

COUNTY CLERK'S USE

CITY OF LOS ANGELES
OFFICE OF THE CITY CLERK
200 NORTH SPRING STREET, ROOM 395
LOS ANGELES, CALIFORNIA 90012

CALIFORNIA ENVIRONMENTAL QUALITY ACT
NOTICE OF EXEMPTION
(PRC Section 21152; CEQA Guidelines Section 15062)

Filing of this form is optional. If filed, the form shall be filed with the County Clerk, 12400 E. Imperial Highway, Norwalk, CA 90650, pursuant to Public Resources Code Section 21152(b) and CEQA Guidelines Section 15062. Pursuant to Public Resources Code Section 21167 (d), the posting of this notice starts a 35-day statute of limitations on court challenges to reliance on an exemption for the project. Failure to file this notice as provided above, results in the statute of limitations being extended to 180 days.

PARENT CASE NUMBER(S) / REQUESTED ENTITLEMENTS

CPC-2022-8179-CA

LEAD CITY AGENCY

City of Los Angeles (Department of City Planning)

CASE NUMBER

ENV-2022-8180-CE

PROJECT TITLE

AI Fresco Ordinance

COUNCIL DISTRICT

Citywide

PROJECT LOCATION (Street Address and Cross Streets and/or Attached Map)

Citywide

Map attached.

PROJECT DESCRIPTION:

Additional page(s) attached.

A proposed Ordinance to 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. As proposed, outdoor dining that complies with the applicable standards would be permitted as a by-right use in any 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 discretionary approval or in compliance with the proposed new ministerial approval.

NAME OF APPLICANT / OWNER:

City of Los Angeles (Department of City Planning)

CONTACT PERSON (If different from Applicant/Owner above)

Bonnie Kim

(AREA CODE) TELEPHONE NUMBER

(213) 978-1330

EXT.

N/A

EXEMPT STATUS: (Check all boxes, and include all exemptions, that apply and provide relevant citations.)

STATE CEQA STATUTE & GUIDELINES

STATUTORY EXEMPTION(S)

Public Resources Code Section(s) Sec. 21080.25

CATEGORICAL EXEMPTION(S) (State CEQA Guidelines Sec. 15301-15333 / Class 1-Class 33)

CEQA Guideline Section(s) / Class(es) Sec. 15303 / Class 3 and Sec. 15311 / Class 11

OTHER BASIS FOR EXEMPTION (E.g., CEQA Guidelines Section 15061(b)(3) or (b)(4) or Section 15378(b))

JUSTIFICATION FOR PROJECT EXEMPTION:

Additional page(s) attached

Please see the attachment to Notice of Exemption from CEQA.

None of the exceptions in CEQA Guidelines Section 15300.2 to the categorical exemption(s) apply to the Project.

The project is identified in one or more of the list of activities in the City of Los Angeles CEQA Guidelines as cited in the justification.

IF FILED BY APPLICANT, ATTACH CERTIFIED DOCUMENT ISSUED BY THE CITY PLANNING DEPARTMENT STATING THAT THE DEPARTMENT HAS FOUND THE PROJECT TO BE EXEMPT.

If different from the applicant, the identity of the person undertaking the project.

CITY STAFF USE ONLY:

CITY STAFF NAME AND SIGNATURE

Bonnie Kim *Bonnie Kim*

STAFF TITLE

City Planner

ENTITLEMENTS APPROVED

Code Amendment

FEE:

N/A

RECEIPT NO.

N/A

REC'D. BY (DCP DSC STAFF NAME)

N/A

DISTRIBUTION: County Clerk, Agency Record

Rev. 3-27-2019

JUSTIFICATION FOR CEQA EXEMPTION
(Class 3, Category 15303 New Construction or Conversion of Small Structures and Class 11, Category 15311 Accessory Structures)

I. PROJECT DESCRIPTION (CONTINUED)

The Project is a proposed Ordinance (commonly referred to as the Al Fresco Ordinance) by the Department of City Planning (DCP) 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, 12.24, 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 order to facilitate the maintenance of many outdoor dining options that were allowed during the COVID-19 emergency, the proposed Ordinance offers a by-right approval process for outdoor dining areas and relief from parking requirements for restaurants that comply with the proposed Ordinance's eligibility criteria and operational standards. The proposed standards remove certain Zoning Code restrictions on outdoor dining on private property to make permanent the rules and regulations set forth in the Mayor's emergency order establishing L.A. Al Fresco, a program which enabled Temporary Use Authorizations (Temporary Authorization) for outdoor dining. The proposed Ordinance codifies Citywide policies and practices used by the Los Angeles Department of Transportation (LADOT) during the Mayor's emergency order to issue Temporary Authorizations to those businesses participating in the L.A. Al Fresco Program. The proposed Ordinance will continue to allow outdoor dining on private property by providing relief from parking requirements for operators that meet the eligibility criteria, comply with the definition of an "Outdoor Dining Area", and comply with the operational standards. The Ordinance also establishes a streamlined, low cost authorization process for current and future Al Fresco participants to continue operation or begin operating outdoor dining areas with alcohol service. The Ordinance's proposed definition, applicability, and standards are summarized below:

Site Design

The proposed Project does not limit the square-footage or set parameters for the configuration of the outdoor dining area but does define the outdoor dining area to be 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 consumption of food and drinks by the patrons of the restaurant. The proposed definition of "Outdoor Dining Area" was crafted to include only the site design parameters that create a smooth transition for restaurants that have invested in their current site design configurations, as the Temporary Authorizations grant similar flexibility in site design permissions, with only full enclosures prohibited.

