

ORDINANCE NO. 387

AN ORDINANCE OF THE CITY OF DEARY, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO FOR REVISING, CODIFYING AND COMPILING THE GENERAL ORDINANCES OF THE CITY OF DEARY; PROVIDING FOR THE ENACTMENT OF A NEW CHAPTER 1 TO TITLE 2, OF DEARY CITY CODE ENTITLED EMERGENCY POWERS; SETTING FORTH THE AUTHORITY; PURPOSE AND INTENT; SCOPE; DEFINITIONS; PUBLIC HEALTH EMERGENCY ORDERS; PROCESS FOR ENACTING PUBLIC HEALTH EMERGENCY ORDERS; SUSPENSION OF SERVICES; FORCE MAJEURE; PENALTY; APPEAL; ADOPTING A SAVINGS CLAUSE; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE BE DEEMED SEVERABLE; AND PROVIDING AN EFFECTIVE DATE IMMEDIATELY UPON ITS PASSAGE.

WHEREAS, the City, as a municipal corporation of the State of Idaho, has the authority to exercise all powers and perform all functions of local self-government in city affairs that are not in conflict with the general laws or the constitution of the state of Idaho (I.C. 50-301); and

WHEREAS, the City is empowered to make all such ordinances, bylaws, rules, regulations and resolutions not inconsistent with the laws of the state of Idaho as may be expedient, in addition to the special powers in this act granted, to maintain the peace, good government and welfare of the corporation and its trade, commerce and industry (I.C. 50-302); and

WHEREAS, any person charged with or convicted of violation of a city ordinance and subject to imprisonment shall be confined in the City or the County jail (I.C. 50-302A); and

WHEREAS, Idaho Code 50-304, the City may pass all ordinances and make all regulations necessary to preserve the public health; prevent the introduction of contagious diseases into the city; make quarantine laws for that purpose and enforce the same within five (5) miles of the city; and

WHEREAS, under Idaho Code 50-310, the City is empowered to regulate or prohibit the loading or storage of any material deemed hazardous, or transporting the same over the streets or waters in the city, or within three (3) miles of city limits thereof; and

WHEREAS, under Idaho Code 50-606, the Mayor shall have such jurisdiction as may be vested in him/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 shall have jurisdiction in all matters vested in him/her by ordinance, except taxation, within one (1) mile of the corporate limits of said city and over such properties as may be owned by the city without corporate limits; and

WHEREAS, under Idaho Code 50-607, the Mayor shall have and exercise such powers, prerogatives and authority as is conferred by the laws of the state of Idaho or as may be conferred upon him/her by City Council; and

WHEREAS, under Idaho Code 50-609, the Mayor is authorized to call on every resident in the city over twenty-one (21) years of age to aid in enforcing the laws; and

WHEREAS, under Idaho Code 50-901, in cases of riot, infections or contagious disease, or other impending danger requiring immediate enforcement, such ordinances shall take effect upon the proclamation of the Mayor or President of the Council, posted in at least five (5) public places of the City; and

WHEREAS, under Idaho Code 50-903, the City is empowered to revise and codify ordinances of a general and permanent nature and to make such changes, alterations, modifications, additions and substitutions therein as the City deems best; 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 DEARY, IDAHO, AS FOLLOWS:**

**SECTION 1:** That a new chapter, Chapter 1, shall be added to Title 2, Deary City Code, to read as follows:

**CHAPTER 1-2 EMERGENCY  
POWERS**

**Sections:**

<b>2-1-01</b>	<b>LEGAL AUTHORITY</b>
<b>2-1-02</b>	<b>PURPOSE AND INTENT</b>
<b>2-1-03</b>	<b>SCOPE</b>
<b>2-1-04</b>	<b>DEFINITIONS</b>
<b>2-1-05</b>	<b>PUBLIC HEALTH EMERGENCY ORDERS</b>
<b>2-1-06</b>	<b>PROCESS FOR ENACTING PUBLIC HEALTH EMERGENCY ORDERS</b>
<b>2-1-07</b>	<b>EXCLUSIONS</b>
<b>2-1-08</b>	<b>SUSPENSION OF SERVICES</b>
<b>2-1-09</b>	<b>FORCE MAJEURE</b>
<b>2-1-10</b>	<b>PENALTY</b>
<b>2-1-11</b>	<b>APPEAL</b>



## **Sec.2-1-01. LEGAL AUTHORITY**

Idaho Code sections 50-304 and 50-606 authorize the City of Deary to pass ordinances granting certain powers to the Mayor related to public health emergencies.

