

PROPOSED AMENDMENTS TO MOSCOW CITY CODE TITLE 1, CHAPTER 11

Gary J. Riedner, City Supervisor

Mia Bautista, City Attorney

Moscow City Council, January 19, 2021

CONSTITUTION OF THE STATE OF IDAHO

Article XII. CORPORATIONS, MUNICIPAL

§ 2. LOCAL POLICE REGULATIONS AUTHORIZED

Any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws.

IDAHO CODE § 50-301 CORPORATE AND LOCAL SELF-GOVERNMENT POWERS

Cities governed by this act shall be bodies corporate and politic; may sue and be sued; contract and be contracted with; accept grants-in-aid and gifts of property, both real and personal, in the name of the city; acquire, hold, lease, and convey property, real and personal; have a common seal, which they may change and alter at pleasure; may erect buildings or structures of any kind, needful for the uses or purposes of the city; and exercise all powers and perform all functions of local self-government in city affairs as are not specifically prohibited by or in conflict with the general laws or the constitution of the state of Idaho.

IDAHO CODE § 50-302

PROMOTION OF GENERAL WELFARE – PRESCRIBING PENALTIES

(1) Cities shall 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. Cities may enforce all ordinances by fine, including an infraction penalty, or incarceration; provided, however, except as provided in subsection (2) of this section, that the maximum punishment of any offense shall be by fine of not more than one thousand dollars (\$1,000) or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment.

IDAHO CODE § 50-302A

CONFINEMENT IN CITY OR COUNTY JAIL FOR VIOLATING ORDINANCE

Any person charged with or convicted of violation of a city ordinance and subject to imprisonment shall be confined in the city jail; provided, however, that any city shall have the right to use the jail of the county for the confinement of such persons but it shall be liable to the county for the cost of keeping such prisoners.

MOSCOW CITY CODE 2-1-7

Sec. 1-7. Police Power of Mayor. The Mayor shall have jurisdiction over all places within five (5) miles of the City for the enforcement of any health or quarantine ordinance and regulations thereof, and shall have jurisdiction in all matters, except taxation, within one mile of the City, and over such properties as may be owned by the City without the corporate limits.

IDAHO CODE § 50-304

PRESERVATION OF PUBLIC HEALTH

Cities may establish a board of health and prescribe its powers and duties; 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.

IDAHO CODE § 50-310

HAZARDOUS MATERIALS

Cities are 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 the limits thereof; to prevent the discharge of firearms, rockets, powder, fireworks or other dangerous, combustible or explosive material in the streets, lots, grounds, alleys or in and about the vicinity of any building and punish violators therefor.

IDAHO CODE §50-606

POLICE POWERS OF MAYOR

The mayor shall have such jurisdiction as may be vested in him 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 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 the corporate limits.

IDAHO CODE § 50-607

GENERAL POWERS

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 by the city council, and shall have the power to administer oaths, and shall sign all contracts and conveyances in the name of and on behalf of the city.

IDAHO CODE §50-609
MAYOR MAY REQUIRE AID IN ENFORCING LAW

The mayor is hereby authorized to call on every resident in the city over twenty-one (21) years of age to aid in enforcing the laws.

IDAHO CODE § 50-901

ORDINANCES - STYLE - PUBLICATION - WHEN EFFECTIVE - IMMEDIATE OPERATION IN EMERGENCIES

The style of all ordinances shall be: "Be it ordained by the mayor and council of the city of“ and all ordinances of a general nature, unless otherwise required by law, shall, before they take effect and within one (1) month after they are passed, be published in full or by summary as provided in section 50-901A, Idaho Code, in at least one (1) issue of the official newspaper of the city, or mailed as provided in section 60-109A, Idaho Code; provided, however, that 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

IDAHO CODE §50-903

GRANT OF POWER

Any city is hereby empowered to revise, codify, and compile from time to time and to publish in book or pamphlet form all ordinances of such city of a general and permanent nature and to make such changes, alterations, modifications, additions and substitutions therein as it may deem best to the end that a complete simplified code of such ordinances then in force shall be presented, but with errors, inconsistencies, repetitions and ambiguities therein eliminated.

IDAHO CODE §46-1011


LOCAL DISASTER EMERGENCIES

A local disaster emergency may be declared only by a mayor or chairman of the county commissioners within their respective political subdivisions. It shall not be continued or renewed for a period in excess of seven (7) days except by or with the consent of the governing board of the political subdivision. Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the local county recorder.

