

REPORT TO CITY COUNCIL

DATE: JANUARY 12, 2022

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: NATHAN HAMBURGER, CITY MANAGER

BY: RAMIRO ADEVA, ASSISTANT CITY MANAGER

SUBJECT: ADOPTION OF RESOLUTION NO. 22-1993 OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, RATIFYING AND CONFIRMING THE DIRECTOR OF EMERGENCY SERVICES' EXECUTIVE ORDER NO. 2021-02, AN EXECUTIVE ORDER OF THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF AGOURA HILLS TEMPORARILY CONTINUING THE TEMPORARY OUTDOOR OPERATIONS PERMIT PROGRAM FOR DESIGNATED ESTABLISHMENTS

On January 2, 2022, all temporary outdoor operations permits (TOOPs) issued by the City for outdoor dining, as well as outdoor operations for commercial and non-commercial establishments, were set to expire.

On November 17, 2021, the COVID-19 Ad Hoc Committee, which at the time was Mayor Weber and Mayor Pro Tem Lopez, met to discuss whether to extend all, some, or none of the TOOPs. The committee was united in their feedback, expressing the need to extend all existing TOOPs, given the current challenges and financial struggles that still exist for the business community during the ongoing pandemic. The committee also agreed that extensions should be in smaller increments that allow the most flexibility to adjust to the ever-changing COVID regulations, which is the reason the extensions have a new expiration date of March 31, 2022, at which time further discussion can occur if necessary to consider additional extensions.

On December 27, 2021, the City's Director of Emergency Services, executed Executive Order No. 2021-02, temporarily continuing the TOOP program, and ensuring that businesses would have valid permits to continue outdoor operations through March 2022, per the committee's direction.

Staff requests the City Council find the Director's Executive Order No. 2021-02 to be necessary for continued protection of life and property affected by the COVID-19 crisis. Municipal Code Section 3605(a)(7)a requires that such rules and regulations issued by the Director are to be ratified and confirmed at the earliest practicable time by the City Council.

RECOMMENDATION

Staff respectfully recommends the City Council adopt Resolution No. 22-1993, ratifying and confirming the Director of Emergency Services' Executive Order No. 2021-02, an Executive Order of the Director of Emergency Services of the City of Agoura Hills temporarily continuing the temporary outdoor operations permit program for designated establishments.

Attachments: Resolution No. 22-1993
Director of Emergency Services' Executive Order No. 2021-02 (Resolution Exhibit 'A')

RESOLUTION NO. 22-1993

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, RATIFYING AND CONFIRMING THE DIRECTOR OF EMERGENCY SERVICES' EXECUTIVE ORDER NO. 2021-02, AN EXECUTIVE ORDER OF THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF AGOURA HILLS TEMPORARILY CONTINUING THE TEMPORARY OUTDOOR OPERATIONS PERMIT PROGRAM FOR DESIGNATED ESTABLISHMENTS

WHEREAS, in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in December 2019 and has spread globally, impacting more than 75 countries, including the United States; and

WHEREAS, since the Center for Disease Control and Prevention ("CDC") confirmed the first possible case of community spread of COVID-19 in the United States on February 26, 2020, there has been a significant escalation of United States domestic cases and deaths from COVID-19; and

WHEREAS, 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 broader spread of COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government will make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, Agoura Hills Municipal Code Section 3605 designates the City Manager to be the Director of Emergency Services; and

WHEREAS, on March 16, 2020, the Director of Emergency Services proclaimed the existence of a local emergency in response to the COVID-19 pandemic; and

WHEREAS, on March 17, 2020, the City Council ratified the emergency proclamation issued by the Director of Emergency Services; and

WHEREAS, in December 2020, both the California Department of Public Health and the Los Angeles County Health Officer issued Regional Stay-at-Home and Safer-At-Home Orders, temporarily prohibiting outdoor dining by restaurants;

WHEREAS, on January 24, 2021, Governor Newsom lifted the Regional Stay at Home Order statewide, thereby allowing restaurants and certain businesses to reopen outdoor dining and other services consistent with the framework in the appropriate tier

under the Blueprint for a Safer Economy. Los Angeles County, along with the majority of the State, is in the most restrictive purple tier;

WHEREAS, in January 2021, Los Angeles County adopted a health order which allowed for the reopening of only specified outdoor activities for uses such as restaurants, museums, galleries, gymnasiums, fitness facilities, hair salons, barbershops, personal care services, (including esthetician, skin care, and cosmetology businesses, nail salons and massage establishments), and places of worship.

