

REPORT TO CITY COUNCIL

DATE: FEBRUARY 22, 2023

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: NATHAN HAMBURGER, CITY MANAGER

BY: RAMIRO ADEVA, ASSISTANT CITY MANAGER

SUBJECT: ADOPTION OF INTERIM URGENCY ORDINANCE NO. 23-468U, OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, RE-ESTABLISHING AND TEMPORARILY CONTINUING A TEMPORARY OUTDOOR OPERATIONS PERMIT PROGRAM AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The Temporary Outdoor Operations Permit (TOOP) Program has been a survival lifeline for many businesses in the City during the pandemic. Now, with the COVID-19 State of Emergency declaration set to be lifted on February 28, 2023, there are fourteen (14) remaining businesses (13 restaurants and 1 gym) that need a new TOOP issued to allow them to continue operating outdoors.

Staff is in the process of drafting amendments to the Zoning Code to permit outdoor operations of certain uses to continue on a permanent basis and anticipates having this task completed later this year. However, in order to allow businesses that currently have a TOOP to continue operating outdoors, when the current program expires on February 28, 2023, a mechanism must be in place to issue a new TOOP that would bridge the gap between February 28, 2023, and the eventual adoption of the Zoning Ordinance Amendment.

The staff report from February 8, 2023, mentioned the intent to bring an item for consideration on February 22, 2023, which would extend the TOOP through June 30, 2023. However, after further consultation with legal counsel, staff concluded the most appropriate action needed is the adoption of an Interim Urgency Ordinance.

Pursuant to Government Code Section 65858, an Interim Urgency Ordinance expires 45-days after adoption. If the City Council approves the adoption of the Interim Urgency Ordinance on February 22, 2023, it would go into effect immediately, and would therefore terminate 45-days later on April 3, 2023, unless extended by the City Council at a noticed public hearing. The Government Code allows for an extension of 10 months and 15 days following the expiration of the initial 45-days, with another four-fifths vote of adoption by the City Council.

Since the Zoning Ordinance Amendment would not be completed by April 3, 2023, staff intends on returning to the City Council with a public hearing item at the meeting on March 22, 2023, to recommend extending the term of the TOOP program again for the additional time needed (not expected to exceed 10 months and 15 days) to adopt the Zoning Ordinance Amendment.

This Interim Urgency Ordinance would be effective immediately upon passage and adoption does require a four-fifths vote of the City Council, pursuant to Government Code Section 65858.

RECOMMENDATION

Staff respectfully recommends the City Council adopt Interim Urgency Ordinance No. 23-468U, re-establishing and temporarily continuing a Temporary Outdoor Operations Permit Program and making a finding of exemption under the California Environment Quality Act.

Attachment: Interim Urgency Ordinance No. 23-468U

INTERIM URGENCY ORDINANCE NO. 23-468U

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, RE-ESTABLISHING AND TEMPORARILY CONTINUING A TEMPORARY OUTDOOR OPERATIONS PERMIT PROGRAM AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS DOES ORDAIN AS FOLLOWS:

SECTION 1. Urgency Findings. The City Council of the City of Agoura Hills hereby finds as follows:

A. 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;

B. On March 4, 2020, a State of Emergency was proclaimed by Governor Newsom;

C. On March 16, 2020, the City of Agoura Hills Director of Emergency Services, proclaimed the existence of a local emergency in response to the COVID-19 pandemic;

D. On March 17, 2020, the City Council ratified the Director of Emergency Services' proclamation of the existence of a local emergency;

E. On January 27, 2021, through the adoption of City of Agoura Hills Executive Order No. 2021-01, the City created one streamlined program for Temporary Outdoor Operations Permits to assist businesses affected by the COVID-19 pandemic;

F. On December 27, 2021, the Director of Emergency Services adopted and issued 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 ("Executive Order No. 2021-02");

G. On January 12, 2022, the City Council adopted 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;

H. On March 30, 2022, the Director of Emergency Services adopted and issued City of Agoura Hills Executive Order No. 2022- 01, An Executive Order of the Director of Emergency Services of the City of Agoura Hills Extending Executive Order No. 2021-02 Regarding Temporary Continuance of the Temporary Outdoor Operations Permit Program for Designated Establishments ("Executive Order No. 2022-01");