EMERGENCY POWERS VS. INDIVIDUAL RIGHTS



CONGRESS SHALL MAKE NO LAW *respecting*
an establishment of religion, or prohibiting the free
exercise thereof; or abridging the freedom of speech,
or of the press; or the right of the people peaceably
to assemble, and to petition the Government for a
redress of grievances.

 **THE FIRST AMENDMENT**
TO THE U.S. CONSTITUTION
15 DECEMBER 1791

FIRST AMENDMENT

Jacobson v. Massachusetts (1905) 197 U.S. 11 “[T]he liberty secured by the Constitution of the United States to every person . . . does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good.”

EMERGENCY POWERS VS. CIVIL LIBERTIES

Cite as: 592 U. S. ____ (2020)

1

Per Curiam

SUPREME COURT OF THE UNITED STATES

No. 20A87

ROMAN CATHOLIC DIOCESE OF BROOKLYN,
NEW YORK *v.* ANDREW M. CUOMO,
GOVERNOR OF NEW YORK

ON APPLICATION FOR INJUNCTIVE RELIEF

[November 25, 2020]

ON NOVEMBER 25, 2020, THE US SUPREME COURT ISSUED A 5-4 RULING GRANTING AN APPLICATION FOR INJUNCTIVE RELIEF FROM THE ENFORCEMENT OF NEW YORK GOVERNOR CUOMO'S EXECUTIVE ORDER 202.68'S, 10 AND 25 PERSON OCCUPANCY LIMITS.

ULTIMATELY, THE COURT HELD THAT PLACES OF WORSHIP WERE TREATED MORE HARSHLY THAN OTHER BUSINESSES IN THE SAME ZONE AND THERE WAS NOT A COMPELLING STATE INTEREST FOR THE MORE RESTRICTIVE RULES.

In re Juan C (1994) 28 Cal. App. 4th 1093


- “[T]he government must make every effort to avoid trammeling its citizens’ constitutional rights. By the same token, those rights are not absolute. ‘[T]he Government’s regulatory interest in community safety can, in appropriate circumstances, outweigh an individual’s liberty interest.’”
- “An ***inherent tension*** exists between the exercise of First Amendment rights and the government's need to maintain order during a period of social strife.”

EMERGENCY POWERS VS. CIVIL LIBERTIES

“[W]hen faced with a society-threatening epidemic, a state may implement emergency measures that curtail constitutional rights so long as the measures have at least some ‘real or substantial relation’ to the public health crisis and are not ‘beyond all question, a plain, palpable invasion of rights secured by the fundamental law.’ (*Jacobson* at *31.) Courts may ask whether the state’s emergency measures lack basic exceptions for ‘extreme cases,’ and whether the measures are pre-textual—that is, arbitrary or oppressive. (*Id.* at *38.) At the same time, however, courts may not second-guess the wisdom or efficacy of the measures.” (*In re Abbott*, 956 F.3d 696, 705 (5th Cir. 2020).)

EMERGENCY POWERS VS. CIVIL LIBERTIES

REGULATION AIMED AT BEHAVIOR, NOT
AIMED AT COMMUNICATION, WILL BE
VIEWED MORE REASONABLE IN THE
COURTS:

- MAINTAIN 6 FT PHYSICAL DISTANCE
 - WEAR FACE COVERING WHEN UNABLE TO
MAINTAIN 6 FT PHYSICAL DISTANCING
 - GOAL IS TO LIMIT EXPOSURE AND SPREAD OF CV19
- 

THERE IS NO CONSTITUTIONAL
RIGHT TO BE FREE FROM FACE
COVERINGS.

The background is a solid blue color. On the right side, there are several white, parallel diagonal lines that create a sense of motion and depth, extending from the top right towards the bottom left.

