

EMERGENCY
ORDINANCE NO. O-2020-17

AN EMERGENCY ORDINANCE OF THE CITY OF DURANGO SUPPORTING THE ENFORCEMENT OF STATE EXECUTIVE AND PUBLIC HEALTH ORDERS BY REQUIRING MASKS IN THE CITY OF DURANGO AND PROVIDING OTHER ENFORCEMENT TO DECREASE THE IMPACTS OF THE COVID 19 PANDEMIC AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City of Durango (“City”) is a municipal home-rule corporation created and organized pursuant to Article XX of the Colorado Constitution and the Charter of the City of Durango, Colorado; and

WHEREAS, by virtue of such authority, and as further authorized by State statutes, including, but not limited to, C.R.S., §31-15-401, the City has broad authority to exercise its police powers to promote and protect the health, safety and welfare of the community and its inhabitants; and

WHEREAS, the Interim City Manager issued a Declaration of Emergency related to the COVID-19 outbreak on March 16, 2020 (the Declaration of Emergency); and

WHEREAS, the City Council adopted Resolution No. 2020-07 on March 17, 2020 to ratify and extend the above referenced Declaration of Emergency until further action of Council, which Resolution remains in effect at this date; and

WHEREAS, the City Council finds that local infections of COVID-19 are escalating and may continue to escalate due to the onset of winter and other factors, thereby creating an emergency that must be immediately addressed by the City; and

WHEREAS, in response to the rapidly escalating COVID-19 infections, San Juan Basin Public Health (SJBPH) has moved La Plata County to Level Red (Severe Risk), effective November 20, 2020 under the provisions of the First Amended Public Health Order 20-36 issued by the Colorado Department of Public Health and Environment (CDPHE) on November 17, 2020; and

WHEREAS, the Governor of Colorado has adopted numerous Executive Orders requiring face coverings, including but not limited to D 2020-138, as amended and updated. In addition, numerous Public Health Orders have been issued by the Colorado Department of Health and Environment regarding face

coverings, including but not limited to Public Health Order 2-35 and the above referenced PHO 20-36; and

WHEREAS, the current health emergency threatens the health and welfare of the residents of the City, their livelihoods and the economy of the area; and

WHEREAS, the escalating COVID-19 infections could create conditions that would overwhelm the medical capacity of local hospitals; and

WHEREAS, while the primary jurisdiction to enforce Executive Orders issued by the Governor and Public Health Orders issued by CDPHE does not rest with the City, SJBPH has requested enforcement assistance from the City and the City does have authority to adopt emergency ordinances to address public emergencies affecting life, health, property or the public peace, including the authority to cooperate with other local entities to exercise such powers and authority to address those emergencies; and

WHEREAS, the City desires to adopt its own regulations as well as to cooperate with SJBPH, La Plata County, the District Attorney and other local governments and government officials in La Plata County and to respond to requests for cooperation and assistance to develop and implement effective local enforcement mechanisms; and

WHEREAS, the City Council finds that scientific studies uniformly support a finding that wearing Masks will help prevent the spread of the virus and is a critical element to control the virus along with social distancing and the practice of good personal hygiene and that requiring Masks will thereby help curb the alarming increase in COVID-19 infections and the resulting impacts to the City; and

WHEREAS, Article II (14) of the City Charter provides authority for the City Council to adopt emergency ordinances to address public emergencies affecting life, health, property or the public peace; and

WHEREAS, assuring the health and welfare of residents and visitors to Durango is the highest priority of the City Council; and

WHEREAS, effective controls on the spread of the virus will benefit the local economy as well as the general health and welfare of residents and visitors to the City; and

WHEREAS, the City Council has received and considered evidence in support of the determination that an emergency affecting the health and welfare of its residents exists, including evidence and documentation provided by SJBPH, and

WHEREAS, the City Council desires to take local proactive measures to address the health emergency to help assure the health, welfare and safety of the City residents and to cooperate with and assist SJBPH, La Plata County, the District Attorney and other local government officials in enforcing those measures; and

NOW, THEREFORE, THE CITY OF DURANGO HEREBY ORDAINS:

Section 1. Public Health Emergency

The foregoing recitals are hereby affirmed and incorporated herein by this reference as specific findings of the City Council that a public health emergency condition exists under the provisions of Article II (14) of the City Charter.

Section 2. Mask Requirement

The City Council hereby adopts and establishes regulations, conditions and orders which shall designate and create the requirement for the wearing of Masks by persons within the City as follows:

1. Definitions.

- a. As used herein, the term "Business" shall be any business required to have a City business license under Article I of Chapter 13 of the City Code while operating within a Public Space.
- b. As used herein, the term "Mask" shall mean a face covering made of cloth, fabric, or other soft or permeable material, without holes, that securely covers the nose and mouth and surrounding areas of the lower face, and that fits snugly but comfortably against the sides of the face and remains in place without the use of one's hands. Masks do not include any face covering that incorporates a one-way valve (typically a raised plastic cylinder about the size of a quarter on the front or side of the mask) that is designed to facilitate easy exhaling, and such masks are not to be used to comply with this Emergency Ordinance.
- c. As used herein, the term "Public Space" shall mean any enclosed indoor area within the City that is publicly or privately owned, managed or operated to which persons have access by right or by invitation, expressed or implied, and that is accessible to members of the public, that serves as a place of employment or that is a location for an entity providing food, goods, services of any kind, including any outside or non-enclosed areas associated with a Public Space such as any courtyard, patio, seating, waiting or parking areas associated with the place of business in which any kind of delivery, pick up or service is provided. Public Space includes public transportation, City transit buses and bus shelters. Public Space does not include a person's residence or private rooms in a hotel or other short-term private accommodation.

