

ORDINANCE NUMBER O- 21287 (NEW SERIES)

DATE OF FINAL PASSAGE JAN 12 2021

AN INTERIM EMERGENCY ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO PURSUANT TO CHARTER SECTION 295 ENACTING A TEMPORARY EXPANSION OF ALLOWABLE OUTDOOR ACTIVITIES IN PUBLIC PARKS FOR PARK USE PERMIT APPLICANTS WHOSE BRICK-AND-MORTAR BUSINESSES HAVE BEEN ORDERED TO CURTAIL OR LIMIT INDOOR OPERATIONS, ENACTING A TEMPORARY WAIVER OF PERMIT FEES FOR GYMS, FITNESS FACILITIES, PLACES OF WORSHIP, AND OTHER BUSINESSES WHOSE OPERATIONS ARE CONSISTENT WITH CHARTER SECTION 55 PURPOSES, AND ENACTING A TEMPORARY WAIVER OF SPECIAL EVENT PERMIT APPLICATION FEES AND PER BUSINESS DAY LATE FEES, DUE TO THE STATE OF EMERGENCY RESULTING FROM THE NOVEL CORONAVIRUS, COVID-19.

WHEREAS, the novel coronavirus, COVID-19, causes infectious disease and was first detected in December 2019; and

WHEREAS, COVID-19 symptoms include fever, cough, and shortness of breath, and those who have been afflicted have experienced anything from mild illness to death; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) considers COVID-19 to be a very serious public health threat, and the World Health Organization declared the COVID-19 outbreak to be a pandemic; and

WHEREAS, on February 19, 2020, the San Diego County Board of Supervisors ratified a declaration of local health emergency related to COVID-19; and

WHEREAS, on March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency in California as a result of the threat of COVID-19; and

WHEREAS, On March 12, 2020, the San Diego County Public Health Officer issued orders directing the public to take certain actions to protect the public health from COVID-19. The Public Health Order was amended several times and is in effect until further notice; and

WHEREAS, on March 12, 2020, former Mayor Kevin Faulconer proclaimed the existence of a local emergency in the City of San Diego (City) as a result of COVID-19, which was ratified by the Council of the City of San Diego (Council) on March 17, 2020; and

WHEREAS, COVID-19 is causing, and is expected to continue to cause, severe negative impacts on the local economy and serious financial impacts to local residents and businesses, including substantial loss of income due to the loss of compensable work hours or wages, layoffs, and business closures; and

WHEREAS, in the interest of protecting the public health and preventing transmission of COVID-19, it is essential to avoid unnecessary public exposure when allowing businesses to operate; and

WHEREAS, on July 13, 2020, the State of California ordered the closure of indoor activities for the following industries and activities within counties on the County Monitoring List for three consecutive days: fitness centers, places of worship, indoor protests, offices for non-essential sectors, personal care services, hair salons, barbershops, and indoor malls; and

WHEREAS, on November 10, 2020, the State of California placed San Diego County into the purple tier (also known as "Tier 1," the most restrictive tier of the color-coded system) which became effective on November 14, 2020. The purple tier prohibits the indoor operation of certain businesses, including places of worship, gyms, fitness centers, and yoga studios; and

WHEREAS on December 3, 2020 the State of California ordered a regional Stay at Home order for Southern California, effective December 5, 2020, which encompasses San Diego

County. The Stay at Home Order instructs residents to stay at home as much as possible and minimize mixing to reduce unnecessary exposure, while still being able to do critical things like going to the doctor, buy groceries, pick up take-out food, or go for a walk. The order closes fitness facilities and churches for indoor operations, limits restaurants to take-out only, and provides for the capacity limitation or closure of numerous other businesses. The Stay at Home order remains in effect for a minimum of three weeks.

WHEREAS, COVID-19 is a threat to public health, safety, and welfare and has had a devastating impact on local businesses by reducing the number of patrons allowed in a business in order to comply with public health orders; and

WHEREAS, the CDC recommends staying at least six feet apart from other people who are not in the same household in both indoor and outdoor spaces to reduce the spread of COVID-19; and

WHEREAS, under San Diego Municipal Code (Municipal Code) Chapter 6, Article 3, Division 00, section 03, Chapter 6, Article 3, Division 1, section 0103(a), and Chapter 6, Article 3, Division 00, section 20.20, the City collects permit fees associated with events that occur in public parks; and

WHEREAS, under Municipal Code Chapter 2, Article 2, Division 40, section 22.4009, the City collects permit fees associated with special events that occur in the City, and also late fees from applicants who do not submit permit applications within the specified time limits; and

WHEREAS, expanding allowable outdoor business activities to allow for social distancing is necessary and appropriate to prevent further potential loss of property occasioned by an inability to conduct business indoors; and

WHEREAS, this Ordinance temporarily expands allowable uses of public parks for fitness classes, personal trainers, and gyms to allow for social distancing; and

WHEREAS, this Ordinance temporarily expands allowable uses of public parks for essential and re-opened brick-and-mortar businesses whose operations are consistent with what constitutes proper park use as outlined in San Diego Charter section 55 and that have been ordered to curtail or limit indoor operations to allow for social distancing; and

WHEREAS, this Ordinance temporarily expands allowable uses of public parks for faith-based organizations to hold religious worship and ceremonial services provided they are in compliance with all social distancing and other COVID-19 related public health orders and all other City, County, State, and Federal laws, including the American with Disabilities Act; and

