

**DEPARTMENT OF
CITY PLANNING**

COMMISSION OFFICE
(213) 978-1300

CITY PLANNING COMMISSION

SAMANTHA MILLMAN
PRESIDENT

MONIQUE LAWSHE
VICE-PRESIDENT

MARIA CABILDO
CAROLINE CHOE
ILISSA GOLD
HELEN LEUNG
KAREN MACK
JACOB NOONAN
ELIZABETH ZAMORA

**CITY OF LOS ANGELES
CALIFORNIA**



KAREN BASS
MAYOR

EXECUTIVE OFFICES

200 N. SPRING STREET, ROOM 525
LOS ANGELES, CA 90012-4801
(213) 978-1271

VINCENT P. BERTONI, AICP
DIRECTOR

SHANA M.M. BONSTIN
DEPUTY DIRECTOR

ARTHI L. VARMA, AICP
DEPUTY DIRECTOR

LISA M. WEBBER
DEPUTY DIRECTOR

November 2, 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:

**REVISED RECOMMENDATIONS PURSUANT TO PLUM INSTRUCTION REGARDING
COUNCIL FILE NO. 20-1074-S4**

RECOMMEND THAT THE CITY COUNCIL:

1. 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.
2. 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.
3. Adopt the Alternative Ordinance (**Exhibit A**), reviewed by the City Attorney and approved as to form and legality, as the final Al Fresco Ordinance, with the amendments reflected in the "Alternative Ordinance" (**Exhibit A**), namely the non-allowance of background music as an ancillary by-right use for Outdoor Dining Areas.
4. Adopt the Amended Findings (**Exhibit B**) which are associated with "Alternative Ordinance", as the Findings of Council.
5. 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 June 6, 2023, the Planning and Land Use Management (PLUM) Committee considered the proposed Al 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, subject to certain exclusions (hereinafter, "Ordinance").

The Committee took a total of nine actions which can be found in the PLUM report in Council File number 20-1074-S4, dated July 28, 2023. The following five actions necessitated modifications to the proposed Ordinance (see Instruction Nos. 4, 5, 6, 8 and 9 listed below). Importantly, instructions 6 and 9, outlined below, require additional enforcement measures that have not yet been subject to public review.

Below are the relevant instructions from the July 28, 2023 PLUM Report that resulted in modifications to the draft Ordinance that was previously presented to PLUM at their meeting on June 6, 2023:

4. Instructed 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.
5. Instructed the DCP to amend the proposed ordinance to limit the application of the curfew (hours provided below) 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. Instructed the DCP to include reasonable enforcement provisions in the final draft of the ordinance with regard to ambient music.
8. Instructed the Los Angeles Department of Building and Safety (LADBS) as follows:
 - a. 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.
 - b. A hotline phone number and contact information of the LADBS Code Enforcement shall be provided for complaints or concerns regarding the operation of the outdoor dining area.
9. Requested the City Attorney to prepare and present the draft Al 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 Al Fresco Ordinance be modified to allow ambient music in outdoor dining areas in compliance with LAMC Section 112.01 (Noise Regulation).

Per these instructions, **Section 2. Discussion of 6/6/2023 PLUM Instructions** of this report outlines the modifications to the Ordinance necessitated by the instructions. As instructed, the Department of City Planning (City Planning) has developed a robust enforcement schema that would allow for background music by-right as an incidental component of the Outdoor Dining Area operations. Such enhanced enforcement mechanisms include a requirement to install a noise monitoring device that is capable of continuous monitoring of decibel levels in the outdoor dining area, 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, to highlight a few. However, following additional review of the Council File and the public comments received to date, City Planning has concluded that the recommended enforcement measures, many of which require the additional expenditures of fees and ongoing monitoring efforts, are counter to the initial City Council instruction to “streamline outdoor dining provisions throughout the Zoning Code for private property.”

In an effort to ensure the overall success of the permanent Al Fresco Program, as well as balance the needs and concerns of the various stakeholders, City Planning recommends that the PLUM Committee recommend approval of the Alternative Ordinance, the version of the Al Fresco Program that does not permit the allowance of background music as a by-right ancillary use in the permanent program, as is the case today within the Temporary Al Fresco Authorization Program. In lieu of allowing background music through a ministerial, by-right process, the Alternative Ordinance would allow operators to request relief through a separate discretionary Conditional Use Permit process. Correspondingly, City Planning has prepared an Alternative Ordinance (see **Exhibit A**) which reflects the recommended modifications to the draft Ordinance for the consideration of the PLUM Committee and City Council. This Alternative Ordinance has also been reviewed and approved as to form and legality by the Office of the City Attorney, and can be adopted by the City Council.

The Alternative Ordinance is a result of City Planning and several other Departments, including but not limited to the Department of Building and Safety (LADBS), Department of Transportation (LADOT), and Bureau of Engineering (BOE), that have been involved in the transitioning of temporary outdoor dining to a permanent program, meeting regularly to develop consensus on a feasible coordination and implementation strategy. During that time, additional recommendations surfaced, requiring minor modifications to improve implementation of the proposed permanent program. These modifications are also discussed in the next section.

1. DISCUSSION OF 6/6/2023 PLUM INSTRUCTIONS

Instruction 4: Incorporate and Align with Chapter 1A (New Zoning Code)

In preparation for the April 27, 2023 CPC hearing, City Planning’s initial recommendation on the matter of defining an Outdoor Dining Areas read as follows:

OUTDOOR DINING AREA. A covered or uncovered but not fully enclosed portion of a restaurant which is located in a space that is outside of a wholly enclosed building or structure, including but not limited to an open to sky parking area, patio, courtyard, or plaza, and is used for the service and consumption of food and drinks by the patrons of the restaurant.

Deliberation of the Al Fresco Ordinance on April 27, 2023 by CPC underlined the importance of having a clear definition of an Outdoor Dining Area for the benefit of restaurant applicants, and between City Planning and LADBS alike. As such, the definition for an Outdoor Dining Area was refined and approved by CPC, and subsequently, approved by the PLUM Committee on June 6, 2023, to read as follows:

OUTDOOR DINING AREA. A covered or uncovered, but not fully enclosed portion of a restaurant, with no more than one structural wall (not inclusive of movable delineators or fencing) which is located in a space that is outside of a wholly enclosed building or structure, including but not limited to an open to sky parking area, patio, courtyard, or plaza, and is used for the service and consumption of food and drinks by the patrons of the restaurant.

As previously mentioned, City Planning, along with LADBS, and several other Departments have continued to meet twice a week for the past several months to discuss the interdepartmental coordination and implementation of the permanent program. As a result, in an effort to ensure there is a consistent application of outdoor dining rules and regulations across the City in both Chapters 1 (Current Zoning Code) and 1A (New Zoning Code), an additional modification to the definition of Outdoor Dining Area is required.

This modification is in line with the CPC's deliberation which stressed the importance of having clear standards for the Outdoor Dining Area. Additionally, CPC opined on the importance of maintaining an outdoor space for dining that allows for continuous air flow; a valuable quality of the temporary program in the face of COVID-19. Al Fresco dining promotes community, activates the City's streets and presents opportunities for high quality urban design that should balance openness with defensibility, where patrons of restaurants can enjoy LA's temperate climate while feeling protected from the public right-of-way. Following this intent, the modified definition of an Outdoor Dining Area omits enclosure standards that are too restrictive, ultimately limiting an operator's ability to configure and adjust an outdoor dining space according to their unique site conditions.

The newly proposed definition, as described below, allows for continuity across both Current and New Zoning Codes by utilizing the flexibility of a formula-based enclosure standard, while allowing for consistent application of regulations for implementation by LADBS. The general rules regarding how to calculate the amount of enclosure have been established in Article 14 of Chapter 1A of the LAMC, which was approved by the City Council on May 3, 2023, as part of their action on the New Zoning Code for the Downtown Community Plan Update. As with the CPC-approved draft, movable delineators which are not permanently installed structures would continue to be exempt from counting towards the maximum enclosure. The new definition also clarifies that an Outdoor Dining Area is an accessory use to an existing restaurant located on the same lot.

As prepared and transmitted by the City Attorney, the Ordinance includes the following amendments to the definition and standards:

OUTDOOR DINING AREA. A covered or uncovered, but not fully enclosed area which may include but is not limited to an open-to-sky parking area, patio, courtyard, or plaza, that is located in a space within the same lot as the restaurant to which it serves as an accessory use, but is outside of the enclosed building or structure in which the restaurant is located, and is used for the service and consumption of food and drinks by the patrons of the restaurant.

(d) Outdoor Dining Area Standards

(1) Development Standards, Operational Requirements and Prohibitions

(i) The Outdoor Dining Area shall have an enclosure of no more than 50 percent, except that:

- a. Moveable, non-permanent delineators are exempt from counting towards the maximum enclosure.*
- b. The Outdoor Dining Area may have an enclosure of up to 100 percent if the roof coverage is no more than 25 percent.*

(e) Administration

(2) Waiver.

- (i) Relief from the Outdoor Dining Area enclosure standards in LAMC Section 12.21 A.24(d)(1)(i) may be requested through the approval of plans on the original discretionary entitlement pursuant to LAMC Section 12.24 M.*

In the Alternative Ordinance, which mainly deviates from the proposed Ordinance's allowance of by-right music, the Outdoor Dining Area definition and enclosure standard are identical, as reflected in the Alternative Ordinance attached in **Exhibit A**. However, the administration provisions have been modified to allow applicants to pursue relief from the maximum enclosure standard via a Conditional Use Permit as an alternative to a variance in the event there is no original discretionary entitlement for which a Plan Approval may be obtained, reflected as follows:

(e) Administration

(2) Waiver.

