

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: March 11, 2021

TO: Honorable Members of the Council

FROM: Sharon M. Tso *SMT*
Chief Legislative Analyst

Council File No: 20-1074

Assignment No: 20-11-1008

SUBJECT: Status Report on Establishing a Permanent L.A. Al Fresco Program.

SUMMARY

On November 4, 2020, the Council approved the following instructions relative to the feasibility of developing a permanent L.A. Al Fresco program that allows for a streamlined outdoor dining permit process (C.F. 20-1074):

- Direct the Chief Legislative Analyst (CLA), the Los Angeles Department of Transportation (LADOT), and the Bureau of Engineering, with the assistance of the Bureau of Street Services, the Departments of Building and Safety and City Planning, the Los Angeles Fire Department, and the City Attorney, to report relative to the feasibility of developing a permanent L.A. Al Fresco program that allows for a streamlined outdoor dining permit process, including but not limited to a potential program structure, eligibility criteria, safety and infrastructure requirements, and a plan that would enable interested businesses to opt-in to the permit program.
- Direct the CLA, with the assistance of the City Attorney, Bureau of Engineering, and the LADOT, to report on any changes to State, County, and City Codes needed to effectuate this program.
- Direct the CLA, LADOT, and the Bureau of Engineering, with the assistance of the Bureau of Street Services, the Los Angeles Department of Building and Safety and the Department of City Planning, the Los Angeles Fire Department, and any other departments, as needed, to closely examine and consider the San Pedro Outdoor Dining Pilot Program as a potential option when developing recommendations relative to the feasibility of creating a citywide permanent L.A. Al Fresco program.

Our Office consulted with various departments that are involved in the implementation of the L.A. Al Fresco Pilot Program, as instructed by the City Council. As a result of these discussions, it became clear that there are numerous issues and considerations that require more extensive review in order to transition the existing pilot program to a permanent status. These challenges require further detailed analysis by the implementing departments, as well as input and coordination with affected communities. This report, therefore, provides a summary of the current program, identifies areas for further analysis, and offers some refinements to the Council instructions in order to accommodate both a short- and long-term permanent outdoor dining program.

CLA RECOMMENDATION:

That the City Council:

1. Request the City Attorney to report on the feasibility of revising the LADOT People St. Program to allow restaurants exclusive use of the public right-of-way.
2. Instruct the Bureau of Engineering, working with the Department of Transportation, to report with recommendations to revise the Sidewalk Dining Program and the People St. Program, as appropriate, to expeditiously 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.
3. Instruct the Departments of Building and Safety, City Planning and the Los Angeles Fire Department to report with recommendations to develop a new category under the Restaurant and Small Business Express Program (RSBEP), or another appropriate regulatory framework, for outdoor dining on private property that is operating under the L.A. Al Fresco Pilot Program, including any changes to State, County, and City Codes needed to effectuate this program, including the identification of specific locations that can quickly be made permanent with minimal changes.

BACKGROUND

On May 29, 2020, the L.A. Al Fresco Pilot Program (Pilot Program) was launched to support outdoor dining opportunities for restaurants affected by the COVID-19 crisis, in coordination with the Los Angeles County Department of Public Health. The Pilot Program was implemented under the City's Safer L.A. emergency authority to provide temporary opportunities for outdoor dining on public right-of-way (sidewalks and streets) and private property (parking lots). The Pilot Program provided an option to help local restaurants partially reopen by providing more square footage for business operations while maintaining physical distance recommended by public health officials.

As part of the Pilot Program, the Mayor directed the Los Angeles Department of Transportation (LADOT) to develop an application portal and launch a Street Dining Temporary Use Authorization. The Bureau of Engineering was also directed to issue authorization for sidewalk dining and the Department of Building and Safety was instructed to issue authorization for private property dining. Interested businesses can typically complete an online application in less than 20 minutes and, at no cost to them, receive a digital City-issued authorization to set up a dining area on the sidewalk or on private property with the property owner's consent. LADOT staff review the feasibility of curbside dining and street closure applications and assess field conditions to make engineering decisions that ensure the safest project. Businesses are required to provide their own tables and chairs. To date, the City has provided free traffic control equipment (barricades, planters, bollards) and shade umbrellas where needed for curbside dining and street closures. The City will continue to provide these materials until LADOT has distributed all available equipment, prioritizing communities that have been most impacted by COVID-19 job loss or are historically disadvantaged.