I. On April 13, 2022, the City Council adopted Resolution No. 22-1999, A Resolution of the City Council of the City of Agoura Hills, California, Ratifying and Confirming the Director of Emergency Services' Executive Order No. 2022-01, An Executive Order of the Director of Emergency Services of the City of Agoura Hills Extending Executive Order No. 2021-02 Regarding Temporary Continuance of the Temporary Outdoor Operations Permit Program for Designated Establishments";

J. On September 28, 2022, the City Council adopted Resolution No. 22-2022, A Resolution of the City Council of the City of Agoura Hills, California, Extending Executive Order No. 2021-02 regarding Temporary Continuance of the Temporary Outdoor Operations Permit Program for Designated Establishments, through January 31, 2023;

K. On January 31, 2023, the Director of Emergency Services adopted and issued City of Agoura Hills Executive Order No. 2023-01, An Executive Order of the Director of Emergency Services of the City of Agoura Hills Extending Executive Order No. 2021-02 Regarding Temporary Continuance of the Temporary Outdoor Operations Permit Program for Designated Establishments ("Executive Order No. 2023-01");

L. On February 8, 2023, the City Council adopted Resolution No. 23-2030, A Resolution of the City Council of the City of Agoura Hills, California, Ratifying and Confirming the Director of Emergency Services' Executive Order No. 2023-01, An Executive Order of the Director of Emergency Services of the City of Agoura Hills Extending Executive Order No. 2021-02 Regarding Temporary Continuance of the Temporary Outdoor Operations Permit Program for Designated Establishments;

M. COVID-19 variants (*e.g.*, Omicron XBB.1.5) continue to be discovered with confirmed transmission cases in Los Angeles County;

N. The City understands that some residents and visitors are immune-compromised, and as high-risk individuals 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;

O. It is important to provide Designated Establishments, as such term is defined in Section 3 of this Interim Ordinance, a degree of flexibility to operate with temporary additional space so that immune-compromised and high-risk patrons can visit such establishments in a safe manner;

P. All current, valid Temporary Outdoor Operations Permits are set to expire on February 28, 2023;

Q. Eliminating the ability of Designated Establishments to operate outdoors could potentially cause irreversible financial harm and permanent closure of such business establishments, which threatens not only the welfare of the businesses in the City of Agoura Hills, but also the City's fiscal welfare and health;

R. Vacant business storefronts not only result in decreased sales tax revenue, but can also lead to blighted, neglected areas susceptible to increased crime, making it imperative for the City to allow Designated Establishments to continue operating outdoors in order to remain open and viable;

S. The City of Agoura Hills continues to desire to help facilitate those Designated Establishments to provide outdoor services;

T. To help facilitate continued business recovery, prevent the closure of Designated Establishments 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 to eligible Designated Establishments until the City adopts more permanent regulations related to outdoor operations for certain commercial uses;

U. Based upon the findings above, the City Council finds that there is a current and immediate need to allow Designated Establishments to use designated outdoor spaces in order to prevent additional financial harm to Designated Establishments in the City and to allow members of the public, particularly those who are high risk and immune-compromised, who wish to continue to socially distance to patronize Agoura Hills restaurants, gyms and fitness establishments, in order to mitigate the threat to and preserve the public health, safety and welfare presented by COVID-19;

V. Based upon the findings above, the City Council finds that this Interim Ordinance is necessary for the immediate preservation of the public health, safety, and welfare. The City Council finds and determines that the immediate preservation of the public health, safety and welfare requires that this ordinance be enacted as an Interim Ordinance pursuant to Government Code Section 65858 and take effect immediately upon adoption. As described above, Designated Establishments such as restaurants, gyms, and fitness establishments in Agoura Hills are facing unprecedented hardships related to COVID-19. This Interim Ordinance must become effective immediately in order to allow the City to permit Designated Establishments to temporarily continue their outdoor operations in private parking lots and areas immediately adjacent to said Designated Establishments. Therefore, this Interim Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare and its urgency is hereby declared;

W. Adoption of this Interim Ordinance will facilitate the City's further study of the appropriate standards for certain outdoor operations in order to address traffic, circulation and public health and safety concerns associated with potentially reducing parking requirements for specified commercial uses to allow outdoor operations. Accordingly, this Interim Ordinance is necessary to protect public safety, health, and welfare and its urgency is hereby declared;

X. To protect the public safety, health, and welfare, staff requires time to study the impact of the expanded outdoor operations of certain commercial uses on the City's development standards for restaurants and potentially other commercial uses. Further study will allow staff to determine whether modifications to the City's Zoning Code are necessary to protect the public safety, health, and welfare; and

Y. The City Council finds that the public interest, convenience, health, safety, welfare and necessity described herein require the immediate enactment of this Interim Ordinance as an urgency measure to put into effect interim development controls until completion of studies and subsequent implementation of any recommended and appropriate revisions to the City's Zoning Code.