- (i) Relief from the Outdoor Dining Area enclosure standards in LAMC Section 12.21 A.24(d)(1)(i) may be requested through the approval of plans on the original discretionary entitlement pursuant to LAMC Section 12.24 M. If there is no original discretionary entitlement, relief may be requested through a Conditional Use Permit pursuant to LAMC Section 12.24 W.32.*

Instruction 5: Curfew

In preparation for the CPC hearing, City Planning's initial recommendation on the matter of a curfew for Outdoor Dining Areas read as follows:

All Outdoor Dining Areas shall operate no later than 10:30 p.m. if adjacent or across an alley to a residential use.

On April 27, 2023, the CPC approved and recommended adoption of the proposed Al Fresco Ordinance with amendments related to the curfew, among others, for Outdoor Dining Areas. The standard as amended by CPC reads as follows:

An Outdoor Dining Area shall operate no later than 11 p.m. if within 250 feet of a residential zone, not including the RAS zone.

At the June 6, 2023 PLUM meeting, there was a requested change from Council District 11, in the form of a letter, and upon further deliberation, an amendment was introduced and adopted, instructing the Department to modify the standard to read as follows:

Amend the proposed ordinance to limit the application of the curfew (hours provided below) 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).

As such, the standard has been modified as follows, as reflected in the Ordinance prepared and transmitted by the City Attorney:

An Outdoor Dining Area shall operate no later than 10:30 p.m. on Sundays through Thursdays and 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.

This standard is maintained verbatim in the Alternative Ordinance attached in **Exhibit A**.

Instruction 6: Enforcement

In preparation for the CPC hearing, City Planning's initial recommendation on the matter of procedures for enforcement applicable to Outdoor Dining Areas read as follows:

Non-compliance with the Outdoor Dining Area standards may result in enforcement actions pursuant to Sec. 12.27.1. [Administrative Nuisance Abatement Proceedings]

On April 27, 2023, the CPC approved and proposed amendments, as previously stated. As part of their action, the Commission instructed City Planning to report to the City Council with recommendations for allowing ambient music in Outdoor Dining Areas, including an analysis of any potential noise impacts consistent with the requirements of the California Environmental Quality Act (CEQA).

At the June 6, 2023 PLUM meeting, there was a requested change from Council District 11, in the form of a letter, which was adopted and instructed City Planning as follows:

Include reasonable enforcement provisions in the final draft of the ordinance with regard to ambient music.

Subsequently, City Planning, in close collaboration with LADBS and the City Attorney, evaluated appropriate options for allowing background music (i.e. colloquially understood to be music played at a volume that allows patrons to speak at normal conversational levels), in Outdoor Dining Areas in compliance with LAMC Section 112.01 enforced by the Los Angeles Police Department (LAPD). City Planning consulted with a noise expert to provide best management practices to control for and prevent excessive noise. Further, City Planning collaborated with LADBS, the City Attorney, and LAPD to review existing enforcement and compliance mechanisms, and considered opportunities for revocation procedures for serial violators of the permanent AI Fresco program regulations. As instructed, the Ordinance was amended to include an enforcement schema that allows for background music by-right with preventative measures for monitoring to ensure compliance with LAMC noise regulations, establishes enhanced monetary penalties for violations of the Noise Ordinance, and incorporates permit revocation procedures for noncompliance of the Outdoor Dining Area standards.

To provide LADBS with the appropriate enforcement mechanisms to investigate noise complaints due to excessive background music, operational standards include a requirement to install and maintain a qualified noise monitoring device in the Outdoor Dining Area. The device must be able to continuously monitor decibel levels, notify the operator if a decibel level threshold is exceeded, and maintain 12 consecutive months of noise monitoring data that is made available upon request by LADBS. Additionally, the device must be installed along the perimeter of the Outdoor Dining Area, closest to the most sensitive zone or use. The location of the device must be shown on plans submitted to LADBS and installation of the device will be inspected and verified by LADBS prior to permit issuance. Operators will be responsible for procuring the noise monitoring device and additional annual software subscription, estimated at approximately \$180 - 280 per year.

A series of enhanced escalating monetary fines for Administrative Citation Enforcement (ACE) Citations issued by LAPD for noise violations has also been established to serve as a financial deterrent to scofflaw operators. The ACE Program is a non-criminal approach to nuisance abatement and quality of life offenses - using fines (instead of arrest, incarceration and criminal records) - for people who violate the LAMC, and is coordinated between the Office of the City Attorney and LAPD. Escalating fines for violations are uniquely suited to address operational standards like the by-right allowance of background music, particularly where a nuisance operator habitually violates the AI Fresco Ordinance.

As such, the Ordinance includes administrative fines that start from \$1,000 for a first violation, increase to \$5,000 for a second violation, and \$8,000 for a third violation, as well as \$8,000 for each subsequent violation. Further, upon the successful imposition of an administrative fine for any combination of three violations of the Noise Ordinance or the background music operational standards, the right to play background music in the Outdoor Dining Area shall be automatically suspended for a period of 12 consecutive months. These enforcement provisions have been drafted in close consultation with LADBS, LAPD, and the City Attorney, as well as informed by the Temporary AI Fresco Program.

The initial draft presented to the CPC referenced the nuisance abatement and revocation procedures in LAMC Section 12.27.1, but were ultimately determined to be disproportionate to the subject use of outdoor dining accessory to a restaurant given that it is a very involved process that requires multiple revocation hearings. Additionally, revocation of a land use is permanent and tied to that property, not necessarily the operator.

Therefore, as the objective of the Al Fresco Ordinance is to allow Outdoor Dining Areas to be permitted by-right, a more streamlined and proportionate permit revocation process has been incorporated as an enforcement tool for LADBS. The Board of Building and Safety Commissioners may revoke a Certificate of Occupancy or a permit authorizing an Outdoor Dining Area for any combination of four or more Notice to Appear Citations, Orders to Comply, Notices of Violation and/or Administrative Citations issued by Los Angeles Police Department, Department of Building and Safety and/or other City Departments for any violation under LAMC Section 12.21 A.24 or Noise Ordinance No. 156,363.

The following operational standards for music and enforcement provisions are reflected in the Ordinance prepared and transmitted by the City Attorney:

(d) Outdoor Dining Area Standards

(1) Development Standards, Operational Requirements and Prohibitions

- (i) The Outdoor Dining Area shall have an enclosure of no more than 50 percent, except that:*
 - a. Moveable, non-permanent delineators are exempt from counting towards the maximum enclosure.*
 - b. The Outdoor Dining Area may have an enclosure of up to 100 percent if the roof coverage is no more than 25 percent.*
- (ii) Television monitors and other similar audiovisual devices are prohibited in Outdoor Dining Areas.*
- (iii) Live music, live entertainment including but not limited to disc jockeys, karaoke, dancing, pool tables, billiard tables, and adult entertainment uses are prohibited in Outdoor Dining Areas.*
- (iv) An Outdoor Dining Area shall operate no later than 10:30 p.m. on Sundays through Thursdays and 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.*
- (v) Notwithstanding any provisions to the contrary, the noise levels of the Outdoor Dining Area shall not exceed the standards set forth in the Noise Ordinance, Ordinance No. 156,363.*

- (vi) *Outdoor Dining Areas shall be cleaned nightly and adjoining sidewalk areas shall be kept free of debris, litter and graffiti.*
 - (vii) *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. 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.*
 - (viii) *A sign reminding guests to be respectful of surrounding neighbors shall be posted in the Outdoor Dining Area.*
- (2) *Background Music Allowance. Background music shall not exceed 5 dBA above ambient noise levels and shall only be permitted in compliance with the following additional standards:*
- (i) *Outdoor speakers shall be oriented toward the center of the Outdoor Dining Area.*
 - (ii) *Outdoor background music shall be played no later than 10:00 p.m.*
 - (iii) *Noise Monitoring Device. The operator shall install a noise monitoring device in the Outdoor Dining Area in accordance with the following requirements.*
 - a. *Device Standards. The noise monitoring device shall be capable of:*
 - i. *Continuously monitoring dBA levels for the duration of the Outdoor Dining Area.*
 - ii. *Sending notification to the operator in the event the dBA level exceeds the notification threshold established in guidance promulgated by the Department of City Planning.*
 - iii. *Maintaining decibel readings that can be made available upon request.*
 - b. *Device Placement. The noise monitoring device shall be located along the perimeter of the Outdoor Dining Area that is closest to the most sensitive zone or use. The operator shall indicate the location of the monitoring device in plans submitted to the Department of Building and Safety prior to approval of a permit and/or certificate of occupancy for the Outdoor Dining Area. The noise monitoring device shall remain in the approved location for the duration of the*

Outdoor Dining Area. In no event shall the noise monitoring device be covered, blocked or altered.

- c. Device Log. The operator shall maintain the noise monitoring data for a minimum of 12 consecutive months. The entirety of the noise monitoring data shall be provided to the City upon request.

