

ORDINANCE #O2020-04

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

WHEREAS, the City of Mitchell has the authority pursuant to SDCL 9-29-1 and 9-31-1 to pass ordinances for the purpose of promoting the health, safety, morals, and general welfare, of the community; and

WHEREAS, an outbreak of the disease COVID-19, which is caused by the novel coronavirus, has been confirmed in more than 100 countries, including the United States; and

WHEREAS, COVID-19 is a severe respiratory disease 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, COVID-19 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 COVID-19 as 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 which declared a state of emergency to exist in the State of South Dakota in response to the spread of COVID-19; and

WHEREAS, on the same day, Mayor Robert B. Everson, via Executive Order 2020-01, did declare a state of local disaster or emergency pursuant to Mitchell City Code Section 5-7-3 in response to the COVID-19 outbreak; and

WHEREAS, cases of COVID-19 have been confirmed in South Dakota, Davison County, and the City of Mitchell; 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 of South Dakota have been closed for at least two weeks; 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, the guidance issued by the White House further recommended that in states with evidence of community transmission, bars, restaurants, food courts, gyms, and other indoor and outdoor venues where people congregate should be closed; and

WHEREAS, Governor Kristi Noem did issue Executive Order 2020-08 on March 23, 2020 which orders and South Dakota citizens, its employers, healthcare organizations, and its local government bodies to take certain actions in response to the COVID-19 outbreak, such as implementation of restrictions on public gatherings.

WHEREAS, many states and communities across the country have already implemented the White House recommendations by ordering all bars, restaurants, food courts, gyms, and other indoor and outdoor venues where people congregate be closed until the public health emergency is over; 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 down the spread of COVID-19 in order to protect the health and safety of the City's residents, especially for seniors and those with underlying health conditions that make them particularly vulnerable to COVID-19; and

WHEREAS, the Mayor and City leadership have been in consultation with health professionals in the community and they are recommending that the actions recommended by federal authorities when there is evidence of community spread within a state be taken in Mitchell at this time; and

WHEREAS, while this ordinance cannot become legally effective for at least five (5) days after first reading due to the requirements of state law, the City strongly urges all businesses to start voluntarily complying with these regulations immediately.

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of Mitchell that:

1. Effective immediately upon publication of this ordinance after adoption, all restaurants, food courts, coffee houses, bars, breweries, distilleries, wineries, 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 COVID-19.

2. Effective immediately upon publication of this ordinance after adoption, all recreational facilities, public pools, health clubs, athletic facilities and theaters, including movie theaters and music or entertainment venues are directed to close and cease operations.
3. Effective immediately upon publication of this ordinance after adoption, all hookah lounges, cigar bars, vaping lounges or other similar businesses that allow for on-site consumption 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 immediately upon publication of this ordinance after adoption, all arcades, bingo halls, bowling alleys, casinos, indoor climbing facilities, skating rinks, trampoline parks, and other similar recreational or entertainment facilities are directed to close and cease operations.
5. The prohibitions and closures in this order do not apply to the following businesses:
 - 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 offer on-site consumption 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, and correctional facilities.
 - d. Crisis shelters, homeless shelters, soup kitchens, or other similar institutions.
 - e. Airport concessionaires.
 - f. Any emergency facilities necessary for the response to the current public health emergency or any other community emergency or disaster.
 - g. Official meetings of the city, schools, county, or state.
 - h. The operations and meetings of any state or federal courts.
6. Any violation of this ordinance is subject to the general penalty provision established in Section 1-4-1 of the Mitchell City Code. Each day a violation of this ordinance is allowed to occur is considered a separate offense. Furthermore, the City Attorney is authorized to

pursue relief, in an appropriate form, through the court system which may serve to prevent and/or prohibit repeat violations of this ordinance.

7. This ordinance shall remain in effect until amended or repealed by the City Council, except that the Mayor may order the temporary suspension of the provisions of this ordinance one time for the purpose of bringing the matter of this ordinance's repeal or continuance before the City Council. Such suspension shall remain in effect either until the Council votes in favor of having this ordinance remain in effect or until the Council complies with the procedure to repeal this ordinance.
8. This ordinance shall not limit the powers of the Mayor pursuant to law and ordinance and the Mayor, having declared a local disaster or emergency pursuant to Mitchell City Code Section 5-7-3, shall continue to have all powers granted thereunder to be exercised by Executive Order. Such Executive Orders shall be of the same force and effect as if included in this ordinance and any person violating such an Executive Order shall be subject to the same penalties as cited above. In addition, pursuant to MCC 5-7-3(C), the City Council does hereby extend the duration of the emergency declared by the Mayor via Executive Order 2020-01 on March 13, 2020. Such extension shall continue until this ordinance is repealed.

BE IT FURTHER ORDAINED, that, 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 publication of this ordinance after adoption.

Adopted by majority vote of the Mitchell SD City Council in regular session this ____ day of _____, 2020.

Robert B. Everson, Jr. – Mayor

Attest:

(seal)

Michelle Bathke – City Finance Officer

First Reading: _____

Second Reading: _____

Adoption: _____

Published: _____