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5/26/2023

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

Dear Honorable Members:

PROPOSED AL FRESCO ORDINANCE - REPORT REGARDING MUSIC IN OUTDOOR DINING AREAS; CF 20-1074-S4

RECOMMENDATION

Amend the proposed Al Fresco Ordinance for private property to allow ambient music in outdoor dining areas in compliance with Section 112.01 (Radios, Television Sets, and Similar Devices) of the Los Angeles Municipal Code.

BACKGROUND

On April 27, 2023, the City Planning Commission (CPC) approved and recommended adoption of the proposed Al Fresco Ordinance (Ordinance) put forth by the Department of City Planning (City Planning) to streamline zoning regulations for outdoor dining on private property. The Ordinance is one component of a multi-department effort to establish a permanent Al Fresco program pursuant to the City Council's instructions (CF 20-1074). As part of their action on the Ordinance, the CPC instructed City Planning to report to the City Council with recommendations for allowing ambient music to be played in outdoor dining areas, including an analysis of any potential noise impacts consistent with the requirements of the California Environmental Quality Act. Accordingly, City Planning has prepared this report and accompanying Negative Declaration (case number ENV-2023-3278-ND) for the City Council's consideration on the matter.

DISCUSSION

The proposed Al Fresco Ordinance would amend 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) to clarify and streamline Zoning Code regulations regarding outdoor dining on private property in the City of Los Angeles. As proposed, outdoor dining that complies with the applicable standards would be permitted as a by-right use in zones where restaurants are currently permitted. Any outdoor alcohol service would continue to require compliance with all applicable zoning regulations, as stated in an existing or new administrative or discretionary approval or in compliance with the proposed new ministerial approval. Specifically, the Ordinance contains new zoning regulations which provide a pathway for restaurants to move forward with the approval process for outdoor dining, including restaurants who are currently offering outdoor dining on private property under the temporary LA Al Fresco program, as well as restaurants who would like to newly expand their outdoor dining operations.

The proposed Ordinance, as modified and approved by the CPC, includes the following operational standards that are applicable to all establishments seeking to provide outdoor dining areas on private property:

- Music, television monitors, screens and speakers are prohibited in Outdoor Dining Areas.
- Live entertainment, dancing, pool tables, billiard tables, and adult entertainment uses are prohibited in Outdoor Dining Areas.
- 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.
 - Notwithstanding the above, an Outdoor Dining Area in a CR zone shall comply with the limitations of Sec. 12.12.2 A 13.
- 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 Al Fresco Ordinance. This shall include a telephone number and an email address shall be provided for complaints or concerns regarding the operation of the Outdoor Dining Area.

Further, the following additional standards apply when alcohol service is proposed in an outdoor dining area:

- All alcohol that is served shall be delivered to and served at tables by employees.
- All patrons shall be seated.
- Only fixed or portable bars not used as a point of sale are permitted in an Outdoor Dining Area.

The proposed standards are generally consistent with the conditions of the temporary program in order to facilitate a straightforward transition for establishments providing

outdoor dining under an LA Al Fresco Temporary Use Authorization (Temporary Authorization) to standard permanent permits.

Other changes made by the CPC to the proposed Ordinance include certain technical modifications and clarifications as follows:

- Definition of an Outdoor Dining Area revised to clarify enclosure standards
- Eligibility criteria revised to disqualify restaurants for which a wage claim has resulted in an adverse judgment
- Technical modification to add hazardous site assessment procedures for when outdoor dining is proposed on a potentially hazardous site
- Technical modification to clarify that outdoor dining areas are not exempt from HPOZ historic preservation review

Public Comments on Music and Noise

Public comments were submitted leading up to and during the CPC meeting on April 27 requesting that the Ordinance be modified to allow music and speakers in outdoor dining areas. Comments in support of allowing music and speakers stated that music played at ambient or background levels were standard and appropriate business practice for restaurants seeking to provide enjoyable outdoor dining experiences, and contended that the past three years of the temporary Al Fresco program demonstrated little to no negative impacts or nuisances resulting from such activity.

Public comments were also received during the same period which contended that there were negative impacts to adjacent and nearby residential neighbors caused by loud music being played at late hours by temporary program participants. As described in the Staff Recommendation Report to the CPC, the Department of Building and Safety (LADBS) has logged approximately 134 complaints regarding temporary Al Fresco participants between April 1, 2020 and April 4, 2023. Of those complaints, 90 (67.2%) were specifically about noise, with 14 businesses having more than one complaint regarding loud or amplified sounds from residential neighbors.