(f) Enforcement

- (1) Failure to comply with any of the regulations and standards set forth herein shall constitute a violation of the Al Fresco Ordinance and may result in a citation, Administrative Citation, Orders to Comply and/or other available enforcement mechanisms identified herein or in the LAMC.
- (2) The City shall have the authority to conduct inspections, consistent with LAMC Section 98.0105, to verify compliance with all of the requirements prescribed in Section 12.21 A.24. of the LAMC. The owner and restaurant operator shall be notified of the deficiency or violation and shall be required to timely correct and eliminate the deficiency or violation.
- (3) Enforcement of the requirements pursuant to LAMC Section 12.21 A.24 is not exhaustive and the City may pursue other remedies.
- (4) Citations and/or Orders to Comply. A citation for violating LAMC Section 12.21 A.24 shall include, but is not limited to, citations issued by the Los Angeles Police Department, Orders to Comply and/or Notices of Violation issued by the Department of Building and Safety, and Administrative Citations, as further outlined herein.
 - (i) The terms "Administrative Citation", "Enforcement Officer", and "Responsible Party" shall have the same meaning as defined in Section 11.2.02 of this Code.
 - (ii) (ii) An Enforcement Officer may issue an Administrative Citation to the property owner and/or Responsible Party for any violation of LAMC Section 12.21.A.24.
- (5) Fines and Penalties for Violations. An owner and/or Responsible Party issued an Administrative Citation in violation of LAMC Section 12.21 A.24 shall be subject to the following fines:
 - (i) An administrative fine of \$1,000 for a first violation;
 - (ii) An administrative fine of \$5,000 for a second violation;
 - (iii) An administrative fine of \$8,000 for a third violation and \$8,000 for each subsequent violation.

Upon the successful imposition of an administrative fine for a third violation of LAMC Section 12.21A.24(d)(2), either because no appeal is filed or any appeal is denied, the right to play background music in the Outdoor Dining Area shall be suspended for a period of 12 consecutive months with no violations.

(6) Administrative Process Applicable to Citations. Unless otherwise specified herein, all Administrative Citations issued for violations of LAMC Section 12.21 A.24 shall be subject to the provisions set forth in Article 1.2 of Chapter I of this Code, including, but not limited to, an administrative hearing and appeal process, as set forth in LAMC Section 11.2.01, et seq., and the City's authority to use any civil remedy available to collect any unpaid administrative fine.

(7) Revocation of Outdoor Dining Areas.

(i) Definitions. As used in this subsection, the following terms are defined as follows:

- a. BOARD. The Board of Building and Safety Commissioners.
- b. DEPARTMENT. The Los Angeles Department of Building and Safety.
- c. SUPERINTENDENT. The Superintendent of Building or his or her authorized representative.

(ii) Applicability. The provisions of this subsection shall apply to every Outdoor Dining Area operating pursuant to LAMC Section 12.21 A.24 with a valid Certificate of Occupancy and a valid permit.

(iii) Revocation Proceedings Resulting from Citations and Other Enforcement Mechanisms. Regardless of any previous corrective actions and/or payments of fines and fees, any combination of four or more citations, Orders to Comply, Notices of Violation and/or Administrative Citations issued by Los Angeles Police Department, Department of Building and Safety and/or other City Departments for any violation under LAMC Section 12.21 A.24 and/or Noise Ordinance No. 156,363 may result in revocation proceedings for any Certificate of Occupancy or permits, or both, issued to authorize an Outdoor Dining Area pursuant to LAMC Section 12.21.A.24. The revocation proceedings shall be commenced by issuance of a Notice of Intent to Revoke ("Notice"), which shall be sent to the owner of the property and the restaurant operator of the Outdoor Dining Area. The Notice shall state the following:

- a. The date and place of the revocation hearing, which shall be scheduled at least 15 days and not more than 90 days from the date of issuance of the Notice.
- b. A list of all violations under LAMC Section 12.21 A.24 LAMC and/or Noise Ordinance No. 156,363 for which a citation, Order to Comply, Notice of Violation, and/or Administrative Citation was issued by Los Angeles Police Department,

Department of Building and Safety and/or other City Departments.

- c. Copies of all inspection reports related to these violations, unless the copies were previously furnished to the owner or restaurant operator.
 - d. The owner or restaurant operator is entitled to be represented by legal counsel at any revocation hearing.
- (iv) Revocation Hearing. On the date specified in the Notice, a Certificate of Occupancy and/or permit revocation hearing shall be held before the Board. The Board shall determine whether the Certificate of Occupancy, or permit, or both, shall be revoked. Revocation shall be ordered by the Board for multiple violations of LAMC Section 12.21 A.24 or Noise Ordinance No. 156,363, four or more Notice to Appear Citations, Orders to Comply, or Notice of Violation or Administrative Citations issued to the property owner of record or restaurant operator by the Los Angeles Police Department, the Department of Building and Safety or any other City Department..
- (v) In making its determination, the Board may hear from the owner, restaurant operator, or other interested party. The determination of the Board is final.
- (vi) Reversion of Uses. Upon the Board's determination to revoke any certificate of occupancy and/or permits issued to authorize an Outdoor Dining Area, the Board may order the Responsible Party to obtain all necessary permits to remove all improvements in the Outdoor Dining Area. The Board may also order the Responsible Party to obtain all necessary permits to restore the use and condition that existed prior to the development of the Outdoor Dining Area or convert the Outdoor Dining Area to a conforming use.
- (vii) Permits Suspension Period. The Board may determine that no new certificate of occupancy and/or permits authorizing an Outdoor Dining Area shall be issued for a period of up to 12 consecutive months as counted from the date the revocation determination is made by the Board.
- (viii) Each violation of the Code and each day of operation without a Certificate of Occupancy and/or building permit is a misdemeanor.
- (8) Criminal and Other Remedies Available. Any violation of LAMC Section 12.21 A.24 may be prosecuted as a misdemeanor. In cases where the City Attorney elects to criminally prosecute a violation, the defendant shall be subject to all applicable penalties authorized by LAMC Section 11.00 (m), and not the administrative fines authorized by this section.

The 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 AI Fresco operators during the pandemic. It should be noted that music is not permitted in an Outdoor Dining Area with a Temporary AI Fresco Authorization, therefore, no standards or best management practices for music were established previously.

For the proposed Permanent AI 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 AI 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 is attached for consideration in **Exhibit A**. 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.

The Alternative Ordinance has been reviewed for form and legality by the Office of the City Attorney. For purposes of expediting the process to provide for a more streamlined process, the City Council can adopt this Alternative Ordinance.

Instruction 8: Hotline

On June 6, 2023 PLUM deliberations resulted in instructions to provide additional resources for use by the public to ensure compliance with the program standards. The instructions were as follows:

8. Instructed the LADBS as follows:

- a. 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.*

b. A hotline phone number and contact information of the LADBS Code Enforcement shall be provided for complaints or concerns regarding the operation of the outdoor dining area.

While the City-issued identification placard was previously included within the proposed ordinance prior to PLUM, the addition of the hotline has been added to the revised Ordinance and reads as follows:

(vi) 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. 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 standard is maintained verbatim in the Alternative Ordinance attached in Exhibit A.

Instruction 9: Form and Legality Ordinance Allowing Music

Lastly, the PLUM Committee, at the June 6, 2023 meeting, instructed the City Attorney to prepare and present the Al Fresco Ordinance as to Form and Legality and to allow background music in the Outdoor Dining Area as follows:

9. Requested the City Attorney to prepare and present the draft Al 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 Al Fresco Ordinance be modified to allow ambient music in outdoor dining areas in compliance with LAMC Section 112.01 (Noise Regulation).

Additional analysis that informed the standards regulating noise in an Outdoor Dining Area was provided by a noise consultant retained by City Planning to provide expert analysis on the allowance of background music in the Ordinance. Michael Baker International (MBI) conducted a peer review of the City's Negative Declaration and recommended best management practices, which are detailed in a memo dated October 26, 2023, attached as Exhibit A of the Errata to Initial Study/Negative Declaration, and have been incorporated into the proposed Ordinance.

As detailed earlier in the report under Instruction 6: Enforcement, the following operational standards regarding background music are included in the Ordinance transmitted by the Office of the City Attorney:

- (2) Background Music Allowance. Background music shall not exceed 5 dBA above ambient noise levels and shall only be permitted in compliance with the following additional standards:*
 - (i) Outdoor speakers shall be oriented toward the center of the Outdoor Dining Area.*
 - (ii) Outdoor background music shall be played no later than 10:00 p.m.*

- (iii) Noise Monitoring Device. The restaurant operator shall install a noise monitoring device in the Outdoor Dining Area in accordance with the following requirements.
- a. Device Standards. The noise monitoring device shall be capable of:
 - i. Continuously monitoring dBA levels for the life of the Outdoor Dining Area.
 - ii. Sending notifications to the restaurant operator in the event the dBA level exceeds the notification threshold established in guidance promulgated by the Department of City Planning.
 - iii. Maintaining decibel readings that can be made available upon request.
 - b. Device Placement. The noise monitoring device shall be located along the perimeter of the Outdoor Dining Area that is closest to the most sensitive zone or use. The restaurant operator shall indicate the location of the monitoring device in plans submitted to the Department of Building and Safety prior to approval of a permit and/or certificate of occupancy for the Outdoor Dining Area. The noise monitoring device shall remain in the approved location for the life of the Outdoor Dining Area. In no event shall the noise monitoring device be covered, blocked or altered.
 - c. Device Log. The restaurant operator shall maintain the noise monitoring data for a minimum of 12 consecutive months. The entirety of the noise monitoring data shall be provided to the City upon request.

