

ORDINANCE NO. ____U

AN URGENCY ORDINANCE OF THE CITY OF HERMOSA
BEACH, CALIFORNIA, TEMPORARILY ALLOWING
LIMITED MUSIC AT COMMERCIAL ESTABLISHMENTS
DURING THE COVID-19 CRISIS, AND SETTING FORTH
THE FACTS CONSTITUTING SUCH URGENCY

The City Council of the City of Hermosa Beach does hereby ordain as follows:

Section 1. Findings.

- A. On March 15, 2020, the City of Hermosa Beach ("City") declared a local emergency to ensure an effective City response to a respiratory disease which has been named "COVID-19". At a special meeting on March 16, 2020, the City Council adopted Resolution No. 20-7230, approving and ratifying the declaration of emergency.
- 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. Evidence in late April and early May demonstrated that state and local orders slowed the increase of community transfer of the disease by limiting interactions amongst people. As a result, on May 7, 2020, Governor Newsom, announced a four-staged framework, titled "Resilience Roadmap" that was intended to guide the state's gradual modification of its Safer at Home Order to reopen California. The state also issued industry specific guidance to help specified businesses reopen under new restrictions, which require businesses to, among other things, implement social distancing measures.
- D. In line with the State's health guidance, the Los Angeles County Public Health Officer issued a revised order on May 13, 2020 entitled "Continuation of Safer at Home Order that begins to move the County of Los Angeles into Stage 2 of the County's Roadmap to Recovery," that authorized some limited retail and outdoor recreation venues to reopen subject to among other things, social distancing measures to prevent the further spread of COVID-19. Since that time, the order was periodically updated to continue to allow the gradual reopening of additional sectors including bars, hair salons, personal care services, gyms and fitness facilities subject to social distancing measures.
- E. The May 29th order for example, permitted restaurants and food facilities to remain open and offer limited dine-in seating. The order also encouraged restaurants to expand outdoor seating where possible in compliance with local zoning codes to comply with social distancing requirements.

- F. To assist in the economic recovery of local businesses and restaurants, on May 26, 2020, the City Manager issued Executive Order No. 2020-05 to establish a “Temporary Permit Program” to allow restaurants and food establishments during the time of limited indoor seating capacity and social distancing requirements to set up temporary outdoor dining areas on public and private properties. Following the adoption of this Order, the State and County experienced a sharp increase in confirmed COVID-19 cases and hospitalizations, and the timing of these increases is in line with the reopening 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. As a result, the County Health Officer issued a revised order on July 1, 2020 to backtrack on the County’s gradual reopening to prohibit indoor dining and order the immediate closure of bars, wineries and winery tasting rooms.
- G. On July 13, 2020, the State Public Health Officer issued a state-wide order to require the immediate closure of: (1) indoor and outdoor operations of bars, pubs, brewpubs and breweries; and (2) indoor operation of restaurant dining, movie theaters, zoos, museums, cardrooms, wineries and tasting rooms. The order also imposed more stringent requirements on specified counties, including Los Angeles County that have appeared on the State’s monitoring list for three consecutive days to order the immediate closure of indoor operations of the following sectors: gyms and fitness centers, places of worship, protests, offices for non-critical infrastructure sectors, personal care establishments, hair salons, barbershops, and malls.
- H. 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. As of April 22, 2021, the County is in Tier3—Orange.
- I. Recent County public health data demonstrates that the rate of COVID-19 community transmission, hospitalizations and testing positivity rates have substantially declined. Additionally, there now exists several COVID-19 vaccines proven to help combat the disease and that are being made available to the public in phases. As a result, state and local health orders have loosened COVID-19 related restrictions to allow a growing number of establishments to resume operations.
- J. For example, on January 25, 2021, the California Department of Public Health ended the Regional Stay at Home Order, lifting the order for all regions statewide, including Southern California, which Hermosa Beach was a part of. This action allowed all counties to return to the Blueprint for a Safer Economy framework which

uses color-coded tiers to indicate which activities and businesses can open based on local case rates and test positivity. Under this order, specified businesses are permitted to remain open to the public and conduct normal business operations provided that it abide by the County's Social (Physical) Distancing Protocol and County Health Department Protocol applicable for its business sector, as these protocols may be amended from time to time. Other businesses are permitted to open at limited capacity or with operating restrictions.