In context of the nearly 3,000 Temporary Authorizations that have been issued since the establishment of the temporary Al Fresco program, the record of 90 noise complaints over three years demonstrate that the vast majority of program participants have conducted outdoor dining operations without causing significant noise impacts to nearby residents. At the same time, the record of 14 businesses for which multiple noise complaints were logged indicates the negative impacts that can arise from potential nuisance operators. Based on the record, the potential for noise impacts caused by music in outdoor dining areas would seem to be most significant when music is played at levels loud enough to be disruptive to neighbors, rather than solely resulting from music being played in an outdoor dining area.

Existing Noise Regulations

The City's General Plan Noise Element includes general objectives and policies related to reducing or eliminating intrusive noise and reducing or eliminating noise impacts associated with development of land and changes in land use. The LAMC, through the City's Noise Ordinance, is the regulatory mechanism for implementing the goals and policies of the City's General Plan, including those set forth in the Noise Element. The City's Noise Ordinance (Ord. No. 156,363) contains a number of regulations that apply to temporary construction activities and long-term operations. Specifically, Section 112.01 of the LAMC, included below, establishes regulations for music and related noise-producing equipment.

SEC.112.01. RADIOS, TELEVISION SETS, AND SIMILAR DEVICES

(a) It shall be unlawful for any person within any zone of the City to use or operate any radio, musical instrument, phonograph, television receiver, or other machine or device for the producing, reproducing or amplification of the human voice, music, or any other sound, in such a manner, as to disturb the peace, quiet, and comfort of neighbor occupants or any reasonable person residing or working in the area.

(b) Any noise level caused by such use or operation which is audible to the human ear at a distance in excess of 150 feet from the property line of the noise source, within any residential zone of the City or within 500 feet thereof, shall be a violation of the provisions of this section.

(c) Any noise level caused by such use or operation which exceeds the ambient noise level on the premises of any other occupied property, or if a condominium, apartment house, duplex, or attached business, within any adjoining unit, by more than five (5) decibels shall be a violation of the provisions of this section.

Violations of LAMC Section 112.01 are enforced by the Los Angeles Police Department (LAPD). LAPD officers may issue an Administrative Citation pursuant to the City's Administrative Citation Enforcement (ACE) program, which uses a non-criminal approach to nuisance abatement and quality of life offenses. After issuance of an Administrative Citation, the cited party will be mailed an "Official Notice of Administrative Violation and Fine Due" with instructions for paying the applicable fine or requesting further review of the citation.

Existing Ambient Noise Levels

To assess the existing ambient noise conditions in the area, City Planning's Geographic Information Systems Unit gathered data that displays the total number of restaurants that are within 250 feet and 500 feet of a freeway, boulevard, or avenue. City Planning found that, of all restaurants in the City, 90.1% are located within 150 feet of a major roadway (that is, a roadway designated as a Boulevard I, Boulevard II, Avenue I, or Avenue II in the Mobility Element), 92.7% are within 250 feet, and 95.9% are within 500 feet. Data for restaurants using the Temporary Authorizations are similar: 88.8% are within 150 feet of a major roadway, 92.1% are within 250 feet, and 95.9% are within 500 feet of a major roadway. A sample review of noise impact analyses for previously analyzed development

projects in the City have found that existing typical daytime ambient noise levels along major roadways in the City is generally in the range of 65 to 70 dBA (see Attachment A to the Negative Declaration).

Typical operational noise levels generated by outdoor dining would range between approximately 60-65 dBA for normal conversations in a commercial area. As previously stated, the vast majority of the City's restaurants (90.1%) are within 150 feet of a major roadway, which themselves typically generate approximately 65 to 70 dBA of noise. Most outdoor dining areas, then, would generate noise within the normal range of ambient noise levels for the environments in which they are located.

CONCLUSION

Taking into consideration the applicable LAMC noise regulations and existing ambient noise levels in commercial areas where restaurants are typically located, City Planning therefore recommends that the proposed Al Fresco Ordinance be modified so that ambient music (i.e. volume limited to allow patrons to speak at normal conversational levels) is allowed in outdoor dining areas in compliance with Section 112.01 of the LAMC. If adopted, violations of the recommended ambient music standard would be enforced by LAPD pursuant to the City's ACE program, thereby addressing the potential noise impacts that may be caused by non-compliant outdoor dining operations.

If you have any questions regarding this matter, please direct them to Bonnie Kim via email at bonnie.kim@lacity.org.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning



Arthi Varma, on behalf of Vince Bertoni
Deputy Director

VPB:AV:hsc:bk

Enclosures
Negative Declaration (ENV-2023-3278-ND)