The standard requiring the installation of noise monitoring devices evolved from the noise consultant's recommended best management practice of requiring operators to keep a daily log of noise level measurements of their Outdoor Dining Area. After discussions with LADBS and LAPD to consider the feasibility of implementation and enforcement of such a best management practice, it was determined that requiring operators to manually take noise measurements and keep a daily log was impractical and potentially susceptible to data manipulation. As such, City departments identified noise monitoring devices as a technological tool which could provide continuous automated noise monitoring services, including during nighttime hours, as well as secure record keeping. Importantly, the use of noise monitoring devices would limit the potential for variable and subjective noise level measurements by individual restaurant operators or neighbors, and assist City departments when following up on noise complaints to verify that a violation of the City's noise regulations had indeed occurred on a property.

However, as described in previous sections, City Planning does not recommend allowing background music by-right in an Outdoor Dining Area after consideration of the public comments received and the inability to maintain a streamlined approach for operators to transition into a permanent Al Fresco program. As such, City Planning has prepared an Alternative Ordinance (**Exhibit A**) which maintains the most essential qualities of an outdoor dining program with the opportunity for individual operators to apply to play background music in an Outdoor Dining Area through a discretionary Conditional Use Permit. In doing so, the Alternative Ordinance removes onerous permitting hurdles and operational standards for operators that would otherwise be required if background music were allowed by-right citywide. The Alternative Ordinance has been reviewed for form and legality by the Office of the City Attorney and can be adopted by City Council. The recommended modifications are described below:

(e) Administration

(2) Waiver.

- (ii) Relief from the Outdoor Dining Area background music and speakers prohibition in LAMC Section 12.21 A.24(d)(1)(ii) may be requested through a Conditional Use Permit pursuant to LAMC Section 12.24 W.32.*

12.24 W.32

Outdoor Dining Areas that Deviate from the Standards Set Forth in LAMC Section 12.21.A.24.(d)(1)(i) and (ii) But Maintain a Valid Certificate of Occupancy or Valid Permit Issued by LADBS for an Outdoor Dining Area in the RAS3, RAS4, CR, C1, C1.5, C2, C4, C5, CM, M1, M2, and M3 Zones or wherever restaurants are permitted.

2. SUMMARY OF ENVIRONMENTAL ANALYSIS

An initial draft of the Proposed Ordinance along with a Categorical Exemption, prepared for the Ordinance pursuant to State CEQA Guidelines Section 15303, Class 3 (New Construction or Conversion of Small Structures) and Section 15311, Class 11 (Accessory Structures), as well as a statutory exemption pursuant to Section 21080.25 of the State's Public Resources Code, were presented to the CPC on April 27, 2023. As the draft Proposed Ordinance considered by the CPC did not allow background music, the corresponding environmental documents for the proposed project did not include analysis of such an additional project feature at the time. Subsequently, the CPC approved and recommended adoption of the Proposed Ordinance with instructions to City Planning to report to the City Council with recommendations for allowing background music to be played in outdoor dining areas, including an analysis of any potential noise impacts consistent with the requirements of the CEQA. Accordingly, City Planning prepared an Initial Study/Negative Declaration (IS/ND) under Case No. ENV-2023-3278-ND in accordance with CEQA (Public Resources Code §21000 et seq.) and the State CEQA Guidelines (Title 14, California Code of Regulations, §15000 et seq.) in May 2023, for the City Council's consideration on the matter. The 30-day circulation period for public review and comment on the Initial Study/Negative Declaration (IS/ND) was from May 18, 2023 to June 20, 2023, during which 44 comments were received.

Subsequent to the circulation of the IS/ND for public comments, the Proposed Ordinance and IS/ND were presented to the PLUM Committee of the City Council for consideration at its meeting on June 6, 2023. At the meeting, PLUM directed City Planning to further modify the Ordinance as described in the above “**1. DISCUSSION OF PLUM INSTRUCTION**” section of this report. Accordingly, City Planning modified the Proposed Ordinance and prepared another version referred to as the Draft AI Fresco Ordinance that allows background music in outdoor dining areas. Additionally, in October 2023, Michael Baker International (MBI) analyzed the noise impact analyses in the IS/ND and provided a Peer Review recommending minor revisions to the IS/ND to bolster the analyses and inclusion of best management practices (BMP) in the IS/ND and the Draft AI Fresco Ordinance. The BMPs have been incorporated into the Draft AI Fresco Ordinance, and an Errata has been prepared and transmitted to the Council File to document all necessary revisions to the IS/ND resulting from modifications to the Proposed Ordinance and MBI’s Peer Review. The Errata also contains minor revisions to the IS/ND resulting from the inadvertent omission of Attachment B and mislabeling of Attachments in the IS/ND, while providing supplemental information and environmental impact analysis for the City decision-makers and the public.

Additionally, as mentioned in this report, City Planning prepared an alternative version of the Draft AI Fresco Ordinance that includes all of the PLUM instructions in the July 28, 2023 Letter, except those related to the allowance and enforcement of by-right background music (Alternative Ordinance attached as **Exhibit A**). The Errata also provides a noise impact analysis of the Alternative Ordinance.

The Errata concludes that the modifications to the Proposed Project and minor revisions and clarifications to the IS/ND include in the Errata do not represent substantial revisions that would require recirculation of the IS/ND pursuant to State CEQA Guidelines Section 15073.5, and the Proposed Project will continue to have less-than-significant impacts. The original IS/ND, the Errata and Exhibits attached to the Errata comprise the Final IS/ND for the Proposed Ordinance.

3. DISCUSSION OF PUBLIC COMMENT

The 30-day circulation period for public review and comment on the Initial Study/Negative Declaration (IS/ND) was from May 18, 2023 to June 20, 2023, during which 44 total public comments were received via email or submitted to the Council File, with 33 of those comments including reference to noise at an AI Fresco business. The number of comments received related to the topic of noise prior to the IS/ND circulation period commenced on May 18, 2023 was 25, and another 17 comments were received after the close of the IS/ND circulation period. A collective response to comments can be found as an exhibit to the Errata transmitted to the Council File.

CONCLUSION

In sum, based on PLUM's instructions, public feedback, consultation with noise experts, collaboration with LADBS, LAPD, and the City Attorney, and consideration of the overall policy objective of streamlining the process for restaurants to provide outdoor dining on private property, the Department of City Planning recommends the City Council adopt the Alternative Ordinance attached as **Exhibit A**, which has been reviewed and approved by the City Attorney as to form and legality, along with the associated findings attached as **Exhibit B**. If you have any questions, please contact Bonnie Kim, City Planner, at bonnie.kim@lacity.org.

Sincerely,



VINCENT P. BERTONI, AICP
Director of Planning

VPB:AV:hsc:nc:bk:rja

ENCLOSURES

- Exhibit A - Alternative Ordinance
- Exhibit B - Amended Findings for Alternative Ordinance

ORDINANCE NO. _____

An 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 Zoning Code regulations to create a permanent Al Fresco Program for outdoor dining on private property.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. The following definition in Section 12.03 of Article 2 of Chapter 1 of the LAMC is amended to read as follows:

FLOOR AREA. The area in square feet confined within the exterior walls of a Building, but not including the area of the following: exterior walls, stairways, shafts, rooms housing Building-operating equipment or machinery, parking areas with associated driveways and ramps, space dedicated to bicycle parking, space for the landing and storage of helicopters, Outdoor Dining Areas, and Basement storage areas. Buildings on properties zoned RA, RE, RS, and R1, except properties in the Coastal Zone which are not designated as Hillside Area, are subject to the definition of Residential Floor Area.

Sec. 2. The following definition is added to Section 12.03 of Article 2 of Chapter 1 of the LAMC in alphabetical order to read as follows:

OUTDOOR DINING AREA. A covered or uncovered, but not fully enclosed area which may include but is not limited to an open-to-sky parking area, patio, courtyard, or plaza, that is located in a space within the same lot as the restaurant to which it serves as an accessory use, but is outside of the enclosed building or structure in which the restaurant is located, and is used for the service and consumption of food and drinks by the patrons of the restaurant.

Sec. 3. Subdivision 2. of Subsection B. of Section 12.10.5 of Article 2 of Chapter 1 of the LAMC is amended to read as follows:

2. All activities are conducted wholly within an enclosed building, except that restaurants may have Outdoor Dining Areas.

Sec. 4. Subdivision 2. of Subsection B. of Section 12.11.5 of Article 2 of Chapter 1 of the LAMC shall be amended to read as follows:

2. All activities are conducted wholly within an enclosed building, except that restaurants may have Outdoor Dining Areas.

Sec. 5. Subdivision 13. of Subsection A. of Section 12.12.2 of Article 2 of Chapter 1 of the LAMC is amended to read as follows:

13. Restaurant, when conducted within a permitted office building, provided: that entrances to the restaurant are located inside of the building; that no sign or other form of advertising is visible from outside the office building; that no sign or other form of advertising is utilized in any manner whatsoever outside of the building as a means of advertising the restaurant; that the restaurant remains open for business only between the hours of 7 a.m. to 8 p.m., Monday through Saturday; and that no entertainment or dancing is conducted or permitted. Notwithstanding the foregoing, Outdoor Dining Areas are permitted.

Sec. 6. Subparagraph 2. of Paragraph (b) of Subdivision 2 of Subsection A. of Section 12.13 of Article 2 of Chapter 1 of the LAMC shall be amended to read as follows:

(2) All activities are conducted wholly within an enclosed building, except that restaurants may have Outdoor Dining Areas.

Sec. 7. Subparagraph (3) of Paragraph (b) of Subdivision 2. of Subsection A of Section 12.13.5 of Article 2 of Chapter 1 of the LAMC is amended to read as follows:

(3) All activities, including storage, with the exception of Outdoor Dining Areas, shall be conducted wholly within an enclosed building.