SECTION 2. Imposition of Interim Development Standards.

A. In accordance with Government Code Section 65858 and pursuant to the findings stated herein, the City Council hereby: 1) declares that the findings and determinations set forth above are true and correct; 2) finds that there exists a current and immediate threat to the public safety, health, and welfare; 3) finds that this Interim Ordinance is necessary for the immediate preservation of the public health, safety, and welfare, as set forth herein; and 4) declares and imposes interim development standards for the immediate preservation of the public safety, health, and welfare as set forth in Section 3 of this Interim Ordinance.

B. Expiration. This Interim Ordinance shall expire, and its standards and requirements shall terminate, on April 3, 2023 (45 days after adoption), unless extended by the City Council at a regularly noticed public hearing, pursuant to Government Code Section 65858.

SECTION 3. Temporary Outdoor Operations Permits in Private Outdoor Areas.

A. Applicability and Eligibility. Notwithstanding the provisions of Sections 9395 and 9395.1 of the Agoura Hills Municipal Code, only a restaurant, gym, or fitness establishment ("Designated Establishment") is eligible 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 valid Temporary Outdoor Operations Permit (also referred to as "TOOP") issued by the City, any related conditions of approval, and this Interim Ordinance.

B. The City Council hereby authorizes the Community Development Director or her designee to: (1) re-establish and develop a Temporary Outdoor Operations Permit application with criteria for approval and denial and minimum standards and conditions for Designated Establishments only; (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 the following minimum conditions and such other reasonable conditions deemed necessary or convenient to protect the public, health, safety, or welfare:

1) 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.

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

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

4) 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.

5) 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.

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

7) 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.

8) The City may modify or revoke any Temporary Outdoor Operations 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.

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 Community Development Director or her designee, applicable State and County health orders and permits, business licensing requirements, and in compliance with the Americans with Disabilities 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 Interim Ordinance 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 economic impacts of COVID-19, due to parking spaces lost as a result of temporarily authorized expansion in Private Outdoor Areas.

F. If a Temporary Outdoor Operations Permit applicant intends to use a shared Private Outdoor Area for the outdoor expansion of its Designated Establishment, then said 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 April 3, 2023, unless this Interim Ordinance is extended by the City Council at a regularly noticed public hearing, pursuant to Government Code Section 65858. Upon expiration of a Temporary Outdoor Operations Permit, a permittee of said Temporary Outdoor Operations Permit may apply for a new Temporary Outdoor Operations Permit so long as this Interim Ordinance remains in effect.

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

J. Nothing in this Interim Ordinance 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 expiration of this Interim Ordinance.

SECTION 4. No Temporary Outdoor Operations Permit Fee. The City Council hereby orders that during the time period this Interim Ordinance is in effect, there shall be no fee imposed for a Temporary Outdoor Operations Permit issued pursuant to this Interim Ordinance.

SECTION 5. CEQA. The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Interim Ordinance, and the prohibitions established hereby, may have a significant effect on the environment, because the ordinance only provides for temporary uses of already developed open space. It is therefore not subject to the California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations. The City Council hereby further finds that the uses authorized by this Interim Ordinance are minor public or private alterations in the condition of land which do not involve removal of healthy, mature, scenic trees. Therefore, this Interim Ordinance is exempt from California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15304(e) of the California Code of Regulations.

SECTION 6. Severability. If any section, subsection, sentence, clause, or phrase of this Interim Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this Interim Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 7. Savings Clause. Neither the adoption of this Interim Ordinance nor the repeal or amendment by this Interim Ordinance of any ordinance or part or portion of any ordinance previously in effect in the City, or within the territory comprising the City, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this Interim Ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

SECTION 8. Effective Date. This Interim Ordinance shall go into effect immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council pursuant to California Government Code Section 65858. The City Council may extend the effectiveness of this Interim Ordinance as provided in Government Code Section 65858.

SECTION 9. Certification. The City Clerk shall certify to the passage and adoption of this Interim Ordinance and shall cause its publication in accordance with applicable law.

PASSED, APPROVED, AND ADOPTED this 22nd day of February, 2023, by the following vote to wit:

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

Chris Anstead, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC, City Clerk

APPROVED AS TO FORM:

Candice K. Lee, City Attorney