WHEREAS, at various times in 2020, the City created various programs for temporary outdoor permits to assist businesses affected by the COVID-19 pandemic, and all City issued Temporary Outdoor Dining Permits, Temporary Outdoor Commercial Expansion Permits and Temporary Outdoor Non-Commercial Expansion Permits expired on January 15, 2021;

WHEREAS, on January 27, 2021, through the adoption of City of Agoura Hills Executive Order No. 2021-01, the City streamlined all Temporary Outdoor Permits into one Temporary Outdoor Operations permit program;

WHEREAS, in June 2021, the State of California fully reopened and all capacity and distancing restrictions relating to COVID-19 were lifted for most businesses and activities, and;

WHEREAS, the City is encouraged by the region's progress in controlling the COVID-19 pandemic, but recognizes that the spread of COVID-19 will continue as a public health risk; and

WHEREAS, COVID-19 variants continue to be discovered (e.g. Delta, Omicron) with confirmed transmission cases in Los Angeles County; and

WHEREAS, the COVID-19 Omicron variant is understood to be far more transmissible than other COVID-19 variants; and

WHEREAS, the City understands that some residents and visitors, especially high-risk individuals, whether vaccinated against COVID-19 or not, may desire to have the option to dine and engage in certain activities outdoors in order to maintain better social distancing and limit indoor exposure with other persons; and

WHEREAS, private sidewalks and private parking lots adjacent to such Designated Establishments, as such term is defined in this Executive Order, offer a relatively safe space to provide outdoor services and those outdoor spaces are currently at reduced capacity due to the COVID-19 pandemic; and

WHEREAS, it is important to provide such establishments a degree of flexibility to operate with temporary additional space to meet social distancing guidelines so that patrons can visit such establishments in a safe manner; and

WHEREAS, it is essential to protect members of the public from avoidable risk of serious illness and death resulting from the spread of COVID-19 and protect the healthcare system from a surge of cases into its emergency room and hospitals, during this emergency; and

WHEREAS, all current, valid Temporary Outdoor Operations Permits will expire on January 2, 2022;

WHEREAS, the City of Agoura Hills continues to desire to help facilitate those Designated Establishments to provide outdoor services; and

WHEREAS, in order to help facilitate business recovery and provide an option for outdoor operations for those who do not yet feel comfortable dining and participating in certain activities of Designated Establishments indoors, the City desires to continue to issue Temporary Outdoor Operations Permits through March 31, 2022;

WHEREAS, in the interest of public health, and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary for the Director of Emergency Services to exercise his authority to issue these regulations; and

WHEREAS, pursuant to Government Code Sections 8634 and Municipal Code Section 3605(a)(7)a., the Director of Emergency Services for the City of Agoura Hills has the authority to make and issue rules and regulations related to the protection of life and property as affected by the COVID-19 pandemic.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AGOURA HILLS DOES HEREBY DOES RESOLVE AS FOLLOWS:

SECTION 1. Ratification and Confirmation of Director's Executive Order No. 2021-02. The City Council of the City of Agoura Hills hereby ratifies and confirms the Director of Emergency Services' Executive Order No. 2021-02, "An Executive Order of the Director of Emergency Services of the City of Agoura Hills temporarily continuing the temporary outdoor operations permit program for designated establishments, attached hereto as Exhibit "A", pursuant to Agoura Hills Municipal Code Section 3605(a)(7)a.

