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August 5, 2022

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

Dear Honorable Members:

## **LA AL FRESCO PROGRAM – PERMANENT ORDINANCE STATUS REPORT; CF 20-1074**

On March 22, 2022 the Los Angeles City Council adopted instructions directing the Los Angeles Department of City Planning (City Planning) and Los Angeles Department of Building and Safety (LADBS) to provide a status report related to the creation and implementation of a permanent expanded outdoor dining program. The adopted instructions further directed the departments to prepare a draft ordinance, conduct outreach, and coordinate interdepartmentally on the implementation of a permanent expanded outdoor dining program. The permanent program would be a successor to the current temporary LA Al Fresco outdoor dining program (Al Fresco program). The Al Fresco program allows for expanded outdoor dining on both private property and within the public right of way.

The departments were instructed that the status report should consider several topics related to the creation and implementation of a permanent expanded outdoor dining program. Those topics, as summarized in the adopted instructions, are:

- c) *INSTRUCT the DCP and LADBS to report to the Council within 90 days with a status report regarding the development of outdoor dining provisions, including consideration of the following:*
  - i. *Strategies for managing public parking in high-demand areas.*
  - ii. *Strategies for the promotion of transit and other modes of transportation to reduce parking demand.*
  - iii. *Noise issues, including whether different rules should apply depending on whether the outdoor dining is on a side of structure facing residential uses.*
  - iv. *Alcohol service*

- v. *Strategies for streamlining the approval process, such as the Restaurant Beverage Program or creating standard plans or a pre-approved kit of parts for outdoor dining areas.*
- vi. *Enforcement of requirements and conditions, including cooperation among the LADBS, BOE, Bureau of Street Services, and Los Angeles Police Department, and including ability to conduct inspections and enforcement during evening and weekend hours.*

The following discussion will provide an update on the creation and implementation of a permanent expanded outdoor dining program and provide further insight into the topics identified in the City Council instructions.

### **Research, Interdepartmental Coordination, and Outreach**

The departments have undertaken a coordinated effort to begin the process for a permanent successor to the AI Fresco program as well as general updates to the outdoor dining provisions in the Zoning Code. These efforts have been focused mainly on research and data analysis, interdepartmental coordination, and designing an outreach program.

Research on the current, temporary AI Fresco program has continued and has expanded to include site visits throughout the City of current installations on private property. These visits have helped to provide key insights into the program, including the various configurations businesses have utilized for outdoor dining on private property as well as the scale of the current program. City Planning has also commenced research into planning application filings related to outdoor dining, including pre-pandemic filings to determine what type of requests are typical and which code provisions may need to be reviewed. Additionally, a survey of similar programs in other jurisdictions is under way, with a focus on cities of similar size and outdoor climate. This work dovetails with ongoing interdepartmental coordination among departments with a role in the permanent AI Fresco program.

After the adoption of the City Council instructions in March, City Planning, LADBS, Department of Transportation (LADOT), and Bureau of Engineering (BOE) have met monthly on items related to a permanent successor to the LA AI Fresco program. These monthly meetings focus on coordinating and complementing the various efforts each department is undertaking in relation to a permanent AI Fresco and expanded outdoor dining. This effort is integral to a seamless roll out of an expanded outdoor dining program for the city since each agency oversees a different type of outdoor dining. City Planning and LADBS are focused on private property whereas DOT and BOE are overseeing the in-street and sidewalk dining programs respectively. It also provides a forum to discuss the coordinated implementation of a successor program as well as ways to ensure similar regulations with a strong focus on urban design. This collaborative process has allowed for increased data-sharing and the ability to create a cohesive program for private property and the public right of way. It will also allow for the results of the ongoing outreach to be shared across departments.

