

ORDINANCE NO. 21-1135U

AN URGENCY ORDINANCE OF THE CITY OF WEST HOLLYWOOD TO TEMPORARILY INCLUDE THE OUTDOOR OPERATION OF GYM/FITNESS FACILITIES/PERSONAL TRAINING FACILITIES ON PRIVATE PROPERTY NOT ADJACENT TO THE PERMANENT PLACE OF BUSINESS AS AN ALLOWED TEMPORARY USE 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 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 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) puts 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.

- G. 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.
- H. 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.
- I. 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.
- J. 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.
- K. 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.

- L. 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.
- M. On June 12, 2020, the County of Los Angeles Department of Public Health adopted a staged approach, supported by science and public health expertise, to allow certain gyms and fitness establishments to safely reopen with modified occupancy and operating procedures to ensure the safeguard of the public. These orders continue to evolve (as recently as September 4, 2020) at the state and county level, in response to the spread of the virus.
- N. Effective August 31, 2020, Governor Newsom's "Blueprint for a Safer Economy" replaced the County Data Monitoring List that had been used to regulate permitted activities at the county level. Under the new framework, every county is assigned to a tier based on its COVID-19 adjusted case rate and test positivity from the last two weeks. Counties can progress through four tiers, ranging from "widespread" (Purple Tier 1) to "minimal" (Yellow Tier 4) community disease transmission. Los Angeles County is assigned to Tier 1, which has the strictest limitations on activities. Tier 1 mandates all gyms and fitness facilities remain closed for indoor operations and are limited to socially distanced outdoor operations.
- O. As of the date of this ordinance, many gyms and fitness facilities 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. While state and county health orders continue to evolve, outdoor operations are critical to business operations, especially in periods where indoor operations are limited or closed.
- P. On April 6, 2020, the City Council ratified Executive Order No. 2020-3 which waived fees for Temporary Use Permits for businesses that alter business operations in response to COVID-19 and require a Temporary Use Permit to accomplish those changes in operations, during the period of local emergency.
- Q. On July 6, 2020 the City Council adopted Urgency Ordinance 20-1110U to temporarily allow gyms and fitness facilities to operate outdoors on private property located near or in close proximity to the business. The purpose of this Ordinance is to allow gyms and fitness facilities the ability to expand operations outdoors on private property

that is not adjacent to their place of business through the application of the Temporary Use Permit.

- R. Gyms and/or Fitness Facilities are conditionally approved uses as they have special impacts on the surrounding environment. Conditional Use Permits allow the discretionary approval of a use with provisions that are intended to protect the integrity and character of the residential and commercial areas of the city, consistent with the General Plan. Personal Training Fitness Facilities are not subject to Conditional Use Permit approval but are subject to conditions on aspects of the business such as the number of clients and allowed amenities. Nevertheless, the TUP process provides a discretionary review process to prevent impacts from this temporary outdoor use.
- S. Many uses are shifting to outdoor operations during this health pandemic and this temporary authorization is a way to balance various interests by authorizing safer exercise and gym option through an established discretionary permit process.
- T. Between the period of July 2020 and February 2021, the State and County issued a number of restrictions on indoor operations for gyms, fitness facilities, and personal training facilities, limiting these facilities solely to outdoor operations.
- U. On January 25, 2021, the State of California lifted the Regional Stay at Home Order as a result of improvement of ICU projections throughout California. However, Los Angeles County remains under a Limited Stay at Home Order. The order will be lifted for a region once its four-week ICU projection shows a capacity of greater than or equal to 15%.
- V. This Ordinance is temporary in nature and only intended to promote stability and safe and healthy operations within businesses 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.
- W. 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.

- A. The West Hollywood Municipal Code (WHMC) Chapter 19.54 provides a process for reviewing proposed temporary uses to ensure that basic health, safety, and community welfare standards are met, while approving suitable temporary uses with the minimum necessary conditions or limitations consistent with the temporary nature of the activity. A temporary use permit allows short-term activities that might not meet the long-term development or use standards of the applicable zoning district but may otherwise be acceptable because of their temporary nature. However, these activities are regulated to avoid incompatibility between the proposed activity and surrounding areas.
- B. A temporary use permit approved by the applicable review authority is required for all uses identified in WHMC Section 19.54.030 (Allowed Temporary Uses) and shall be issued before the commencement of the activity.
- C. This Ordinance makes the determination that an existing gym, fitness facility and personal training facility located and operating in the City of West Hollywood is permitted as an Allowed Temporary Use under 19.54.030.A.10, during the period of local emergency due to the impacts of COVID-19.
- D. Existing gyms and fitness facilities and personal training facilities shall be allowed as a temporary use, subject to the issuance of a Temporary Use Permit by the applicable review authority, for outdoor operations on private property not adjacent to their place of business including vacant property, parking lots, or parking structures, where patrons may engage in physical activity, with the written consent of the property owner.
- E. Gyms, fitness facilities and personal training facilities that receive a Temporary Use Permit to operate outdoors on private property not adjacent to their place of business will carry all relevant conditions from any existing CUP or other entitlement as part of the conditions placed on the Temporary Use Permit.
- F. Gyms, fitness facilities and personal training facilities may expand their operation on private property not adjacent to the place of business, including vacant property, parking lots, parking structures, or other private property, where patrons may engage in physical activity, with the written consent of the property owner. This temporary off-site location shall be called the host facility.
- G. In addition to any requirements or conditions authorized under WHMC Chapter 19.54, the following design and operational standards for outdoor gyms/fitness facilities/private training facilities approved under a Temporary Use Permit

apply as minimum requirements:

- i. Parking requirements for the host facility are temporarily suspended to allow for the temporary use to utilize parking spaces.
- ii. Parking requirements for the temporary use permit will be determined according to the size and scope of the outdoor fitness facility to adequately accommodate parking demand.
- iii. A minimum of one (1) handwashing station and one (1) restroom is required, either indoors (subject to all health requirements) or as a temporary facility set up outside.
- iv. Locker rooms and/or enclosed changing rooms are prohibited in the temporary location.
- v. The final location and configuration of the outdoor fitness area shall be subject to approval by the Director of the Planning and Development Services Department, who shall consider public safety issues and maintenance of minimum clearances to comply with ADA requirements and the safety and convenience of pedestrians and customers.
- vi. Temporary signage may be included as part of outdoor fitness areas.
- vii. All structures, barriers and/or equipment shall be temporary in nature. Items need not be removed each evening, but shall be capable of being removed; imbedded into the pavement they must be fixed through the use of recessed sleeves and posts, otherwise by wheels that can be locked into place or weighted in place. Structures that are more permanent in nature are subject to further review by Building and Safety and may require additional permits.
- viii. Outdoor fitness areas are limited to use by patrons of gym/fitness facility and cannot be utilized by general members of the public.
- ix. Gym/fitness facility management shall keep the outdoor fitness area clear of litter, debris, trash, etc. Trash receptacles shall be provided in the outdoor fitness area.
- x. At the end of each business day, establishments are required to clean (sweep and wash) the area in and around the outdoor fitness area and remove the debris to a closed receptacle. No debris shall be swept, washed, or blown into the sidewalk, gutter or street in conformance with the City's storm water quality regulations.
- xi. Temporary outdoor lighting shall not impact adjacent residential units.

- xii. The allowable hours of operation are 6:00 a.m. to 10:00 p.m., per the City's Noise Ordinance (WHMC 9.08.050). Restricted hours may be applied if the fitness area is located immediately adjacent to residential uses.
 - xiii. Noise: All gym/fitness facilities shall comply with the City's Noise Ordinance. Outdoor amplification of music is not permitted. Use of an outdoor microphone or megaphone is not permitted. All music and instruction shall be transmitted to patrons through wireless headphone systems. Music and instruction shall not be audible to any adjacent residential uses. From 6:00 A.M. to 9:00 A.M., gym/fitness facilities shall not be audible from any residential uses. Additional measures may be necessary to comply with the noise limitations as required by the Noise Ordinance.
- H. In addition to the revocation proceedings authorized under 19.54.090, the enforcement provisions for OUT Zone Permits for gyms may be utilized for temporary use permits issued under this ordinance (exhibit B to Ordinance 20-1110U, Section VI).
- I. All business licenses for the existing business may be applied to and utilized for the temporary location.

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. On June 12, 2020, the County of Los Angeles Department of Public Health adopted a staged approach, supported by science and public health expertise, to allow certain gyms and fitness establishments to safely reopen with modified occupancy and operating procedures to ensure the safeguard of the public. Effective August 31, 2020, Governor Newsom's "Blueprint for a Safer Economy" replaced the County Data Monitoring List that had been used to regulate permitted activities at the county level. Under the new framework, every county is assigned to a tier based on its COVID-19 adjusted case rate and test positivity from the last two weeks. Counties can progress through four tiers, ranging from "widespread" (Purple Tier 1) to "minimal" (Yellow Tier 4) community disease transmission. Los Angeles County is assigned to Tier 1, which has the strictest limitations on activities. As of the date of this ordinance, many businesses 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. While state and county health orders continue to evolve, outdoor operations are critical to business operations, especially in periods where indoor operations are limited or closed. 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.

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PASSED, APPROVED, AND ADOPTED by the City Council of the City of West Hollywood at a regular meeting held this 1st day of February, 2021 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.

DocuSigned by:


DFAFB1A0F4-7958-4088-82C9-266EABB4E49A
 LINDSEY P. HORVATH, MAYOR

ATTEST:

DocuSigned by:


DFAFB1A0F4-7958-4088-82C9-266EABB4E49A
 MELISSA CROWDER, ACTING CITY CLERK

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

I, MELISSA CROWDER, Acting City Clerk of the City of West Hollywood, do hereby certify that the foregoing Ordinance No. 21-1135U was duly passed, approved, and adopted by the City Council of the City of West Hollywood at a regular meeting held on this 1st day of February, 2021.

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 FEBRUARY, 2021.

DocuSigned by:


DFAFB1A0F4-7958-4088-82C9-266EABB4E49A
 MELISSA CROWDER, ACTING CITY CLERK