People St. Program - The L.A. Al Fresco Pilot Program used LADOT's existing People St. Program as a framework to inform eligibility criteria and implementation of outdoor dining in the

street. The People St. Program was created in 2014 as a collaboration with the Departments of Public Works and City Planning, and the Los Angeles County Metropolitan Transportation Authority (Metro) to create a one-stop shop for transforming L.A.'s streets into active, accessible spaces for people. The projects include plazas, parklets, and bicycle corrals that are located in one or more on-street parking spaces or an underutilized travel lane. Projects are permitted for a year with the option to renew.

People St. Program applications are sponsored by a community organization and follow a multi-step application, review, and selection process that includes site location review, community outreach, the issuance of a Memorandum of Understanding and "A" permit (LAMC 62.106.a), environmental review, as well as inspection of projects and post-installation public life surveys. In considering whether to approve sites, LADOT carefully considers whether applicants demonstrate the necessary organizational skills, capacity, and initiative to facilitate community outreach, fund design and materials procurement, and conduct comprehensive maintenance of the site.

It is important to note that People St. projects remain public spaces for everyone to enjoy. Project sponsors or adjacent businesses may not restrict usage or limit access to their customers. Additionally, nearby land uses should include food service, retail, transit facilities, and cultural institutions to support the natural functions of a viable parklet site.

Sidewalk Dining Program - Prior to the L.A. Al Fresco Pilot Program, the City offered restaurants two options to provide outdoor dining: construct a permanent patio structure on private property or seek a Revocable "R" Permit through the Board of Public Works Sidewalk Dining Program. The "R" permit grants a conditional encroachment for restaurants to occupy the adjacent right-of-way for dining purposes. Once an application has been received, the Bureau of Engineering reviews applicable regulations including but not limited to: allowable locations; liability insurance and waiver of damages, minimum clearance needs, appropriate umbrellas, planters and furniture, allowable number of seats, visibility, and a host of other requirements to ensure the safety of customers and pedestrians. If there are violations of the permit conditions, the permit can be revoked.

Outdoor Dining on Private Property - Under the L.A. Al Fresco Pilot Program, outdoor dining on private property is automatically approved through the online application process with no detailed analysis or involvement from Building and Safety. Prior to the COVID-19 Pandemic, outdoor dining was limited to locations that obtained a building permit for covered or uncovered outdoor dining areas. To make the permitting and inspection process more efficient, enabling restaurants and small businesses to open in a timely, efficient, and coordinated manner, in 2010, the Department of Building and Safety created the complementary Restaurant and Small Business Express Program (RSBEP) (formerly named the Restaurant and Hospitality Express Program). The RSBEP is aimed at small businesses such as nail salons, barbershops, breweries, and retail stores that are undertaking a construction project with a permit valuation under \$1,000,000. Restaurants and bars may apply to the program regardless of permit valuation.

There is no existing mechanism to transition the temporary L.A. Al Fresco Pilot Program on private property to a permanent program. All of the current requirements for restaurant operations

are based on brick and mortar buildings with specific requirements for the number of restrooms, ceiling heights, accessibility accommodations, and vermin protection, just to name a few. The tents currently serving as outside seating would need to be removed and replaced with a solid structure, which would require owners to apply for a building permit through Building and Safety. The permit process ensures compliance with local and state laws when undertaking any construction that requires a building permit, such as the California Building Standards Code (Title 24) and the Los Angeles Municipal Code (LAMC). The Los Angeles Building Code and the Zoning Code are subsidiaries to Title 24 and the LAMC, which provide a broad set of requirements for “energy conservation, green design, construction and maintenance, fire and life safety, accessibility, and zoning.” These codes apply to all buildings in Los Angeles, including but not limited to “structural with all its associated mechanical, electrical, and plumbing systems, and zoning requirements. To continue the use of tents and umbrellas for outdoor dining on private property, local, state, and federal rules and requirements would need to be changed.