City Planning has taken the lead in structuring the outreach program and has recently launched the effort to garner general feedback as well as site-specific data on current AI Fresco participants. The outreach effort incorporates a dedicated webpage on the Department's website as well as two surveys, one for the general public and another for the roughly 2500 current AI Fresco participants. The survey for the general public is tailored to garner feedback on outdoor dining including attitudes toward its usage, amenities/structures incorporated, and parking impacts. The survey geared towards current AI Fresco participants is more detailed though still accessible and

easy to complete. That survey asks these participants about their perspective towards outdoor dining as well as specific information about the size, scale and impacts of their outdoor dining options. It also specifically asks about their thoughts on a permanent program. The initial response to the surveys has been robust, and roughly 225 participating businesses have responded as well as nearly 2000 community members. The data collected thus far will at minimum provide a quality sample of businesses still participating in the program and insight into how different outdoor areas are being repurposed. In the coming weeks, City Planning plans to further promote the surveys and webpage through social media and meet with interested parties to garner additional feedback. Further outreach will be determined based on in-depth analysis of the survey data and the comments that have been collected.

### **Parking and Mobility Concerns/Alternatives**

The current Al Fresco program impacts parking in several ways. Curbside and in-street dining, overseen by LADOT, allow participating businesses to utilize in-street public parking spots for outdoor dining areas. On private property, which is under the purview of the Zoning Code, the Al Fresco program allows for participating businesses to utilize their private parking areas for outdoor dining as well. The program, regardless of whether in the public right of way or on private property, does not require any additional parking. However, the Zoning Code currently does not require additional automobile parking for outdoor dining open to the sky and only in limited instances for covered outdoor dining areas. Most of the parking loss, in terms of parking required by the Zoning Code, is limited to those participating businesses that utilize their required parking spaces, either partially or in totality, for their outdoor dining areas. The remaining parking loss is from businesses utilizing covered outdoor dining areas in certain C and M zones that do not fall under the definition of an Outdoor Eating Area and would otherwise be required by the Zoning Code to provide additional parking.

LADOT oversees the management and use of public parking facilities throughout the city including on-street parking. Over 35,000 of these spots are metered, both in public parking lots and on-street parking stalls. These facilities are managed to maintain parking availability in the areas that they are installed, and a number of tools are at the disposal of LADOT to manage that demand and limit significant overflow parking into adjacent residential neighborhoods. These tools include installation of meters, changes to meter hourly rates, hours of operations, parking permits, and in some areas such as Downtown, dynamic pricing at meters. These tools along with the toolkit available through proposed Transportation Demand Management (TDM) ordinance help to manage parking demand at public facilities.

The proposed Transportation Demand Management ordinance (CF 15-0719-S19) will provide the City with new tools to encourage multimodal transportation options including transit, biking, and walking as well tools to curtail the use of automobiles and manage the demand automobiles create on streets and in parking facilities. The applicability of the TDM ordinance would be limited to new development projects of a certain size, however the tools available may be utilized by other land use initiatives and ordinances to help mitigate parking and traffic concerns. These tools include enhanced bike infrastructure, pedestrian wayfinding, free or discounted transit passes for employees/residents, mobile phone and computer apps to encourage carpooling and ride-share, and educational campaigns to help navigate transportation options. Another proven demand management tool is lowering minimum parking requirements for development projects.

Parking will continue to be a consideration as the proposed program for expanded outdoor dining on private property is drafted. A key component of the outreach being undertaken for this program is surveys to both the general public and to current Al Fresco program participants. These surveys include questions related to the amount of private automobile parking removed for outdoor dining

as well as about the impacts of this removal on businesses and residents. Once an adequate amount of data is collected from these surveys and reinforced with site visits to areas in the city with a concentration of AI Fresco sites, an analysis will be undertaken to determine whether and how to best mitigate this parking loss. This will be particularly true for those commercial corridors with a concentration of outdoor dining areas in former parking areas.

