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December 22, 2021

The Honorable City Council  
City of Los Angeles  
City Hall, Room 395  
Los Angeles, California 90012

Dear Honorable Members:

**LA AL FRESCO PROGRAM – TRANSITION TO A PERMANENT PROGRAM; CF 20-1074**

**Summary**

The City of Los Angeles' Al Fresco program was launched in late May 2020 as an Emergency Directive issued by the Mayor. This temporary program created a streamlined process to provide expanded outdoor dining options for food establishments citywide. It was launched to provide a lifeline for these establishments, which had at that point been subject to a strict indoor dining ban because of the ongoing COVID-19 pandemic.

The program has remained popular since its introduction and has provided a viable alternative for these business owners as the trajectory of the pandemic has repeatedly waxed and waned. Currently the program has roughly 2,500 participants, of which the majority are utilizing some portion of private property while the remainder are utilizing space in the public right of way. Many participants are utilizing combinations of both public and private space. A permanent program, though a complex undertaking that requires careful analysis and thoughtful design, will aid in the City's recovery from the pandemic and its economic impacts while allowing for unique placemaking opportunities throughout the City.

**Background**

In November 2020, the City Council adopted a motion requesting that the Chief Legislative Analyst (CLA), supported by numerous Departments, report back on the feasibility of a permanent Al Fresco program. That report was heard in March of 2021 and outlined a number of issues and opportunities in realizing a permanent Al Fresco program. Since that time Council has directed several departments, including the Department of Transportation (LADOT) and Bureau of Engineering (BOE), to report back on efforts to transition existing program participants to a permanent program.

On October 20, 2021, the City Council adopted a Transportation Committee Report that included further instructions related to a permanent AI Fresco program. This Council action included a request that the Department of City Planning respond to the following:

5. *Direct the Los Angeles Department of Building and Safety (LADBS) and the Department of City Planning, with support from the Los Angeles Fire Department, to report back within 30 days with recommendations to change the applicable regulations and permit procedures to expeditiously make this transition (to a permanent AI Fresco program).*
  
9. *(Amended) Instruct all relevant departments, EWDD, LADOT, DBS, City Planning, BOE, and BSS, to come together and establish a single portal where all applications for temporary-to-permanent transitions of AI Fresco permits will be received (including on-street, sidewalk, and private property) and then funneled/transmitted to the relevant departments.*

The Department of City Planning has conducted a preliminary study of the issue, and found, similar to the analysis provided in the Chief Legislative Analyst (CLA) report back, that there are several opportunities as well as challenges in transitioning to a permanent AI Fresco program. The creation of a permanent program for private property will require a number of amendments to existing land use regulations, in order to address conflicts with existing citywide zoning regulations as well as those contained in some local zoning overlays and specific plans. Since the temporary emergency program has thus far been embraced by local businesses, a transition to a permanent program will allow for a wholesale rethinking of the City's zoning regulations for outdoor dining which could provide further vibrancy and a sense of community along the City's numerous commercial corridors and centers. A permanent program of this scope and scale can provide an important catalyst for the economic recovery of the City and its restaurant and food service industry, and for community-driven placemaking opportunities.

In the near-term, a transition to a permanent program will be aided through implementation of the recently adopted Local Emergency Ordinance (LEO, C.F. 20-0380-S1) and recent legislation by the State of California (State) related to alcohol sales (SB 314 and AB 61), which provide for continued allowances for expanded on-site alcohol sales and targeted parking relief for outdoor dining. However, though these items will aid in the transition to a permanent program they are also temporary measures and do not provide the same level of regulatory relief as is provided under the temporary emergency program. For a permanent program to be fully realized, several policy considerations must be addressed and amendments to the Zoning Code adopted by the City Council. The following discussion will highlight these issues as well as what can be achieved in an initial transition period.

### **Waived Zoning Regulations and Conditional Use Permit Requirements**

The current LA AI Fresco program is a temporary measure that was implemented through an emergency directive issued by the Mayor under the emergency powers vested through the City Charter. Under these emergency powers, the Mayor is able to suspend or supersede any ordinance or Municipal Code provision. The AI Fresco program supersedes several regulations in the Zoning Code as well as certain provisions in a number of specific plans and other zoning overlay districts.

