

ORDINANCE NO. 20-1106U

AN URGENCY ORDINANCE OF THE CITY OF WEST HOLLYWOOD IMPLEMENTING A TEMPORARY OUTDOOR EXPANSION FOR SOCIAL DISTANCING TO ASSIST IN THE REOPENING OF BUSINESSES IMPACTED BY THE NOVEL CORONAVIRUS (COVID-19) AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings.

- A. International, national, state, and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus named "SARS-CoV-2," and the disease it causes which has been named "coronavirus disease 2019," abbreviated COVID- 19, ("COVID-19").
- B. On March 4, 2020, the Los Angeles County Board of Supervisors and Department of Public Health declared a local emergency and local public health emergency to aid the regional healthcare and governmental community in responding to COVID-19.
- C. On March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for a broader spread of COVID- 19.
- D. On March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government would make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19.
- E. On March 16, 2020, the City Council proclaimed the existence of a local emergency to ensure the availability of mutual aid and an effective City response to the novel coronavirus ("COVID-19").
- F. On March 16, 2020, the Governor of the State of California issued Executive Order N-28-20, authorizing local governments' through their police power to impose substantive limitations residential or commercial evictions for nonpayment of rent for tenants financially impacted by COVID-19 through May 31, 2020.

- G. On March 16, 2020, the Los Angeles County Public Health Officer issued an order countywide that (1) prohibited gatherings where at least 50 or more people are expected to attend, (2) put limits and regulations on gatherings of 10-49 people, (3) limits restaurants to drive- through/takeout/delivery only, and (4) closes bars (that don't serve food), gyms, movie theaters, etc.
- H. The Centers for Disease Control and Prevention, the California Department of Health, and the Los Angeles County Department of Public Health have all issued recommendations including but not limited to strict adherence to social distancing guidelines, canceling or postponing group events, working from home, and other precautions to protect public health and prevent transmission of this communicable virus. Other counties throughout the state have issued essentially "shelter in place" directives.
- I. On March 19, 2020 the Los Angeles County Public Health Officer issued a second countywide order, the Safer at Home For Control of COVID-19 Order, which was further clarified on March 21, 2020. This public health order prohibits all public and private group gatherings and events and requires people to stay in their homes with limited exceptions; and requires closure of all non-essential retail businesses, shopping centers, playgrounds for children, bars, nightclubs, movie theaters and all similar gathering places. The purpose of the order is to further restrict, and limit gathering of persons and require closures of non-essential retail businesses in an effort to stem or slow the spread of the virus.
- J. On March 19, 2020, the Governor of the State of California, also issued Executive Order N-33-20, an Order of the State Public Health Officer ordering all individuals living in California to stay home or at their place of residence except as needed to maintain continuity of operations of outlined federal critical infrastructure sectors.
- K. On May 4, 2020, Governor Newsom announced that, beginning May 8, 2020, the State of California would move from Stage 1, which had been in place statewide since the issuance of the Stay at Home order, to Stage 2, which is the gradual re-opening of some lower risk workplaces.
- L. On May 26, 2020, the Los Angeles County Public Health Officer issued a countywide order, the Safer at Work and in the Community For Control of COVID-19. This public health order allowed for new standards and safe reopening in alignment with the State of California guidelines. Among the activities now permitted under the change are faith-based services, in-store shopping at low-risk retail stores, drive-in movies and other recreational pursuits.

- M. On May 29, 2020, the Los Angeles County Health Officer issued a revised order, the Safer at Work and in the Community For Control of COVID-19. This public health order allowed for operations of hair salons, barbershops, and in-person dining to resume immediately with modified occupancy and operating procedures to ensure the safeguard of the public.
- N. The California Department of Alcohol Beverage Control (“ABC”) has issued various “Regulatory Relief” orders designed to support the alcoholic beverage industry in its efforts to assist California in slowing the spread of the virus while assisting the industry in dealing with the economic challenges it is facing as a result. More recently on May 15, 2020, ABC issued its fourth notice of Regulatory Relief providing for temporary relief for licensees to expand licensed footprints in order to serve more people outside where it is safer while the COVID-19 pandemic continues, through an inexpensive ABC permit requiring authorization from local jurisdictions.
- O. On May 20, 2020, ABC issued its fifth Regulatory Relief Notice to permit on a temporary basis, licensees that do not operate kitchen facilities and do not prepare bona fide meals on the licensed premises to partner with businesses that do offer meals to sell bona fide meals in conjunction with to-go containers of alcoholic beverages.
- P. As of the date of this ordinance, many restaurant and food establishments have begun to reopen, and it is critical they operate in a safe manner where social distancing can be maintained in accordance with guidance from the State of California and local health officials.
- Q. To assist restaurant and food establishments, it is necessary to temporarily allow them to operate on public and/or private property, including the public right way, sidewalks, public street parking, parking areas or other private property located near or in close proximity to the business. If the business has on-site parking, the private parking may be used for outdoor expansion.
- R. This Ordinance is temporary in nature and only intended to promote stability and safe and healthy operations within the restaurant and food markets in the City during the COVID-19 pandemic outbreak, and to prevent avoidable business closures thereby serving the public peace, health, safety, and public welfare and ensuring jobs and economic vitality within the City, while also preventing further spread of the virus.