2. Masks Required.

Except as otherwise specifically provided herein, it shall be unlawful for any person to be within a Public Space as described herein without wearing a

Mask. The requirement that all persons wear a Mask shall not apply to the following locations or conditions:

- a. Persons in restaurants or licensed liquor establishments or in outdoor areas legally authorized for food service while such person is in the act of eating or drinking; provided however, Masks shall be worn while entering and exiting the food or liquor establishment, and while ordering, paying, picking up take out or otherwise interacting with employees or other customers of the establishment and once the food and drink have been consumed;
- b. Persons working in a place of business who do not come into contact with the public and who do not share workspace with other persons not of their household; provided however, a Mask shall be worn while entering or exiting the building or otherwise when within six feet of another person in or around that place of business and as may otherwise be required under any other orders or directives issued by any entity with jurisdiction;
- c. Children under the age of ten.
- d. Persons who cannot medically tolerate a Mask.
- e. Persons within property owned or operated by the federal, state or county governments.

3. Duties of Owners, Operators or Managers of Businesses.

The owner, operator or manager of any Business shall have an obligation to assure that all employees of that Business comply with the provisions of this Emergency Ordinance when such employees are within the Public Space occupied by the Business, and it shall be unlawful for any owner, operator or manager of any Business to fail to require or secure such compliance by employees of the Business as required herein.

4. Required Signage.

Owners, operators or managers of all Public Spaces or other public accommodations subject to this Ordinance shall display at each entrance to such space a sign advising all persons of the requirements of this Emergency Ordinance and that Masks are required to enter or remain within such space. Additional signage shall be posted by the City at other locations designed to inform the public that Masks are required.

5. Violations and Penalties.

The City shall attempt to secure voluntary compliance with the provisions of this Emergency Ordinance, including the issuance of verbal or written warning notices, prior to the issuance of any citations for violations.

The City may pursue any lawful action to enforce the provisions of this Emergency Ordinance, including but not limited to, the commencement of an action under Article I of Chapter 15 of the City Code.

Any person shall be subject to a separate offense under the provisions of this Ordinance for each and every day when the provisions of this Emergency Ordinance is found to have been violated, committed, continued or permitted.

Notwithstanding any other provision of the City Code, and in addition to any other remedy provided for herein, any person found to have violated the provisions of this Emergency Ordinance shall be punishable as follows: a. For a first offense, the

issuance of a penalty assessment notice specifying a fine of fifty dollars (\$50.00); b. For a second offense, a fine of two hundred and fifty dollars (\$250.00); c. For a third or other subsequent offense, a fine of five hundred dollars (\$500.00).

Section 3. Enforcement by the Durango Local Licensing Authority

The Durango Local Licensing Authority (DLLA) shall have the authority to take any and all disciplinary actions described in Article VIII of Chapter 5 of the Durango Code of Ordinances against the holder of a liquor license operating within the City on the basis that the said licensee or the owner, operator or manager of such licensee has violated any provision of a state health order, an executive order issued by the Governor, or this Emergency Ordinance under the terms and provisions of 1 Colorado Code of Regulations 203-2, Regulation 47-1102.

Section 4. Trespass

Any person who refuses to wear a Mask as required by this Emergency Ordinance or refuses to leave the premises at the request of an owner, operator or manager of a Public Space shall be unlawfully remaining on the property in trespass under the provisions of Section 17-57 of the Code of Ordinances of the City of Durango.

Section 5. This Emergency Ordinance shall be effective for a period not to exceed sixty days, during which time, the City of Durango shall undertake a review of the continued impacts of the COVID-19 virus and the effectiveness of the provisions of this Emergency Ordinance to determine if an extension of or amendment to the provisions of this Emergency Ordinance is required.

Section 6. The City Council finds and determines that absent the imposition of this Emergency Ordinance, the existing conditions related to an increase in COVID-19 infections within the City will have a significantly detrimental impact on the health, safety and welfare of the community. The Council further finds that the provisions provided for herein to create the requirement for wearing of Masks by persons within the City and the other enforcement provisions provided for herein are thereby necessary and appropriate to address an imminent public health emergency.

Section 7. The provisions of this Emergency Ordinance are temporary in nature and may be repealed by subsequent legislative enactment. The provisions of this Emergency Ordinance shall automatically terminate at midnight on January 22, 2021, unless sooner repealed or otherwise extended.

Section 8. If any portion of this Emergency Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Emergency Ordinance. The City Council hereby declares that it would have