The temporary Al Fresco program currently in effect has been widely used by restaurants to establish outdoor dining areas, but the exact amount of how much space has been used for these purposes, or what configurations or structures have been built under Temporary Authorizations, are not known. To ascertain an approximation of the usage of space for outdoor dining under the temporary Al Fresco program, in Summer of 2022, DCP, in conjunction with the LADOT, conducted a survey of the current participants of the provisional L.A. Al Fresco program. 308 unique business owners responded out of 2,803 total Al Fresco temporary authorizations, representing an approximately 11% response rate. The survey found that restaurant operators have configured their outdoor dining areas in a variety of ways and that a majority of participants utilize their private property to place their outdoor dining areas.

The data output from the survey respondents was as follows: approximately 34% reported using private property only, 24.9% reported using private property and the public right-of-way, 19.5% reported using multiple types of right-of-way spaces (i.e. sidewalk, curbside, and in-street dining), and 19.2% reported using the sidewalk only. Further, data acquired from the ClearForms Database, the application portal for the L.A. Al Fresco program, shows that approximately 76.6% of the Temporary Authorizations were issued for outdoor dining involving private property and approximately 23.4% of the Temporary Authorizations were issued on the public right-of-way. Again, with this ClearForms data, it can be found that over half of the Temporary Authorizations have been issued for the use of private property as outdoor dining space.

The ClearForms Database also shows the average and median size of the outdoor dining areas and average and median number of seats provided by participating restaurants who offer outdoor dining on private property. According to those who responded to the Temporary Authorization application questions in ClearForms, the average size of an outdoor dining area was 1,036 square feet, with a median of 500 square feet, and the average number of seats was 34 seats, with a median of 24 seats. The current Al Fresco Program sets conditions for the arrangement and spacing of tables in outdoor dining areas in compliance with the accessibility standards of the California Building Code; the proposed Project maintains the applicability of these accessibility standards by staying silent on the matter and deferring to the California Building Code.

Applicability/Eligibility Criteria and Operational Standards

The Project includes applicability and eligibility criteria that need to be met in order for participants to be allowed to maintain or establish outdoor dining areas in their private property. Restaurants must have all necessary permits to operate a restaurant, which would include any required permits from the LA County Department of Public Health, any necessary entitlements from Los Angeles City Planning, and any necessary permits from Los Angeles Department of Building and Safety. The outdoor dining areas are allowed on private property in all RAS, C, and M zones, and/or wherever restaurants are allowed by-right. To reduce noise and other nuisances, the Temporary Authorizations prohibit the following activities: music, television monitors, screens and speakers, live entertainment, dancing, pool tables, billiard tables, adult entertainment uses, private events, and cover charges. The proposed Project retains all of these prohibitions except for the prohibition of private events and cover charges. Relief from the prohibition on music and speakers may be obtained via a discretionary conditional use permit.

In addition, the operational standards require that all outdoor dining areas not operate any later than 10:30 p.m. if they are adjacent or across an alley to a residential use. Moreover, the Project includes a set of security, monitoring, and maintenance standards that require restaurants to take proactive measures to clean litter and debris, as well as require restaurants to post a City-issued identification on the premises that includes instructions on how patrons or community members can submit complaints or concerns regarding the operation of the outdoor dining area. These eligibility criteria and operational standards essentially align with what is required of current temporary Al Fresco program participants and provides a path for the City to review and verify the businesses that are able to provide outdoor dining on private property.

Parking Relief

The summary report of the 2022 participant survey discussed above in the ***Site Design*** subsection, indicated that nearly 80% of the 308 survey respondents who were providing outdoor dining in a parking area were using five parking spaces or fewer, which equates to an approximately 1,000 square-foot area of outdoor dining space based on parking stall dimensions established in the Zoning Code. The LADOT studies options for adopting Preferential Parking Districts and installing parking meters in parts of the City that require these additional parking measures to ensure that there is ample and adequate parking in neighborhoods. Additionally, the State of California adopted Assembly Bill 2097 (AB 2097), which prohibits public agencies or cities from imposing a minimum automobile parking requirement on most development projects located within a half-mile radius of a major transit stop, including residential, commercial and industrial projects. Approximately 1,758 (62.7%) of the total 2,803 Temporary Authorizations issued as of March 2023 meet the locational eligibility criteria for AB 2097. Out of those 1,758 Temporary Authorizations eligible for AB 2097, a minimum of 1,322 were issued for outdoor dining involving private property. In an effort to mirror the intent of AB 2097 and create equal opportunities for all outdoor dining expansion under the Project, parking relief is proposed for restaurants to add their outdoor dining area on private property where their required automobile parking spaces are located. The waiving of new parking requirements and requirements to maintain existing required parking for participating establishments has been a key feature of the current Al 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 current Zoning Code, beyond the adopted Local Emergency Ordinance regulations or through a Zone 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. As such, this Project adds this new parking relief option to the Zoning Code, specific to replacement of private property parking spaces with outdoor dining areas. However, at least one parking space must be provided, unless: the primary restaurant contains 3,000 square feet or less of floor area; the outdoor dining area is 1,000 square feet or less; or as otherwise prohibited by state or federal law.

