

CITY OF BOISE

Ordinance NO. ORD-11-20

BY THE COUNCIL

BAGEANT, CLEGG , HALLYBURTON,
SANCHEZ, THOMSON AND
WOODINGS

AN ORDINANCE ENACTING A NEW CHAPTER 15 TO TITLE 1, BOISE CITY CODE, ENTITLED EMERGENCY POWERS; SETTING FORTH THE AUTHORITY, PURPOSE AND INTENT; DEFINITIONS; DESCRIBING PUBLIC HEALTH EMERGENCY ORDERS; PROCESS FOR ENACTING PUBLIC HEALTH EMERGENCY ORDERS; PROVIDING FOR EXCLUSIONS; PROVIDING FOR SUSPENSION OF SERVICES; FORCE MAJEURE CLAUSE; PENALTY; SUNSET PROVISION; PROVIDING FOR A WAIVER OF THE READING RULES; AND PROVIDING AN EFFECTIVE DATE UPON PROCLAMATION BY THE MAYOR POSTED IN FIVE PUBLIC PLACES OF THE CITY.

WHEREAS, on March 11, 2020, the World Health Organization declared the worldwide outbreak of COVID-19 (aka coronavirus) a pandemic; and

WHEREAS, on March 13, 2020, the President of the United States issued an emergency declaration for the country in response to the increasing number of COVID-19 cases within the U.S.; and

WHEREAS, on March 13, 2020, Idaho Governor Brad Little signed a declaration of emergency for the State of Idaho in response to concerns that cases of COVID-19 are imminent in Idaho; and

WHEREAS, under Idaho Code section 50-304, the Mayor is authorized to pass all ordinances and make all regulations necessary to preserve the public health, prevent the introduction of contagious diseases into the city, and to make quarantine laws for that purpose and enforce the same within five (5) miles of Boise city limits, any health or quarantine ordinance and regulation thereof; and

WHEREAS, under Idaho Code section 50-606, the Mayor shall have such jurisdiction as may be vested in her by ordinance over all places within five (5) miles of the corporate limits of the city, for the enforcement of any health or quarantine ordinance and regulation thereof; and

WHEREAS, in order to effectively preserve the health and safety of the public, the Mayor is granted the emergency powers contained within this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BOISE, IDAHO:

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Section 1. That Title 1, Chapter 15, Boise City Code, be and the same is enacted to read as follows:

CHAPTER 1-15

EMERGENCY POWERS

Sections:

1-15-01 LEGAL AUTHORITY

1-15-02 PURPOSE AND INTENT

1-15-03 SCOPE

1-15-04 DEFINITIONS

1-15-05 PUBLIC HEALTH EMERGENCY ORDERS

1-15-06 PROCESS FOR ENACTING PUBLIC HEALTH EMERGENCY ORDERS

1-15-07 EXCLUSIONS

1-15-08 SUSPENSION OF SERVICES

1-15-09 FORCE MAJEURE

1-15-10 PENALTY

1-15-11 SUNSET PROVISION

Section 1-15-01 LEGAL AUTHORITY:

Idaho Code sections 50-304 and 50-606 authorize the city of Boise City, state of Idaho ("City") to pass ordinances granting certain powers to the Mayor related to public health emergencies.

Section 1-15-02 PURPOSE AND INTENT:

The City finds that the preservation of public health, safety, and welfare may require immediate action by the City in response to emergency situations. Therefore, the City hereby authorizes the Mayor certain powers for immediate response to foreseeable, imminent, or present public health emergencies.

Section 1-15-03 SCOPE:

This chapter sets forth the procedures for activating the emergency powers of the Mayor and the specific powers of the Mayor during a public health emergency.

Section 1-15-04 DEFINITIONS:

For the purposes of this Chapter, the following terms, phrases, words, and derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words used throughout this Chapter, but not defined herein or in Chapter 01 of

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Title 3, shall have their plain, ordinary, and common meaning. Words in any gender shall apply to the feminine, masculine, and neuter genders.

- A. PUBLIC HEALTH EMERGENCY: The foreseeable, imminent, or present threat of any pathogen, agent, vector, or environmental condition, including hazardous materials, which does or may cause illness or injury to humans.
- B. PUBLIC HEALTH EMERGENCY ORDER: An advisory, social distancing, isolation, or quarantine order enacted by the Mayor.
- C. ISOLATION: The separation of infected persons, or of persons suspected to be infected, from other persons to such places, under such conditions, and for such time as will prevent transmission of the infectious agent.
- D. QUARANTINE: The restriction placed on the entrance to and exit from the place of premises where an infectious agent or hazardous material exists.
- E. SOCIAL DISTANCING: Actions taken to maintain distance from other people, including avoiding or canceling congregate settings and mass gatherings.