### **Alcohol Sales/Noise**

The current AI Fresco program has put in place several requirements to ensure that the sale of alcohol by participants is correctly permitted and within the scope of the allowances permitted by the California Department of Alcohol Beverage Control (ABC). The sale of alcohol is only permitted for those establishments that have an active license from ABC and are permitted by the City for those sales. The sale of alcohol in the city, as it relates to land use, is governed by the Zoning Code, and is typically allowed only by establishments that have a Conditional Use Permit (CUP) for alcohol sales. Some businesses may have a variance or legal non-conforming rights to allow the sale of alcohol, if they pre-date the adoption of the ordinance requiring a CUP. The City's AI Fresco program also limits operations of these sites to specific hours of operation and prohibits certain amenities in the outdoor dining area (amplified music, live entertainment, etc.) to limit noise and nuisances.

Furthermore, since the AI Fresco program permits outdoor dining in non-traditional places that may not be contiguous with the establishment, ABC requires a "temporary catering permit" to allow for the temporary expansion of the area covered by an establishment's current alcohol license. This temporary catering permit is an interim measure that was permitted under SB 314 which was adopted in 2021 by the state legislature. This legislation will sunset 365 days after the termination of the statewide State of Emergency order by the governor or July 1, 2024, whichever is sooner. After the sunset of this program, any outdoor dining, contiguous or not, that was only permitted under this program will need to amend their existing alcohol license with the state in order to permit continued sales in expanded areas.

The City has similar mechanisms in place for when the permissions under the current AI Fresco program ends. The Zoning Code permits modifications to existing CUPs for alcohol sales through the Plan Approval process, which would allow businesses with expanded outdoor dining to apply to include this new area into their existing CUP. This process has limitations however, and some operators may need to apply for a new CUP if the expansion is larger than 20% or incorporates certain changes to mode and character. The City also recently adopted the Restaurant Beverage program (RBP) to allow for bona-fide restaurants to obtain permission for the sale of alcohol on-site through an administrative process, where permitted by Council Resolution. This program requires that the establishment adhere to over 50 conditions that include a number of prohibitions that limit noise and alcohol related nuisances. Eligible businesses must be within a geographic area that permits participation in RBP, and operators must agree to the aforementioned conditions and potential inspections, in order to allow for on-site alcohol sales without a hearing or site-specific conditions of approval that are typically required for a CUP. This process takes a fraction of the time and cost that a CUP would entail. Both RBP and the Plan Approval process would allow certain establishments that are participating in the AI Fresco program to transition to a permanent program while still maintaining City control and conditioned approval for the on-site sale of alcohol in these newly added outdoor dining areas. However, there may be some operators who may need to apply for a new CUP or take advantage of RBP, in lieu of their current CUP, for alcohol sales due to the changes in scale or character of their outdoor dining area.

City Planning will continue to investigate this matter as it drafts a set of proposed regulations for expanded outdoor dining based on the current AI Fresco program. However, there are limitations

to what the City can do to expand the footprint of alcohol sales for existing CUP grantees without requiring a modification of their existing CUP. The conditions imposed on a CUP and the approval of it in general are predicated on a Zoning Administrator hearing and a site-specific review of the project. Each CUP or similar action is unique for the site in question and will require some type of review to allow for any expansion of its current allowance for alcohol sales.

Regarding noise impacts, and whether certain limitations or distancing requirements should be imposed for those establishments adjacent to or across the street from residential uses, City Planning continues to collect data on concerns related to this issue. This is being done through both the outreach surveys recently released as well as a geographic analysis of the current Al Fresco sites. Further consideration of this limitation, and other potential options to address noise impacts will be investigated as the draft regulations for a permanent program are crafted and then released for public comment.

### **RBP/Kit of Parts/Standard Plans**

The departments are investigating several mechanisms to help create a streamlined process for a permanent expanded outdoor dining program Citywide. This includes creating clear guidelines and modernizing the current allowances in the Zoning Code for outdoor dining areas. The current Al Fresco program has shown the benefits of a streamlined process, and the potential for minimal impacts from such a process. The recent adoption of the Restaurant Beverage program (RBP) provides a strong foundation for a streamlined administrative process for certain types of land use approvals.