The Zoning Code permits outdoor dining on private property as an allowed use in commercial, mixed use, and most manufacturing zones throughout the City. Regulations are in place that put limitations primarily on the size and location of outdoor dining areas. These regulations typically afford the most flexibility for establishments in more intense commercial zones (C2, C4, C5), though there is considerable nuance when it comes to how these areas are classified and whether they are incidental to the main restaurant use. The Zoning Code allows both Outdoor Eating Areas, which are allowed in most zones but have restrictive location and size requirements, and Outdoor Dining Areas, which are allowed only in more intense commercial and manufacturing zones and do not have as many size or location restrictions but must be incidental to the main use (i.e. indoor restaurant). This differentiation is unique to the City's Zoning Code, and though they have some differing regulations they essentially both allow the same type of use, which is outdoor dining. Both of these provisions would need to be addressed as part of the creation of a permanent AI Fresco program for private property.

The waiving of additional parking requirements as well as requirements to maintain existing required parking for participating establishments has been a key feature of the AI Fresco program, and has allowed for much of its flexibility and success. This has allowed the participating establishments to utilize existing parking spots and areas, both on private property and within the public right of way, without replacement. This concept is not contemplated by the Zoning Code, beyond the recently adopted LEO regulations or through a zoning variance, and use of parking areas for anything other than automobile or bicycle parking is strictly limited, if not entirely prohibited, in most instances, including for use as outdoor dining. This aspect will require close examination during the drafting of a permanent program, both because it is an integral component of the temporary program and because the reorientation and activation of this space raises access and safety considerations.

In addition, a Conditional Use Permit (CUB) is required for new and many existing establishments to serve alcohol in the city. The CUB process is discretionary and is in place to allow for consideration of land use impacts of allowing alcohol sales at a specific location. In addition to the general regulations for outdoor dining in the Zoning Code, site-specific regulations imposed during the CUB approval process may further restrict any allowance for outdoor dining and the service of alcohol in outdoor dining areas. These site-specific conditions and limitations are usually crafted specifically for the business and site in question and may have specific limits on square footage, seating, hours of operation, and outdoor dining. The current AI Fresco program requires establishments serving alcohol to be licensed by the State, including a temporary authorization for expanded outdoor dining, to have a valid CUB for the establishment, and to adhere to a set of universal standards related to their operations including limitations on hours of operation, location, and proximity to the permanent establishment.

The CUB requirement is not universal, as the City did not regulate the on-site sale of alcohol until the 1980s and establishments opened prior to those regulations are generally considered "deemed approved" for the on-site sale of alcohol if licensed by the State. Furthermore, the Restaurant Beverage Program (C.F. 17-0981) may further streamline the process for bona-fide restaurants to serve alcohol on-site, under specific conditions including restricted allowance for outdoor dining, if adopted by the City Council. In addition, the sale of alcoholic beverages can elicit diverse opinions among stakeholders, and any changes to the process for their allowance should take this into consideration.

Further analysis will need to be conducted to identify conflicting provisions in various specific plans, zoning overlays, and site-specific zoning conditions, such as (Q) conditions. These regulations can and will further limit the size, scale, proximity, and parking requirements for establishments with outdoor dining. The current Al Fresco program has over 600 participants in specific plan areas, utilizing their private property for expanded outdoor dining, with a significant number specifically located within the boundaries of the Ventura - Cahuenga Boulevard Corridor Specific Plan and the Vermont-Western Station Neighborhood Area Plan. Though these specific plans do not directly regulate outdoor dining, some of their parking provisions and streetscape plans may impact the allowance for expanded outdoor dining.

This is not an exhaustive list of the provisions in the Zoning Code that regulate outdoor dining, however it does provide context for the considerable number of rules and enforcement mechanisms needing examination and potential amendment to facilitate a permanent Al Fresco program. An interim framework is available to help address any time gap between the termination of the temporary emergency program and the adoption of an ordinance to facilitate a permanent program. However, this interim framework, including the LEO, SB 314 and AB 61, does not provide the scale or scope of flexibility that the current temporary Al Fresco program does. As such, key next steps would involve initiating coordination with other city agencies on enforcement and rules to make legislative changes necessary to facilitate a safe and feasible permanent Al Fresco program through possible zoning amendments, creation of an administrative application process, and integration of design guidance.

