Ordinance NO. ORD-12-20

BY THE COUNCIL
   BAGEANT, CLEGG, HALLYBURTON, SANCHEZ, THOMSON AND WOODINGS

AN ORDINANCE REPEALING AND REPLACING TITLE 1, CHAPTER 15, EMERGENCY POWERS, 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; 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 17, 2020, the Boise City Council approved ordinance 11-20, Emergency Powers ordinance, which granted to the Mayor certain powers in the event of a public health emergency; and

WHEREAS, upon further review, the Emergency Powers ordinance requires some clean up in its processes and procedures, and the deletion of the “Isolation” provisions; and

WHEREAS, due to the ongoing nature of the COVID-19 pandemic, these changes must be made immediately to ensure that the Mayor has the authority to address the fluid nature of this crisis.

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

Section 1. That existing Boise City Code Title 1, Chapter 15, shall be, and hereby is, repealed in its entirety and replaced as follows:

CHAPTER 1-15

EMERGENCY POWERS

Sections:
1-15-01 LEGAL AUTHORITY
1-15-02 PURPOSE AND INTENT
1-15-03 SCOPE
Section 1-15-01 LEGAL AUTHORITY:
Article XII, Section 2 of the Idaho Constitution, and 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 threats to public health. Therefore, the City hereby authorizes the Mayor certain powers for immediate response to foreseeable, imminent, or present public health emergencies upon a Declaration of a Public Health Emergency as provided in the Disaster Preparedness Act (Idaho Code, Title 46, Chapter 10).

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 upon a Declaration of 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 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: An emergency as set forth in a Declaration of Emergency as provided in the Disaster Preparedness Act (Idaho Code, Title 46, Chapter 10) that is related to 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, curfew, shelter in place, social distancing, quarantine, or other order enacted by the Mayor entered to preserve the public health, safety and welfare of the City.

C. SHELTER IN PLACE: The requirement that persons remain in their residences and/or self-isolate, subject to certain exceptions.

D. QUARANTINE: The restriction placed on the entrance to and exit from the place of premises or geographic area where an infectious agent, hazardous material exists, pathogen, vector, or environmental condition exists, subject to certain exceptions.
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E. SOCIAL DISTANCING: Actions taken to reduce or limit physical contact between individuals or maintain, reduce or limit distance between individuals or groups, subject to certain exceptions.

Section 1-15-05 PUBLIC HEALTH EMERGENCY ORDERS:

After issuance of a Declaration of Public Health Emergency, the Mayor, being duly authorized by Article XII, Section 2 of the Idaho Constitution and Idaho Code sections 50-304 and 50-606, may issue the following orders, as deemed appropriate by the Mayor following consultation with local, regional, statewide, or nationwide public health authorities.

A. Advisory Order. During a public health emergency, the Mayor may enact an advisory order providing information and recommended guidelines for preventing, detecting, and/or mitigating the onset or spread of a public health emergency.

B. Social Distancing Order. During a public health emergency, the Mayor may enact a social distancing order, establishing any or all of the following, subject to certain exceptions:

1. Appropriate restrictions regarding the operation or occurrence of planned or foreseeable commercial and recreational 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, which may apply to indoor or outdoor venues, businesses, or governmental activities or
5. Other measures to be taken in order to prevent, avoid, detect, address, or mitigate an imminent or present public health emergency hazard.

C. Curfew Order. During a public health emergency, the Mayor may enact a curfew order, establishing any or all of the following, subject to certain exceptions:

1. An order limiting the hours of operation for businesses and facilities; or
2. An order establishing a curfew under which individuals are to remain in their homes except for essential travel.

D. Quarantine Order. During a public health emergency, the Mayor may enact a quarantine order, establishing any or all of the following, subject to certain exceptions:

1. Geographical or other areas of restricted or prohibited access, such as restricting access to a geographical location or area; or
2. Other measures necessary to avoid, address, or mitigate an imminent public health emergency hazard.

E. Shelter in Place Order. During a public health emergency, the Mayor may enact a shelter in place order, establishing any or all of the following, subject to certain exceptions:

1. A requirement that people isolate themselves and remain in their residences;
2. Restrictions or prohibitions on public and private gatherings of individuals outside a residence;
3. Restrictions or prohibitions on business or governmental activities;
4. Limitations and restrictions on travel; or
5. Other similar measures to be taken in order to prevent, avoid, detect, address, or mitigate an imminent, or present public health emergency hazard.
Section 1-15-06 PROCESS FOR ENACTING PUBLIC HEALTH EMERGENCY ORDERS:
Upon a Declaration of a Public Health Emergency, the Mayor may issue Public Health Emergency Orders to preserve the public health, safety and welfare of the City.

A. Enactment of Order. The Mayor shall prepare a written Public Health Emergency Order and publish it pursuant to this section as soon as practical after signature.

B. Consultation with City Council. When practical, the Mayor should consult with City Council prior to the enactment of a Public Health Emergency Order. Consultation with City Council, however, is not required before enactment.

C. City Council Ratification or Rescission. A majority of Council members shall ratify or rescind a Public Health Emergency Order issued by the Mayor at the next duly noticed City Council meeting.

D. Publication of Public Health Emergency Order. As soon as possible and prudent under the circumstances, the Mayor shall cause any Public Health Emergency Order to be published by:
1. Posting the order prominently in all external public entrances 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 City’s primary social media account;
5. Providing the order to local television and radio broadcast outlets; and
6. Notifying local government agencies, school districts, and hospitals located in Ada County, the Ada County Highway District, and other adjacent municipalities.

E. Term of Order. Every Public Health Emergency Order shall include an effective date and an expiration date that shall be no more than thirty (30) days from the effective date.

F. Extension of Order. The Mayor may extend any Public Health Emergency Order for subsequent terms as set forth above. Any such extension must be published as set forth in Section 1-15-06(D).

G. Termination of Authority. The Mayor’s authority to issue a Public Health Emergency Order shall cease upon termination of the underlying Declaration of Emergency.

1-15-7 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:

A. 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;
B. Educational institutions, which shall follow the duly adopted policies of their respective governing bodies;
C. Activities necessary to operate critical infrastructure and utilities;
D. Activities necessary to operate and use medical facilities and services; and
E. Activities necessary to buy, sell, or otherwise deliver food and necessities.

1-15-8 SUSPENSION AND WAIVER OF CERTAIN CITY SERVICES, ORDINANCES, AND POLICIES AND PROCEDURES:

During a Declaration of a Public Health Emergency and upon issuance of a Public Health Emergency Order, the Mayor may suspend:

A. 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;
B. Regular meetings of City boards and commissions, and the ordinances providing for the same;
C. Timelines for processing City applications and the ordinances providing for the same; and
D. Other such ordinances as may be necessary given the specific nature of Public Health Emergency; and
E. Such internal rules, regulations, and procedures as deemed necessary to protect the health and welfare of City employees and residents.

1-15-9 FORCE MAJEURE:
In the context of this chapter, the Declaration of a declared 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 Public Health Emergency Order. The violation of any provision or directive of a Public Health Emergency Order shall be a misdemeanor and punishable as set forth in Boise City Code 1-4-1.

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.
CITY OF BOISE

ADOPTED by the Council of Boise City, Idaho, on April 7, 2020.

APPROVED by the Mayor of the Boise City, Idaho, on April 7, 2020.

APPROVED:  

[Signature]
Lauren McLean, Mayor

ATTEST:  

[Signature]
Lynda Lowry, Ex-Officio City Clerk