Sec. 8. Subparagraph (10) of Paragraph (a) of Subdivision 1. of Subsection A. of Section 12.14 of Article 2 of Chapter 1 of the LAMC is amended to read as follows:

(10) Restaurant, tea room or cafe (including entertainment other than dancing) or a restaurant with an Outdoor Dining Area.

Sec. 9. A new Subdivision 24. is added to Subsection A. of Section 12.21. of Article 2 of Chapter 1 of the LAMC to read as follows:

24. Outdoor Dining Area Regulations for Restaurants (Al Fresco Ordinance).

(a) **Purpose.** The purpose of this section is to establish eligibility, development, and operational standards to facilitate Outdoor Dining Areas to support public health, safety, and welfare.

(b) **Applicability.** Outdoor Dining Areas on private property in all RAS, C, and M zones, or wherever restaurants are allowed, shall be permitted pursuant to the regulations in this Subsection. This ordinance and the Outdoor Dining Area standards expressed herein may, at the

applicant's request, supersede conditions associated with outdoor dining which were previously applied under a discretionary approval.

(c) **Eligibility.** A restaurant that currently provides and/or proposes to offer Outdoor Dining Areas shall have all necessary permits, including a certificate of occupancy, to operate a restaurant. A restaurant operator, however, that has been the subject of a wage claim under LAMC Section 188.00, et seq. (Los Angeles Office of Wage Standards Ordinance) that has resulted in an adverse order, decision, or award shall be ineligible.

(1) **Hazardous Site Assessment.** If the Outdoor Dining Area involves soil disturbance on land that is a known hazardous materials release site listed on the Hazardous Waste and Substances Sites Cortese List, the operator shall prepare a Phase I Environmental Site Assessment (ESA) and, if needed, a Phase II ESA and shall comply with any necessary remediation(s). A "No Further Action" letter, or some other comparable documentation issued by the appropriate regulatory agency shall be required in order for the restaurant operator to be eligible for the AI Fresco Program.

(2) **Historic-Cultural Monument (HCM) and Historic Preservation Overlay Zones.** Properties that have either been designated as an HCM, pursuant to LAAC Section 22.171 (Cultural Heritage Ordinance), or are located within a Historic Preservation Overlay Zones, pursuant to LAMC Section 12.20.3 (HPOZ Ordinance) may be eligible for the AI Fresco Ordinance, but shall be required to comply with the requirements and processes set forth in the Cultural Heritage Ordinance and the HPOZ Ordinance.

(d) **Outdoor Dining Area Standards.**

(1) **Development Standards, Operational Requirements and Prohibitions.**

(i) The Outdoor Dining Area shall have an enclosure of no more than 50 percent, except that:

a. Moveable, non-permanent delineators are exempt from counting towards the maximum enclosure.

b. The Outdoor Dining Area may have an enclosure of up to 100 percent if the roof coverage is no more than 25 percent.

(ii) Background music and speakers are prohibited in Outdoor Dining Areas.

(iii) Television monitors and other similar audiovisual devices are prohibited in Outdoor Dining Areas.

(iv) Live music, live entertainment including but not limited to disc jockeys, karaoke, dancing, pool tables, billiard tables, and adult entertainment uses are prohibited in Outdoor Dining Areas.

(v) 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.

(vi) Notwithstanding any provisions to the contrary, the noise levels of the Outdoor Dining Area shall not exceed the standards set forth in the Noise Ordinance (Ordinance No. 156,363).

(vii) Outdoor Dining Areas shall be cleaned nightly and adjoining sidewalk areas shall be kept free of debris, litter, and graffiti.

(viii) 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. 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.

(ix) A sign reminding guests to be respectful of surrounding neighbors shall be posted in the Outdoor Dining Area.

(2) **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.

(3) **Alcohol Service Standards.**

(i) In addition to all the standards listed above in LAMC Section 12.21 A.24.(d)(1) and (2), all of the following standards apply when alcohol service is provided in an Outdoor Dining Area on private property pursuant to the administrative alcohol authorization process in LAMC Section 12.21 A.24(e) below:

a. All alcohol shall be delivered to and served at tables by employees.

b. All patrons shall be seated.

c. Only fixed or portable bars not used as a point of sale are permitted in an Outdoor Dining Area.

(ii) When a revocable permit is issued for outdoor dining in the public right-of-way and alcohol service is proposed pursuant to the administrative alcohol authorization process in LAMC Section 12.21 A.24(e) below, all the following standards apply:

a. All alcohol shall be delivered to and served at tables by employees.

b. All patrons shall be seated.

c. Only fixed or portable bars not used as a point of sale are permitted in an Outdoor Dining Area.

(e) **Administration.**

(1) **Alcohol Authorizations.** Notwithstanding the provisions of LAMC Section 12.24 W.1, modifications or expansions of alcohol service for an Outdoor Dining Area may be authorized pursuant to this Subsection through an administrative verification process. No fee shall be charged for administrative verification of Al Fresco deemed approved status. Deemed approved status must be obtained within six months of the expiration of the previously-issued temporary authorization (LA Al Fresco authorization).

(i) Restaurants shall be considered deemed approved and authorized to continue operations in compliance with the standards listed above in LAMC Section 12.21 A.24.(d) if the restaurant operator continually meets all the following eligibility criteria:

a. Have a valid LA Al Fresco authorization issued or renewed as of the effective date of this Ordinance that has not been previously revoked for violations;

b. Have a valid approval for alcohol service from the Department of City Planning or have existing alcohol sales with no conditional use approval prior to March 1, 1977; and

c. Have a license to sell alcohol from the California Department of Alcoholic Beverage Control; and

d. Is not subject to any of the enforcement mechanisms set forth in Paragraph (f) that, upon further investigation by the City, result in a citation, the imposition of fines or penalties, or revocation.

(ii) Restaurants that did not receive deemed approved status shall be authorized to serve alcohol in Outdoor Dining Areas pursuant to an Expanded Outdoor Dining Area clearance issued pursuant to this section, in compliance with the standards listed above in LAMC Section 12.21 A.24.(d) if the restaurant operator continually meets the all the following eligibility criteria:

a. The "Building Permit Clearance - Minor" fee, pursuant to LAMC Section 19.04 of this Code,

shall be paid prior to the issuance of an Expanded Outdoor Dining Area clearance.

b. Have a valid approval for alcohol service from the Department of City Planning or have existing alcohol sales with no conditional use approval prior to March 1, 1977;

c. Have a license to sell alcohol from the California Department of Alcoholic Beverage Control; and

d. Is not subject to any of the enforcement mechanisms set forth in Paragraph (f) that, upon further investigation by the City, result in a citation, the imposition of fines or penalties, or revocation.

(2) Waiver.

(i) Relief from the Outdoor Dining Area enclosure standard in LAMC Section 12.21 A.24(d)(1)(i) may be requested through the approval of plans on the original discretionary entitlement pursuant to LAMC Section 12.24 M. If there is no original discretionary entitlement, relief may be requested through a Conditional Use Permit pursuant to LAMC Section 12.24 W.32.

(ii) Relief from the Outdoor Dining Area background music and speakers prohibition in LAMC Section 12.21 A.24(d)(1)(ii) may be requested through a Conditional Use Permit pursuant to LAMC Section 12.24 W.32.

(f) Enforcement.

(1) Failure to comply with any of the regulations and standards set forth herein shall constitute a violation of the AI Fresco Ordinance and may result in a citation, Administrative Citation, Orders to Comply and/or other available enforcement mechanisms identified herein or in the LAMC.

(2) The City shall have the authority to conduct inspections, consistent with LAMC Section 98.0105, to verify compliance with all of the requirements prescribed in LAMC Section 12.21 A.24. The owner and restaurant operator shall be notified of

the deficiency or violation and shall be required to timely correct and eliminate the deficiency or violation.

(3) Enforcement of the requirements pursuant to LAMC Section 12.21 A.24 is not exhaustive and the City may pursue other remedies.

(4) Citations and/or Orders to Comply. A citation for violating LAMC Section 12.21 A.24 shall include, but is not limited to, Administrative Citations and/or Notice to Appear Citations issued by the Los Angeles Police Department, and Orders to Comply and/or Notices of Violation issued by the Department of Building and Safety.

(5) Administrative Process Applicable to Administrative Citations. Unless otherwise specified herein, all Administrative Citations issued for violations of LAMC Section 12.21 A.24 shall be subject to the provisions set forth in Article 1.2 of Chapter I of this Code, including, but not limited to, an administrative hearing and appeal process as set forth in LAMC Section 11.2.01, et seq., and the City's authority to use any civil remedy available to collect any unpaid administrative fine.

(6) **Revocation of Outdoor Dining Areas.**

(i) **Definitions.** As used in this subsection, the following terms are defined as follows:

a. **BOARD.** The Board of Building and Safety Commissioners.

b. **DEPARTMENT.** The Los Angeles Department of Building and Safety.

c. **SUPERINTENDENT.** The Superintendent of Building or his or her authorized representative.

(ii) **Applicability.** The provisions of this subsection shall apply to every Outdoor Dining Area operating pursuant to LAMC Section 12.21 A.24 with a valid Certificate of Occupancy and a valid permit.