- S. This Ordinance is adopted pursuant to the City's police powers and powers afforded to the city in time of national, state, county and local emergency during an unprecedented health pandemic, such powers being afforded by the State Constitution, State law and the Chapter 2.80 of the West Hollywood Municipal Code to protect the peace, health, and safety of the public. The West Hollywood City Council finds that this ordinance is necessary for the preservation of the public peace, health, and safety of residents living within the City and finds urgency to approve this ordinance immediately based on the facts described herein and detailed in the staff report. Under Government Code Section 8634, this ordinance is necessary to provide for the protection of health, life and property.

SECTION 2. Temporary Outdoor Expansion Permit for Social Distancing Program for Businesses Impacted by the COVID-19 Crisis.

- A. Notwithstanding anything to the contrary in the West Hollywood Municipal code, a "Temporary Outdoor Expansion Permit Program" to assist in the safe and healthy reopening of restaurant and food establishments during the time of limited capacities and social distancing requirements for restaurants as a result of California and Los Angeles County Health orders in response to COVID-19 is hereby established as set forth in Exhibit A attached hereto and incorporated herein by reference. The purpose of this ordinance is to offer streamlined approval for eligible businesses to use sidewalks, on-street parking spaces and private parking lots as areas to expand outdoor business operations. This temporary program is separate from and can be used in conjunction with an outdoor encroachment permit authorized under WHMC 11.28. Businesses that use their private property for outdoor social distancing expansion need to obtain a temporary outdoor expansion permit. Businesses that use public right of way for outdoor social distancing expansion must obtain both a temporary outdoor expansion permit and an encroachment permit. These permits are available at no cost.
- B. The provisions of West Hollywood Municipal Code Sections 19.28.040, Table 3-6, regarding Number of Parking Spaces Required for Non-Residential Land Uses are hereby temporarily suspended to allow for implementation of item A above on a temporary basis through the duration of City, State, and County COVID-19 periods of declared emergency.
- C. The provisions of WHMC Sections 19.10.030 Table 2-5 regarding uses and permit requirements for commercial and public zoning districts are temporarily waived for the purposes authorized in this ordinance through the duration of City, State, and County COVID-19 periods of declared emergency.

- D. Permittees that utilize public property for outdoor social distancing expansion shall obtain and maintain insurance in an amount specified below. Proof of Certificate of liability insurance shall be provided to the Public Works Department, with the City of West Hollywood named as Additionally Insured, prior to issuance of an encroachment permit as follows:
1. Per WHMC 11.28.080, the applicant shall, at its own cost and expense, procure and maintain in force policies of comprehensive public liability insurance in a combined single limit amount of at least one million dollars (\$1,000,000.00) covering the applicant's operations on the sidewalk. Such insurance shall be procured from an insurer authorized to do business in California, shall be subject to the approval in writing of the city, shall provide primary and not excessive coverage, shall name the city, its officers and employees, and the property owner as additional insureds and shall contain provisions that prohibit cancellation, modification, or lapse without thirty days' prior written notice to the city.
 2. In addition, the applicant shall procure and maintain in force Worker's Compensation insurance with statutory limits, and employer's liability insurance with limits of not less than one million dollars (\$1,000,000.00) per accident.
- E. If alcohol is to be served in the outdoor social distancing expansion area, it must be served in compliance with the Alcoholic Beverage Control's COVID-19 Temporary Catering Authorization (ABC-218 CV19 Permit).
- F. The permits authorized under this ordinance, as further described in the attachments, are temporary and revocable and do not create a vested right to operate in the expanded space. The City may revoke the permits when approval is granted to reopen at capacity levels established prior to the March 16, 2020 Los Angeles County Health Officer Order.