PASSED, APPROVED, AND ADOPTED, this 12th day of January, 2022, by the following vote to wit:

AYES: ()
NOES: ()
ABSENT: ()
ABSTAIN: ()

Deborah Klein Lopez, Mayor

ATTEST:

Kimberly M. Rodrigues, City Clerk

EXHIBIT "A"

**CITY OF AGOURA HILLS EXECUTIVE ORDER NO. 2021-02,
DATED DECEMBER 27, 2021**

**AN EXECUTIVE ORDER OF THE DIRECTOR OF EMERGENCY SERVICES
OF THE CITY OF AGOURA HILLS TEMPORARILY CONTINUING THE
TEMPORARY OUTDOOR OPERATIONS PERMIT PROGRAM FOR
DESIGNATED ESTABLISHMENTS**

(ATTACHED)

December 27, 2021

CITY OF AGOURA HILLS EXECUTIVE ORDER NO. 2021-02

**AN EXECUTIVE ORDER OF THE DIRECTOR OF
EMERGENCY SERVICES OF THE CITY OF AGOURA HILLS
TEMPORARILY CONTINUING THE TEMPORARY OUTDOOR
OPERATIONS PERMIT PROGRAM FOR DESIGNATED
ESTABLISHMENTS**

WHEREAS, in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in December 2019 and has spread globally, impacting more than 75 countries, including the United States; and

WHEREAS, since the Center for Disease Control and Prevention ("CDC") confirmed the first possible case of community spread of COVID-19 in the United States on February 26, 2020, there has been a significant escalation of United States domestic cases and deaths from COVID-19; and

WHEREAS, 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 broader spread of COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States of America declared a national emergency and announced that the federal government will make emergency funding available to assist state and local governments in preventing the spread of and addressing the effects of COVID-19; and

WHEREAS, Agoura Hills Municipal Code ("Municipal Code") Section 3605 designates the City Manager to be the Director of Emergency Services; and

WHEREAS, on March 16, 2020, the Director of Emergency Services proclaimed the existence of a local emergency in response to the COVID-19 pandemic; and

WHEREAS, on March 17, 2020, the City Council of the City of Agoura Hills ("City") ratified the emergency proclamation issued by the Director of Emergency Services; and

WHEREAS, in December 2020, both the California Department of Public Health and the Los Angeles County Health Officer issued Regional Stay-at-Home and Safer-At-Home Orders, temporarily prohibiting outdoor dining by restaurants;

WHEREAS, on January 24, 2021, Governor Newsom lifted the Regional Stay at Home Order statewide, thereby allowing restaurants and certain businesses to reopen outdoor dining and other services consistent with the framework in the appropriate tier under the Blueprint for a Safer Economy. Los Angeles County, along

with the majority of the State, is in the most restrictive purple tier;

WHEREAS, in January 2021, Los Angeles County adopted a health order which allowed for the reopening of only specified outdoor activities for uses such as restaurants, museums, galleries, gymnasiums, fitness facilities, hair salons, barbershops, personal care services, (including esthetician, skin care and cosmetology businesses, nail salons and massage establishments), and places of worship.

WHEREAS, at various times in 2020, the City created various programs for temporary outdoor permits to assist businesses affected by the COVID-19 pandemic, and all City-issued Temporary Outdoor Dining Permits, Temporary Outdoor Commercial Expansion Permits and Temporary Outdoor Non-Commercial Expansion Permits expired on January 15, 2021;

WHEREAS, on January 27, 2021, through the adoption of City of Agoura Hills Executive Order No. 2021-01, the City streamlined all Temporary Outdoor Permits into one Temporary Outdoor Operations Permit program;

WHEREAS, in June 2021, the State of California fully reopened and all capacity and distancing restrictions relating to COVID-19 were lifted for most businesses and activities; and

WHEREAS, the City is encouraged by the region's progress in controlling the COVID-19 pandemic, but recognizes that the spread of COVID-19 will continue as a public health risk; and

WHEREAS, COVID-19 variants continue to be discovered (e.g., Delta, Omicron) with confirmed transmission cases in Los Angeles County; and

WHEREAS, the COVID-19 Omicron variant is understood to be far more transmissible than other COVID-19 variants; and

WHEREAS, the City understands that some residents and visitors, especially high-risk individuals, whether vaccinated against COVID-19 or not, may desire to have the option to dine and engage in certain activities outdoors in order to maintain better social distancing and limit indoor exposure with other persons; and

WHEREAS, private sidewalks and private parking lots adjacent to such Designated Establishments, as such term is defined in this Executive Order, offer a relatively safe space to provide outdoor services and those outdoor spaces are currently at reduced capacity due to the COVID-19 pandemic; and

WHEREAS, it is important to provide such establishments a degree of flexibility to operate with temporary additional space to meet social distancing guidelines so that patrons can visit such establishments in a safe manner; and

