

First Reading: April 6, 2020
Second Reading: April 13, 2020
Final Adoption: April 13, 2020
Published: April 15, 2020
Effective Date: April 13, 2020

ORDINANCE NO. 20-04-05
COVID-19 EMERGENCY ORDINANCE NO. 3

**AN EMERGENCY ORDINANCE TO ADDRESS A PUBLIC HEALTH CRISIS
BY IMPLEMENTING CERTAIN MEASURES WHICH HAVE BEEN DEEMED
NECESSARY TO SLOW THE COMMUNITY SPREAD OF THE VIRUS
RESPONSIBLE FOR THE COVID-19 DISEASE**

WHEREAS, the City of Aberdeen has the authority pursuant to SDCL §§ 9-29-1 and 9-32-1 to adopt ordinances for the purpose of promoting the health, safety, and general welfare of the community, and to do what may be necessary or expedient for the promotion of health or the suppression of disease; and

WHEREAS, the City Council, pursuant to Aberdeen City Charter, Sec. 2.14, may adopt an emergency ordinance affecting life, health, property, or the public peace by an affirmative vote of at least sixty percent of the members present, which ordinance shall automatically stand repealed as of the 61st day following the date on which it was adopted; and

WHEREAS, an outbreak of the COVID-19 disease, which is caused by the novel coronavirus SARS-CoV-2 (the “virus”), has been confirmed in more than 100 countries, including the United States; and

WHEREAS, COVID-19 is a severe respiratory disease caused by the virus transmitted by person-to-person contact, or by contact with surfaces contaminated by the virus. In some cases, especially among older adults and persons with serious underlying health conditions, virus infection can result in serious illness requiring hospitalization, admission to an intensive care unit, and death; and

WHEREAS, the World Health Organization (WHO), the Centers for Disease Control and Prevention (CDC), and the Secretary of the U.S. Department of Health and Human Services have declared the outbreak of the virus causing the COVID-19 disease a public health emergency; and

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

WHEREAS, on the same day, Governor Kristi Noem issued Executive Order 2020-04 declaring a State of Emergency in all counties in the State of South Dakota due to the COVID-19 pandemic; and

WHEREAS, Governor Noem on April 2, 2020, issued Executive Order 2020-11 declaring a disaster to exist in all sixty-six counties and nine tribal reservations of South Dakota and that federal resources are needed to alleviate the impacts of the pandemic on the State of South Dakota; and

WHEREAS, cases of infection from the virus causing the COVID-19 disease have been confirmed in the State of South Dakota, including confirmed cases in Brown County, and cases of community spread are reasonably suspected to exist; and

WHEREAS, the CDC and health experts have concluded that social distancing is necessary to slow the spread of the virus causing the COVID-19 disease; 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, the CDC issued guidance to state and local governments and all citizens recommending social distancing steps to prevent community spread and guard against the COVID-19 outbreak; and

WHEREAS, many states and communities across the country implemented the CDC recommendations by ordering the closure of bars, restaurants, food courts, gyms, and other indoor and outdoor venues where people congregate until the public health emergency is over; and

WHEREAS, many Aberdeen residents, healthcare organizations, businesses, and religious organizations voluntarily instituted social distancing measures recommended by the CDC but social distancing is not being practiced by all persons within the City; and

WHEREAS, the failure to successfully implement social distancing will likely result in higher numbers of infected individuals and has the potential to overwhelm the capacity of the City's health care providers; and

WHEREAS, it is important that control measures be taken to reduce or slow the spread of the virus in order to protect the health and safety of the City's residents, especially seniors and those with underlying health conditions that make them particularly vulnerable to the COVID-19 disease; and

WHEREAS, consistent with the CDC guidance, Governor Noem issued Executive Order 2020-08 on March 23, 2020, providing social distancing directives to every South Dakotan, all employers, any enclosed retail business that promotes social gatherings, all healthcare organizations, and all local and municipal governments; and

WHEREAS, Governor Noem on April 6, 2020, noting her authority under the Constitution and Laws of the State, including SDCL Ch. 34-48A, and recent projections of the potential demand upon hospitals due to the spread of the novel coronavirus in South Dakota, issued Executive Order 2020-12, which order rescinded the directives of Executive Order 2020-08 and mandated that the prescribed social distancing and CDC hygiene practices *shall* be followed by every South Dakotan, all employers, any enclosed retail business that promotes social gatherings, all healthcare organizations, and all local and municipal governments; and

WHEREAS, the City Council, exercising its authority pursuant to Aberdeen City Charter, Sec. 2.14, finds that the rules and regulations contained within this ordinance are necessary for the prevention and spread of the contagious virus causing the deadly COVID-19 disease within the City of Aberdeen.

SECTION A.