The Council instructions that directed the departments to create a permanent expanded outdoor dining program Citywide also included direction to modernize the current outdoor dining provisions in the Zoning Code as well. This provides an opportunity to both create a more permissible and coherent outdoor dining program for most typologies of outdoor dining as well as the ability to create a streamlined process for approvals of more novel concepts of outdoor dining such as allowances for dining in parking areas. The departments will be looking at the standardized application of conditions under the RBP Ordinance, applied citywide, as a guide for the expanded outdoor dining program. Any streamlined process for permanent expanded outdoor dining should be applied citywide to continue the benefits seen under the current Al Fresco Program.

City Planning has launched an outreach program with a number of surveys to help determine how to best update outdoor dining regulations as well as to understand what types of urban design elements and structures are most utilized. This process will help to determine the scale and scope of any standard plans for design of outdoor dining areas and associated structures. It will also help inform how to integrate key urban design principles into the program to enhance functional outdoor dining spaces and also serve to foster pedestrian safety. City Planning's Urban Design Studio has been engaged to help in analyzing the data from the surveys and site visits to ensure quality and durable design and code-compliant site planning all while keeping a low barrier of entry for establishments to pursue outdoor dining installations.

### **Enforcement**

Enforcement of regulations for expanded outdoor dining on private property will fall primarily on LADBS for required building and use of land permits and supplemental enforcement will be handled by LAPD for noise and nuisance issues. This is common practice for any Zoning Code regulations on private property.

Enforcement of regulations for expanded outdoor dining on the sidewalk or in the street will fall primarily to Streets LA and their investigators. Support will be provided by LAPD as well as by DOT and BOE who will help to ensure that nuisance issues are addressed, and that structural integrity is maintained.

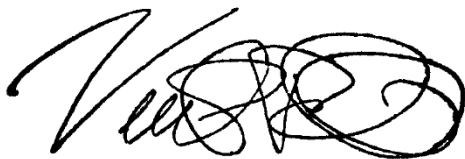
A number of strategies can be employed to ensure a coordinated response to any violations of Zoning Code and Building Code provisions related to outdoor dining on private property. The recently adopted Restaurant Beverage Program (RBP) utilizes the Monitoring, Verification and Inspection Program (MViP) to do preliminary and follow-up compliance inspections. MViP also coordinates a similar program for new operators that receive a conditional use permit for alcohol sales. As part of the adoption of RBP, an enhanced complaint portal was established to assist the general public in reporting activities of non-compliant operators. These programs involve close coordination between City Planning and LADBS staff to advance investigations and mitigate violations with appropriate code enforcement measures. These tools, or variations of them, may provide a suitable mechanism to ensure compliance with any new program allowing expanded outdoor dining. Further investigation of these programs, and other similar programs, will continue and mechanisms for coordinated enforcement will be an integral part of any ordinance allowing expanded outdoor dining on private property.

### Next Steps

The recent launch of public outreach regarding the creation of a permanent expanded outdoor dining program has so far yielded a robust response, and data will continue to be collected through these surveys and complemented by site visits to current Al Fresco installations citywide. This outreach and analysis will help to inform a draft proposal of regulations for a permanent expanded outdoor dining program. City Planning hopes to release a draft of these regulations along with a modernization of current outdoor dining regulations this fall with a webinar and public hearing to follow shortly thereafter. Following these steps, staff will prepare a recommendation report to the City Planning Commission. Throughout this process, coordination will continue between the departments overseeing the various aspects of expanded outdoor dining to ensure that the program is complementary, coordinated, and seamless for future applicants.

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) and Mary Richardson via email at [mary.richardson@lacity.org](mailto:mary.richardson@lacity.org).

Sincerely,



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