### **Department of Building and Safety Permitting Process**

The Department of Building and Safety (LADBS) is the agency responsible for the approval of building permit applications for development on private property. Prior to the COVID-19 pandemic, outdoor dining was limited to locations that obtained a permit for any covered or uncovered outdoor dining areas. The permit process ensures compliance with local and state laws when undertaking any work or construction that requires a building permit, such as the California Building Standards Code (Title 24) and the Los Angeles Municipal Code (LAMC). The Los Angeles Building Code and the Zoning Code are subsidiaries to Title 24 and the LAMC, which provide a broad set of requirements for "energy conservation, green design, construction, and maintenance, fire life safety, accessibility, and zoning." Although the emergency Al Fresco program allowed restaurants to temporarily install outdoor dining and shade structures, the permanent use of any covered or uncovered dining would require the restaurants to submit plans and apply for permits so LADBS may review for code compliance. There are current zoning and building code requirements that may be difficult for restaurants currently operating under the Al Fresco program to comply with.

While Zoning Code issues have already been described above, some examples of potential Building Code issues that covered outdoor dining may face include:

- Increased floor area due to shade structures over outdoor dining areas (LA Building Code Chapter 2 Definitions)
- Use of non-positive anchorage for shade structures over outdoor dining areas (Building Code Chapter 16)
- Use of combustible materials over outdoor dining areas in Fire District 1, Very High Fire Hazard Severity Zones, and types 1 and 2 construction (Building Code Sections 7204, 603, 704A, 707A)
- Exterior wall fire-resistance ratings and opening protections for shade structures (Building Code Section 705)

State law allows jurisdictions to apply for more restrictive local amendments to the California building code that are reasonably necessary because of local climatic, geological, or topographic conditions. It does not allow jurisdictions to adopt less restrictive local amendments, so any proposed changes that are less restrictive would need to be made at the State level.

In individual cases, LAMC 98.0403.1(a) authorizes LADBS to act upon slight modifications to the building code regulations provided that the slight modification is reasonably equivalent to the requirement involved, that a special individual reason makes the strict letter of the code impractical, and that the slight modification is in conformity with the spirit and purpose of the code. These slight modification requests would need to be evaluated when the applicant has begun the permitting process and submitted plans for the proposed outdoor dining.

LAMC 98.0422 allows an expedited review process when an amount of a fee equal to one-half of the review fee, in addition to the normal review fee, is paid. This option is available to all permit applications and can be used by restaurants utilizing the AI Fresco program to reduce the turnaround time to receive plan check corrections and clearances.

### **Fire Department Regulations and Fire Safety**

The Los Angeles Fire Department (LAFD) is the agency responsible for the approval of public safety in all assembly areas. Prior to the COVID-19 pandemic, the LAFD regulated all assembly areas including exits, aisles, appliances, and occupant loads including the use of tents and canopies. The permit process and maintenance inspections ensure compliance with local and state laws while addressing any public safety concerns.

Although the emergency AI Fresco program allowed restaurants to temporarily install outdoor dining and shade structures, the permanent use of any covered or uncovered dining would require the restaurants to obtain approval from LADBS and, in addition, the Fire Department would have to approve the use, layout, and occupant load with an initial inspection and subsequent maintenance inspections.

One example of a potential public safety issue is the protection of the public from moving vehicles. The Fire Department does not allow a shared space with assembly areas and moving vehicles.

Some examples of potential Fire Code issues that covered outdoor dining may face include:

#### Access:

- Obstructed Access to Building Openings and Roofs: Sec. 504.1
- Fire Lane Maintenance: Sec 503.4.2
- Aerial Fire Apparatus Access: Sec. D105.1
- Access Road Width: Sec. D105.2
- Proximity to building. Sec. D105.3

#### Tents, Canopies, and Assembly Structures:

Permanent tents, canopies, and assembly structures are permitted through LADBS utilizing the California Building Code. LAFD is included in the LADBS permitting procedure as a part of the final approval process under the following sections, to name a few.