SECTION 3. This ordinance shall be effective immediately.

SECTION 4. Severability.

If any section, subsection, sentence, clause, phrase or word of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such decision shall not affect the remaining provisions of this Ordinance.

SECTION 5. Environmental Review.

The City Council finds that adoption and implementation of this ordinance is not a “project” for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) sections 15061(b)(3), and 15378(b)(5). The effect of the proposed amendment will be for existing businesses to use right of way and parking spaces for socially distant restaurant operations, operating a less intensive capacity than before the crisis. No new development will result from the proposed action And the activity is temporary. No impact to the physical environment will result. The City Council also alternatively finds that the adoption and implementation of this ordinance is exempt from the provisions of CEQA as an administrative activity by the City of West Hollywood, in furtherance of its police power, that will not result in any direct or indirect physical change in the environment, per sections 15061(b)(3), and 15378(b)(5) of the CEQA Guidelines, as well as CEQA Guidelines section 15064(e) (economic regulations). The existing businesses will operate a less intensive capacity than before and the temporary expansion into right of way will be conditioned through the encroachment permit process to prevent impacts.

SECTION 6. Urgency Declaration; Effective Date.

The City Council finds and declares that the adoption and implementation of this ordinance is necessary for the immediate preservation and protection of the public peace, health and safety as detailed above and as the City and public would suffer further spread of the virus, as businesses open and need additional space to operate in a safe and healthy manner. On May 26, 2020, the Los Angeles County Public Health Officer issued a countywide order, the Safer at Work and in the Community For Control of COVID-19. This public health order allowed for new standards and safe reopening in alignment with the State of California guidelines. Among the activities now permitted under the change are faith-based services, in-store shopping at low-risk retail stores, drive-in movies and other recreational pursuits. On May 29, 2020, the Los Angeles County Health Officer issued a revised order, the Safer at Work and in the Community For Control of COVID-19. This public health order allowed for operations of hair salons, barbershops, and in-person dining to resume immediately with modified occupancy and operating procedures to ensure the safeguard of the public. As of the date of this ordinance, many restaurant and food establishments have begun to reopen, and it is critical they operate in a safe manner where social distancing can be maintained in accordance with guidance from the State of California and local health officials. Many cities in Southern California have implemented similar programs. As businesses have been closed for over two months, their livelihood depends on opening immediately and to do that before a vaccine is available means that additional measures need to be implemented. The ABC supports this program and has implemented

similar relief to facilitate the operation outside a licensed premises. This relief measure also prevents avoidable business closures thereby serving the public peace, health, safety, and public welfare and ensuring jobs and economic vitality within the City, while also preventing further spread of the virus.

Under Government Code Section 8634 and WHMC Chapter 2.80, this ordinance is necessary to provide for the protection of life and property for the reasons set out herein. The Council therefore finds and determines that the immediate preservation of the public peace, health and safety, and protection of life and property, require that this Ordinance be enacted as an urgency ordinance pursuant to Government Code section 36937 and take effect immediately upon adoption by four-fifths of the City Council.

SECTION 7. Certification.

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published or posted in the manner required by law.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of West Hollywood at a regular meeting held this 1st day of June, 2020 by the following vote:

AYES:	Councilmember:	D'Amico, Duran, Meister, Mayor Pro Tempore Heilman, and Mayor Horvath.
NOES:	Councilmember:	None.
ABSENT:	Councilmember:	None.
ABSTAIN:	Councilmember:	None.

DocuSigned by:
Lindsey Horvath
LINDSEY P. HORVATH, MAYOR

ATTEST:

DocuSigned by:
YVONNE QUARKER
YVONNE QUARKER, CITY CLERK

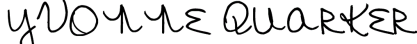
STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF WEST HOLLYWOOD)

I, YVONNE QUARKER, City Clerk of the City of West Hollywood, do hereby certify that the foregoing Ordinance No. 20-1106U was duly passed, approved, and adopted by the City Council of the City of West Hollywood at a regular meeting held on the 1st day of June, 2020.

I further certify that this ordinance was posted in three public places as provided for in Resolution No. 5, adopted the 29th day of November, 1984.

WITNESS MY HAND AND OFFICIAL SEAL THIS 2nd DAY OF JUNE 2020.

DocuSigned by:

YVONNE QUARKER

YVONNE QUARKER, CITY CLERK