Alcohol Service Standards

According to those who responded to the Temporary Authorization application questions in ClearForms, approximately 69% of current Temporary Authorizations involving outdoor dining on private property reported serving alcohol. Additionally, the 2022 participant survey conducted by DCP and LADOT shows that approximately 72.7% of survey respondents reported serving alcohol in their outdoor dining area. These numbers indicate that a large majority of participating restaurant operators serve alcohol and therefore, the sale, dispensing, and consumption of alcoholic beverages will continue to also be allowed by the proposed provisions of the Project. The proposed Project provides streamlined, low cost processes for current and future Al Fresco participants to continue operating or begin operating outdoor dining areas while serving alcohol. As such, alcohol provisions will fall within the following three categories:

- 1) Restaurants that obtained a valid L.A. Al Fresco Temporary Authorization to operate an outdoor dining area as of the effective date of the proposed Ordinance and currently have a valid alcohol approval from the City and valid alcohol license from the State will be deemed to be approved to continue the sale of alcohol in their outdoor dining area if the business is in compliance with the alcohol service standards of the Ordinance;
- 2) Restaurants that currently serve alcohol under a valid alcohol approval from the City and a valid alcohol license from the State but did not obtain a valid L.A. Temporary Authorization to operate an outdoor dining area may serve alcohol in an outdoor dining area by obtaining an Expanded Outdoor Dining Area Clearance; and
- 3) Restaurants that currently do not serve alcohol but wish to do so in an outdoor dining area will be required to obtain a CUP or apply for the Restaurant Beverage Program (RBP), as is required in the LAMC today.

In order to qualify for category 1, which is considered an “Al Fresco deemed to be approved” status, participants must have a valid alcohol approval from the City and have an alcohol license issued by the California Department of Alcoholic Beverage Control (ABC). If eligible, current participants must submit required documents to the DCP within 6 months of the expiration of the L.A. Al Fresco Temporary Authorization. The list of required documents includes their issued or renewed L.A. Al Fresco Temporary Authorization, a valid alcohol approval from the DCP or proof showing existing alcohol sales with no conditional use approval prior to March 1, 1977, and an ABC-issued alcohol license. Upon verification of a complete application, DCP will confirm the participant’s “Al Fresco deemed to be approved status”. Once confirmed, the participant will still be required to comply with the conditions of approval or standards associated with the valid alcohol approval for all indoor areas and any outdoor dining areas included in the initial approval. However, the outdoor dining area standards of the Ordinance will supersede any conflicting conditions or standards pertaining to the expanded outdoor dining area that would preclude outdoor dining as described in the proposed Project. Additionally, restaurant operators will need to obtain any necessary approvals from ABC for permanent expansions of their State alcohol licenses. This approach will allow current Al Fresco participants to maintain their operations as they are today with no cost and minimal disruption to service.

For category 2, restaurants that do not qualify for “Al Fresco deemed to be approved status” will

be authorized to serve alcohol in outdoor dining areas pursuant to an administrative clearance process. An applicant must have a valid approval for alcohol service from the DCP or have proof of existing alcohol sales with no CUP prior to March 1, 1977, and an ABC-issued alcohol license. This option requires the filing of a new application, called an Expanded Outdoor Dining Area Clearance, and fee. The "Building Permit Clearance - Minor" fee pursuant to LAMC Section 19.04 will be charged for an Expanded Outdoor Dining Area Clearance. The restaurant will be required to comply with the conditions of approval or standards associated with the valid alcohol approval for all indoor areas and any outdoor dining areas included in the initial approval. However, an applicant may request that the outdoor dining area standards of the Ordinance supersede any conflicting conditions or standards pertaining to the expanded outdoor dining area, as indicated through a site plan. Additionally, restaurant operators will need to obtain any necessary approvals from ABC for permanent expansions of their State alcohol licenses. This administrative clearance process will provide eligible restaurants who did not participate in the temporary Al Fresco program a pathway for obtaining authorizations for alcohol service in an outdoor dining area.