WHEREAS, it is essential to protect members of the public from avoidable risk of serious illness and death resulting from the spread of COVID-19 and protect the healthcare system from a surge of cases into its emergency rooms and hospitals,

during this emergency; and

WHEREAS, all current, valid Temporary Outdoor Operations Permits will expire on January 2, 2022;

WHEREAS, the City of Agoura Hills continues to desire to help facilitate those Designated Establishments to provide outdoor services; and

WHEREAS, in order to help facilitate business recovery and provide an option for outdoor operations for those who do not yet feel comfortable dining and participating in certain activities of Designated Establishments indoors, the City desires to continue to issue Temporary Outdoor Operations Permits through March 31, 2022.

WHEREAS, in the interest of public health, and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary for the Director of Emergency Services to exercise his authority to issue these regulations; and

WHEREAS, pursuant to Government Code Section 8634 and Municipal Code Section 3605(a)(7)a., the Director of Emergency Services for the City of Agoura Hills has the authority to make and issue rules and regulations related to the protection of life and property as affected by the COVID-19 pandemic.

NOW, THEREFORE, THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF AGOURA HILLS DOES HEREBY ORDER AS FOLLOWS:

SECTION 1. Temporary Outdoor Operations Permit in Private Outdoor Areas.

A. Only restaurants, gyms, fitness establishments, hair salons, barbershops, personal care establishments (including esthetician, skin care and cosmetology businesses, nail salons and massage establishments), places of worship, museums, and galleries (collectively referred to as "Designated Establishments") may continue to temporarily provide their services outside within the private parking lot, private sidewalk, and/or other private outdoor space located immediately adjacent to the building in which the Designated Establishment is already located ("Private Outdoor Area"), subject to the terms and conditions of a current, valid Temporary Outdoor Operations Permit (also referred to as "TOOP") issued by the City, any related conditions of approval and this Executive Order.

B. The Director of Emergency Services/City Manager hereby authorizes the Community Development Director or her designee to: (1) create a Temporary Outdoor Operations Permit application with criteria for approval and denial and minimum standards and conditions; (2) review applications for such a Temporary Outdoor Operations Permit; and (3) to issue such Temporary Outdoor Operations Permits with any necessary conditions of approval. Only Designated Establishments with a valid business license and all required regulatory Federal, State, County and governmental permits are eligible for and may apply to the City for a revocable, limited Temporary Outdoor Operations Permit.

C. The Community Development Director or her designee shall have the

sole authority to approve a Temporary Outdoor Operations Permit subject to following minimum conditions and such other reasonable conditions deemed necessary or convenient to protect the public, health, safety, or welfare:

1) Temporary outdoor operations authorized by any City issued Temporary Outdoor Operations Permit shall be permitted only when permitted by law and only whenever the State of California and the County of Los Angeles authorize outdoor operations for Designated Establishments. Whenever State or County Orders and regulations prohibit outdoor operations of a certain category of Designated Establishment, any City-issued Temporary Outdoor Operations Permit shall be automatically suspended during the effective period of any State or County Order or regulation prohibiting outdoor operations for that category of Designated Establishment.

2) All outdoor operations shall be conducted in a manner that is safe, orderly, neat, sanitary, in compliance with the Americans with Disability Act accessibility requirements, and in compliance with any other applicable laws or regulations. Outdoor operations shall not be conducted in any manner causing a public nuisance.

3) All operations must comply with all applicable public health permits, directives, orders, and guidelines regarding COVID-19, including State and County health orders.

4) Alcohol sales shall not be allowed without proof of Department of Alcohol and Beverage Control authorization for outdoor alcohol service.

5) Permittees shall be solely responsible for the setup, operations, maintenance and removal of furniture and materials required to facilitate safe and satisfactory use of the outside area.

6) Permittees must agree to indemnify, defend, and hold the City, its officials, officers, employees, and agents free and harmless from any liability arising from the use of Private Outdoor Areas for or related to outdoor operations or the City's approval of Temporary Outdoor Operations Permits.

7) Temporary Outdoor Operations Permits shall be limited to the hours of operation and for the term, if any, specified in the approval.

8) All operations must be conducted in accordance with Federal, State, County and City laws, ordinances, rules and regulations as may from time to time be applicable to such business, including but not limited to rules and regulations related to the sale of food and the sale of alcohol. All permittees shall be required to maintain a valid City business license.

