

ORDINANCE #565

AN EMERGENCY ORDINANCE TO ADDRESS A PUBLIC HEALTH CRISIS BY IMPLEMENTING CERTAIN MEASURES WHICH HAVE BEEN DEEMED NECESSARY BY THE GOVERNOR OF THE STATE OF SOUTH DAKOTA TO SLOW THE COMMUNITY SPREAD OF CORONAVIRUS (COVID-19)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLARK, SOUTH DAKOTA:

WHEREAS, an outbreak of the severe respiratory disease, COVID-19, which is caused by and is transmitted by person-to-person spread of the novel coronavirus, started in late 2019 and has currently been detected across the world, including the United States; and,

WHEREAS, COVID-19 is spread by person-to-person contact via both airborne and fecal-oral transmission, or by contact with surfaces contaminated by the virus. In some cases, especially among older adults and persons with serious underlying health conditions, COVID-19 can result in serious illness requiring hospitalization, admission to an intensive care unit, and death; and,

WHEREAS, COVID-19 is an imminent hazard to public health, safety, or welfare; and,

WHEREAS, the World Health Organization (WHO) has designated COVID-19 a pandemic, and the U.S. Centers for Disease Control and Prevention (CDC) has declared a public health emergency; and,

WHEREAS, the CDC has issued guidance to state and local governments and all citizens recommending steps to prevent community spread and guard against the COVID-19 outbreak; and,

WHEREAS, the CDC and health experts have recommended social distancing to slow the spread of COVID-19; and,

WHEREAS, social distancing is a method of slowing down or stopping the spread of a contagious disease by reducing the probability of contact between infected persons and those not infected in order to minimize disease transmission; and,

WHEREAS, in response to the need to implement social distancing, all schools in the state will be closed for the remainder of the school year; and,

WHEREAS, on March 16, 2020, the White House issued guidance recommending that social gatherings of more than ten people be avoided, and that people avoid eating or drinking at bars, restaurants, and food courts; and,

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency in response to the global pandemic of COVID-19; and,

WHEREAS, cases of COVID-19 have been confirmed in several counties in South Dakota, including Clark County; and,

WHEREAS, on March 13, 2020, Executive Order 2020-04 declared a state of emergency to exist in the State of South Dakota in response to the spread of COVID-19, which was extended through May 31, 2020 by Executive Order 2020-15; and,

WHEREAS, on March 23, 2020, Executive Order 2020-08, provided guidance and strategies to South Dakota citizens and businesses to reduce the likelihood of spreading COVID-19; and,

WHEREAS, the CDC & SD Department of Health (SD DOH) have issued guidance to state and local governments and all citizens recommending steps to prevent community spread and guard against the COVID-19 outbreak; and,

WHEREAS, on April 6, 2020, Executive Order 2020-12, rescinded Executive Order 2020-08, and put in place mandatory guidelines for South Dakota citizens, employers, retail businesses, health care organizations, and local and municipal governments; and,

WHEREAS, pursuant to Executive Order 2020-12, the City of Clark (hereinafter the “City”) shall:

1. Implement the recommended CDC hygiene practices and public employee arrangements designed to reduce the likelihood of spreading the disease, and take action based on facts, data, and science.
2. Restrict public gatherings of ten or more people, unless it is necessary.
3. Review the business practices of each “enclosed retail business that promotes public gatherings” in their community for compliance with [Executive Order 2020-12] and protect the ability of those businesses to innovate.
4. Encourage entrepreneurial innovation in the private sector to provide employment opportunities to protect the continued operation of the free market consistent with the recommendations of the CDC hygiene practices and understand that COVID-19 will impact communities for potentially the next four months or more.
5. Protect critical infrastructure sectors, as defined by the Department of Homeland Security, such as healthcare services, pharmaceutical industry, and food supply entities, as these sectors have a special responsibility to maintain their normal work schedule.

NOW, THEREFORE, BE IT ORDAINED, that the City of Clark hereby adopts the following ordinance that implements various measures to address the state of emergency caused by COVID-19:

Section 1: RESTRICTIONS

The City has general police powers pursuant to SDCL Ch. 9-32 and SDCL Ch. 9-29 to carry into effect this Ordinance and resolutions relating thereto and to promote the general welfare and health of the community. Under SDCL § 9-32-1, the City has the power to “do what may be necessary

for the promotion of health or the suppression of disease.” Furthermore, under SDCL § 9-29-1, the City has the power to promote “the health, safety, morals, and general welfare of the community.” Therefore, pursuant to these enumerated powers, State Law, and Executive Order 2020-12, as incorporated into this Ordinance by this reference, the City of Clark hereby implements the following restrictions:

A. General Restrictions

1. The recommended CDC hygiene practices and public employee arrangements designed to reduce the likelihood of spreading the disease are hereby implemented, and action is taken based on facts, data, and science.
2. Public gatherings of ten or more people, if unnecessary, are hereby restricted as set forth in CDC & SD DOH guidance and as otherwise provided by this Ordinance.
3. Entrepreneurial innovation in the private sector is hereby encouraged in order to provide employment opportunities to protect the continued operation of the free market consistent with the recommendations of the CDC hygiene practices and to understand that COVID-19 will impact their communities for potentially the next four months or more.
4. Critical infrastructure sectors, as defined by the Department of Homeland Security, such as healthcare services, pharmaceutical industry, and food supply entities, are hereby protected as these sectors have a special responsibility to maintain their normal work schedule.