Category 3 relates to provisions that already exist in the LAMC today and is therefore, not a proposed provision of this proposed Project. Restaurants who wish to serve alcohol will be required to follow the provisions of LAMC Sections 12.24 W.1 or 12.22 A.34 to obtain a CUP or RBP approval, respectively, from the Department of City Planning. Pursuant to LAMC Section 12.24 W.1, the CUP application process consists of a public hearing conducted by a Zoning Administrator, who has discretion over the outcome of the application. Upon the Zoning Administrator's approval, the Zoning Administrator may impose site-specific conditions of approval intended to alleviate potential land use impacts associated with the sale of alcohol on neighbors and the surrounding community. In addition, as required by the State's CEQA Guidelines, the CUP application requires an environmental analysis to determine whether there are any environmental impacts resulting from the discretionary action. This process can take at least 6 months and costs approximately \$14,000 or more. In February 2022, the City Council adopted the RBP Ordinance (CF 17-0981, Ordinance No. 187,402), which created a new administrative clearance process for bona fide restaurants seeking to obtain City approval to sell alcohol for on-site consumption as an alternative to obtaining a discretionary CUP approval. The RBP Ordinance created two versions of the RBP: a general version and an Alcohol Sensitive Use Zone (ASUZ) version. The RBP Ordinance granted the City Council the ability to designate specific geographies as eligible for either version. As of March 2023, the City Council has opted-in the entirety of Council Districts 2, 3, 4, 5, 10, 11, 12, and 13 into the general version of the RBP. In Council District 15, the City Council opted-in the southern portion of the district, including San Pedro, into the general version and the neighborhood of Watts into the ASUZ version. Pursuant to LAMC Section 12.22 A.34, eligible restaurants are required to comply with a series of operational, security, and monitoring standards to be able to participate in their respective version of the RBP. Such standards include closing at 11:00 p.m., installing and maintaining a camera surveillance system, providing adequate lighting, no live entertainment, no dancing, and additional noise-restricting measures. The RBP application process consists of an administrative review that takes approximately four weeks or less to complete and costs about \$5,000. Further, provisions of LAMC Sections 12.24 W.1 and 12.22 A.34 require an establishment selling alcohol with a CUP or RBP authorization to apply for a new alcohol authorization whenever there is substantial change in mode or character of operation of the business. Pursuant to LAMC Section 12.24 M, when an expansion is less than 20%, a Plan Approval may be required instead of a new CUP.

Similarly to the Temporary Authorizations, the Project would allow applicants to submit applications to provide outdoor dining and use their existing valid alcohol approval for their outdoor dining area on private property and/or the public right-of-way. The eligible restaurants will also be subject to a number of minimum operating standards that currently apply to the Temporary Authorizations, as summarized above under the **Applicability/Eligibility Criteria and Operation Standards** subsection. In addition to these operating standards, the Project proposes applicable standards when alcohol service is provided in an outdoor dining area on private property. These standards are the following:

- All alcohol that is served shall be delivered and served at tables by employees.
- All patrons shall be seated.
- No fixed or portable bar service areas are permitted in Outdoor Dining Areas.

Furthermore, the Project also proposes the same applicable standards for those eligible businesses that have a Revocable Permit for outdoor dining in the public right-of-way from LADOT and/or the Bureau of Engineering (BOE) and who are proposing alcohol service. These standards are necessary to ensure alcohol is monitored and regulated. Regardless of whether alcohol service is occurring in private property or in the public right-of-way, the alcohol service standards will be enforced by the Department of Building and Safety (LADBS).

Any deviations from the outdoor dining area standards of the proposed Project will be considered through a Plan Approval of the original discretionary entitlement pursuant to Section 12.24 M of Chapter I or Article 13 of Chapter 1A of the LAMC, as applicable. Non-compliance with the outdoor dining area standards may result in enforcement actions pursuant to Section 12.27.1 (Administrative Nuisance Abatement Proceedings) of Chapter I or Article 13 of Chapter 1A of the LAMC, as applicable. Lastly, the Project's provisions will ensure that an outdoor dining area not be considered a project nor require any general design review procedures under any Specific Plan, Supplemental Use District, or other overlay and will ensure that the outdoor dining area standards established in the proposed Section 12.21 A.24(d) of the LAMC will provide relief from any conflicting provisions found in such Specific Plans, overlays, or Chapter I of the LAMC.

II. PROJECT HISTORY

In order to alleviate the COVID-19 pandemic impacts, the City of Los Angeles implemented a variety of emergency measures through the Mayor's local emergency powers. On May 29, 2020, the City launched a new program, L.A. Al Fresco, to allow for outdoor dining activities for qualifying food and beverage establishments. The program also provided aid to owners of local food establishments who were adversely impacted by the pandemic due to related public health restrictions. Under L.A. Al Fresco, food and beverage establishments were granted a streamlined temporary authorization to expand their operations with outdoor dining facilities, including the temporary suspension of existing LAMC regulations which would prevent or limit outdoor dining activity. The Temporary Authorizations enabled outdoor dining to occur without requiring the City's traditional outdoor dining permits (i.e. Bureau of Engineering's sidewalk dining revocable permit or Department of Building and Safety Temporary Special Event Permit). The L.A. Al Fresco Program is free, expedited, and the average time to apply is approximately 20 minutes. Approximately 2,803 Temporary Authorizations have been issued as of March 2023. According to the Office of Finance list of registered active businesses, there are 10,320 total restaurants in the City of Los Angeles. Businesses that have a valid L.A. Al Fresco Temporary Authorization (2,803), constitute 27.2% of all restaurants in the City of Los Angeles. Due to the City's successful implementation of a temporary program under the local emergency order, the City proposes to adopt a permanent version of the program, including any necessary amendments to the City's Municipal Code. On March 22, 2022, the City Council directed the Department of City Planning (DCP) in coordination with the Los Angeles Department of Building and Safety (LADBS), Los Angeles Fire Department (LAFD), and City Attorney, to prepare and present a Citywide Ordinance creating a permanent Al Fresco program and generally streamlining outdoor dining provisions throughout the Zoning Code. As a result, the Project involves a proposed Ordinance to clarify and streamline Zoning Code regulations regarding outdoor dining on private property citywide. The Project includes components such as a definition of outdoor dining area, operational standards, parking relief for outdoor dining areas, and streamlined alcohol authorizations for existing or new outdoor dining areas. Outdoor dining that complies with the applicable standards would be permitted as a by-right use in any zones where restaurants are currently permitted.