(iii) **Revocation Proceedings Resulting from Citations and Other Enforcement Mechanisms.** Regardless of any previous corrective actions or payments

of fines and fees, any combination of four or more Notice to Appear Citations, Orders to Comply, Notices of Violation or Administrative Citations issued by Los Angeles Police Department, Department of Building and Safety or other City Departments for any violation under LAMC Section 12.21 A.24 or the Noise Ordinance may result in revocation proceedings for any Certificate of Occupancy or permits, or both, issued to authorize an Outdoor Dining Area pursuant to LAMC Section 12.21 A.24. The revocation proceedings shall be commenced by issuance of a Notice of Intent to Revoke ("Notice"), which shall be sent to the owner of the property and the restaurant operator of the Outdoor Dining Area. The Notice shall state the following:

a. The date and place of the revocation hearing, which shall be scheduled at least 15 days and not more than 90 days from the date of issuance of the Notice.

b. A list of all violations under LAMC Section 12.21 A.24 LAMC or the Noise Ordinance for which a Notice to Appear Citation, Order to Comply, Notice of Violation, or Administrative Citation was issued by Los Angeles Police Department, Department of Building and Safety or other City Department.

c. Copies of all Notice to Appear Citations, Orders to Comply, Notices of Violation and Administrative Citations related to these violations, unless the copies were previously furnished to the owner or restaurant operator.

d. The owner or restaurant operator is entitled to be represented by legal counsel at any revocation hearing.

(iv) **Revocation Hearing.** On the date specified in the Notice, a revocation hearing shall be held before the Board. The Board shall determine whether the Certificate of Occupancy or permit, or both, shall be revoked. Revocation shall be ordered by the Board for multiple violations of LAMC Section 12.21 A.24 or the Noise Ordinance, four or more Notice to Appear Citations, Orders to Comply, or Notice of Violation or Administrative Citations issued to the property owner of record or restaurant operator by the Los Angeles

Police Department, the Department of Building and Safety or any other City Department.

(v) In making its determination, the Board may hear from the owner, restaurant operator, or other interested party. The determination of the Board is final.

(vi) **Reversion of Uses.** Upon the Board's determination to revoke any Certificate of Occupancy or permits issued to authorize an Outdoor Dining Area, the Board may order the owner or restaurant operator to obtain all necessary permits to remove all improvements in the Outdoor Dining Area. The Board may also order the restaurant operator to obtain all necessary permits to restore the use and condition that existed prior to the development of the Outdoor Dining Area or convert the Outdoor Dining Area to a conforming use.

(vii) **Permits Suspension Period.** The Board may determine that no new Certificate of Occupancy or permits authorizing an Outdoor Dining Area shall be issued for a period of up to 12 consecutive months, as counted from the date the revocation determination is made by the Board.

(viii) Each violation of the Code and each day of operation without a Certificate of Occupancy or a building permit is a misdemeanor.

(7) **Criminal and Other Remedies Available.** Any violation of LAMC Section 12.21 A.24 may be prosecuted as a misdemeanor. In cases where the City Attorney elects to criminally prosecute a violation, the defendant shall be subject to all applicable penalties authorized by LAMC Section 11.00 (m), and not the administrative fines authorized by this section.

(g) **Relationship to Other Zoning Provisions.** An Outdoor Dining Area shall not be considered a project nor require any design review procedures under any Specific Plan, Supplemental Use District, or other overlay, except for Historic Preservation Overlay Zones (HPOZs) pursuant to LAMC Section 12.20.3, including but not limited to the Ordinances listed by number below. Furthermore, the Outdoor Dining Area Standards in LAMC Section 12.21 A.24(d) shall prevail and supersede any conflicting provisions found in any Specific Plans, Supplemental Use Districts, or other overlays, except HPOZs, or Chapter I of this Code.

RECOMMENDED ALTERNATIVE ORDINANCE
Exhibit A to City Planning's 11/2/2023 Supplemental Report

- (1) 171,139 (Alameda District Specific Plan)
- (2) 174,663 (Avenue 57 Transit Oriented District)
- (3) 182,576 (Bunker Hill Specific Plan)
- (4) 156,122 (Century City North Specific Plan)
- (5) 186,370 (Century City West Specific Plan)
- (6) 168,862 (Century City South Specific Plan)
- (7) 170,046 (Coastal Bluffs Specific Plan)
- (8) 186,105 (Coastal Transportation Corridor Specific Plan)
- (9) 185,042 (Coliseum District Specific Plan)
- (10) 178,098 (Colorado Boulevard Specific Plan)
- (11) 182,617 (Cornfield Arroyo Seco Specific Plan)
- (12) 184,795 (Crenshaw Corridor Specific Plan)
- (13) 168,937 (Devonshire/Topanga Corridor Specific Plan)
- (14) 186,402 (Exposition Corridor Transit Neighborhood Plan)
- (15) 170,694 (Foothill Boulevard Corridor Specific Plan)
- (16) 171,946 (Glencoe/Maxella Specific Plan)
- (17) 184,296 (Granada Hills Specific Plan)
- (18) 168,121 (Hollywoodland Specific Plan)
- (19) 184,346 (Jordan Downs Urban Village Specific Plan)
- (20) 167,940 (Los Angeles Airport/El Segundo Dunes Specific
Plan)
- (21) 185,164 (Los Angeles International Airport (LAX) Specific
Plan)
- (22) 181,334 (Los Angeles Sports and Entertainment District
Specific Plan)

RECOMMENDED ALTERNATIVE ORDINANCE
Exhibit A to City Planning's 11/2/2023 Supplemental Report

- (23) 181,605 (Loyola Marymount University Specific Plan)
- (24) 167,943 (Mulholland Scenic Parkway Specific Plan)
- (25) 171,128 (North University Park Hills Specific Plan)
- (26) 163,202 (North Westwood Village Specific Plan)
- (27) 170,155 (Oxford Triangle Specific Plan)
- (28) 184,371 (Pacific Palisades Commercial Village and Neighborhood Specific Plan)
- (29) 184,539 (Paramount Pictures Specific Plan)
- (30) 162,530 (Park Mile Specific Plan)
- (31) 165,638 (Playa Vista Area B Specific Plan)
- (32) 165,639 (Playa Vista Area C Specific Plan)
- (33) 176,235 (Playa Vista Area D Specific Plan)
- (34) 180,083 (Porter Ranch Land Use/Transportation Specific Plan)
- (35) 175,736 (San Gabriel/Verdugo Mountains Scenic Preservation Specific Plan)
- (36) 166,352 (San Pedro Specific Plan)
- (37) 173,381 (San Vicente Scenic Corridor Specific Plan)
- (38) 182,343 (University of Southern California University Park Campus Specific Plan)
- (39) 168,613 (Valley Village Specific Plan)
- (40) 175,693 (Venice Coastal Zone Specific Plan)
- (41) 174,052 (Ventura-Cahuenga Boulevard Corridor Specific Plan)
- (42) 173,749 (Vermont/Western Transit Oriented District Specific Plan (Station Neighborhood Area Plan))

RECOMMENDED ALTERNATIVE ORDINANCE
Exhibit A to City Planning's 11/2/2023 Supplemental Report

- (43) 182,766 (Warner Center 2035 Plan)
- (44) 186,108 (West Los Angeles Transportation Improvement and Mitigation Specific Plan)
- (45) 187,644 (Westwood Village Specific Plan, Westwood Community Design Review Board Specific Plan)
- (46) 155,044 (Wilshire - Westwood Scenic Corridor Specific Plan)
- (47) 185,539 (San Pedro CPIO District)
- (48) 185,927 (South Los Angeles CPIO District)
- (49) 185,925 (Southeast Los Angeles CPIO District)
- (50) 184,268 (Sylmar CPIO District)
- (51) 184,794 (West Adams-Baldwin Hills-Leimert CPIO District)
- (52) 187,155 (Westchester - Playa del Rey CPIO District)
- (53) 180,871 (Broadway Theater and Entertainment District Design Guide)
- (54) 174,519 (Canoga Park-Commercial Corridor CDO District)
- (55) 108,561 (Cypress Park & Glassell Park CDO)
- (56) 173,508 (Downtown Canoga Park CDO District)
- (57) 179,907 (Downtown Westchester CDO District)
- (58) 180,880 (Echo Park CDO District)
- (59) 178,157 (Fletcher Square CDO District)
- (60) 179,906 (Lincoln Boulevard CDO District)
- (61) 176,658 (Lincoln Heights CDO District)
- (62) 183,011 (Little Tokyo CDO District)
- (63) 180,797 (Loyola Village CDO District)
- (64) 176,331 (Miracle Mile CDO District)

RECOMMENDED ALTERNATIVE ORDINANCE
Exhibit A to City Planning's 11/2/2023 Supplemental Report

- (65) 175,545 (Pacoima CDO District)
- (66) 175,549 (Panorama City CDO)
- (67) 176,557 (Reseda Central Business District CDO District)
- (68) 174,398 (Sun Valley CDO District)
- (69) 184,366 (Toluca Lake Village CDO)
- (70) 174,420 (Van Nuys Central Business District CDO District)
- (71) 174,161 (West Wilshire Boulevard CDO District)
- (72) 173,676 (Atwater Village POD)
- (73) 171,859 (Westwood/Pico NOD)
- (74) 174,260 (Westwood Boulevard POD)

Sec. 10. Subdivision 5. of Subsection A. of Section 12.21.1 of Article 2 of Chapter 1 of the LAMC is amended to read as follows:

5. In computing the total floor area within a building, the gross area confined within the exterior walls within a building shall be considered as the floor area of that building, except for the space devoted to bicycle parking, stairways, elevator shafts, light courts, rooms housing mechanical equipment incidental to the operation of buildings, and Outdoor Dining Areas.