- Public safety plan for gatherings. Sec. 403.12.2
- Occupant load factors. Sec. 3104.14
- Aisles - Arrangement and maintenance. Sec. 3103.12.5.1
- Maintenance of means of egress. Sec. 3103.12.8
- Seating arrangements. Sec. 3103.11
- Outdoor cooking. Sec. 3104.15.6

These regulations are dictated by the City's Fire Code, which are adopted from the California Fire Code. State law only allows these regulations to be more restrictive than the State's regulations, and any deviation would need to be initiated through legislation at the state level.

#### **Initial Transition**

The current LA Al Fresco program is still active and accepting applications. The emergency declaration enabling the program to exist is still in place as of the writing of this report, and recent Council action (C.F. 20-1074-S1) provides that the program will remain active for 6 months after the termination of the emergency declaration. Once the program closes out, specific provisions of the recently adopted Local Emergency Ordinance (LEO) will provide a starting point for the transition to a permanent Al Fresco program.

The LEO was approved by the City Council in June 2021 and went into effect on July 1, 2021. Simultaneously, the Council adopted the necessary resolution to activate its temporary regulatory relief provisions. Among those provisions is targeted regulatory relief for outdoor dining uses. The relief allows for outdoor dining to occur in designated parking areas and provides that no additional parking shall be required. This relief is active for a minimum of one year after the termination of the emergency declaration, and Council has the option to extend, by resolution, that timeframe to 3 years. However, all other regulations, including limits on size, location and any limitations by an applicable specific plan or overlay, will be in effect and only a temporary permit will be issued by LADBS for the term that the LEO is applicable.

Additionally, the State passed legislation this year that provides relief for outdoor dining from both local land use regulations and state alcohol sale limitations. SB 314 permits the continued use of the COVID-19 Temporary Catering Authorization for current on-site alcohol sales license-holders. AB 61 allows the use of the aforementioned authorization for areas adjacent to structures where an existing license is issued, and it provides similar parking relief for outdoor dining as does the LEO. Both of these provisions sunset on or before January 1, 2024, depending on when the State's emergency declaration is terminated. Recently, the governor extended the State's emergency declaration to at least March 2022.

For many of the current program's participants, particularly those primarily utilizing private property, further action may be required even with the LEO and recent state legislation in place. This may involve participants seeking a zoning adjustment, variance, specific plan exception, or other discretionary action. With more than 1500 private property participants in the current Al Fresco program, the number of requests may be substantial. As such, the City's interest in transitioning to a permanent program would aim to simplify the application process for those businesses that are eligible.

### **Permanent Program**

Due to the success of the emergency executive order's temporary Al Fresco program, the City has the opportunity to create and administer a permanent version that is both equitable and beneficial for all businesses. Developing a permanent Al Fresco program will require considerable research, analysis, CEQA review and extensive community engagement. The current program waived nearly all the City's current zoning regulations for outdoor dining and alcohol consumption and allowed for a minimal administrative permitting process. This was a necessity to help ensure the economic viability of the food and beverage industry considering the current pandemic; however, it leaves data gaps that will need to be investigated to fully understand how to best tailor a permanent program. In order to gather and investigate data gaps, a robust community outreach effort is needed to engage with not only participating businesses and stakeholders but also neighboring businesses, community members, advocacy groups, and, if the scope of the permanent program demands, future participants. This engagement, and analysis of the current program, will ensure that a thoughtfully crafted permanent program is designed that addresses potential impacts in a way that supports these local businesses and integrates this program seamlessly into the fabric of the community at large.

The scope of the permanent program will also need to be defined. A permanent Al Fresco program can be designed in a variety of ways, and its scope and scale can be limited or open-ended. These are key questions to answer and will impact the ability of the Department of City Planning to successfully draft and implement a new program in a timely manner. It will also dictate whether any new resources may be required to accomplish such a program. Furthermore, the new program will focus primarily on changes to the Zoning Code. As has been discussed, changes to Building and Fire Codes are limited since those Codes are adopted from standards set by the State and any local changes must be more restrictive than those dictated by the State.