III. ENVIRONMENTAL SETTING

As stated in the *II. Project History* section above, since 2020, the L.A. Al Fresco Program has allowed Temporary Authorizations for outdoor dining and has relaxed regulations in order to provide restaurants and other food establishments with an alternative to full indoor dining. Restaurant operators interested in the program have been able to apply online for self-certified Temporary Authorizations rather than the traditional

outdoor dining permits (i.e. Bureau of Engineering's sidewalk dining Revocable Permit or Department of Building and Safety's Temporary Special Event Permit) required by the City. The temporary L.A. Al Fresco program charges no fees for applicants, the applications take approximately 20 minutes to complete online, and the program is available Citywide. The intent of the proposed Project is to allow for the continuation of such authority for restaurants wishing to operate their outdoor dining areas on private property Citywide, so that current participants can transition their Temporary Authorizations into permanent approvals and future eligible participants have access to a streamlined application process.

Existing Regulatory Setting

The existing temporary Al Fresco program provides streamlined approval for outdoor dining in the following areas:

- Private Property (Parking Lots, Patios, Courtyards, Walkways, Plazas)
- Sidewalks
- On-Street (Curbside Parking Spaces)
- On-Street (Parking Lane Closures)

The temporary L.A. Al Fresco program is open to all establishments that adhere to State and local public health guidelines and meet the following minimum qualification thresholds:

- Establishment must be licensed in the City of Los Angeles and have a Business Tax Registration Certificate;
- For establishments with existing alcohol permits, alcoholic beverages may only be served with the approval from the Department of City Planning and the California Department of Alcohol and Beverage Control (ABC) (applicants must obtain COVID-19 Temporary Catering Authorization from the ABC);
- Establishment must have a \$300,000 minimum Liability Insurance policy; and
- Business Owner must agree to defend, indemnify and hold the City of Los Angeles harmless for any loss or liability, including but not limited to, damage or injury related to the encroachments of this temporary authorization.

In addition, the existing temporary Al Fresco program requires that any operator that applies for a Temporary Authorization must self-certify that they will comply with the following minimum operating conditions:

- Operation must match the character and mode of the existing establishment in regards to alcohol service.
- All shade structures or canopies shall only be overhead, without any vertical sides, and shall not exceed 400 square feet in size. Shade structures or canopies larger than 400 square feet shall require permits from the Los Angeles Fire and Building and Safety Departments. Full enclosures are prohibited. Exception: The aggregate area of multiple canopies placed side by side with a fire break clearance of 12 feet between each canopy may exceed 400 square feet total without requiring permits.
- All alcohol that is served shall be delivered to tables by employees.
- All patrons shall be seated.
- All alcohol service shall continue to require Department of City Planning approval. No fixed or portable bar service areas shall be placed in the temporary outdoor dining areas.
- Prohibit music, television monitors, screens and speakers in temporary outdoor dining areas.
- Prohibit live entertainment, dancing, pool tables, billiard tables, and adult entertainment uses pursuant to LAMC Section 12.70 in all temporary outdoor dining areas.
- A City-issued identification shall be posted in the temporary outdoor dining area and made clearly visible to the public, indicating that the area is subject to the requirements and restrictions of the L.A. Al Fresco Program. This shall include a telephone number and an email address for complaints or concerns regarding the operation of the temporary outdoor dining area.
- Fire apparatus access roads must remain unobstructed.
- Tables shall be arranged so that the seating edges of adjacent tables are not less than 54 inches apart. Rectangular tables arranged to accommodate seating on one side only shall have not less than 36 inches between adjacent table edges.

- Aisles between tables and chairs must be 44-inch minimum width.
- This approval constitutes a temporary use authorization for outdoor dining areas for the duration of the Mayoral order, subject to additional extensions of Mayoral order.
- LADBS and LAFD (Public Assemblage Unit) shall have the authority to inspect and enforce conditions and may revoke any temporary use authorization for non-compliance with subject operating conditions.
- All temporary outdoor dining areas shall operate no later than 10:30 p.m. if adjacent to residentially zoned properties or residential uses.
- Prohibit private events and cover charges in temporary outdoor dining areas.
- Require nightly cleaning of premise, outdoor seating areas, and adjoining sidewalk areas free of debris and litter.
- Exits from proposed outdoor dining areas must be provided with direct, unobstructed access to the public right-of-way.
- Immediate access to the Fire Department connections shall be maintained without obstructions.
- A minimum of 5% of outdoor seating spaces must be accessible.
- A clear space of 36-inch minimum must be provided behind accessible seating spaces.
- At the expiration of this order, all temporary uses granted under this emergency order shall be subject to standard building and zoning codes and procedures.

Existing Physical Conditions

Under the current temporary Al Fresco program, the issuance of Temporary Authorizations are overseen by the LADOT and contain a number of minimum operating conditions (outlined above) that are self-certified by the restaurant operator. Further, restaurant operators wishing to participate in the program are still able to apply for new Temporary Authorizations as of the time of this analysis, and those establishments that already have a Temporary Authorization may continue to operate their outdoor dining areas until August 1, 2023, subject to additional extensions.