Sec. 11. Subparagraph (5) of Paragraph (a) of Subdivision 34. of Subsection A. of Section 12.22 of Article 2 of Chapter 1 of the LAMC is amended to read as follows:

(5) The restaurant shall have between a minimum of 10 patron seats and a maximum of 150 patron seats, including any outdoor seating.

Exemption. Outdoor Dining Areas pursuant to 12.21 A.24 shall be exempt from the above outdoor seating limitation.

Sec. 12. Subparagraph (4) of Paragraph (b) of Subdivision 34. of Subsection A. of Section 12.22 of Article 2 of Chapter 1 of the LAMC is amended to read as follows:

(4) For properties abutting or across an alley from an A or R zoned lot:

RECOMMENDED ALTERNATIVE ORDINANCE
Exhibit A to City Planning's 11/2/2023 Supplemental Report

(i) a wholly enclosed building, at least 8 feet in height above grade and extending at least the full length of the outdoor dining area, shall be located between the outdoor dining area and an A or R zoned lot that may or may not be separated by an alley. This requirement shall not apply to outdoor dining permitted on a public sidewalk by a revocable permit issued by the Bureau of Engineering, Department of Public Works; and

(ii) outdoor seating shall be limited to the ground floor only.

Exemption. Outdoor Dining Areas pursuant to LAMC Section 12.21 A.24 shall be exempt from the above standards.

Sec. 13. Subparagraph (6) of Paragraph (e) of Subdivision 34. of Subsection A. of Section 12.22 of Article 2 of Chapter 1 of the LAMC is amended to read as follows:

(6) The owner or the operator of the restaurant shall reapply for the administrative clearance if there is:

(i) a change in State alcohol license type;

(ii) a modification to the floor plan, including, but not limited to, floor area or number of seats, or a modification to outdoor seating**; or

(iii) a change in the ownership or the operator or the operator of the restaurant.

****Exemption.** Modification to the number of seats or outdoor seating for the purposes of Outdoor Dining Areas pursuant to LAMC Section 12.21 A.24 shall not require reapplication.

Sec. 14. A new Paragraph (e) is added to Subdivision 1. of Subsection W. of Section 12.24 of Article 2 of Chapter 1 of the LAMC as follows:

(e) **Exceptions.** Notwithstanding Paragraph (d) above, conditional use approval or a plan approval shall not be required solely for the purposes of providing an Outdoor Dining Area pursuant to LAMC Section 12.21 A.24.

Sec. 15. Subdivision 32. of Subsection W. of Section 12.24 of Article 2 of Chapter 1 of the LAMC is amended to read as follows:

32. Outdoor Dining Areas that Deviate from the Standards Set Forth in LAMC Section 12.21.A.24.(d)(1)(i) and (ii) But Maintain a Valid Certificate of Occupancy or Valid Permit Issued by LADBS for an Outdoor Dining Area in the RAS3, RAS4, CR, C1, C1.5, C2, C4, C5, CM, M1, M2, and M3 Zones or wherever restaurants are permitted.

Sec. 16. Subdivision 2. of Subsection D. of Section 16.02.1 of Article 6 of Chapter 1 of the LAMC is amended to read as follows:

2. **Outdoor Dining Areas.** Notwithstanding any provisions of this Code or any Zoning Administrator interpretations of this Code to the contrary, any new or expanded Outdoor Dining Areas shall not require any automobile parking, and the maintenance of existing automobile parking shall not be required for any portion of the parking lot utilized for an approved Outdoor Dining Area during the period that these provisions are invoked, pursuant to this section, if the following requirements are met:

(a) **Eligibility.** Only permitted establishments with verifiable indoor seating for on-premises dining are eligible for the relief provided within this subdivision.

(b) **Consistency.** The relief provided in this subdivision is limited to the automobile parking provisions enumerated herein, and the project shall otherwise be consistent with this Code and the General Plan.

(c) **Termination.** Whenever the provisions of this section cease to apply, the automobile parking requirements that existed prior to the declaration of the local emergency shall be met, and any Outdoor Dining Areas shall comply with this Code and any applicable Specific Plan, notwithstanding this Section.

Sec. 17. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

HYDEE FELDSTEIN SOTO, City Attorney

By 
KIMBERLY HUANGFU
Deputy City Attorney

Date November 2, 2023

File No. _____

Pursuant to Charter Section 559, I **disapprove** this ordinance on behalf of the City Planning Commission and recommend that it **not** be adopted.


VINCENT P. BERTONI, AICP
Director of Planning

Date November 3, 2023

[m:\real prop_env_land use\land use\kimberly huangfu\ordinances\al fresco\final transmittal\2023.11.1\23.11.01 alternative al fresco ord (no music) final draft.docx]

The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles, **by a vote of not less than two-thirds** of all its members.

CITY CLERK

MAYOR

Ordinance Passed _____

Approved _____

EXHIBIT B

FINDINGS FOR ALTERNATIVE ORDINANCE CF 20-1074-S4

Land Use Findings

Charter Finding 556 (General Plan). In accordance with City Charter Section 556, the proposed Ordinance is in substantial conformance with the purposes, intent, and provisions of the General Plan.

The City established the temporary L.A. Al Fresco Program in May 2020 in response to the COVID-19 pandemic and local state of emergency to allow restaurants to operate outdoor dining areas through a free streamlined application process. Following the success of L.A. Al Fresco, the City drafted a proposed Ordinance that would create a permanent administrative “by-right” approval process for outdoor dining areas on private property and ensure that existing participants are able to continue operations with their current approvals. Background music as an ancillary use of the Outdoor Dining Area, however, would only be permitted pursuant to a discretionary Conditional Use Permit.

Both participating and new restaurants will be able to expand outdoor dining areas by-right if they comply with the proposed Ordinance’s standards for eligibility, operations, and, if applicable, alcohol service. These standards replace certain Zoning Code restrictions on outdoor dining on private property while balancing the desire for outdoor dining in relation to neighbors, other sensitive receptors and residential areas. By facilitating the expansion of outdoor dining, the proposed Ordinance aims to beautify, expand street use, and improve governmental services as prioritized in various elements of the General Plan.

This proposed Ordinance furthers the following objectives and policies of the General Plan:

| |
|--|
| Land Use (Chapter 3) |
| Policy 3.4.3 Establish incentives for the attraction of growth and development in the districts, centers, and mixed-use boulevards targeted for growth that may include: d. Streamlined development review processes f. Modified parking requirements in areas in proximity to transit or other standards that reduce the cost of development |
| Economic Development (Chapter 7) |

Objective 7.4 Improve the provision of governmental services, expedite the administrative processing of development applications, and minimize public and private development application costs.

Policy 7.4.1 Develop and maintain a streamlined development review process to assure the City's competitiveness within the Southern California region.

Policy 7.4.2 Maximize opportunities for "by-right" development.

Policy 7.4.3 Maintain development fee structures that do not unreasonably burden specific industry groups, are financially competitive with other cities in the region, and reduce uncertainty to the development community.

Mobility Element ([Mobility Plan 2035](#))

Policy 1.7 Regularly Maintained Streets: Enhance roadway safety by maintaining the street, alley, tunnel, and bridge system in good to excellent condition.

Policy 2.1 Adaptive Reuse of Streets: Design, plan, and operate streets to serve multiple purposes and provide flexibility in design to adapt to future demands.

Policy 4.13 Parking and Land Use Management: Balance on-street and off-street parking supply with other transportation and land use objectives.

Health Element ([Plan for a Healthy Los Angeles](#))

Policy 1.1 Leadership Position: Los Angeles as a regional leader by collaborating across departments, agencies, sectors, and jurisdictions to incorporate health, equity, and sustainability considerations into policies, programs, and procedures.

Policy 2.9 Community Beautification: Proactively work with residents and public, private, and nonprofit partners to develop, execute, and maintain civic stewardship over community beautification efforts to promote neighborhoods that are clean, healthy, and safe.

The General Plan establishes growth and development policies by providing a comprehensive long-range view of the City as a whole. The proposed Ordinance contributes to the land use diversity and economic development of the City, while also carrying out policies in both the Mobility (Mobility Plan 2035) and Health (Plan for a Healthy Los Angeles) Elements.

The proposed Ordinance furthers Land Use Policy 3.4.3, namely by (d) creating a streamlined review process and (f) modifying parking requirements. The proposed Ordinance expands on the temporary LA AI Fresco Program, creating a permanent “by-right” review process for outdoor dining areas on private property. The streamlined and “by-right” nature of the new approval process will allow current AI Fresco participants as well as new participants to continue or begin their outdoor dining operations at little to no cost, subject to the submission of the appropriate documentation to the Department of City Planning and Department of Building and Safety in conformance with the standards set forth in the proposed AI Fresco Ordinance. Lastly, the proposed Ordinance will allow the replacement of automobile parking spaces by outdoor dining areas, which is vital for restaurants as it decreases development costs and allows for the maximum utilization of private property for outdoor dining. However, it is important to note that outdoor dining areas will still be required to comply with any applicable accessibility regulations pursuant to Chapter 11-A and 11-B of the California Building Code, as adopted by reference in Sec. 91.1100. of the Los Angeles Municipal Code (LAMC).