San Pedro Outdoor Dining Pilot Program

In 2019, the San Pedro Outdoor Dining Pilot Program was implemented through the Board of Public Works and the Office of Community Beautification (OCB) Adopt-A-Median Program. The Board’s action authorized OCB to grant revocable permission to encroach within the public right-of-way, subject to several conditions, to the San Pedro Property Owner’s Association to install 12 dining patios and parklets on sidewalks and adjacent curbside parking lanes in Downtown San Pedro along 5th, 6th, 7th and Centre Streets. A supplemental A-permit was issued, however, the City is awaiting the submission of proof of insurance and the execution of a Maintenance Agreement before issuance of an R-permit. The unique approach used for San Pedro is still in the pilot phase and a determination has not been made regarding its impact on the neighborhood or the feasibility of expanding the Adopt-A-Median Program to include such projects. A citywide approach for similar projects is currently available through the People St. Program, which will ensure all communities are required to follow standard processes and reviews, as well as equitable enforcement actions.

ANALYSIS

During the initial months of the stay-at-home orders, the economic emergency situation facing the food service industry necessitated the implementation of the L.A. Al Fresco Pilot Program. To address the urgent needs of restaurants, the City eliminated many of the steps outlined above to streamline outdoor dining approval for restaurants.

Restaurant owners, operators, and employees view the L.A. Al Fresco Pilot Program as an invaluable lifeline and the City has seen overwhelming demand. Nearly 2,400 restaurants have taken advantage of it and, currently, there are an estimated 103 curbside dining locations; 16 lane closures; 1,400 sidewalk dining locations; and 1,700 outdoor dining locations on private property. The Pilot Program continues to accept applications and did so even during the months that outdoor dining was not allowed.

While the Pilot Program has generally been successful during the past ten months of the COVID-19 Pandemic, if made permanent, will present technical and logistical challenges for operators, surrounding communities and businesses, as well as City staff. Given the emergency nature of the

existing program, community engagement surrounding the projects has been limited. A longer-term program will require a more robust community engagement process. In addition, when indoor dining resumes, additional outdoor dining space will increase restaurant occupancy, thereby raising numerous operational issues and increasing the potential for impacts to the surrounding community, as described in more detail below.

It is important to remember that the Pilot Program's success is due to the unprecedented demand for restaurants to establish service space that complies with public health requirements. This highlights the unmet public demand for establishing safe public spaces, as well as the availability of outside areas that saw a lower demand as a direct result of the stay-at-home orders. Once residents begin to resume their pre-Pandemic activities, such as driving to school and work and patronizing businesses, the public right-of-way or parking lots may no longer be appropriate or available for outdoor dining. Additionally, consideration should be given to the needs of other businesses that may depend on nearby parking and vehicular access. As business activity increases once the stay-at-home order is lifted, it is anticipated that all businesses will see an increase in customers. Additional square footage for a restaurant, once indoor dining is again allowed, may result in a significant increase in pedestrian and vehicular activity in some areas. The overall positive response to use of the Pilot Program project areas calls for the City to reevaluate the best uses of these spaces and equitable access. Using the lessons learned from the Pilot Program, enhancements can lead to a permanent program.

In discussions with various City departments, it became clear that there are numerous issues that would need to be addressed to transition each location authorized under the Pilot Program to permanent status. The following is a summary of the concerns raised by the Departments that would, at a minimum, need to be addressed for locations currently authorized in the public right-of-way:

- Exclusive use of public space by private businesses
- ADA accessibility
- Visibility of traffic, traffic signage, and other business signage
- Fire/life/safety issues
- Environmental review and approval
- Community outreach
- Meter revenue loss
- Quality of pavement determination
- City infrastructure maintenance issues (storm drains/street cleaning/sewer access)
- Program staff resource needs
- Traffic study work for travel lane closures
- Standardize permanent traffic control measures
- Inspection and enforcement
- Parking minimums for private property dining
- Address the State definition of alcohol service area
- Consider accepting off-site or shared parking to assist restaurants meet parking minimums

For locations currently authorized on private property, amendments to the zoning code or at the state level for building code requirements would be necessary:

- Permits associated with fire protection
- Green Code Compliance
- Building Code Compliance, e.g. foundation egress, accessibility, fire and life safety, mechanical/electrical/plumbing, fixture count, etc.
- LA County Department of Public Health requirements
- Specific plan, historical building, existing conditional use approvals of the site or building, and/or new entitlement relative to the zoning code, e.g. parking deficiency, alcohol sales, and land use violations, etc.
- Determination of Industrial Wastewater Permit, installation of a grease interceptor, and any other pre-treatment requirements
- Sewer and/or driveway related to additional floor area.
- Define usable space (patios)/determine if this space is part of the floor area
- Zoning Code Compliance, e.g., additional auto and bike parking, yards, loading zones, land use requirements such as outdoor entertainment, cooking, floor area, etc.
- Inspection and enforcement