Applicants who provided outdoor dining on private property and/or the public right-of-way were given separate authorizations for each type of outdoor dining. Currently, there are 10,320 total restaurants in the City of Los Angeles. Businesses that have a valid L.A. Al Fresco Temporary Authorization (2,803) constitute 27.2% of all restaurants in the City of Los Angeles. Out of the 2,803 Temporary Authorizations issued as of March 2023, approximately 2,148 (76.6%) were issued for outdoor dining involving private property and 655 (23.4%) authorizations were issued for the public right-of-way. As stated in the **Site Design** subsection of the **I. Project Description (Continued)** section above, according to those who responded to the Temporary Authorization application questions in ClearForms, the average size of an outdoor dining area is 1,036 square feet, with a median of 500 square feet, and the average number of seats is 34 seats, with a median of 24 seats.

According to the data acquired by the DCP's Geographic Information Systems Unit, there is at least one Temporary Authorization in each of the 35 Community Plans areas that make up the General Plan's Land Use Element of the City of Los Angeles and at least one Temporary Authorization within the Los Angeles International Airport (LAX) Specific Plan and the Port of Los Angeles' Dual Coastal Plan Zone, which guide land use consideration at two of the City's proprietary agencies, namely the airport and port. The five Community Plan areas with the most Temporary Authorizations involving outdoor dining on private property are listed in descending order as follows: 416 (19.4%) are in the Wilshire Community Plan area, 212 (9.9%) are in the Hollywood Community Plan area, 139 (6.5%) are in the Sherman Oaks-Studio City-Toluca Lake Community Plan area, 119 (5.5%) are in the Northeast Los Angeles Community Plan area, and 119 (5.5%) are in the Central City Community Plan area.

Related Project

LADOT has led concurrent efforts related to regulations to permit in-street and curbside dining, as well as the Bureau of Engineering (BOE) to permit expanded sidewalk dining. As such, outdoor dining on the public right-of-way was addressed separately in Ordinance No. 187,722 (CF 20-1074), which was adopted by the City Council on December 6, 2022 and became effective on January 19, 2023. Ordinance No. 187,722 is relative to amending the LAMC to use the Special Engineering Fee for certain Revocable Permit applications, and a Los Angeles Department of Transportation Application Review Fee for Revocable Permit applications for

roadway dining areas.

As stated in the *I. Project Description (Continued)* section above, the proposed Project is an Ordinance that makes changes to the Zoning Code's limitations on outdoor dining on private property to facilitate outdoor dining on a permanent basis. This includes: removing Zoning Code limits on the size and location of where outdoor dining is allowed; allowing for parking spaces to be removed and replaced with outdoor dining area while also not triggering additional parking requirements; relieving certain specific plan requirements to ensure that existing and future restaurants could elect to continue and participate in outdoor dining throughout the City; and establishing new alcohol authorization processes for eligible establishments to serve alcohol in outdoor dining areas.

IV. ENVIRONMENTAL ANALYSIS

Class 3

To qualify for a Class 3 Categorical Exemption pursuant to CEQA Guidelines Section 15303, a project must consist of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. Examples include but are not limited to, in urbanized areas, up to four commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use, if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive.

Under the proposed Project, the existing and future use of a property as a restaurant with a Temporary Authorization for outdoor dining will not be changed but restaurants will be able to obtain necessary permits for outdoor dining areas via a by-right approval process as long as the restaurants comply with the outdoor dining area standards established by the Ordinance and any applicable health and safety guidelines. Operators that have not yet expanded their food and beverage establishments with outdoor dining facilities on private property will be able to do so through by-right approvals, and operators seeking to serve alcohol in newly expanded outdoor dining areas will be able to do so through a streamlined administrative clearance process. In those instances where restaurants do not have any designated outdoor space for dining, new configurations and structures will have to be considered and either constructed, installed, or converted.

The temporary L.A. Al Fresco program currently charges no fees for applicants, the self-certified applications take approximately 20 minutes to complete online, and the program is available Citywide. Under that existing regulatory setting, restaurants with Temporary Authorizations have used an average of 1,036 square feet and a median of 500 square feet for their outdoor dining areas involving private property, and it is reasonable to assume that outdoor dining areas authorized by the proposed Project would be of similar size, well below 10,000 square feet of floor area. Additionally, any new outdoor dining areas that involve the construction, alteration, or repair work of a restaurant would be subject to the LADBS Plan Check and Permit Compliance process, which could trigger an additional discretionary approval from the DCP inclusive of its own environmental analysis if applicable. Restaurants do not typically use hazardous substances beyond small amounts of chemicals used for cleaning purposes typical to commercial uses. Furthermore, the outdoor dining areas would be accessory uses to approved restaurants, which would be on developed commercial properties and require public services and facilities for the operation of the restaurant. Therefore, the outdoor dining areas would be small structures or facilities meeting the requirements of a Class 3 exemption.