**IDAHO DEPARTMENT OF HEALTH AND WELFARE
ORDER OF THE DIRECTOR**

**ORDER TO SELF-ISOLATE
DATE OF ORDER: March 25, 2020**

**IDAHO DEPARTMENT OF HEALTH AND WELFARE
ORDER OF THE DIRECTOR**

**ORDER TO SELF-ISOLATE
DATE OF ORDER: March 25, 2020
DATE OF AMENDMENT: April 2, 2020**

**IDAHO DEPARTMENT OF HEALTH AND WELFARE
ORDER OF THE DIRECTOR**

**ORDER TO SELF-ISOLATE
DATE OF ORDER: March 25, 2020
DATE OF AMENDMENT: April 15, 2020**

**STATE OF IDAHO
IDAHO DEPARTMENT OF HEALTH AND WELFARE
STAY HEALTHY ORDER**

May 16, 2020

**STATE OF IDAHO
IDAHO DEPARTMENT OF HEALTH AND WELFARE
STAY HEALTHY ORDER**

May 30, 2020

**STATE OF IDAHO
IDAHO DEPARTMENT OF HEALTH AND WELFARE
STAY HEALTHY ORDER**

October 27, 2020

**STATE OF IDAHO
IDAHO DEPARTMENT OF HEALTH AND WELFARE
STAY HEALTHY ORDER**

November 14, 2020

GOVERNOR'S ACTIONS

ALL INDIVIDUALS, BUSINESSES, AND GOVERNMENTAL AGENCIES MUST ADHERE TO THE MANDATORY PORTIONS OF THE PHYSICAL DISTANCING AND SANITATION REQUIREMENTS SET OUT IN SECTION 3 OF THIS ORDER.

The Governor and Director of the Idaho Department of Health and Welfare (“Director”) hereby issue this order of isolation pursuant to Article IV, § 5 of the Idaho Constitution and Idaho Law.

The Director is authorized by Idaho Code § 56-1003(7) “to impose and enforce orders of isolation and quarantine to protect the public from the spread of infectious or communicable diseases.”

This Order is intended to be temporary and is effective as of 12:00 a.m. December 30, 2020 and will continue to be in effect until it is extended, rescinded, superseded, or amended in writing by the Governor and Director.

NOW, THEREFORE, THE GOVERNOR OF IDAHO AND IDAHO DEPARTMENT OF HEALTH AND WELFARE DIRECTOR ORDER:

1. Gatherings.

- a. Gatherings of more than 10 people, both public and private, are prohibited. People participating in gatherings of 10 or fewer people, while permitted, must adhere to the Physical Distancing and Sanitation Requirements in Section 3.
- b. As defined by the CDC, “gathering” means “a planned or spontaneous event, indoors or outdoors, with a small number of people participating or a large number of people in attendance such as a community event or gathering, concert, festival, conference, parade, wedding, or sporting event.”

PAGE 2
20

3. Physical Distancing and Sanitation Requirements.

- a. Individuals not residing within the same household must maintain at least six-foot physical distancing from other individuals whenever possible.

THE CITY OF MOSCOW
LOCAL EMERGENCY PROCLAMATION

THE CITY OF MOSCOW
PUBLIC HEALTH EMERGENCY ORDER No. 20-01
MASS GATHERINGS, RESTAURANTS AND BARS

March 20, 2020

THE CITY OF MOSCOW

PUBLIC HEALTH EMERGENCY ORDER No. 20-02
MASS GATHERINGS, SCHOOLS, CHURCHES, GYMS, TATOO PARLORS, BARBER SHOPS AND SALONS

March 24, 2020

THE CITY OF MOSCOW
AMENDED PUBLIC HEALTH EMERGENCY ORDER No. 20-03
FACE COVERINGS AND 6 FOOT SOCIAL/PHYSICAL DISTANCING

July 1, 2020

1.1.2020
HENRIANNE T
LATAH COUNTY RE
FEE \$ *0* BY *[Signature]*

THE CITY OF MOSCOW

PUBLIC HEALTH EMERGENCY ORDER No. 20-04
TEMPORARY SUSPENSION OF DAYCARE AND ZONING REGULATIONS TO ASSIST WITH THE COVID-19 PANDEMIC RESPONSE AND MITGATION

September 2, 2020

9.2.2020
HENRIANNE T
LATAH COUNTY RE
FEE \$ *0* BY *[Signature]*

RESOLUTION NO. 2020-05

A RESOLUTION OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, AUTHORIZING THE CONTINUATION OF THE MAYOR'S PROCLAMATION OF LOCAL DISASTER EMERGENCY MADE EFFECTIVE MARCH 13, 2020; AND PROVIDING THIS RESOLUTION SHALL BE IN EFFECT UPON ITS PASSAGE AND APPROVAL.

RESOLUTION NO. 2020-06

A RESOLUTION OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, AUTHORIZING THE ACCEPTANCE AND EXTENSION OF THE MAYOR'S PUBLIC HEALTH EMERGENCY ORDER 20-01 MADE EFFECTIVE MARCH 21, 2020; AND PROVIDING THIS RESOLUTION SHALL BE IN EFFECT UPON ITS PASSAGE AND APPROVAL.