CONCLUSION

One of the few bright spots in the COVID-19 Pandemic has been the opportunity to reimagine the use of outdoor space for food service and dining. Ongoing discussions regarding ways the City can re-emerge post- Pandemic include thoughtful consideration about how to continue to support the restaurant business through outdoor dining options. The L.A. Al Fresco Pilot Program did more than simply streamline requirements and approvals for outdoor dining; it virtually eliminated them. This was necessary to address the dire situation for the restaurant industry in the early days of the COVID-19 Pandemic, however, many other considerations must be examined once normal activities resume. Some of the current outdoor dining locations may be completely appropriate and easily transitioned to permanent status. Others may be deemed infeasible for long-term outdoor food service. As described above, there are a host of practical and technical issues that must be addressed by the respective oversight department.

Maria Souza-Rountree
Analyst

by
KEK

SMT:msr

Attachments: Motion (Ryu - Buscaino)
Amending Motion (Buscaino - Bonin)

TRANSPORTATION

MOTION

Enhancing LA's Outdoor Dining by Permanently Adopting the City's Al Fresco Program

On May 29, during the COVID-19 Emergency Declaration and the City's Safer-At-Home and Safer LA orders, Mayor Eric Garcetti announced the LA Al Fresco program. LA Al Fresco aims to help local food purveyors reopen safely and allow customers and employees to maintain physical distancing by temporarily relaxing the rules that regulate outdoor dining. LA Al Fresco is a program that allows restaurants, permitted sidewalk food vendors, and food trucks to utilize sidewalks, private parking lots, street parking spaces, lane closures, and street closures for dining.

The LA Al Fresco Program, which has received tremendous feedback from restaurants, diners and restaurant adjacent neighborhoods, looks to support the heavily impacted industry by allowing restaurants to continue to operate in a safe, physically distanced setting. Additionally, in many instances, outdoor dining has provided additional dining space for smaller, family owned restaurants, while taking advantage of Southern California's climate and preserving the unique character of neighborhoods with smaller shops and restaurants.

After the local emergency is lifted, expectations for in-restaurant dining will likely have changed and flexible outdoor dining settings should continue to be made available. These outdoor dining options must follow ADA guidelines for the public right-of-way and additional safety measures implemented where necessary.

I THEREFORE MOVE that the Chief Legislative Analyst, Department of Transportation and Bureau of Engineering, with the assistance of the Bureau of Street Services, Department of Building and Safety, Department of City Planning and City Attorney, as needed, report back on the feasibility of developing a permanent Al Fresco program that allows for a streamlined outdoor dining permit process, including but not limited to a potential program structure, eligibility criteria, safety and infrastructure requirements, and a plan that would enable interested businesses to opt-in to the permit program.

I FURTHER MOVE that the Chief Legislative Analyst, with the assistance of the City Attorney, Bureau of Engineering and Department of Transportation, report on any changes to State or County Codes would need to be made in order to effectuate this program.

PRESENTED BY:



DAVID E. RYU
Councilmember, 4th District

SECONDED BY:

JOE BUSCAINO (Verbal)
Councilmember 15th District

AUG 2 5 2020

M O T I O N

I HEREBY MOVE that Council AMEND the Transportation Committee report relative to developing a permanent Al Fresco program (Item No. 39, Council file No. 20-1074) to include the following recommendation:

DIRECT the CLA, LADOT, and the Bureau of Engineering, with the assistance of the Bureau of Street Services, the Los Angeles Department of Building and Safety and the Department of City Planning, the Los Angeles Fire Department, and any other departments, as needed, to closely examine and consider the San Pedro Outdoor Dining Pilot Program as a potential option when developing recommendations relative to the feasibility of creating a citywide permanent Al Fresco program.

PRESENTED BY: _____
JOE BUSCAINO
Councilmember, 15th District

SECONDED BY: _____
MIKE BONIN
Councilmember, 11th District

November 4, 2020