

ORDINANCE NO. 20-1129U

AN URGENCY ORDINANCE OF THE CITY OF WEST HOLLYWOOD REQUIRING GROCERY STORES TO POST A DEDICATED PERSON AT ENTRANCES TO ENFORCE PUBLIC HEALTH ORDER REQUIREMENTS APPLICABLE TO GROCERY STORE OPERATIONS DURING THE COVID-19 PANDEMIC, 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. On March 4, 2020, the Governor of the State of California declared a State of Emergency in response to a respiratory disease named "COVID-19". On March 16, 2020, the City of West Hollywood (City) declared a local emergency to ensure the availability of mutual aid and an effective City response to the impacts of COVID-19.
- B. On March 19, 2020, the Governor of the State of California 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.
- C. On May 13, 2020, the Los Angeles County (County) Department of Public Health issued a new Safer at Home Order for Control of COVID-19, which extended the order for people to remain in their residences except for essential business and requires all persons to practice physical distancing of at least six feet apart and wear a cloth face covering whenever they may have contact with people outside their household. The status of County and State health orders is still evolving daily.
- D. On May 14, 2020, the City Manager issued Emergency Executive Order No. 2020-3, which, beginning on May 23, 2020, requires all persons to wear face coverings when out in public and away from their residence.
- E. Following the opening of "high-risk" businesses where individuals may congregate with members who are not part of the same household and remove their face coverings to eat and drink, the State and County experienced a sharp increase in confirmed COVID-19 cases and hospitalizations. As a result, the County Health Officer backtracked on the County's gradual reopening to prohibit and limit the indoor and outdoor operation of specified businesses.

- F. Effective November 30, 2020, the County Department of Public Health enacted a new Stay at Home Order requesting individuals to remain in their homes as much as possible and to avoid crowding and mingling with non-household members. The Order came after many Americans gathered and traveled over the Thanksgiving holiday in the midst of a winter surge of COVID-19 cases and deaths. According to the County Department of Public Health, daily peaks are now more than double the County's peak of daily cases during the summer surge.
- G. With Intensive Care Unit (ICU) bed capacity rapidly decreasing throughout California, the Governor of the State of California issued a State Regional Stay at Home Order on December 3, 2020, that would trigger greater restrictions on a region consisting of multiple counties depending on that region's ICU hospital bed availability. Once a region has less than 15 percent ICU availability, all counties within the region are required to follow the State Regional Stay at Home Order within 24 hours for at least three weeks.
- H. The Southern California Region, which the City of West Hollywood is a part of, was at 9 percent ICU capacity on December 9, 2020.
- I. In compliance with the State Regional Stay at Home Order and County Public Health Officer Order (HOO) dated December 9, 2020, all retail food markets are required to (1) in the case of stand-alone grocery stores (where the principal business activity is the sale of food) limit their stores to 35% occupancy based on applicable building or fire code occupancy, (2) in the case of all other retail food markets (grocery stores), limit their stores to 20% occupancy based on applicable building or fire code occupancy, (3) implement a system for monitoring building occupancy, and (4) institute special hours for seniors and others with chronic conditions or compromised immune systems.
- J. In addition to imposing occupancy limits, the County HOO also requires retail food markets, including grocery stores, convenience stores, and liquor stores, to comply with the County's HOO Protocols for Grocery Stores and Retail Food Markets: Appendix B-1. Pursuant to the Protocols, retail food markets must monitor entrances in order to track occupancy, and if necessary, may post near the door an employee wearing a face covering to track occupancy and to direct customers to line up six feet apart outside the entrance if the market has reached its occupancy limit.
- K. The County HOO permits, but does not require, grocery stores to post an employee at the entrance to monitor store capacity, nor does it mandate the designated employee to enforce face covering or social distancing requirements while customers shop inside the store.
- L. To enhance the County's protective health measures, the City Council finds that grocery stores, an essential resource for all residents, should be required to post a dedicated person at the store entrance to monitor

compliance with occupancy limits as well with face covering and social distancing requirements. This is especially true since grocery shopping is an indoor activity, which carries a greater risk of virus spread. Ensuring compliance with capacity limits, masks and other public health measures can reduce the risk of spread at this essential indoor service. This is already a common practice for many local grocers to protect the health of the store workers and customers. Additionally, this ordinance was originally directed because of reports of individuals visiting stores in the region and intentionally violating health protocols, putting workers and customers at risk.