- K. On March 12, 2021, the County Department of Health issued a revised County Health Officer Order in light of increasing numbers of vaccinated individuals and the County's move into the Red Tier, effective March 15, 2021.
- L. On April 2, 2021, the County entered the even less restrictive Orange Tier of the State's Blueprint for a Safer Economy framework. Under the County Public Health Officer's revised order issued on this date, capacity limits for specified establishments, including but not limited to restaurants, breweries and wineries, fitness facilities, cardrooms and places of worship were increased subject to the County's Social (Physical) Distancing Protocol and the County Health Department Protocol applicable for its business sector.
- M. On April 17, 2021, the County Public Health Officer updated Appendix I "Protocol for Restaurants" ("Revised Appendix") of its "Reopening Safer at Work and in the Community for Control of COVID-19" order, to allow restaurants to host live outdoor entertainment subject to the County's Public Health Officer Order, Physical Distancing Protocol, and Appendix I, as this order and protocols may be updated from time to time. While the Revised Appendix allows for live outdoor entertainment, it cautions that community spread remains moderate and continues to require all persons and businesses to take precautions such as mask wearing and social distancing measures to reduce the risk of spread of the disease.
- N. In light of the Revised Appendix and to assist in the financial recovery of local businesses and musicians that have been forced to quickly adapt their operations in response to the evolving nature of the State and local public health orders, the City desires to temporarily suspend specified noise provisions in the City's Municipal Code to allow businesses to host live outdoor performances and play music subject to the County Public Health Officer's Order, Physical Distancing Protocol, and Appendix I, as this order and protocols may be updated from time to time.
- O. The temporary suspension of specified noise provisions in the City's Municipal Code 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.

- P. This Urgency 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 2.56 of the Hermosa Beach Municipal Code to protect the peace, health, and safety of the public, and to protect life and property as affected by the emergency.

Section 2. Temporarily Allowing Limited Music at Commercial Establishments During the Covid-19 Crisis

- A. The following provisions of the Hermosa Beach Municipal Code are temporarily suspended as they apply to music played both indoors and outdoors at commercial establishments on the establishment's own property or permitted encroachment areas: Sections 8.24.040 (A), (J), 8.24.045 and 8.24.060.
- B. Music shall only be permitted during the hours of 9:00 AM through 9:00 PM and shall be limited to a noise level that is needed solely for the establishment's customers.
- C. The City Manager, or designee, is authorized to waive any applicable Conditional Use Permit restrictions inconsistent with this ordinance and is authorized to promulgate any regulations or waive enforcement of any applicable authority to implement this ordinance.
- D. This ordinance and any action by the City Manager or designee pursuant to this ordinance shall be in effect until the earlier of: (i) termination of the City's COVID-19 local emergency or (ii) until terminated or superseded by action of the City Council
- E. Any activity permitted under this ordinance is temporary and does not create a vested right.

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 for existing businesses, operating at less intensive capacity than before the crisis, to be allowed to have limited live music outdoors. No new development will result from the proposed action and the activity is temporary. No impact to the physical environment will result as any live music will be subject to the City's noise ordinance, subject to hours restrictions and coordination so that certain areas are not inundated with multiple live music performers resulting in cumulative impacts. 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 Hermosa Beach, 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; 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 potentially suffer further loss of revenue during the City's severe economic downturn caused by the COVID-19 crisis. 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. As of April 22, 2021, Los Angeles County is assigned to Tier 3—Orange. Under Tier 3, the Los Angeles County Health Officer has permitted restaurants to host live entertainment in outdoor operations only, subject to the modifications set forth in the County's Social (Physical) Distancing Protocol and County Health Department Protocol, "Appendix I" applicable to its business sector, as these protocols may be amended from time to time. While State and county health orders continue to evolve, the ability to offer new services such as live entertainment that may lead to increased revenue is critical to business operations. 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 is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Hermosa Beach's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and cause it to be published or posted in accordance with California law.

PASSED, APPROVED and ADOPTED this 27th day of April 2021.

VOTE: AYES:
 NOES:
 ABSTAIN:
 ABSENT:

MAYOR of the City of Hermosa Beach, California

Good

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney