that non-compliance with the Outdoor Dining standards *may* result in enforcement actions pursuant to Section 12.27.1. Needless to say, that is wholly inadequate. This ordinance lacks an enforcement strategy. The resources must be provided for enforcement of this program to ensure its success and protect residential areas from adverse impacts.

Currently, LAPD does not enforce noise regulations and that would need to change with respect to outdoor dining as rules against amplified music or serving on rooftops and other outdoor areas are routinely ignored.

There is good reason why the City’s existing Noise Ordinance has prohibited outdoor speakers and outdoor amplified music for decades. Even with the current prohibitions, many restaurants use outdoor speakers and amplified music, with impunity. To legalize outdoor ambient music will only make the impacts on neighborhoods much worse.

Also, creating a program that must for its success rely heavily on enforcement will create needless conflicts and new burdens on law enforcement, thus enforcement is unlikely to be successful.

As always, we look forward to working with City Planning and the Coastal Commission to improve the proposed Al Fresco Dining Ordinance so that it is fair and does not cause adverse effects to the public health, safety, and welfare of neighbors and surrounding communities. This program has the potential to be a win/win for our city. Please do not allow it to go forward as proposed, which is a major win for only certain restaurants or their landlords/property owners and an unacceptable loss for other businesses and the neighborhoods.

Yours truly,

Richard Stanger

Richard Stanger
President Pro Tem
Citizens Preserving Venice

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Bonnie Kim, City Planner
Brian Averill, Venice Neighborhood Council President-Elect

Citizens Preserving Venice, a non-profit 501(c)3 organization, was founded as a group dedicated to preserving and protecting the character and scale of Venice as a Special Coastal Community, including the history and the social, cultural, racial and economic diversity, as well as protecting affordable housing.