The proposed Ordinance’s new streamlined “by-right” process for outdoor dining on private property also aligns with the General Plan’s Economic Development Objective 7.4 and Policies 7.4.1, 7.4.2, and 7.4.3. Clear standards and requirements are established for current L.A. AI Fresco participants to transition into a permanent program, as well as new applicants to begin outdoor dining operations. The proposed Ordinance creates no new planning or land use entitlement fees that would be required for applications for outdoor dining on private property, and only applies a minimal clearance fee for applications to newly expand alcohol service into outdoor dining areas, subject to certain regulations. This is imperative to reduce costs for restaurants and allow them to continue their economic recovery from the COVID-19 pandemic and emergency. Additionally, the streamlining of outdoor dining applications will also allow the City to compete with cities throughout the Southern California region and statewide, as other cities and counties have already adopted permanent outdoor dining programs or are preparing a permanent program, such as the cities of San Diego, Santa Monica, Beverly Hills, and San Francisco. Each jurisdiction has or is considering different application requirements and standards pertaining to outdoor dining, such as location, design, and hours of operation.

The proposed Ordinance further encourages “by-right” development as specified in Economic Development Policy 7.4.2 by establishing a streamlined pathway for current participants of the temporary LA AI Fresco program to transition to the permanent program. As part of this streamlining, the proposed Ordinance’s standards pertaining to outdoor dining areas may supersede project-specific conditions of approval (such as those associated with a Conditional Use Permit) that would preclude or conflict with outdoor dining, at the applicant’s request. The substitution of any conflicting conditions will promote the “by-right” character of the LA AI Fresco Program and decrease the processing time for AI Fresco applications to allow small and local restaurants to continue

their outdoor operations with little to no disruption in service and continue their economic recovery from the COVID-19 pandemic and emergency. Furthermore, 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. These standards include the following:

- The Outdoor Dining Area shall have an enclosure of no more than 50 percent, except that:
 - Moveable, non-permanent delineators are exempt from counting towards the maximum enclosure.
 - The Outdoor Dining Area may have an enclosure of up to 100 percent if the roof coverage is no more than 25 percent.
- Background music and speakers are prohibited in Outdoor Dining Areas.
- Television monitors and other similar audiovisual devices are prohibited in Outdoor Dining Areas.
- Live music, live entertainment including but not limited to disc jockeys, karaoke, dancing, pool tables, billiard tables, and adult entertainment uses are prohibited in Outdoor Dining Areas.
- An Outdoor Dining Area shall operate no later than 10:30 p.m. on Sundays through Thursdays and 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.
- Notwithstanding any provisions to the contrary, the noise levels of the Outdoor Dining Area shall not exceed the standards set forth in the Noise Ordinance (Ordinance No. 156,363).
- Outdoor Dining Areas shall be cleaned nightly and adjoining sidewalk areas shall be kept free of debris, litter and graffiti.
- 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.
- A sign reminding guests to be respectful of surrounding neighbors shall be posted in the Outdoor Dining Area.

The “by-right” nature of the permanent AI Fresco Program will promote livability and convenience for residents and employees, promote a variety of uses, and strengthen the

employment and amenity base of communities. Background music as an ancillary use of the Outdoor Dining Area, however, would only be permitted pursuant to a discretionary Conditional Use Permit.

The streamlining of outdoor dining approvals as outlined in the proposed Ordinance also aligns with Policies 1.7, 2.1, 2.14, and 4.13 of the Mobility Element (Mobility Plan 2035). First, as noted in the outdoor dining standards list above, restaurants will be required to clean outdoor dining areas nightly and maintain adjoining sidewalk areas free of debris, litter, and graffiti. Furthermore, the proposed Ordinance will facilitate the conversion of off-street parking to outdoor dining areas. This will help de-emphasize land used for parking, such as surface parking lots, in favor of outdoor dining areas, promoting safety for patrons, residents, and the community. More importantly, automobile parking spaces used for outdoor dining will not need to be replaced.

Lastly, the proposed Ordinance aims to promote public health, namely Policies 1.1 and 2.9 of the Health Element (Plan for a Healthy Los Angeles). The temporary LA Al Fresco Program was started to provide opportunities for patrons and residents to enjoy restaurant dining at locations where the risk of exposure to COVID-19 was minimized. Safety issues associated with the COVID-19 pandemic remain, and as such, the permanent outdoor dining program will prove vital in ensuring patrons and residents, especially those that are immunocompromised or have other health concerns, continue to have equitable access to outdoor dining. The proposed outdoor dining standards will ensure that outdoor dining areas approved through the new process do not cause adverse effects to the public health, safety, and welfare of neighbors and surrounding communities, such as limiting hours of operation when abutting residential zones and requiring proper maintenance of outdoor dining areas.

For the reasons stated above, the proposed Ordinance is in substantial conformance with the purposes, intent, and provisions of the General Plan.

City Charter Finding 558 and LAMC Section 12.32 (Public Necessity, Convenience, General Welfare, Good Zoning Practice). In accordance with City Charter Section 558 (b)(2) and LAMC Sections 12.32 C.2 and C.7, the proposed Ordinance is in substantial conformance with public necessity, convenience, general welfare, and good zoning practice by promoting economic development, public safety, and community vibrancy.

The City established the temporary L.A. Al Fresco Program in May 2020 during the COVID-19 pandemic and emergency to allow restaurants to operate outdoor dining areas through a streamlined process with minimal fees and application process. This temporary program created a lifeline for many restaurants to resume operations and stay financially viable during the pandemic and emergency when indoor dining was limited due to local emergency orders. At the same time, the program promoted public health by providing opportunities for patrons and residents to enjoy restaurant dining at locations where the

risk of exposure to COVID-19 was minimized. More than 2,500 restaurants Citywide participated in the temporary L.A. Al Fresco Program.

The proposed Ordinance expands on the temporary L.A. Al Fresco Program by creating a new streamlined process in the Zoning Code to allow outdoor dining areas on private property, such as parking lots, with minimal requirements. The proposed Ordinance will allow restaurant owners to continue or begin outdoor dining operations at little to no cost, allowing them to fulfill the demand for safe dining spaces and an amenity that will serve patrons, residents, and visitors. Many of the benefits pertaining to economic development and public health brought forth by the temporary program will continue under the permanent program. Additionally, a permanent program will bring greater certainty to restaurants as it relates to outdoor dining regulations, which is vital for them to continue recovering economically from the COVID-19 pandemic and emergency. By streamlining outdoor dining in restaurants, the proposed Ordinance will help create more vibrant neighborhoods that will benefit local communities and commercial areas while leading to the growth of restaurants throughout the City.

Environmental Findings

Approval of the proposed Ordinance (Project) is supported by the **Categorical Exemption (ENV-2022-8180-CE)** prepared for this Project and presented to the City Planning Commission (CPC) on April 27, 2023. In accordance with the California Environmental Quality Act (CEQA), the proposed Project's reduction in parking is statutorily exempt from CEQA pursuant to California Public Resources Code Section 21080.25, and meets the criteria of a Categorical Exemption pursuant to CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures) and Section 15311 (Accessory Structures). Furthermore, there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines Section 15300.2 applies.

On the basis of the whole of the record before the Lead Agency including any comments received, the Lead Agency finds that there is no substantial evidence that the proposed Project will have a significant effect on the environment. The Project will not change zoning or General Plan designation or introduce any new land uses. It does not directly authorize new restaurants to be built and is only available where restaurants are an existing allowed use. Restaurants continue to be subject to historic preservation review as applicable and restaurants located on hazardous waste sites which propose ground disturbing activities are required to comply with additional remediation standards. The Project contains measures to avoid environmental impacts, such as noise and adverse behavior, and there is not a reasonable possibility that the Project may have a significant adverse effect on the environment given the existing physical conditions baseline and allowed use. As detailed in the Categorical Exception document (Environmental Case No.

ENV-2022-8180-CE) prepared by the Lead Agency, and attached to the subject case file, the Project would not result in a cumulative impact or significant effect on the environment.

Chapter 2.6, Section 21080.25 of the State's Public Resources Code provides a statutory exemption from CEQA for a "project carried out by a City or County to reduce minimum parking requirements." A central component of this Project pertains to eliminating automobile parking requirements and provisions. The Project provides regulatory relief from automobile parking requirements needed for the placement of outdoor dining structures on private property that are ancillary to a restaurant's by-right use. The relief provided exempts existing and/or new outdoor dining areas from parking requirements and further allows for restaurants to convert existing required automobile parking spaces to outdoor dining areas without needing to replace those spaces. This provision is permanent for eligible businesses and in some instances will result in an overall reduction of required parking below current LAMC parking requirements for the life of that use and/or structure. The utilization of a restaurant's parking spaces on private property would allow for the creation or modification of outdoor dining areas and would reduce minimum parking requirements. As such, the Project qualifies for the statutory exemption pursuant to Section 21080.25 of the State's Public Resources Code.

Additionally, in May 2023, an IS/ND (ENV-2023-3278-ND) was prepared for the Proposed Project in accordance with CEQA (Public Resources Code §21000 et seq.) and the State CEQA Guidelines (Title 14, California Code of Regulations, §15000 et seq.). The IS/ND was circulated for 30 days for public review and comment from May 18, 2023 to June 20, 2023. Subsequent to the 30-day public comment period, modifications allowing background music in outdoor dining areas in compliance with additional standards, imposing restrictions on the hours during which music can be played in outdoor dining areas, and incorporating enforcement procedures for City Departments, have been made to the Proposed Project. An Errata has been prepared, dated October 2023, to clarify and redefine the Proposed Project and document all necessary revisions to the IS/ND that resulted from the modifications. The Errata combined with the Draft IS/ND, including technical appendices, comprise the Final IS/ND.

On the basis of the whole of the record before the Lead Agency including any comments received, the Lead Agency finds that there is no substantial evidence that the proposed Project will have a significant effect on the environment. The Final IS/ND reflects the Lead Agency's independent judgment and analysis.