Section 1-15-05 PUBLIC HEALTH EMERGENCY ORDERS:

The Mayor, being duly authorized by Idaho Code sections 50-304 and 50-606, may issue the following orders, as deemed appropriate by the Mayor following consultation with or review of information issued by local, regional, statewide, or nationwide public health authorities.

- A. **Advisory Order.** Where a public health emergency is foreseeable or imminent, the Mayor may, following consultation with City Council, enact an advisory order, which order may provide information and recommended guidelines for preventing, detecting, and/or mitigating the onset or spread of a public health hazard.
- B. **Social Distancing Order.** Where a public health emergency is imminent, the Mayor may, following consultation with City Council or summarily when necessary, enact a social distancing order, which order may establish any or all of the following:
 - 1. Appropriate restrictions regarding the operation or occurrence of planned or foreseeable commercial, recreational, or expressive gatherings or events.
 - 2. Restrictions on travel through or visitation within the community.
 - 3. Postponement or cancellation of public meetings and hearings.
 - 4. A limit on the number of persons who may gather in one location and may apply to indoor or outdoor venues.
 - 5. Measures to be taken in order to prevent, avoid, detect, address, or mitigate a

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foreseeable, imminent, or present public health hazard.

6. A social distancing order shall include an effective date and an anticipated expiration date, which may be extended in the same manner as the imposition of the initial order. A social distancing order shall apply within Boise city limits, and five (5) miles outside Boise city limits.

C. Isolation Order. Where a public health emergency is present, and poses a clear threat of harm to the public health, the Mayor may, following consultation with City Council or summarily when necessary, enact an isolation order, which order may establish any or all of _____ the _____ following:

1. A directive that infected and/or exposed individuals isolate themselves from other persons.
2. Geographical areas of restricted or prohibited access.
3. Other measures necessary to avoid, address, or mitigate an imminent public health hazard.
4. The scope and manner of delivery of services, materials, or supplies to be provided by the City, if any.
5. Measures to be taken in order to prevent, avoid, detect, address, or mitigate a foreseeable, imminent, or present public health hazard.
6. Conditions of the isolation order.
7. An isolation order shall include an effective date and an anticipated expiration date, which may be extended in the same manner as the imposition of the initial order. An isolation order shall be effective only when and for so long as the public health emergency is present, and when no less restrictive alternative exists. Any person shall be entitled to appeal an isolation order or to request a modification of any provision of such order by filing a written appeal with the City Clerk. Such appeal shall be heard by City Council at their next meeting, or, if no meeting is scheduled during the term of the isolation order, the Fire Chief or designee shall review such appeal and issue a written decision. The Fire Chief's decision shall be final.

D. Quarantine Order. Where a health emergency is present and poses a clear threat of harm to the public health, the Mayor may, following consultation with City Council or summarily when necessary, enact a quarantine order, which order may establish any or all of the following:

1. A directive that infected and/or exposed individuals isolate themselves from other persons.
2. Geographical or other areas of restricted or prohibited access.

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3. Other measures necessary to avoid, address, or mitigate an imminent public health hazard.
4. The scope and manner of delivery of services, materials, or supplies to be provided by the City, if any.
5. Measures to be taken in order to prevent, avoid, detect, address, or mitigate a foreseeable, imminent, or present public health hazard.
6. Conditions of the quarantine.
7. A quarantine order shall include an effective date and an anticipated expiration date, which may be extended in the same manner as the imposition of the initial order. A quarantine order shall be effective only when and for so long as the public health emergency is present, and when no less restrictive alternative exists. Any person shall be entitled to appeal a quarantine order, or to request a modification of any provision of such order by filing a written appeal with the City Clerk. Such appeal shall be heard by City Council at their next meeting, or, if no meeting is scheduled during the term of the quarantine order, the Fire Chief or designee shall review such appeal and issue a written decision. The Fire Chief's decision shall be final.