B. Every Citizen of the City Shall:

1. Review and practice the recommended CDC & SD DOH hygiene practices designed to stop the spread of the disease COVID-19 and encourage others to do so as well.
2. Know the signs and symptoms of COVID-19, call a health care provider if suffering symptoms in advance of a visit to a provider and stay at home if sick.
3. Understand that those who are particularly vulnerable to COVID-19, including those over age 65 and those with a serious underlying medical condition (including chronic lung disease, severe respiratory disorder, moderate to severe asthma, serious heart or cardiac condition, immunosuppression, diabetes, liver disease, chronic kidney disease or someone undergoing dialysis, or other condition identified by one’s medical provider) should take extra precautions and remain home if possible.
3. Implement social distancing measures and support businesses who are adjusting their business model to reduce the spread of COVID-19.
4. Assist, if possible, those who work in essential jobs such as emergency personnel, medical professionals, and law enforcement.

C. All employers, both for profit and not-for-profit, within the City of shall:

1. Implement the recommended CDC & SD DOH hygiene practices and other business strategies designed to reduce the likelihood of spreading the disease (staggering shifts, flexible schedules, employee screenings, and similar measures to avoid group contact).
2. Understand that COVID-19 is not a short-term challenge, and operations will need to endure a difficult and limited social environment for potentially the next four months or more.
3. Innovate and continue to demonstrate entrepreneurial excellence in their operations during this difficult and uncertain environment.
4. Encourage staff to telework if possible, implement social distancing measures, limit unnecessary work gatherings, limit non-essential travel, and consider regular health checks including CDC & SD DOH guidance for COVID-19 screening if possible.
5. Offer, to the extent possible, special shopping times or access periods for populations particularly vulnerable to COVID-19.

D. Any “enclosed retail business that promotes public gatherings” within the State of South Dakota shall:

1. Suspend or modify business practices as recommended by CDC & SD DOH guidance that involve ten or more people to be in an enclosed space where physical separation of at least six feet is not possible.
2. Continue offering or consider offering business models that do not involve public gatherings, including takeout, delivery, drive-through, curbside service, off-site services, social distancing models, or other innovative business practices that do not involve public gatherings in an enclosed space.
3. Consider business arrangements and innovative ideas intended to support the critical infrastructure sectors, as defined by the Department of Homeland Security.
4. For the purposes of this Section D, an “enclosed retail business that promotes public gatherings” means any enclosed facility operating as a bar, restaurant, brewery, café, casino, coffee shop, recreational or athletic facility, health club, or entertainment venue.

Section 2: PROCEDURE

This Ordinance is self-executing and shall be effective immediately upon passage, however, in order to provide the City with the ability to carry out the purpose of this Ordinance, including Executive Order 2020-12, in a manner to protect the comfort, repose, health, or safety of others, as outlined by State and federal authorities, this Ordinance, or any portion thereof, may be further

defined, administered, and executed through the passage of a properly enacted resolution or resolutions as deemed necessary.

Section 3: ENFORCEMENT AND PENALTY

1. Notwithstanding any ordinance or requirement to the contrary, pursuant to SDCL §§ 9-29-13, 21-10-1, and City Ordinance #564, should any individual or entity violate the requirements set forth in this Ordinance, the City may declare that individual or entity to be a public nuisance and may immediately abate the same.
2. Any violation of this Ordinance may be punished by a fine not to exceed \$500 or by imprisonment not exceeding 30 days, or by both such fine and imprisonment.

Section 4: GENERAL PROVISIONS

1. Any resolution passed hereunder shall be reconsidered by the City Council every 30 days to ensure that it continues to meet the purposes of this Ordinance.
2. This Ordinance shall remain in effect until May 31, 2020, at which time it shall be automatically repealed unless specifically readopted for an additional period of time by the Clark City Council.
3. Pursuant to SDCL § 9-19-13, this Ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare of the City and shall become effective immediately upon passage.

Dated this 25th day of April, 2020.

CITY OF CLARK

John Pollock, Mayor

ATTEST:

Jackie Luttrell, City Finance Officer

First Reading: April 20, 2020

Second Reading: April 25, 2020

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