RESOLUTION NO. 2020-07

A RESOLUTION OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, AUTHORIZING THE ACCEPTANCE AND EXTENSION OF THE MAYOR'S PUBLIC HEALTH EMERGENCY ORDER 20-02 MADE EFFECTIVE MARCH 24, 2020; AND PROVIDING THIS RESOLUTION SHALL BE IN EFFECT UPON ITS PASSAGE AND APPROVAL.

RESOLUTION NO. 2020 – 17

A RESOLUTION OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, AUTHORIZING THE CONTINUED ACCEPTANCE AND EXTENSION OF THE MAYOR'S AMENDED PUBLIC HEALTH EMERGENCY ORDER 20-03 MADE EFFECTIVE JULY 2, 2020 AND EXTENDED BY COUNCIL ON JULY 6, 2020 WITH AN EXPIRATION AT 11:59 P.M. OF AUGUST 4, 2020; AND PROVIDING THIS RESOLUTION SHALL BE IN EFFECT UPON ITS PASSAGE AND APPROVAL.

RESOLUTION NO. 2020 – 22

A RESOLUTION OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, AUTHORIZING THE CONTINUED ACCEPTANCE AND EXTENSION OF THE MAYOR'S AMENDED PUBLIC HEALTH EMERGENCY ORDER 20-03 MADE EFFECTIVE JULY 2, 2020 AND EXTENDED BY COUNCIL ON JULY 6, 2020 AND AGAIN ON AUGUST 3, 2020, WITH AN EXPIRATION AT 11:59 P.M. OF OCTOBER 6, 2020; AND PROVIDING THIS RESOLUTION SHALL BE IN EFFECT UPON ITS PASSAGE AND APPROVAL.

RESOLUTION NO. 2020 – 27

A RESOLUTION OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, AUTHORIZING THE CONTINUED ACCEPTANCE AND EXTENSION OF THE MAYOR'S AMENDED PUBLIC HEALTH EMERGENCY ORDER 20-03 TO 11:59 PM ON JUNE 9, 2021, UNLESS CITY COUNCIL TERMINATES EARLIER; AND PROVIDING THIS RESOLUTION SHALL BE IN EFFECT UPON ITS PASSAGE AND APPROVAL.

PROPOSED AMENDMENTS TO EMERGENCY POWERS ORDINANCE



Sec. 11-07. 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:~~

~~A. 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.~~

~~B. Educational institutions and airports, which shall follow the duly adopted policies of their respective governing bodies.~~

~~C. Activities necessary to operate critical infrastructure and utilities.~~

~~D. Activities necessary to operate and use medical facilities and services.~~

~~E. — Activities necessary to buy, sell, or otherwise deliver food or necessities purchased in or at grocery or convenience stores, gas stations, and pharmacies.~~ **Section Repealed in its Entirety.**

PROPOSED AMENDMENTS TO EMERGENCY ORDER ORDINANCE: EXCLUSIONS

Sec. 11-10. Penalty.

It shall be unlawful to violate any provision or directive of a duly enacted ~~social distancing emergency order, isolation order, or quarantine order while such order is in effect~~. The violation of any provision or directive of ~~an emergency social distancing order, isolation order, or quarantine~~ order shall be a misdemeanor, unless a different penalty is designated by the emergency order or by Resolution of the City Council. Different penalties may include infractions or civil penalties.

PROPOSED AMENDMENTS TO EMERGENCY
ORDER ORDINANCE: PENALTY

Sec. 11-11. 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.

PROPOSED AMENDMENTS TO EMERGENCY ORDER ORDINANCE: APPEAL

Sec. 11-11. 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, unless a different appeal process is designated by the emergency order or by Resolution of the City Council, shall be heard by City Council at their next scheduled meeting, or, if no meeting is scheduled during the term of the isolation order or quarantine order, the City Council may schedule an emergency meeting to hear the appeal. The decision by the City Council shall be final. If the City Council is unable to schedule an emergency meeting where a quorum will be present, and the appellant requests expedited review, then the City Supervisor or designee ~~shall~~ may review such appeal and issue a written decision. The City Supervisor's or designee's decision ~~shall be final~~ may be appealed by filing a written appeal with the City Clerk. The Mayor and Council President will review the written appeal and determine whether the City Supervisor's or designee's decision should be upheld or reversed. The decision of the Mayor and Council President shall be final.

ALTERNATE APPEAL AMENDMENTS

QUESTIONS?