Section 1-15-06 PROCESS FOR ENACTING PUBLIC HEALTH EMERGENCY ORDERS:

- A. **Consultation with City Council.** When enacting a Public Health Emergency Order following consultation with City Council, the Mayor shall present to City Council, at a duly noticed public meeting, the proposed Public Health Emergency Order. Public input may be taken at such meeting, but a public hearing shall not be required. City Council shall provide input, and the Mayor shall duly consider such input, though the Council's consent to the contents or issuance of the order shall not be required. Following presentation to the City Council, the Mayor shall prepare a written order and publish it pursuant to this section. Except as may be specifically stated in the Public Health Emergency Order, such order shall be effective upon posting at Boise City Hall.
- B. **Summary Enactment.** When necessary to summarily enact a Public Health Emergency Order, the Mayor shall prepare a written order and publish it pursuant to this section. Within seven (7) days of the issuance of such an order the Mayor shall consult with the City Council as outlined in section A.
- C. **Council Veto.** A majority of Council members may override any action the Mayor takes pursuant to this Chapter.
- D. **Publication of Public Health Emergency Order.** As possible and prudent under the circumstances, the Mayor shall cause a Public Health Emergency Order to be published:

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1. Posting the order in a prominent place at Boise City Hall;
2. Posting the order on the City's website;
3. E-mailing the order to all persons subscribed to City e-mail notification services;
4. Posting the order to all City social media accounts;
5. Providing the order to local television and radio broadcast outlets; and
6. Notifying other government agencies, including West Ada School District, Ada County Highway District, Ada County, and other municipalities.

Except as may be specifically stated in the Public Health Emergency Order, such order shall be effective upon posting at Boise City Hall.

E. Term of Order. Every public health emergency order shall include an effective date and a termination date that shall be no more than thirty (30) days from the effective date, which may be extended upon approval of City Council.

1-15-07 EXCLUSIONS:

Unless otherwise specifically prohibited by a Public Health Emergency Order duly enacted by the Mayor, the following activities shall be exempt from the scope of such order:

1. Any and all expressive and associative activity that is protected by the United States and Idaho Constitutions, including speech, press, assembly, and/or religious activity.
2. Educational institutions, which shall follow the duly adopted policies of their respective governing bodies.
3. Activities necessary to operate critical infrastructure and utilities.
4. Activities necessary to operate and use medical facilities and services.
5. Activities necessary to buy, sell, or otherwise deliver food and necessities.

1-15-08 SUSPENSION AND WAIVER OF CERTAIN CITY SERVICES, ORDINANCES, AND POLICIES AND PROCEDURES:

During a Public Health Emergency and upon issuance of a Public Health Emergency Order, the Mayor may suspend certain non-essential City government services and functions as deemed necessary and advisable given the specific public health emergency and in consideration of the health of employees and the general public. During such time, the Mayor may also suspend the

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regular meetings of City boards and commissions, including but not limited to Planning & Zoning, Design Review, and the Historic Preservation Commission. In order to facilitate such suspension of meetings, the ordinances providing for the regular meetings of these commissions shall be temporarily suspended. Those ordinances providing the timeline for processing applications shall also be suspended. The Mayor is also authorized to waive such internal rules, regulations, and procedures as deemed necessary to protect the health and welfare of City employees.

1-15-09 FORCE MAJEURE:

In the context of this chapter, a public health emergency is a force majeure. No person shall be entitled to recover from the City of Boise any costs incurred, or profits lost, as may be alleged to be attributed to the enactment of a Public Health Emergency Order.

1-15-10 PENALTY:

It shall be unlawful to violate any provision or directive of a duly enacted social distancing order, isolation order, or quarantine order while such order is in effect. The violation of any provision or directive of a social distancing order, isolation order, or quarantine order shall be a misdemeanor.

1-15-11 SUNSET PROVISION:

This chapter 1-15 shall terminate and be of no force and effect six (6) months after its effective date, or upon termination of the Mayor's Declaration of Emergency that was approved, ratified and extended by Council on March 17, 2020 as Resolution 117-20, whichever is later.

Section 2. That all ordinances, resolutions, orders, or parts thereof or in conflict with this ordinance are hereby voided.

Section 3. That this ordinance, consistent with Idaho Code section 50-901, shall be effective immediately upon its passage and proclamation of the Mayor with publication via posted notice in at least five (5) public places of the City.

Section 4. That pursuant to the affirmative vote of one-half (1/2) plus one (1) of the members of the full Council, the rule requiring two (2) separate readings by title and one (1) reading in full be, and the same is hereby, dispensed with, and accordingly, this Ordinance shall be in full force and effect immediately upon its passage, approval and publication.