- M. 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 store workers and 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:

- A. Each grocery store shall cause a person to be posted at the store entrance to monitor compliance with the safety measures applicable to grocery stores as set forth in the Los Angeles County Public Health Order, effective December 6, 2020, and all subsequent amendments, during the store's hours of operations (the "COVID-19 Monitor"). The COVID-19 Monitor shall wear a face covering and shall be responsible for enforcing the following requirements:
1. All customers entering the premises of the grocery store shall wear a cloth face covering and shall not remove the face covering while inside the store.
 2. Each customer shall maintain a physical distance of six feet from any other person while on the grocery store premises, including when waiting in line outside the entrance.
 3. The number of persons inside the store shall not exceed the occupancy limit as set forth in the applicable County HOO, currently set at 35% for stand-alone grocery stores and as may be amended by the County Health Officer.
- B. For purposes of this Ordinance, a "grocery store" is defined as a retail business where the principal business activity is the sale of food. This

definition does not include a “convenience store”, which is defined as a retail store of generally 3,500 square feet or less in gross floor area, which primarily carries prepackaged food and beverage products, but may also include other merchandise oriented to convenience shopping and travelers’ needs.

- C. The manager(s) on duty of each grocery store shall be responsible for compliance with the ordinance while on duty. If no manager is on duty, the general manager responsible for the store shall be responsible for compliance with the ordinance.
- D. This Ordinance shall not apply to a “grocery store” whose principal business is to provide delivery services or curbside pick-up and whose ancillary use is in-person shopping. The City Manager is designated to make the determination on whether a business falls under this exemption.

SECTION 3: 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 ordinance will be to maintain the status quo and provide a notice of health orders. No new development will result from the proposed action. 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).

SECTION 4: Urgency Declaration.

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 from this Ordinance. The uptick in cases following the reopening of high-risk businesses demonstrates how easily and rapidly the disease can spread from person-to-person. COVID-19 continues to remain a threat to the public health and safety of City residents, and a winter surge on top of post-holiday gatherings and travel has resulted in new daily records of COVID-19 cases. While a vaccine is in development, it is estimated that it will not be widely available to the public until the summer of 2021. Absent a vaccine, research demonstrates that the use of face coverings and social distancing is the best way to curb further transmission of the disease. Under State and County stay-at-home orders, persons are required to remain in their homes as much as practicable, but they may still go to grocery stores subject to face covering, social distancing, and store capacity requirements. This urgency ordinance is necessary to ensure that customers wear face coverings and practice social distancing while shopping in grocery stores to prevent transmission of the

disease to each other and essential grocery store workers. Under Government Code Section 8634 and West Hollywood Municipal Code 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 5: 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.

SECTION 6. This ordinance shall remain in effect until such time as the local state of emergency, or the declaration of statewide emergency, related to COVID 19 is lifted, whichever date is later.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of West Hollywood at a regular meeting held this 21st day of December, 2020 by the following vote:

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

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 LINDSEY P. HORVATH, MAYOR

ATTEST:

DocuSigned by:

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 YVONNE QUARKER, CITY CLERK

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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. 20-1129U was duly passed, approved, and adopted by the City Council of the City of West Hollywood at a regular meeting held on this 21st day of December, 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 22nd DAY OF DECEMBER, 2020.

DocuSigned by:

YVONNE QUARKER, CITY CLERK