Class 11

To qualify for a Class 11 Categorical Exemption pursuant to CEQA Guidelines Section 15311, the project must consist of the construction or replacement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities. The existing structures in place for outdoor dining have been temporarily approved under the L.A. Al Fresco Temporary Authorizations and could be replaced under this program. New outdoor dining areas would all be required to be accessory uses to restaurants approved under

standard zoning regulations and the LADBS Plan Check and Permit Compliance process, and any new outdoor dining structures would be required to not be enclosed, and be further restricted to dining uses. The proposed Project, then, would authorize the construction or replacement of minor structures accessory to existing commercial facilities, and a Class 11 Categorical Exemption would apply.

Exceptions

Furthermore, since the proposed Project falls within the Class 3 and 11 Categorical Exemptions criteria, the Exceptions outlined in the State CEQA Guidelines Section 15300.2 are analyzed below and do not apply to the project:

- a) **Location.** CEQA Guideline Section 15300.2(a) states that classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located - a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

The proposed Project does not fall under this exception as it would only consist of the construction, installation, or conversion of small new structures from one use to another where only minor modifications are made in the exterior of the structure. As stated in the *I. Project Description (Continued)* section above, the Project involves a code amendment to allow restaurants the ability to expand their already by-right or approved use by allowing food and beverage service to be provided outdoors on their private property. The outdoor dining areas would be established only as accessory uses to restaurants. These restaurants would be subject to standard zoning and permitting processes, including maximum occupancy requirements, and are generally located on developed, urbanized sites, which are not considered environmentally sensitive sites. Future restaurants are unlikely to be located on environmentally sensitive sites, as restaurants are by their nature located in accessible, urbanized areas that are zoned for such a use; any future restaurants that require additional discretionary entitlements would be required to review any potential environmental impacts through a separate environmental review process.

Furthermore, the proposed Project prohibits the removal of protected trees or shrubs for the establishment of outdoor dining areas, preventing environmental impacts in this regard. Further, regulatory compliance with Ordinance 186,873 (commonly referred to as the Protected Tree and Shrub Ordinance that applies Citywide) prohibits the removal of protected trees or shrubs without review and approval by the Board of Public Works, Advisory Agency, or other designated decision maker as applicable, inclusive of its own environmental analysis. Therefore, this exception does not apply.

- b) **Cumulative Impact.** CEQA Guideline Section 15300.2(b) states that all exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. The proposed small expansions, additions, and/or tenant improvements will not exceed thresholds identified for new impacts to the area (i.e. traffic, air quality, water quality, noise, etc.) and will not result in new significant cumulative impacts for restaurants currently using Temporary Authorizations as the by-right and/or approved uses for outdoor dining have been operating through the emergency order and continue to exist. The proposed Project will serve as a means for such operations to continue under the amended regulations of the Zoning Code.

The proposed Project provides a pathway for existing restaurants that do not have outdoor dining on their private property to apply for outdoor dining building permits and request an alcohol approval through a ministerial process. It is reasonable to assume that the proposed project could lead to more restaurants opening outdoor dining areas. However, the Project's eligibility criteria and operating standards (see *I. Project Description (Continued)* section above) are designed to filter out inappropriate operators and minimize significant environmental impacts, such as noise, by prohibiting dancing, live entertainment, and adult entertainment at all times in outdoor dining areas and by restricting hours of operation to ensure outdoor dining closes at 10:30 p.m. if adjacent or across an

alley to a residential use. Music, speakers, television monitors or screens are prohibited in outdoor eating areas. Moreover, outdoor dining establishments would be required to follow the LAMC Noise Ordinance, keeping noise to within legal limits.

In addition to these standards, the Project proposes the following applicable standards when alcohol service is provided in an Outdoor Dining Area on private property and the public right-of-way:

- All alcohol that is served shall be delivered and served at tables by employees.
- All patrons shall be seated.
- No fixed or portable bar service areas are permitted in Outdoor Dining Areas.

These standards, which currently exist in Temporary Authorizations and which are standard conditions of approval for CUPs when restaurants are applying for a permit to serve alcohol, ensure that potential noise impacts to neighboring properties will be avoided. Security and monitoring guidelines further attempt to minimize impacts by mandating restaurants to take proactive measures to clean litter and debris, as well as require restaurants to post a City-issued identification on their outdoor dining area that includes instructions on how patrons or community members can submit complaints or concerns regarding the operation of the outdoor dining area.

Furthermore, the outdoor dining areas would only be available as an accessory use to restaurants. These restaurants either already exist or would be required to go through the full permitting process. As such, new outdoor dining areas would be established on land already used for urban, commercial uses. The proposed Project would also prohibit the removal of protected trees or shrubs for outdoor dining areas, preventing impacts in that regard. Moreover, regulatory compliance with Ordinance 186,873 (commonly referred to as the Protected Tree and Shrub Ordinance that applies Citywide) prohibits the removal of protected trees or shrubs without review and approval by the Board of Public Works, Advisory Agency, or other designated decision maker as applicable, inclusive of its own environmental analysis. Therefore, impacts in that regard would be prevented.

For a full summary of the outdoor dining area standards, please see the *I. Project Description (Continued)* section above. In short, the outdoor dining area standards remove certain Zoning Code restrictions on outdoor dining on private property while taking into consideration impacts of outdoor dining on neighbors and neighborhoods. As such, the Project will not result in any significant impacts and, therefore, will not make a cumulatively considerable contribution to any significant impacts that are not already accounted for by the General Plan and future environmental clearances.