BE IT ORDAINED BY THE CITY OF ABERDEEN as follows:

1. Effective 12:01 a.m. on the day following the passage of this ordinance, all restaurants, coffee houses, bars, breweries, casinos, dance clubs, gentlemen's clubs, cafes, and other similar places of public accommodation offering food and beverages for on-site consumption, including any alcohol licensees with on-sale privileges, are closed to on-site/on-sale patrons. These businesses may continue to operate in order to provide take-out, delivery, curbside service, and drive-thru service. Any business continuing to operate in order to provide off-site service should implement procedures to ensure social distancing and operate in compliance with federal and state health guidance in order to prevent the spread of the virus causing the COVID-19 disease.

2. Effective 12:01 a.m. on the day following the passage of this ordinance, all indoor recreational facilities, pools, health and fitness facilities and clubs, social clubs, fraternal organizations, athletic and weight training facilities, movie and live production theaters, event centers, meeting halls, and music and entertainment venues are directed to close to on-site sales, but may continue to offer products for sale off-site under the same conditions as bars and restaurants outlined in Paragraph 1.

3. Effective 12:01 a.m. on the day following the passage of this ordinance, all tobacco shops and lounges, vaping shops and lounges, hookah lounges, and other similar business which allow for on-site consumption of any product by smoking or inhaled

vapor are directed to cease allowing on-site consumption, but may continue to offer products for sale to consume off-site under the same conditions as bars and restaurants outlined in Paragraph 1.

4. Effective 12:01 a.m. on the day following the passage of this ordinance, all pool halls, video game arcades, video lottery casino operations, bowling alleys, ice skating rinks, and other similar indoor recreational or entertainment facilities are directed to close to on-site sales, but may continue to offer products for sale off-site under the same conditions as bars and restaurants outlined in Paragraph 1.

5. Effective 12:01 a.m. on the day following the passage of this ordinance, all tattoo parlors, beauty and hair salons, barber shops, spas, massage studios, and other similar indoor hands-on personal care facilities are directed to close to on-site services and sales, but may continue to offer products for sale off-site under the same conditions as bars and restaurants outlined in Paragraph 1.

6. In addition to the prohibitions and closures ordered in Paragraphs 1 - 5 above, effective 12:01 a.m. on the day following the passage of this ordinance, any public gathering of ten (10) or more people is prohibited (a) where there is not sufficient space to have physical separation of at least six feet between persons who are not immediate family members or members of the same household, or (b) where CDC hygiene practices to reduce the likelihood of spreading the COVID-19 disease are not maintained.

7. The prohibitions and closures in this order do not apply to the following:

- (a) Places of public accommodation that offer food and beverages for off-site consumption, including grocery stores, markets, retail stores that offer food, convenience stores, pharmacies, drug stores, and food pantries, other than any portion of such business which would be subject to the requirements of Paragraph 1.
- (b) Room service in hotels.
- (c) Health care facilities, residential care facilities, congregate care facilities, licensed day cares, and correctional facilities.
- (d) Crisis shelters, homeless shelters, churches, soup kitchens, or other similar institutions.
- (e) Any emergency facility necessary for the response to the current public health emergency or any other community emergency or disaster.

SECTION B.

BE IT FURTHER ORDAINED as follows:

1. That this ordinance shall be repealed, in part or in whole, on the day following each regular or special meeting of the City Council, *unless* the City Council at such regular or special meeting by resolution approved by a majority of the members present affirms (1) the continued existence of the public health emergency, and (2) the necessity of all or certain parts of the social distancing measures set forth in Section A, Paragraphs 1 - 7 above, and extends all or any part of the ordinance for the day following the next regular or special meeting of the City Council. This provision authorizes the City Council by resolution to affirm that certain of the social distancing measures set forth in Section A, Paragraphs 1 - 7 above may no longer be necessary while other such measures may continue to be necessary. Any part of the ordinance that has not been repealed shall be subject to recurrent affirmances by resolution and extended thereafter, but in no event may any part of this ordinance be extended beyond 60 days from the effective date and all remaining parts of this ordinance shall be automatically repealed on the 61st day without further action of the City Council. Nothing herein shall be construed to prevent the City Council from adopting another ordinance necessary for the immediate preservation of the public peace, health, or safety in response to the COVID-19 pandemic.

2. That a violation of this ordinance shall be a Class 2 misdemeanor, and may result in suspension or revocation of any license issued by the city. Each day a violation of this ordinance occurs is considered a separate offense.

3. That, pursuant to SDCL § 9-19-13, this ordinance is necessary for the immediate preservation of the public peace, health, or safety and shall become effective immediately upon passage.

First Reading: April 6, 2020

Second Reading: April 13, 2020

Final Adoption: April 13, 2020

Published: April 15, 2020

Effective Date: April 13, 2020

Travis Schaunaman, Mayor

ATTEST:

Karl Alberts, Finance Officer