9) The City may modify or revoke any permit for any reason, including but not limited to, for a violation of any of the conditions provided herein, or for no reason upon written notice to permittees. Permittees' use of the premises is subject to temporary modification or suspension at any time based on the public's priority for use of public property or right-of-way as determined solely by the City.

D. Temporary Outdoor Operations Permits shall authorize the revocable, limited, and temporary outdoor operations of only Designated Establishments in

Private Outdoor Areas, as specified in the Temporary Outdoor Operations Permit, subject to compliance with operational and safety provisions provided by the City Manager or his designee, applicable State and County health orders and permits, business licensing requirements, and in compliance with the Americans with Disability Act and any other applicable laws or regulations, including but not limited to the regulations of the Department of Alcohol and Beverage Control.

E. Provided the requirements of this Executive Order and any related conditions are met, a Temporary Outdoor Operations Permittee shall not be subject to minimum parking requirements specified in the Agoura Hills Municipal Code or in a previously granted entitlement, for the Permittee's business for the duration of the term of the Temporary Outdoor Operations Permit, which shall be reasonably related to the requirements of State, County, or local social distancing requirements and the economic impacts of COVID-19, due to parking spaces lost as a result of temporarily authorized expansion in Private Outdoor Areas.

F. If the applicant intends to use a shared Private Outdoor Area for the outdoor expansion of its Designated Establishment, then the applicant must obtain written consent from the owner of the shared Private Outdoor Area to be used for outdoor expansion of the Designated Establishment, and such written consent shall be provided upon submission of the Temporary Outdoor Operations Permit application.

G. All provisions of the Agoura Hills Zoning Code that would preclude the Community Development Director or her designee from allowing a Designated Establishment from providing outdoor service in accordance with a duly issued Temporary Outdoor Operations Permit are hereby suspended for the period of time that such valid Temporary Outdoor Operations Permit remains in effect.

H. All Temporary Outdoor Operations Permits shall automatically expire on March 31, 2022, or when this Executive Order expires pursuant to Section 4 of this Executive Order, whichever date is sooner. Upon expiration of a Temporary Outdoor Operations Permit, an eligible applicant may apply for a new Temporary Outdoor Operations Permit so long as this Executive Order remains in effect.

I. During the term of this Executive Order, there shall be no fee imposed for a Temporary Outdoor Operations Permit issued pursuant to this Executive Order.

SECTION 2. No Rights or Entitlements. Nothing in this Executive Order shall be considered an entitlement or a permit for outdoor use or outdoor expansion of a permitted use or to confer any vested rights or property interest to any ongoing or continuing activities beyond the term of this Executive Order.

SECTION 3. Violations. Any person who violates any provisions of this Executive Order is subject to citation and/or abatement pursuant to any relevant provision of law, and this Executive Order shall be enforceable as set forth in Government Code Section 8665 and Section 3609 of the Agoura Hills Municipal Code.

SECTION 4. Term. This Executive Order shall remain in effect until the local emergency declared in response to COVID-19 within the City is concluded, or until any

applicable Los Angeles County Department of Public Health order is issued prohibiting outdoor operations or March 31, 2022, whichever date is soonest. This Executive Order may also be revised, extended, superseded or rescinded during the period of local emergency by a duly enacted resolution or ordinance of the City Council or by a further Order by the Director of Emergency Services.

SECTION 5. Amendments. The Director of Emergency Services shall continue to monitor the Orders of Federal, State and local authorities and shall amend, extend or modify this Executive Order or issue additional Executive Orders as necessary or advisable.

SECTION 6. Effective Date. This Executive Order shall be effective immediately as of the date of this Executive Order.

SECTION 7. Severability. The Director of Emergency Services declares that, should any section, subsection, subdivision, sentence, clause, phrase, or portion of this Executive Order for any reason be held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Executive Order. The Director of Emergency Services hereby declares that he would have adopted this Executive Order and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 8. Notice of Executive Order. The Director of Emergency Services hereby directs City staff to cause this Executive Order to be disseminated to the public and be given widespread publicity and notice.

ORDERED, ADOPTED and ISSUED this 27th day of December, 2021.



Nathan Hamburger
Director of Emergency Services/City Manager