## **Sec. 1-11-02. 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.

## **Sec. 1-11-03. 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.

## **Sec. 1-11-04. 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, shall have their plain, ordinary and common meaning. Words in any gender shall apply to the feminine, masculine and neutral 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.

#### Sec.1-11-05. PUBLIC HEALTH EMERGENCY ORDERS

The Mayor, being duly authorized by Idaho Code sections 50-304 and 50-606, may issue the following orders:

- A. **Advisory Order.** Where a public health emergency is foreseeable or imminent, the Mayor may, 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 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 cancelation of public meetings and hearings.
  - 4. A limit on the number of persons who may gather in one location regardless of whether the location is an indoor or outdoor venue.
  - 5. Measures to be taken in order to prevent, avoid, detect, address, and/or mitigate a 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 Deary city limits, and continue contiguously to a distance of five (5) miles outside Deary city limits.



**Isolation Order.** Where a public health emergency is present, and poses a clear threat of harm to the public health, the Mayor may enact an isolation order, which order may establish any or all of the following:

7. A directive that infected and/or exposed individuals isolate themselves from other persons.
8. Geographical areas of restricted or prohibited access.
9. Other measures necessary to avoid, address, or mitigate an imminent public health hazard.
10. The scope and manner of delivery of services, materials, or supplies to be provided by the City, if any.
11. Measures to be taken in order to prevent, avoid, detect, address, or mitigate a foreseeable, imminent, or present public health hazard.
12. Conditions of the isolation order.
13. 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.

C. **Quarantine Order.** Where a health emergency is present, and poses a clear threat of harm to the public health, the Mayor may, 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.
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.

**Sec. 2-1-06. PROCESS FOR ENACTING PUBLIC HEALTH EMERGENCY ORDERS**

A. **Enactment.** When summarily enacting a Public Health Emergency Order, the Mayor shall prepare a written order and publish it pursuant to this section.

B. **Effective Date.** The Public Health Emergency Order shall become effective immediately upon publication, except as may be specifically stated in the Public Health Emergency Order, such order shall be effective upon posting at Deary City Hall. The order shall not be continued or renewed for a period in excess of seven (7) days except by or with consent of the Council through a Resolution.

C. **Publication of Public Health Emergency Order.** The Mayor shall cause a

Public Health Emergency Order to be published as soon as possible and prudent under the circumstances by doing the following:

1. Posting the order in a prominent place at Deary City Hall;
2. Posting the order on the City's website;



#### **Sec. 2-1-07. 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 and airports, 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 or necessities purchased in or at grocery or convenience stores, gas stations, and pharmacies.

#### **Sec. 2-1-08. 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 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.

#### **2-1-09. 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 Deary any costs incurred, or profits lost as may be alleged to be attributed to the enactment of a Public Health Emergency Order.

#### **2-1-10. 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.

#### **2-1-11. APPEAL**

Any person shall be entitled to appeal an isolation order or 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 isolation order or quarantine order, the City Supervisor or designee shall review such appeal and issue a written decision. The City Supervisor's decision shall be final.

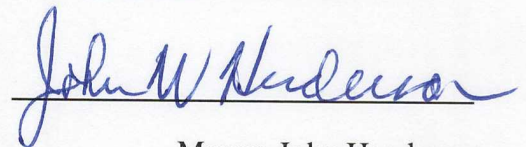
**SECTION 2: SEVERABILITY.** Provisions of this Ordinance shall be deemed severable and the invalidity of any provision of this Ordinance shall not affect the validity of remaining provisions. The remaining sections of Title 2, Chapter 1, shall be in full force and effect.

**SECTION 3: EFFECT ON OTHER ORDINANCES.** Where the definitions contained in this Ordinance are in conflict with relevant portions of the City of Deary, Idaho, Municipal Code, the definitions contained within those portions of the Deary Municipal Code will be unaffected until such time, if any, as they are amended to be consistent with this Ordinance.

**SECTION 4: EFFECTIVE DATE.** This Ordinance shall be effective immediately upon its passage, approval, and publication. Pursuant to the emergency provisions granted under Idaho Code 50-901, where in cases of infections or contagious disease, or other impending danger requiring immediate enforcement, such as COVID-19, such ordinance shall take effect upon the proclamation of the Mayor or President of the Council, posted in at least five (5) public places of the City.

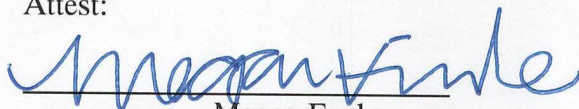
The Ordinance will also be published.

PASSED by the City Council and APPROVED by the Mayor this 25 day of March, 2020.



Mayor, John Henderson

Attest:



Megan Funke

Clerk/Treasurer