The City is not alone in seeking to revamp its regulations regarding outdoor dining, nor in its exploration of a permanent solution for current Al Fresco participants. Numerous jurisdictions nationwide have undertaken similar Al Fresco programs, typically under the same circumstances and emergency authorities that the City has locally. Cities such as Glendale and San Diego are undertaking efforts to rethink outdoor dining and on-street dining opportunities with an emphasis on design and placemaking. San Francisco and New York City are undertaking similar expansions of outdoor dining as well. Lessons can already be drawn from these efforts, including the need for robust engagement and communication with current program participants and neighboring businesses.

Interdepartmental coordination will be key to the success of any permanent program. The work already underway by LADOT and BOE to expand and enhance their current offerings for use of the public right-of-way for this program can be maximized if the regulations around outdoor dining in the Zoning Code are fully compatible and complementary. LA City Planning will need to coordinate on several activities including permitting, clearances, design standards, and parking alternatives. It will also be key to work closely with all the participating Departments on the creation and implementation of a unified application portal to ensure consistent standards, requirements, and avoid duplicative processes.

The opportunity to rethink the City's outdoor dining regulations, and provide a path for current LA AI Fresco participants to transition to a permanent program, is a tremendous opportunity, and one that will require dedicated staff time. The scale of this program, and the need for an expeditious process, may require that LA City Planning request additional staffing resources, or reallocate existing staffing resources to prioritize the project ahead of current work on other ordinances, in order to facilitate its completion.

### **Restaurant and Small Business Express Program**

In 2010, the LADBS created the complementary Restaurant and Small Business Express Program (RSBEP) (formerly named the Restaurant and Hospitality Express Program). The goal of the RSBEP is to make the permitting and inspection process more efficient by enhancing the coordination in permitting, construction, and inspection. The RSBEP streamlines the approval process, providing assistance to business owners as well as their design and construction teams. Restaurants and bars may apply to the program regardless of permit valuation. LADBS does not see a need for a separate category under the RSBEP for restaurants utilizing the AI Fresco program, since the process and code requirements are the same for all restaurants. LADBS recommends promoting RSBEP on the Build LA single portal discussed in the following section as a valuable tool available to restaurants transitioning from AI Fresco who may not be familiar with the code requirements or permitting process.

### **Build LA Single Portal**

In a Bureau of Engineering (BOE) report dated November 17, 2021, BOE recommended a tile be added to the "most popular services" section of the Build LA web page at <https://buildla.lacity.org/> to serve as the single portal with links to two different systems – the BOE Revocable Permit web application for Revocable Permits for sidewalk dining and/or on street dining and the LADBS system for private property dining. LADBS supports this recommendation and can link the portal to various parts of the website such as permit applications or information on RSBEP.



## Recommendation

The success and scale of the current temporary AI Fresco program provides the City an opportunity to revamp and modernize its regulatory framework for outdoor dining in the Zoning Code. Considering the above discussion, including the many complex issues related to drafting and implementing a new, permanent AI Fresco program, the City Planning Department recommends that the City Council:

1. *Instruct the Department of City Planning, in coordination with the Department of Building and Safety, Fire Department, and City Attorney, to prepare and present a Citywide ordinance creating a permanent AI Fresco program and generally streamlining outdoor dining provisions throughout the Zoning Code.*
2. *Instruct the Department of City Planning to undertake an outreach process, including current temporary AI Fresco participants, community stakeholders, and industry representatives, in the preparation of the permanent AI Fresco and outdoor dining ordinance.*
3. *Instruct the Department of City Planning, the Department of Building and Safety, the Department of Transportation, the Bureau of Engineering, and other applicable Departments to create an internal working group to ensure consistent and complementary regulations and processes for the permanent AI Fresco and outdoor dining program.*

If you have any questions regarding this matter, please direct them to Andrew Pennington via email at [andrew.pennington@lacity.org](mailto:andrew.pennington@lacity.org)

Sincerely,



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