

CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

Date: September 29, 2021

To: Honorable City Council
c/o City Clerk, Room 395, City Hall
Attention: Honorable Mike Bonin, Chair, Transportation Committee

From: Gary Lee Moore, City Engineer 
Bureau of Engineering

Seleta J. Reynolds, General Manager 
Department of Transportation

Subject: **SIDEWALK DINING AND PEOPLE ST. PROGRAM L.A. AL FRESCO UPDATE**

SUMMARY

In response to CF 20-1074, this report recommends a permitting process for existing and new L.A. Al Fresco participants to operate in the public right-of-way. This will allow for continued use of the public right-of-way for dining, but does not address all programmatic details needed for a permanent outdoor dining program.

RECOMMENDATION

That the City Council:

1. REQUEST the City Attorney, with the assistance of the Los Angeles Department of Transportation (LADOT), to draft an ordinance to establish application fees for on-street dining;
2. AUTHORIZE the LADOT to report back on the application fees collected for FY 2021-22 and seek Council approval to set up an appropriation account within Department of Transportation Trust Fund No. 840 based on the expenditure plan for the fees collected;
3. DIRECT LADOT to report back in 90 days with grant eligibility criteria and a process for selecting and prioritizing locations for funding through the contractual services provided for in the Fiscal Year 2022 budget.

BACKGROUND

In November 2020, the City Council directed the Chief Legislative Analyst (CLA), with the support of several departments, to report on the feasibility of developing a permanent Al Fresco Program.

The CLA report, presented to Council in March 2021, outlines the City's existing authority to issue private use permits for the public right-of-way. Under the COVID-19 emergency order, LADOT and the Bureau of Engineering (BOE) issue temporary use authorizations that allow businesses to set up outdoor dining in the public right-of-way. When the emergency order and the temporary L.A. Al Fresco Program

expire, these temporary use authorizations will become invalid and businesses will need to obtain a revocable permit (R-Permit) for continued use of the sidewalk or on-street space for private use. As defined in LAMC Section 62.118.2, only BOE can issue R-Permits. The City's existing Sidewalk Dining Program has established procedures for obtaining R-Permits for sidewalk dining. In order to transition from temporary to permanent on-street dining, the City needs to establish the procedures for obtaining an R-Permit for on-street locations, including the fees associated with application review and meter revenue recovery.

On May 24, 2021, the City Council directed BOE and LADOT to report with recommendations on revising the Sidewalk Dining Program and the People St. Program to transition all existing L.A. Al Fresco Pilot Program participants that are operating in the public right-of-way into permanent sidewalk dining locations, including the identification of specific locations that can quickly be made permanent with minimal effort.

Al Fresco temporary use authorizations are currently set to expire on December 31, 2021. LADOT's authority to create temporary use authorizations for on-street dining, as established by the Mayor's Directive on L.A. Al Fresco will remain in effect for six months following the end of the City's Safer L.A. Emergency Order, pursuant to the Council action (CF 20-1074-S1).

DISCUSSION

Sidewalk Dining

The BOE recommends applying the existing Sidewalk Dining Program for establishments that want to continue offering sidewalk dining after the Al Fresco emergency order program ends. The current Sidewalk Dining Program rules are available in the BOE permit manual at <https://engpermitmanual.lacity.org/revocable-r-permits/technical-procedures/02-sidewalk-dining>. BOE is in the process of submitting a report to the Board of Public Works recommending consideration of certain policy changes that would simplify the process for applicants.

Implementation

BOE issued over 1,600 sidewalk dining temporary use authorizations since the launch of the program. BOE automatically approved Al Fresco emergency response authorizations for sidewalk dining upon completion of the application and self-certification to the program requirements.

BOE proposes to use the existing R-Permit process to transition these L.A. Al Fresco participants to the Sidewalk Dining Program as described in the BOE report dated June 16, 2021, under CF 20-0499. Businesses will need to apply for a Sidewalk Dining R-Permit. BOE anticipates that existing Al Fresco installations that meet the existing Al Fresco Sidewalk Dining Program requirements will generally be straightforward to transition to the regular Sidewalk Dining Program.

Staff Resources

Additional staff resources needs are unknown at this time. BOE estimates that there may be a need for up to three additional staff to support the Sidewalk Dining Program depending on the volume of applications received. Due to the high degree of uncertainty of the application volume, BOE is not requesting positions at this time but may request them in the future if it appears that they are needed.

On-Street Dining

LADOT's People St Program launched in 2014 to allow community groups to transform street space for public use. People St projects remain publicly accessible and are not tied to any individual business or organization. LADOT reviews and approves all applications to the People St Program and enters into an agreement with the applicant for the management, maintenance, and operation of the public space. Once that agreement is approved and all fees are paid, BOE issues an A-Permit for construction in the right-of-way.

Unlike the People St community partners, L.A. Al Fresco participants seek exclusive use of street space if they are to invest in and assume liability for on-street dining. LADOT recommends creating a stand-alone Al Fresco permitting process similar to the People St Program, to authorize long-term private use of street space for dining. In addition to an agreement and an A-Permit, the Al Fresco permitting process will require an R-Permit to allow for private use of the public right-of-way. Al Fresco applications will be accepted on a rolling basis.

LADOT will continue to partner with BOE to finalize a new inter-departmental application review and permitting process to establish on-street Al Fresco spaces. Upon adoption of the ordinance to establish application fees for on-street dining, LADOT will notify the businesses with temporary on-street dining authorizations and will provide an opportunity for these locations to apply prior to a full launch of the permanent program.

As of this report, 154 restaurants currently operate curbside dining areas. LADOT has already performed an engineering feasibility review of authorized on-street Al Fresco dining locations and anticipates that these dining areas can quickly be permitted through the permanent program, contingent upon compliance with land use conditions and permanent program requirements.

Application and Design Requirements

LADOT will review applications for suitability based on speed limit, the number of travel lanes, curb color, parking availability, and the distance to fire hydrants. If an on-street dining installation overlaps a neighboring property's frontage, LADOT will require a written agreement from that property owner.

In October 2020, LADOT received one-time funding from the Coronavirus Aid, Relief and Economic Security (CARES) Act, which allowed LADOT to purchase and install traffic control devices for on-street dining areas. Therefore, since its launch, L.A. Al Fresco has been free for restaurants to apply and participate. Without additional funding moving forward, applicants will need to purchase and install these traffic control devices at the direction of LADOT.

LADOT will provide specific guidelines as to what can be built within the dining area, will review and approve an applicant's design plans, and will inspect furnishings and structures after installation and on an ongoing basis to ensure compliance. Dining areas will need to include materials that are easily removable for street maintenance and emergencies and will need to comply with ADA requirements. Permanent program guidelines will require additional design guidance and conditions of approval from other departments such as the Los Angeles Fire Department and the Department of Building and Safety pursuant to requirements for health and safety.

Environmental Review

LADOT filed a Notice of Exemption (NOE) for temporary on-street dining under the current L.A. Al Fresco emergency response program. This exemption states the Project is categorically exempt by statute under Section 15269 of the State CEQA Guidelines. LADOT will need to perform an environmental review process and determine if the Department can file a programmatic NOE for permanent on-street dining. The repurposing of parking for outdoor dining should be categorically exempt. LADOT will need to draft, sign, and file the subsequent CEQA documents prior to the launch of the permanent program.

California Coastal Commission Permitting

In July 2020, the California Coastal Commission (CCC) provided the City with a waiver of coastal development permitting requirements for the L.A. Al Fresco Program while Executive Order N-33-20 and City's emergency order are in place. This determination is based on the City's acknowledgment that the proposed development will not result in the erection of any permanent structures valued at more than \$25,000.

LADOT has identified 18 curbside dining areas and two parking lane closures that are within the coastal zone boundary and may be subject to permit requirements after the emergency order ends. These businesses will need to file for a Coastal Permit exemption, which the Department of City Planning will review.

Staff Resources

In the Fiscal Year 2022 budget, City Council provided LADOT resolution authority and six-months funding for three positions to support the future Al Fresco Program - one Supervising Transportation Planner I, one Engineering Associate III, and one Management Analyst. These positions will provide LADOT with the resources to permit existing on-street dining participants for permanent operation, as well as reviewing and processing new applications at a later date. LADOT can begin the hiring process for these three positions after January 2022.

Grant Opportunities

The Fiscal Year 2022 budget includes one-time contractual services funding in the amount of \$1,614,791 to create grant opportunities for restaurants in low-income neighborhoods to set up outdoor dining areas. LADOT is assessing the datasets and methodology needed to determine the eligibility criteria, the process for grant distribution, and the types of expenditures the grants could cover.

Costs

LADOT recommends fees associated with application review and use of metered spaces in order to make the program cost-neutral, unless the City identifies additional funding sources or other cost recovery mechanisms.

The CAO has reviewed and approved LADOT's fee study for application review. This study recommends the following fees specifically for on-street dining applicants.

Application Review Fee (for existing participants): \$1,200

Application Review Fee (for new participants): \$1,500

Parking Meter Head Removal: \$230 first meter + \$58 each additional

Parking Meter Usage Fees: Options for annual usage fees can include full cost recovery based on meter rate and hours (approximately \$1,500 - \$17,500 per space), historical revenue generated by a meter (approximately \$450 - \$9,000 per space), or no usage fees. Options may also include subsidies for the first year and/or payment plans.

Applicants would pay these fees directly to LADOT. Upon approval by LADOT, the business would pay an R-Permit Tier 1 fee (\$556) and a Sewer Facility Charge to BOE. If the on-street dining area requires minor construction, the business would need to apply for an A-Permit.

A new ordinance is required to implement a permanent permit process with associated fees.

FISCAL IMPACT

Over 60% of Al Fresco curbside dining areas use one or more paid parking spaces, which include single-space meters and paid parking stalls. Currently, restaurants have repurposed 297 single-space parking meters and 41 paid parking stalls for on-street dining. The annual revenue generated by these paid parking spaces totaled \$1,082,668 in 2019. This presents a long-term fiscal impact to the Special Parking Revenue Fund (SPRF).

One hundred fifty-four (154) businesses are currently operating on the street in curbside dining areas. If these businesses apply into the permanent program, this would result in one-time application review fees totaling \$184,800. LADOT recommends depositing these fees into the Department of Transportation Trust Fund No. 840 to support an expenditure plan for staff positions.

SJR:DM:jg