- c) **Significant Effect.** CEQA Guideline Section 15300.2(c) states that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. The proposed Project is an Ordinance to clarify and streamline Zoning Code regulations regarding outdoor dining on private property. This means that the proposed Project would only address provisions that regulate the eligibility criteria and operational standards of the outdoor dining areas on private property, with the exception of including a provision regarding alcohol service proposed in the public right-of-way. As previously explained, this provision is limited to including operational standards that are enforced by LADBS and allows for those operating an outdoor dining area in the public right-of-way to be eligible for alcohol authorizations as proposed by this Project so long as the applicants meet the operational standards. For restaurants using Temporary Authorizations, this provision essentially allows for the continuation of an existing use.

New outdoor dining areas would only be available as accessory uses to restaurants, and would be subject to standard zoning restrictions and permitting processes. Restaurants eligible for the AI Fresco program thus consist of commercial uses and operations that are compatible with the surrounding urban development and consistent with the underlying zone. Whether with or without new structures, the work involved to establish outdoor dining areas is typical of restaurants wishing to add or expand their outdoor dining even prior to the temporary AI Fresco program. Additionally, restaurant uses would have to comply with the applicable permanent standards for outdoor dining proposed in the Ordinance.

Any restaurant seeking to serve alcohol would still need to obtain an alcohol approval from the Department of City Planning and alcohol license from the California Department of Alcoholic Beverage Control. Restaurants that are already built and that wish to have new outdoor dining on private property would be permitted as a by-right accessory use in any zone where restaurants are currently permitted and would be subject to regulatory conditions. Projects that involve the construction, alteration, or repair work of a restaurant will be subject to the LADBS Plan Check and Permit Compliance process which could trigger an additional discretionary approval from the DCP inclusive of its own environmental analysis. Furthermore, there is a limited amount of land allotted for restaurant use in the City. It would be speculative to anticipate that a program like the proposed Project would introduce an unusual number of new restaurants in addition to the thousands already established in the City. As such, no unusual circumstances or potential for significant impacts are present or foreseeable.

- d) **Scenic Highways.** CEQA Guideline Section 15300.2(d) states that a categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. The only officially designated state scenic highway located within the City of Los Angeles is a short portion of Topanga Canyon Boulevard, State Route 27, located within Topanga State Park. All of the land within City boundaries near this state scenic highway is public parkland, with no private development. The nearest private land within City boundaries to this state scenic highway is 0.8 mile away, and the nearest commercially zoned property within City boundaries is 1.3 miles away. Furthermore, mountain ridges separate the state scenic highway from this private land; the private land is not visible from the highway. As such, the Project would not result in any development having an effect on or near a designated state scenic highway and this exception would not apply.
- e) **Hazardous Waste Sites.** CEQA Guideline Section 15300.2(e) states that a categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code, also known as the Cortese List. The new outdoor dining provisions for private property as intended by the proposed Ordinance would not be applicable on any property found on any list compiled pursuant to Section 65962.5 of the Government Code. Therefore, this exception would not apply.
- f) **Historical Resources.** CEQA Guideline Section 15300.2(f) states that a categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource. State CEQA Guidelines Section 15064.5 defines a historical resources as: 1) a resource listed in or determined to be eligible by the State Historical Resources Commission for listing in the California Register of Historical Resources; 2) a resource listed in a local register of historical resources or identifies as significant in a historical resource survey meeting certain state guidelines; or 3) an object, building, structure, site, area, place, record or manuscript which a lead agency determines to be significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California, provided that the lead agency's determination is supported by substantial evidence in light of the whole record. A project-related significant adverse effect would occur if a project were to adversely affect a historical resource meeting one of the above definitions. The new outdoor dining provisions for private property as intended by the proposed Ordinance would be subject to historic preservation review to ensure historic compatibility on any property listed in the National Register of Historic Places, in the California Register of Historic Resources, as a local City Historic-Cultural Monument, within a Historic Preservation Overlay Zone, or as a resource by SurveyLA. Furthermore, any future restaurants that require additional discretionary entitlements would be required to review any potential environmental impacts through a separate environmental review process as required by the California Environmental Quality Act, as well as the City's HPOZ Ordinance (Los Angeles Municipal Code Section 12.20.3) and Cultural Heritage Ordinance (Los Angeles Administrative Code Section 22.171, et seq.). As such, it is unlikely that any outdoor dining area authorized by the proposed Project would cause a substantial adverse change in the significance of a historical resource. Therefore, this exception would not apply.

The proposed Project has been crafted to not apply in areas of the City that would be subject to several of the various categorical exemption exceptions, and would not otherwise result in a cumulative impact or significant

effect. Therefore, none of the possible exceptions to categorical exemptions, found in CEQA Guidelines Section 15300.2, apply to this Project, and as such, the Project qualifies for a Class 3 and 11 Categorical Exemption.

STATUTORY EXEMPTION

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. However, at least one parking space must be provided, unless: the primary restaurant contains 3,000 square feet or less of floor area; the outdoor dining area is 1,000 square feet or less; or as otherwise prohibited by state or federal law. 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.