WHEREAS, this Ordinance temporarily waives certain park use permit fees, specifically ground use fees, and those associated with adult outdoor fitness classes and personal trainers on parkland, to lower costs for brick-and-mortar businesses expanding into outdoor areas to allow for social distancing; and

WHEREAS, this Ordinance temporarily waives certain application and late fees related to special events permits to lower costs for brick-and-mortar businesses expanding into public park areas to allow for social distancing; and

WHEREAS, San Diego Charter, Article III, section 11 vests all legislative authority for the City in the Council; and

WHEREAS, pursuant to San Diego Charter section 295, the Council finds that adopting this interim emergency Ordinance is necessary and appropriate to prevent or mitigate adverse effects to public health, safety, and welfare related to the significant health and economic

impacts of the COVID-19 pandemic, and to further enable compliance with public health orders and recommendations related to COVID-19; and

WHEREAS, the Council finds that, pursuant to San Diego Charter section 295(e), this Ordinance is necessary to provide for the immediate preservation of the public peace, property, health, or safety; and

WHEREAS, under San Diego Charter section 295(e), a supermajority vote of the Council is required for passage of this Ordinance; and

WHEREAS, under San Diego Charter section 280(a)(3), this Ordinance is not subject to veto by the Mayor because it is an emergency ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego (Council), as follows:

Section 1. That retroactive to August 24, 2020, allowable uses of public parks are temporarily expanded to allow for social distancing for:

- a. fitness classes, personal trainers, and gyms; and
- b. essential and re-opened brick-and-mortar businesses whose operations are consistent with what constitutes proper park use as outlined in San Diego Charter section 55 and that have been ordered to curtail or limit indoor operations; and
- c. faith-based organizations to hold religious worship and ceremonial services.

Section 2. That retroactive to August 24, 2020, park use permit fees imposed in San Diego Municipal Code Chapter 6, Article 3, Division 00, section 03, Chapter 6, Article 3, Division 1, section 0103(a), and Chapter 6, Article 3, Division 00, section 20.20, including authorized application fees, are temporarily waived for park use permit applicants whose brick-and-mortar businesses have been forced to curtail or limit indoor operations and request to

temporarily operate fitness classes, personal training, yoga classes, and gyms in public parks to allow for businesses to operate while allowing for social distancing.

Section 3. That retroactive to August 24, 2020 park use permit fees imposed in San Diego Municipal Code Chapter 6, Article 3, Division 00, section 03, Chapter 6, Article 3, Division 1, section 0103(a), and Chapter 6, Article 3, Division 00, section 20.20, including authorized application fees, are temporarily waived for park use permit applicants who maintained a brick-and-mortar business presence prior to COVID-19, qualify as essential and re-opened businesses pursuant to the most recent Public Health Order, have operations consistent with San Diego Charter 55 uses, have been ordered to curtail or limit indoor operations to allow for social distancing, and request to temporarily operate in public parks while allowing for social distancing.

Section 4. That retroactive to August 24, 2020 park use permit fees imposed in San Diego Municipal Code Chapter 6, Article 3, Division 00, section 03, Chapter 6, Article 3, Division 1, section 0103(a), and Chapter 6, Article 3, Division 00, section 20.20, including authorized application fees, are temporarily waived for faith-based organization park use permit applicants whose brick-and-mortar businesses have been forced to curtail or limit indoor operations and request to temporarily hold religious worship and ceremonial services in public parks on a temporary basis, provided they are in compliance with all social distancing and other COVID-19 related public health orders and all other City, County, State, and Federal laws, including the American with Disabilities Act.

Section 5. That retroactive to August 24, 2020 special event permit application fees and per business day late fees imposed in San Diego Municipal Code Chapter 2, Article 2, Division 40, section 22.4009 for applicants who apply for a special event permit in a public park

sixty (60) calendar days or less before the time when it is proposed to conduct the special event are temporarily waived, allowing for businesses to operate while allowing for social distancing.

Section 6. That there is a current and immediate threat to the public health, safety, and welfare of the City and its communities caused by COVID-19, thereby necessitating the immediate enactment of this interim emergency Ordinance.

Section 7. That this Ordinance shall expire on December 31, 2021 or until social distancing is no longer ordered by the San Diego County Office of Public Health, whichever occurs first, unless extended by Council action.

Section 8. That this Ordinance is intended to supplement, not duplicate or contradict, applicable state and federal law, and shall be construed in light of that intent.

Section 9. That the provisions of Article 1, Division 2 of the San Diego Municipal Code, including those relating to construction and interpretation, shall apply to this Ordinance.

Section 10. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 11. That this Ordinance is declared to be an emergency measure required for the immediate preservation of the public health, safety, and welfare pursuant to San Diego Charter section 295 and shall take effect immediately from the day of adoption by the affirmative vote of at least six members of the Council.

APPROVED: MARA W. ELLIOTT, City Attorney

By: Jane M. Boardman
Jane M. Boardman
Deputy City Attorney

JMB:nja
12/7/20
12/16/20 Cor. Copy
Or. Dept: Parks and Recreation Dept.
Doc. No.: 2546172

Passed by the Council of The City of San Diego on JAN 12 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JAN 12 2021

AUTHENTICATED BY: TODD GLORIA
Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on JAN 12 2021, said ordinance being of the kind and character authorized for passage on its introduction by Section 275 of the Charter.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By [Signature], Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 21287